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Parliament Buildings  
Wellington

## **Submission to the Finance and Expenditure Committee on the Regulatory Standards Bill**

### **1. Introduction**

Toi Mata Hauora (the Association of Salaried Medical Specialists) is the union for senior salaried doctors and dentists, representing over 6,000 members. We promote, protect and support the interests of our members in all aspects of their working lives. Toi Mata Hauora's constitution also includes objectives to support the right of all New Zealanders to equal access to comprehensive quality public healthcare services, and to promote the availability and delivery of the highest possible standards of publicly funded healthcare services.

In 2023, Toi Mata Hauora's membership voted to amend its constitution to include an objective to advance and affirm a commitment to Te Tiriti o Waitangi and its principles, and the values and practices of Mātauranga Māori. This amendment arose in recognition that Te Tiriti o Waitangi provides a foundation to address the unethical, unjust and unacceptable inequities in health outcomes that exist between Māori and non-Māori in Aotearoa New Zealand.

Toi Mata Hauora has a strong interest in the Regulatory Standards Bill, as it has implications for New Zealand's constitution and the ability of future governments to make decisions relating to the health and wellbeing of the New Zealand public and the environment. It would also impact many aspects of the health system.

In summary:

- Toi Mata Hauora opposes the Regulatory Standards Bill
- The Regulatory Standards Bill has not been developed in partnership with Māori
- The process for developing the Bill has been poor
- The Bill proposes significant constitutional reform
- The Bill will exacerbate inequities between Māori and non-Māori
- The Bill will be detrimental to the health of New Zealanders
- The Bill gives too much power to the Minister for Regulation
- The Bill will not achieve its purpose.

Toi Mata Hauora's submission is predominantly focused on the health implications of the Bill. However, Toi Mata Hauora also supports the broader issues raised in the New Zealand Council of Trade Unions' submission on the Regulatory Standards Bill.

## **2. Toi Mata Hauora opposes the Regulatory Standards Bill**

Toi Mata Hauora opposes the Regulatory Standards Bill and strongly recommends that the bill does not proceed. The rationale for Toi Mata Hauora's recommendation is provided below.

Toi Mata Hauora requests the opportunity to make an oral submission to the finance and expenditure committee.

## **3. The Regulatory Standards Bill has not been developed in partnership with Māori**

The Regulatory Standards Bill has not been developed with early, genuine and on-going consultation with iwi/Māori groups throughout the policy and legislative process. The Minister for Regulation rejected advice from his officials that such engagement was necessary.

As described in the Waitangi Tribunal's *Interim Regulatory Standards Bill urgent Report*, "Ministry officials noted the Bill 'will be of specific interest for Māori', given its 'constitutional significance' and the relevance of kāwanatanga and tino rangatiratanga to the process of law-making." Despite this advice, the Minister declined to undertake genuine engagement with iwi / Māori groups, and no targeted engagement with Māori occurred before the decision to progress the Bill was taken to Cabinet. (1)

Toi Mata Hauora supports the position of the Waitangi Tribunal that this process has breached Te Tiriti principles of partnership and active protection "by failing to meaningfully consult with Māori before Cabinet took significant decisions as to the content of the proposed Regulatory Standards Bill." (1)

As recognised in the Cabinet Manual, Te Tiriti is an integral part of the constitutional framework for Aotearoa New Zealand. Omitting Te Tiriti from this legislation would represent a constitutional shift.

It is Toi Mata Hauora's position that ignoring obligations under Te Tiriti o Waitangi and failing to undertake genuine consultation with iwi / Māori provide substantial grounds for rejecting the Regulatory Standards Bill.

## **4. The process for developing the Bill has been poor**

In addition to the failure to consult with iwi / Māori, the Bill has followed a poor policy process generally, that appears designed to limit public engagement and risks undermining the trust New Zealanders have in the policy and legislative process.

In particular:

- The Treaty Impact Analysis was heavily redacted, despite this information being requested by submitters and strongly in the public interest. This limited the ability of respondents to engage on Te Tiriti impacts of the proposals. (1)

- The timing of the Ministry for Regulation’s initial consultation coincided with submissions being due on the Treaty Principles Bill, reducing the opportunity for engagement.
- The Ministry of Regulation received a significant volume of feedback, with 88% of submitters opposing the Bill, and 65% raising concerns about the impact on Te Tiriti (1). Despite this strong feedback from the New Zealand public, Cabinet agreed to proceed with the Bill without addressing the concerns raised by submitters.
- The New Zealand Parliament guidelines recommend a minimum 6-week period to allow for submissions on Bills before Select Committees (2). It notes shorter timeframes may be appropriate if the Bill is of limited interest. The Regulatory Standards Bill is of significant public interest. However, only 4-weeks has been allowed for submissions.
- The Legislation Design and Advisory Committee (LDAC) also notes that “Given the Bill’s potential constitutional significance, it occupies a field in which deliberation, research, discussion papers, and extensive consultation is usually expected...Proceeding without clearly articulating the constitutional implications of the Bill is problematic.” (3)

Coalition agreements between National, ACT and New Zealand First committed to pass a Regulatory Standards Act as soon as practicable. However, Toi Mata Hauora urges members of the Finance and Expenditure Committee to pay heed to Cabinet Manual guidance that:

*“a balance has to be struck between majority power and minority right, between the sovereignty of the people exercised through Parliament and the rule of the law, and between the right of elected governments to have their policies enacted into law and protection of fundamental social and constitutional values. The answer cannot always lie with simple majority decision-making. Indeed, those with the authority to make majority decisions often themselves recognise that their authority is limited by understandings of what is basic in our society, by convention, by the Treaty of Waitangi, by international obligations and by ideas of fairness and justice.” (4)*

## **5. The Regulatory Standards Bill proposes significant constitutional reform**

Te Tiriti o Waitangi is the founding document of Aotearoa New Zealand and a binding agreement between Māori and the Crown. Te Tiriti and its principles have long been recognised in legislation, and as a major source of Aotearoa New Zealand’s constitution. (4)

By neglecting to reference the Treaty of Waitangi, the Regulatory Standards Bill seeks to subvert that balance and undermines Aotearoa New Zealand’s social and constitutional values. This destabilises the fabric of New Zealand society and is damaging for Māori, Pākehā, and everyone living in Aotearoa New Zealand.

The LDAC describes the Bill as “an attempt by the current parliament to pass legislative constraints on how future parliaments should legislate.” It notes that even if this is not the intention of the Bill, there is risk it could be interpreted this way in the Courts, leading to “unpredictable and likely irreversible developments.” As described above, it also notes that “proceeding without clearly articulating the constitutional implications of the Bill is problematic.” (3)

## **6. The Bill is based on flawed and narrow principles**

Subpart 1 of the Bill – Principles of responsible regulation – outlines a narrow set of principles that do not reflect values widely held in Aotearoa New Zealand. These principles are primarily concerned with property, taxes, fees, levies and the rights of the individual. The principles neglect to consider collective social responsibilities and the common good. Toi Mata Hauora does not consider that the principles proposed in the Bill would lead to good-law-making and is concerned that some of the principles would have a chilling effect on interventions to promote and protect public health.

In New Zealand, the LDAC is responsible for the *Legislation Guidelines* that have been adopted by Cabinet as the government's key reference point for assessing whether legislative principles are consistent with accepted legal and constitutional principles. The LDAC has highlighted that the Regulatory Standards Bill contains selective and deeply contestable principles that "depart significantly from the principles stated to be fundamental common law principles in the LDAC Guidelines;" are "vague, open-ended and inherently subjective," and are "unlikely to be durable across successive governments." (3)

The principles also neglect to include other principles relevant to good law-making, for example equity, human rights, principles of distributive justice, the environment, protecting the interests of future generations, obligations under international law, privacy, the precautionary principle, and the public harm principle.

LDAC guidance emphasises legislation should be constitutionally sound and consistent with the Treaty of Waitangi. (5) However, the Regulatory Standards Bill contains no reference to the Treaty of Waitangi.

Toi Mata Hauora considers the Bill is based on flawed, narrow principles and fails to meet New Zealand's own standards for good legislation. The absence of principles that support the protection of people and the environment is deeply problematic, and risks undermining public health and wellbeing, alongside many other aspects of New Zealand society.

## **7. The Bill will exacerbate inequities between Māori and non-Māori in Aotearoa New Zealand**

As well as ignoring Te Tiriti o Waitangi, the Bill contains a principle that "every person is equal before the law." In the Waitangi Tribunal's *Ngā Mātāpono Part II* report, it noted that "emphasis on formal equality ... could prevent the Crown from ensuring equitable results for Māori and meetings its obligations under the principle of equity." (6)

Toi Mata Hauora supports the Waitangi Tribunal's further analysis in its *Interim Regulatory Standards Bill Urgent Report*. The Report states that "Historically, Māori have deliberately been treated unequally under the law, and the law has been used as a tool to entrench the inequities that are faced by Māori, some of which continue to this day. The notion of 'everyone being equal before the law' does not fix these inequities. For substantive equality to be realised, it would require historically discriminatory laws and their impact on Māori to be addressed and compensated for." (1)

It is increasingly understood within the health sector that equal treatment does not mean equal outcomes, and different people present with different needs. Stark inequities exist between the health outcomes of Māori and non-Māori, which will not be addressed by equal treatment. A recent

example is the decision to lower the age of free bowel screening to 58 for all New Zealanders, and funding that by cancelling the ability for Māori and Pacific people to access bowel cancer screening from age 50. Māori and Pacific people experience bowel cancer at a younger age than non-Māori and non-Pacific people, with 60% of Māori female and 50% of Māori male bowel cancer patients diagnosed before aged 60 (compared to 30% of non-Māori) (7). By insisting on equal treatment, the policy will mean a significant proportion of Māori and Pacific peoples with bowel cancer will not have access to screening, resulting in a higher death rate at a younger age for Māori and Pacific people with bowel cancer. A more equitable approach would have been to reduce screening to age 58 for non-Māori and keep it at age 50 for Māori (7).

Toi Mata Hauora has serious concerns that formalising the principle “every person is equal before the law” will prevent needs-based, equitable approaches to healthcare and other social services between Māori and non-Māori. This will exacerbate the stark inequities that already exist across health, education, housing, employment, and income. The principle will also entrench and exacerbate inequities for New Zealanders with low incomes.

Fundamentally, a less equitable society will also undermine social cohesion, negatively impacting all New Zealanders.

## **8. The Bill will be detrimental to the health of New Zealanders**

Regulation is critical to protecting people and the environment from harm. This can be in the form of regulation that governs workplace health and safety; sets minimum standards for the building of safe, warm and healthy homes; ensures that food is safe to eat; protects waterways from damage; seeks to mitigate climate change; limits the advertising of tobacco products; and sets minimum standards for employment conditions.

New Zealand has a poor track record in many of these areas. Our workplace death rate is significantly higher than in the United Kingdom and Australia, and inadequate regulation has led to major disasters like Pike River. Our standards of housing have historically been poor, including the leaky homes crisis that resulted from deregulation of the building industry, and has had significant financial and health impacts on tens of thousands of New Zealanders. Despite these well documented and significant failures, the Regulatory Standards Bill aims to deregulate industry, which will lead to further workplace deaths and negative health impacts.

Toi Mata Hauora considers that the health impacts of the Bill are wide-ranging and cannot be covered in their entirety in this submission. However, examples of potential impacts are provided below.

### **8.1 Public health implications**

The Regulatory Standards Bill would mean that if a law impairs property or limits profit without the consent of the owner, the owner would be entitled to compensation from those who obtain the benefit. The Departmental Disclosure Statement for the Regulatory Standards Bill indicates that “regulating in the public interest may become more costly.”(8)

Toi Mata Hauora considers this regulatory takings or impairment principle would be a significant deterrent to governments from making laws to protect the health of the public, resulting in direct harm to the New Zealand population. Potential examples include:

- Tobacco companies could claim loss of profits from initiatives such as plain packaging and denicotinisation of cigarettes and take legal action against the Crown. This occurred in Australia when Phillip Morris took legal action against the government over the introduction plain packaging laws (9). Although the Australian Government was successful, the litigation halted the passage of New Zealand’s plain packaging regulation, delaying progress by several years (10). Similarly, other industries that have a negative impact on health, such as alcohol and sugary drinks, could claim loss of profits from restrictions on marketing. The abilities of future governments to tackle the social and commercial determinants of health could become severely restricted, resulting in increased harm to the health of New Zealanders.
- Recently, the government has passed regulations to ban disposable vapes and restrict advertising in an attempt to reduce vaping. Under the Regulatory Standards Bill, such action likely would have faced challenge from the vaping industry and would have been less likely to pass.
- Industry could claim loss of profits from measures to regulate to prevent pollution of air, land and waterways, compromising the rights of New Zealanders to access basic human rights and needs such as clean air, clean water, and safe environments to live and work in. As noted in advice provided by officials, the Bill essentially reverses the principle of “polluter pays.” (11)
- Corporate interests could claim loss of profits from regulations to set minimum building and housing standards, such as minimum standards for insulation, ventilation, and the building of weathertight homes. The leaky homes crisis in New Zealand illustrates the severe physical, mental and financial toll tens of thousands of New Zealanders suffered as a result of deregulation in the construction industry (12).
- Industry could claim loss of profit from government measures to manage pandemics such as COVID-19, such as closing borders or utilising lockdowns. This would limit the options available to governments to minimise spread of disease and limit the rate of death. The potential for litigation may also slow down government decision-making in time critical scenarios.

Essentially, the requirements for industry to limit negative externalities could be significantly reduced, and the cost of those negative externalities would be borne by everyday New Zealanders – with potential to significantly impact physical, mental, whānau and financial health and wellbeing. Already, commercial determinants have a significant impact on health, with just four sectors (tobacco, alcohol, ultra-processed food, and fossil fuel) accounting for at least a third of global deaths (13). Without strong regulation to protect public health in New Zealand, the health harms caused by commercial determinants will accelerate to a point where the health system can no longer cope.

Deregulation would likely see an erosion of what is basic and expected in New Zealand society – such as access to safe food, air, water, land, housing, working conditions, and the protection from harm. The power imbalance between commercial interests and the general public will continue to grow.

## **8.2 Health and safety implications**

Because the Bill requires compensation to corporate interests when laws impact on property or profit, it could also have a detrimental effect on health and safety regulations, resulting in direct harm to New Zealanders.

As described above, New Zealand already has a poor track record when it comes to workplace health and safety, and the Regulatory Standards Bill would lead to further decline, increasing the rate of workplace-based deaths and life-changing injuries.

Already, between 750-900 people die in New Zealand each year from work-related causes, and it is estimated a further 5,000-6,000 people are hospitalised (14). New Zealand's rate of workplace deaths is 60% higher than in Australia, and 500% higher than the United Kingdom (15). These deaths and injuries are unacceptable and are preventable. The Regulatory Standards Bill could limit the actions governments could take to mandate minimum health and safety standards, due to the risk of having to pay compensation for lost profit.

New Zealand is not over-regulated in terms of workplace health and safety and tends to lag behind other countries. For example, in 2024 Australia banned engineered stone as exposed workers were developing silicosis – a debilitating and incurable disease. New Zealand has neglected to follow suit, leaving workers at risk (16). New Zealand has also been slow to respond to major failures that have killed workers such as the Pike River disaster, and persistently high rates of fatality and injury in the forestry sector. Despite these major problems, media reports suggest WorkSafe in New Zealand visits workplaces and issues infringement and improvement notices far less than its counterpart in Australia (15).

Health and safety regulations are also a cornerstone of protecting vulnerable populations such as young children in Early Childhood Education, and older adults in aged care. Governments are likely to be more reluctant to set minimum standards around care, supervision, and other health and safety matters in these settings if it means private providers could claim compensation for loss of profit. In this scenario, rates of harm would increase for vulnerable young children and older adults in these settings.

### **8.3 Health workforce and patient safety implications**

Regulation is a cornerstone for ensuring health practitioners working in New Zealand provide safe, high-quality care to patients. Health care is a high hazard, high risk industry, and minimum standards are necessary to prevent avoidable patient harm and give patients confidence that it is safe to seek treatment from our health care system. Doctors, nurses and other health practitioners are rightly held to high standards for the protection of patients.

The Bill's focus on prioritising corporate profit over the health and safety of the public would likely lead to deregulation of the health practitioner workforce, in the pursuit of a less qualified and cheaper workforce to enable profit maximisation above patient care. This would lead to direct patient harm, substandard care, and a loss of trust in the healthcare system. Moves to deregulate the health workforce and allow lower standards of training and qualifications have already been made clear in the Ministry of Health's recent consultation document *Modernising Health Workforce Regulation* (17) The consultation document was significantly flawed, with factual errors, manufactured patient quotes, and misleading, politicised content that has caused widespread concern in the health sector.

Although New Zealand's healthcare system is under significant pressure, it is held together by a highly qualified, skilled and committed workforce with regulation that clearly supports patient safety. This means that when patients receive healthcare, their experience tends to be positive and their level of trust in health practitioners is high (18). This is a strength of New Zealand's health system that must be retained.



#### **8.4 Cost of living implications and impact on the ability for families to access their basic needs**

The health of New Zealanders is shaped by social determinants of health and access to basic needs, such as safe, affordable, healthy food. Already, New Zealanders are impacted by extraordinarily high food costs, with the Commerce Commission estimating supermarkets extract \$1 million in excess profits every day from New Zealanders (19). New Zealand has embarrassing rates of food insecurity that have sharply increased in recent years. Over a quarter of children live in households where food runs out often or sometimes, or where they often or sometimes have to eat less due to lack of money (20). For households where children are Māori, Pacific, disabled, or living in the most deprived neighbourhoods, rates of food insecurity are even higher.

The government has put New Zealand's supermarket duopoly "on notice." However, if the Regulatory Standards Bill were to pass and the takings or impairment principle to be introduced, it could limit what options governments may have to improve the competitiveness of the market. This would see food costs increase further, increasing the number of families without enough food to eat. This would have widespread impacts on lifelong health.

#### **8.5 Impact on the government's finances and its ability to fund the public services New Zealanders need**

Officials advising the Government on the Regulatory Standards Bill have noted that at a minimum, there would be costs involved in assessing all legislation against the new requirements, and in defending the Crown in court (21). Further, a briefing from officials notes that costs to the Crown from providing compensation for impairment of property are too uncertain to estimate but could be significant (22). This means the Regulatory Standards Bill could leave the New Zealand government open to significant financial risks from corporate litigation and the requirement to pay compensation.

Essentially, the Bill contains significant risk that revenue raised from taxpayers would be directed away from public services, and towards compensation for corporate businesses. Depending on how significant these costs are, the public provision of services such as health, education, and social development could be negatively impacted.

### **9. The Regulatory Standards Bill gives too much power to the Minister for Regulation**

The Regulatory Standards Bill would establish a Regulatory Standards Board that could make inquiries into existing legislation to assess whether it is inconsistent with the principles of the Bill. The Ministry for Regulation would be required to establish and maintain a system for receiving and dealing with complaints that legislation is inconsistent with the principles in the Bill. It would also have significant powers to request information from other government departments, councils and third-party providers.

Toi Mata Hauora disagrees with this proposal for a number of reasons:

- This provision confers significant power to appointed individuals rather than elected representatives in the assessment of current and future legislation.
- The membership of the Board does not require any expertise in areas such as public health, environmental protection, human rights, or Te Tiriti o Waitangi. It is highly unlikely a Board of 5-7 members would have the depth of experience in these fields to fully assess the benefits of any particular piece of legislation.



- The complaints process opens an avenue for corporate lobby groups to apply pressure on government to change legislation that impacts their profits. This would increase avenues for tobacco, ultra-processed food, alcohol and other health-harming industries to pressure government to remove legislation that exists for the benefit and protection of the public. For example, it would provide a mechanism for the vape industry to challenge regulations that have recently come into force banning disposable vapes and restricting marketing.
- It allows the Minister for Regulation to hand-pick a Board to play a role that is similar to judicial oversight. This is inappropriate and concentrates too much power with the Minister for Regulation.

## **10. The Bill will not achieve its purpose**

The purpose of the Regulatory Standards Bill is to promote accountability for developing high-quality legislation and the exercise of stewardship over regulatory systems. However, it is evident that experts and government officials are dubious the Bill would achieve its stated purpose.

The Ministry for Regulation notes in its Regulatory Impact Statement that “Given the selective nature of the principles and the fact that they do not include many aspects of regulatory quality...it is difficult to assess the impact on overall regulatory quality.” (23) The LDAC has provided advice that it “has misgivings about the capacity of this Bill to offer improvement and sees risks with the proposals, including the risk of unintended consequences.” Also, throughout official documents it is clear several government departments have misgivings about the Bill and the likelihood of the Bill fulfilling its purpose (11).

Given the level of risk the Bill poses to the general public and to the financial position of the government, coupled with the low chance of it achieving its stated purpose, proceeding with the Bill would be illogical.

## **11. Conclusion**

The potential adverse health outcomes of this Bill are wide ranging and would impact the lives of many who live in Aotearoa New Zealand. It would also risk the safety and quality of care provided in the health system, negatively affecting patients. Toi Mata Hauora cannot capture the full consequences in a single submission, and within the truncated timeframe allowed for feedback.

We reiterate our recommendation that the Bill should progress no further. In dismissing this Bill, we recommend the Finance and Expenditure Committee consider what health impact the Bill would have on the New Zealand population.

We also reiterate the Cabinet Manual advice that *“those with the authority to make majority decisions often themselves recognise that their authority is limited by understandings of what is basic in our society, by convention, by the Treaty of Waitangi, by international obligations and by ideas of fairness and justice.”*

Toi Mata Hauora thanks the Finance and Expenditure Committee for the opportunity to provide feedback on this Bill.

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