

# The proposed Regulatory Standards Bill

## Climate Justice Taranaki submission

### to the Ministry for Regulation / Te Manatū Waeture, 13 Jan 2025

## Introduction

1. Founded in 2010 and incorporated in 2015, Climate Justice Taranaki (CJT) is dedicated to environmental sustainability, social justice and inter-generational equity - our collective ethical responsibility to current and future generations, human and non-human. Our vision is founded on, and underpinned by, Te Tiriti o Waitangi, Aotearoa New Zealand's constitutional document.
2. Composed of a broad range of people with varied expertise and life experiences, CJT has engaged respectfully with government on numerous occasions. CJT has submitted on many consultation papers, policies and Bills over the past decade, as documented on our website<sup>1</sup>.

## The overarching Bill excludes Te Tiriti o Waitangi

3. The discussion paper on the proposed Regulatory Standards Bill suggests that the proposed ***"principles of responsible regulation would act as a set of criteria against which new regulatory proposals or existing regulation could be assessed... it is not proposed that the Bill would include a principle relating to the Treaty of Waitangi/Te Tiriti o Waitangi"*** (Discussion Paper p.20-21)<sup>2</sup>.
4. As such, the proposed Bill is overarching and omnibus, with the ability to force the rewrite or change the meanings of many existing laws and regulations. The ramifications are enormous though largely hidden behind the much more visible Treaty Principles Bill. Driven by a minor party's libertarian ideology, the two Bills have sweeping constitutional implications and would remove the little protection and avenues of redress that currently exists for Māori. It would especially strip away the rights of tangata whenua yet to receive settlements, undermine tino rangatiratanga and ignore the importance of tikanga and kaitiakitanga.
5. *"Overall, the regulatory bill's principles are very similar to the distinctive libertarian interpretations of the terms contained in the Treaty principles bill — interpretations that differ significantly from common usage. Together, these bills propose embedding Act's ideological worldview in the heart of New Zealand's constitutional framework, limiting legislative flexibility, executive decision-making, and judicial interpretation"*, explains Melanie Nelson<sup>3</sup>, an educator and writer on cross-cultural issues.
6. The numerous redactions in the preliminary Treaty Impact Analysis for the Bill<sup>4</sup> are concerning. Why is the public not allowed to read the full Treaty impact analysis? Whose 'legal professional privilege' does the redaction protect?

## The dangerous principles

7. Under 'rule of law', the principle *"the law should not adversely affect rights and liberties, or impose obligations, retrospectively..."* emboldens individualism and entitlement. It undermines individual responsibility and collective obligations needed for a fair society based on universal wellbeing. It is especially dangerous without any reference to the NZ Bill of Rights<sup>5</sup>, the public harm principle, distributive justice<sup>6</sup>, the right to a clean and healthy environment, intergenerational equity, international obligations and the precautionary principle<sup>7</sup>.

8. Under 'liberties', the principle *"legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property..."* goes even further. Such deregulation risks removing or weakening the already inadequate safeguards for the safety, health and wellbeing of people and the environment. It also reads like a precursor to further relaxing gun control.
9. The principle on 'taking of property' is ironic when the Bill is silent on the Treaty of Waitangi and Te Tiriti. The three justifications for the *"taking or impairing of"* property: *"good justification... fair compensation... to the extent practicable"*, provide 'get out of jail free' cards, as we see often (e.g. the taking of the Pascoes' land for Mt. Messenger Bypass)<sup>8</sup>. Other scholars, notably Emeritus Professor Jonathan Boston<sup>9</sup>, have highlighted the problems relating to the vagueness of these terms which are open to disparate interpretations, *"hard to operationalize and can generate unintended and undesirable outcomes."*
10. Likewise, the principle on taxes, fees and levies, is littered with adjectives like "proper" and "reasonable". Bearing in mind the neo-liberal agenda behind the Bill proponent, we would envisage further tax cuts for the rich, reduced waste disposal levy, a falling carbon price and shrinking spending on public infrastructure, social services and environmental monitoring, restoration and research.
11. The principle on 'good law-making' risks further eroding transparency and public participation. It goes against 'open government' which is about strengthening democracy, building trust, accountability and inclusivity<sup>10</sup>. The current bulldozing approach of the coalition government — crafting, amending and passing numerous pieces of legislation under urgency, with no regard to expert, Māori and public concerns and objection, makes a mockery of 'good law-making'.
12. Under 'regulatory stewardship', the principle *"Unnecessary regulatory burdens and undue compliance costs should be eliminated or minimised"* is another push for neoliberal deregulation, the very thing that has been fuelling environmental vandalism, destroying our life-supporting ecosystems and harming people and non-human species.
13. The proposed Regulatory Standards Board, with members appointed by the Minister for Regulation, would consider complaints about inconsistency of regulation with the proposed principles<sup>11</sup>. It would also review the operation of regulatory systems and the content and design of legislation, at its own behest or under the direction of the Minister for Regulation (Discussion paper, p.31). We see this as a huge power grab, perhaps to please vested interests like corporations and lobbyists, and potentially at the expense of ordinary citizens, residents, Māori, migrant workers and other marginalised groups, as well as activists working for social and environmental justice.
14. *"Furthermore, all proposed legislation or ministerial statutes (with a compliance review of all existing laws within 10 years) would fall under the purview of the new regulatory board, severely curtailing the ability of the government to regulate harmful business practices or corporate exploitation, even if such regulation is in the public interest"*, says Dr. Ryan Ward<sup>12</sup>, a senior lecturer at Ōtākou Whakaihu Waka, the University of Otago.
15. In all the above respects, the proposed Bill could more appropriately be titled the 'Regulatory Capture Bill'.

## Bin the proposal

16. The proposed Bill ought to be binned once and for all. As Emeritus Professor Jane Kelsey explains<sup>13</sup>, *“This fourth attempt by the ACT Party to pass its Bill is the result of horse-trading in coalition talks with the National Party... This refers to passing, not just introducing, the Bill... In effect, a minor political party that attracted just 8.6% of the total vote in the general election is being permitted to by-pass the democratic process that has three times rejected the proposed bill in two cases through rigorous parliamentary processes. This is the antithesis of best practice regulatory standards, parliamentary democracy or the rule of law.”* Kelsey’s thorough submission lays out the undeniable reasons to bin this Bill, notably the *“Coalition’s double standards”, “Principles-based decision-making that lacks principles”, “The Minister’s double standards”, “Unaccountable executive power”,* and more.

## Our proposed alternatives

17. *“Parliament is ultimately responsible for producing good quality laws through effective scrutiny”* (Discussion paper p.13). Yet the Westminster Parliamentary system we have is clearly not delivering this.
18. At the very least, there should be a fixed, equal budget and cap for donations towards political campaigning especially during election years, to minimise influence by vested interests and curb corruption. This would foster a more even playing field and encourage more independent members to parliament.
19. At a structural level, we believe it is time to bring back a bicameral Parliament with an upper chamber (the Legislative Council) and a lower house (the House of Representatives) which together formed a General Assembly, as it was from 1854 to 1951<sup>14</sup>. The system would offer a better chance of making ‘good quality laws through effective scrutiny’, with strong measures put in place to protect the independence of the upper chamber from being ‘stacked’ by governments. To honour Te Tiriti o Waitangi, we believe at least half of the membership of the upper house should be elected by Māori.
20. The work of Matike Mai / Constitutional Transformation is crucial. We encourage the government and everyone else to learn more about it and get onboard<sup>15</sup>.
21. Globally and at national and local levels, citizens’ assemblies are being used to enable deliberative democracy and make decisions on complex or difficult issues, in a more inclusive, respectful and productive way<sup>16</sup>. Such a model is becoming more important to avoid society becoming more polarised. Government at all levels could explore and adopt deliberative democracy<sup>17</sup> through citizens’ assemblies or other pathways. Lessons can be drawn from the experience at Auckland Watercare<sup>18</sup>, Wellington City Council<sup>19</sup>, Te Weu Tairāwhiti and Gisbourne District Council<sup>20</sup>, and Napier City Council<sup>21</sup> which have or are planning to tackle a variety of subjects (e.g. drinking water source, long term planning, climate resilience) through citizens’ assemblies.

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<sup>1</sup> <https://climatejusticetaranaki.info/>

<sup>2</sup> <https://www.regulation.govt.nz/assets/Publication-Documents/Have-your-say-on-the-proposed-Regulatory-Standards-Bill-final.pdf>

<sup>3</sup> <https://e-tangata.co.nz/comment-and-analysis/the-dangerous-bill-flying-under-the-radar/>

<sup>4</sup> <https://www.regulation.govt.nz/assets/Publication-Documents/Preliminary-Treaty-Impact-Analysis-for-the-proposed-Regulatory-Standards-Bill.pdf>

<sup>5</sup> <https://legislation.govt.nz/act/public/1990/0109/latest/DLM225519.html>

<sup>6</sup> <https://www.treasury.govt.nz/publications/ap/ap22-03>

<sup>7</sup> <https://www.iisd.org/articles/deep-dive/precautionary-principle>

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- <sup>8</sup> <https://www.rnz.co.nz/news/national/535747/taranaki-farmers-ordered-to-pay-court-costs-of-180k-over-roading-buyout>
- <sup>9</sup> <https://melanienelson.substack.com/p/regulatory-bill-emeritus-professor>
- <sup>10</sup> <https://ogp.org.nz/open-government-nz-what-it-is-and-why-it-matters?e5=7-open-government-nz-what-it-is-and-why-it-matters-english>
- “An effective Open Government Partnership promotes accountable, responsive and inclusive governance. Transparency International New Zealand expects the New Zealand government to make aspirational OGP commitments that will drive integrity and transparency through increased citizen engagement...”*
- <sup>11</sup> <https://newsroom.co.nz/2024/11/19/powered-up-regulatory-standards-bill-removes-role-of-courts/>
- <sup>12</sup> <https://newsroom.co.nz/2024/12/18/the-long-neoliberal-con>
- <sup>13</sup> <https://melanienelson.substack.com/p/jane-kelsey-submission-on-the-proposed>
- <sup>14</sup> <https://teara.govt.nz/en/parliament>
- <sup>15</sup> <https://matikemai.maori.nz/>
- <sup>16</sup> <https://www.rnz.co.nz/news/in-depth/505616/how-citizens-assemblies-could-resolve-new-zealand-s-toughest-debates>
- <sup>17</sup> <https://www.publicservice.govt.nz/publications/deliberative-processes-citizens-juries-and-citizens-assemblies>
- <sup>18</sup> <https://www.watercare.co.nz/home/about-us/latest-news-and-media/citizens-assembly-recommends-direct-recycled-water-for-auckland-s-future-water-source>
- <sup>19</sup> <https://wellington.govt.nz/news-and-events/news-and-information/our-wellington/2023/07/citizen-assembly>
- <sup>20</sup> <https://teweu.nz/tairawhiti-transition-citizens-assembly-faq/>
- <sup>21</sup> <https://www.napier.govt.nz/assets/Uploads/2024-10-10-Workshop-Memo-Citizens-Assembly.pdf>