

Network Waitangi Ōtautahi
Website: nwo.org.nz
Email: organisers@nwo.org

Regulatory Standards Bill
Submission to the Finance and Expenditure Committee

Introduction

Network Waitangi Ōtautahi (NWŌ) is an incorporated society based in Ōtautahi Christchurch. Its members are committed to Te Tiriti o Waitangi as a framework for a multicultural and strongly sustainable future for all of us, with a particular focus on the responsibility for building honourable kāwanatanga.

Network Waitangi Ōtautahi strongly opposes the bill.

We wish to speak to our submission.

We are submitting out of deep concern about the direction in which this Bill would take our country. The Bill, if enacted, would undermine our constitutional arrangements, introducing a set of neoliberal principles that privilege the rights of 'persons' (individuals and corporate bodies) over collective rights to justice, environmental protection, and wellbeing.

The Bill would be in conflict with Te Tiriti o Waitangi. A values based, relational approach is needed for the Crown to honour Te Tiriti, yet the Bill refers solely to the equality of rights of 'persons'. Rights must always be balanced with responsibilities. Relationships need to be rooted in an understanding of values held in common. Further, the bill shows no acknowledgement by the Crown of the history of dispossession and discrimination experienced by Māori since 1840. The lack of consideration for the historical and structural disadvantage of Māori in this country would entrench inequalities. The focus on rights alone is flawed – as the late Moana Jackson said "The Treaty to me has never been about Treaty rights, it's always been about the rightness that comes from people accepting their obligations to each other".

It also ignores the legitimacy of Māori rights to self determination, acknowledged in He Whakaputanga (The Declaration of Independence) as well as Te Tiriti, and protected by international agreements the New Zealand government is party to, including The UN Declaration on the Rights of Indigenous Peoples. The role of tikanga within New Zealand legal and political framework is complex, and takes place within a relational sphere between treaty partners as the two legal systems interact. The proposed bill fails to foster the evolution of honourable kāwanatanga over time, diverting our country away from the course democratically elected governments have been following for decades towards greater recognition of tino rangatiratanga within New Zealand laws and practices.

The rights of 'persons' are often only able to be taken into account if they are priced. Value and price are different. What is valued cannot always be monetized, and balancing of needs and interests are therefore complex. The bill speaks of cost-benefit analysis of legislation, but with an emphasis on private property rights. It is silent on benefits to public good outside those rights - for example the right to health and dignity, a clean environment into the future, and an honourable commitment to addressing structural inequities. There is no explanation how the government will guarantee that the Regulatory Standards Board — appointed by the Minister for Regulation — will have the expertise, independence, and legitimacy to assess the complexities of every aspect of laws. The particular concern is that this Bill will mean our governments will be only justified in enacting legislation (both primary and secondary) which impinge upon 'persons' rights and freedoms for a very limited range of purposes - specifically to prevent demonstrable harm to

other 'persons' and/or their property. It excludes public good or long-term wellbeing as valid reasons to restrict liberty.

The Bill makes no reference to well established explicit measures under current metropolitan law and international human rights laws that are needed to address ongoing outcomes from historical dispossession and discrimination on many fronts. This form of historical amnesia benefits and maintains the special privileges enjoyed by those not affected by these injustices.

There is also no consideration of future generations in this Bill, nor of the imperative to consider collective rights to address collective problems. This would have significant impact in these areas:

- This Bill will further constrain governments' powers to address wellbeing which have already been limited by the recent removal of statutory requirements to do so in both the Public Finance Act and the Local Government Act.
- The Bill would make regulations designed, for instance, to promote environmental goals, such as the protection of biodiversity or the maintenance of ecosystem health or integrity, inconsistent with one or more of the proposed principles of responsible regulation.
- The Bill privileges rights of 'persons' over those of the community and reduces the government's ability to implement social initiatives including legislation aimed at redistributing income and/or wealth to enhance social justice and/or alleviate poverty.
- The Bill's focus on rights of 'persons' alone lacks elements needed to achieve equity and healthy relationships in our society such as acting in good faith and with mutual respect.

No government should be making agreements that bind our future in ways that undermine our constitutional history. The Bill is deliberately designed to constrain the grounds upon which the state can justifiably regulate human behaviour, especially the formulations of the principle of liberty and the 'takings' provision.

The Bill will not secure cross-party support so, if enacted, would generate ongoing political controversy and would likely be short-lived as a future government would repeal it.

Therefore we submit

- That the Regulatory Standards Bill should not be enacted