GREENPEACE

Greenpeace submission on the Regulatory Standards Bill

Submitter Details

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Introduction

We thank the Select Committee for the opportunity to submit on The Regulatory Standards Bill. Greenpeace strongly opposes the Bill and recommends that it be rejected in its entirety.

This Bill poses an unprecedented threat to environmental protection, climate action, and the democratic foundations of Aotearoa. It would impact every New Zealander,

undermining access to clean water, safe and affordable food, and basic health and safety protections.

At stake, is the ability of any future government to respond to the very real crises we face - climate change, inequality, biodiversity loss - without being tied down by legal threats, corporate compensation claims, and the Act party's rigid neoliberal ideology.

The Bill seeks to elevate a narrow set of principles in lawmaking that prioritise individualism and corporate property rights, while explicitly excluding collective interests such as a healthy environment, safe communities, and human rights.

These principles explicitly exclude environmental protection, public health and our founding document - Te Tiriti o Waitangi. The bill even reverses the well-established principle that those who cause harm should bear the cost of it.

Dressed up in the language of "freedom" and "liberty," this Bill promotes a fringe libertarian worldview that individuals and corporations are entitled to harm nature and others and if restrictions are placed on them, then they should be compensated.

This ideology is fundamentally at odds with our nation's deeply-rooted values of fairness, care, and collective responsibility.

If this bill is passed, for the first time in our history, corporations would expect taxpayer payouts for any regulation that protects the public good if it impairs the use of their property - whether that's preventing oil spills, cleaning up rivers, improving workplace safety or the cost of living.

- If rules were strengthened to prevent catastrophic oil spills such as the Deepwater Horizon disaster, the executives at BP oil would expect millions from the taxpayer.
- Basic protections for our drinking water or lakes and rivers, would see Fonterra making complaints to an unelected regulatory standards board and expecting a public payout.
- Supermarket giants would expect compensation for any efforts to limit price gouging and bring down grocery prices.

- Offshore shareholders of multinational forestry companies would expect a payout for any new laws compelling them to prevent further deaths of New Zealand forestry workers.
- Even, the Tobacco industry would expect taxpayer dollars simply for efforts to save New Zealanders lives and get us to a smokefree reality.

We are already told, every budget, that the government cannot afford the money desperately needed by DOC to stop wildlife sliding into extinction. We are told that the funding cannot be found in the coffer to stop our water and sewage pipes bursting or to build fit for purpose ferries or a functioning public transport network. We are told that it is just too expensive to revamp our aging and overcrowded hospitals and actually staff them with enough nurses and doctors.

So where exactly will all that compensation for Shell, Phillip Morris, Trawler Talley's and wannabe seabed miners Trans Tasman Resources come from, if this bill is passed? The answer is, there will not be enough money. So, all future democratically elected Governments hands will be tied. They will simply not be able to afford to regulate harmful corporate activities.

Disturbingly, the Bill explicitly excludes Te Tiriti o Waitangi from the principles of lawmaking, undermining its constitutional status and attempting to ensure the Treaty will no longer guide how laws are made. It further undermines future legislation that seeks to honour Te Tiriti by excluding mention of equity and requiring formal equality rather than substantive equality.

Furthermore, the Bill hands extraordinary powers to the Minister for Regulation - currently David Seymour - including the power to exempt legislation, guide how the principles are enacted, determine who should be consulted on legislation, and appoint and fire members of the Regulatory Standards Board at their sole discretion.

This is an undemocratic attempt to install a regulatory constitution built on corporate rights, without public mandate. Three iterations of this Bill have been rejected by the democratic process in the past twenty years. The 2006 and 2011 Bills each reached the Select Committee stage and were both subject to extensive criticism and a

recommendation from the Commerce Committee that they not be passed. The 2021 Bill did not make it past the First Reading.

At its core, this Bill is an attempt by a far-right libertarian politician to create a bill of rights for corporations, at the expense of the rights of New Zealanders, the rights of nature, and the rights of Māori guaranteed to them under Te Tiriti o Waitangi.

If enacted, it will, without doubt, erode environmental protection, lead to extinction of precious native wildlife, and impair the Government's ability to take action on climate change. It is not consistent with, nor honours, our founding document -Te Tiriti o Waitangi.

The remainder of the submission elaborates on the key reasons that Greenpeace Aoteaoroa opposes this bill in its entirety and recommends it is thrown out.

The Bill is an unprecedented threat to nature and the climate

Not only does this Bill fail to include any reference to climate change or environmental degradation, it explicitly sidelines them. That is contrary to the purpose of the Act which is purportedly to set out principles of responsible regulation. Responsible regulation necessarily must consider the protection of our environment on which we all depend.

The Principles explicitly prioritise the protection of individual liberties, including property rights. This prioritisation comes at the cost of collective interests, such as the natural environment.

Clause 8(c) is particularly dangerous. It provides that legislation should not "take or impair" property without the consent of the owner unless the owner is provided fair compensation by the persons who obtain the benefit of the taking or impairment.

The clause is vague, which means its impacts are potentially extensive. For example, the Bill does not define "impair", "property" or "fair compensation". Property is

therefore not limited to real property and potentially includes "share, companies, real property, intangible intellectual property, foreign exchange, carbon credits, fisheries quotas, goodwill in business, cryptocurrencies, social media platforms, mining permits and other licenses".[1]

The term impair, while not defined in the Bill, in ordinary usage means "to diminish or weaken…".[2] Taken together, cl 8(c) could apply to any regulation that purports to diminish or weaken any of the interests listed above held by private persons or companies. The following are just some of many examples, alongside those listed in the introduction :

- climate change policies allowing Aotearoa to mitigate, and adapt to, climate change to the extent the policies affect profits or the value of carbon credits under the ETS.
- policies that impact a company's ability to mine for minerals under an existing permit, such as not renewing mining permits.
- strengthening legislative protection of wildlife, or conservation areas, to the extent the policies affect profits or private land.
- policies that restrict fishing catch volumes in certain areas.

The application of cl 8(c) to these kinds of policies may have a number of devastating consequences for the development of regulation that protects and enhances the natural environment. For example, cl 8(c) may:

- have a chilling effect on the Government, meaning they do not seek to enact legislation to protect the natural environment in the first place.
- require a Government to compensate a large corporation when enacting legislation to protect the environment, and therefore lining the pockets of those responsible for environmental degradation.
- require another non-governmental party to compensate a large corporation if they are deemed to benefit from the regulation. One of the consequences is that Māori, or activist groups, may be legally compelled to compensate a corporation

[1] Professor Emeritus Jane Kelsey's Submission on the proposed Regulatory Standards Bill at [50].
[2] Oxford English Dictionary "Impair" <oed.com>.

for legislation enacted to protect or enhance Māori interests, or the environment.

Additionally, cl 8(c) provides corporations with a legal avenue to challenge government regulations aimed at protecting the natural environment.

The Bill is an attack on Te Tiriti o Waitangi

The Bill purports to set out standards of good law making in Aotearoa. However, the Bill does not contain any reference to our founding constitutional document, Te Tiriti o Waitangi.

Nor does it refer to the principles of Te Tiriti. Legislation cannot be considered "good law" if Te Tiriti is not considered in the legislative process or incorporated into the legislation where required. That is completely inconsistent with New Zealand's constitution and years of judicial precedent. The Bill exempts a limited list legislation from its ambit. While that includes Treaty settlement Bills it does not include any wider treaty related legislation. Implementation of the Bill therefore risks the eventual removal of every Tiriti provision across the statute book.[3]

One of the Principles is that "every person is equal before the law". While perhaps seemingly innocuous, that definition of the rule of law is an underhanded attempt to prevent the Crown from enacting legislation that attempts to redress the Crown's historical breaches of the treaty by way of reparative action. Like the Treaty Principles Bill, this formulation champions "formal equality" over substantive equality and will exacerbate existing inequalities caused by the colonial history of Aotearoa.

The Ministry of Justice has already warned that the bill fails to recognise Te Tiriti's constitutional significance or the Crown's obligations under it and they have also warned it is not in line with the Bill of Rights Act[4]. Following an urgent inquiry, the Waitangi Tribunal found that the Crown violated its partnership obligations to consult

[3] Dr Carwyn Jones in Waitangi Tribunal *Interim Regulatory Standards Bill Urgent Report* (Wai 3470, 2025) [57].
[4] Cabinet Paper: Policy Approvals for Progressing a Regulatory Standards Bill May 2025

with Māori in good faith[5] and recommended the Crown "immediately halt the advancement" of the Bill.[6]

The Bill has serious democratic and constitutional implications

The Bill sets out a legislative framework with which all legislation is expected to comply. The framework is fundamentally political and seeks to entrench the ACT party's ideology. Despite the Crown's assertions that the Bill builds on uncontroversial norms and principles, the Bill seeks to define concepts that are still being debated and to define them in a way that aligns strongly with neoliberalism. For example, the "Rule of Law" as defined in the Bill refers to formal equality which has significant consequences for Te Tiriti (as discussed above). Defining these concepts in legislation, and in this way, represents a constitutional shift for Aotearoa.

Further, the Bill gives the Minister for Regulation - currently David Seymour - significant power. The Minister for Regulation, together with the Attorney-General may issue guidance that sets out how the principles of responsible regulation should be applied (including, for example, circumstances in which consultation with those people the Ministry for Regulation considers will be directly affected is not reasonably practicable or when not consulting might be justified).That gives the Minister the power to corrode the consultation process required when enacting legislation. The Minister also has the power to:

- decide which regulations are exempt from compliance.
- appoint the members of the Regulatory Standards Board.
- remove a board member, entirely at their discretion.

Conferring this level of power to the Minister for Regulation puts significant decisions about the implementation and application of the Bill in the hands of one individual.

Additionally, this bill sets up an unelected Regulatory Standards Board whose members will be appointed by the Minister for Regulation. Corporations can make complaints to

[5] Waitangi Tribunal *Interim Regulatory Standards Bill Urgent Report* (Wai 3470, 2025) at [44]
[6] Waitangi Tribunal *Interim Regulatory Standards Bill Urgent Report* (Wai 3470, 2025) [87].

the Board if they consider legislation does not comply with the principles (for example, if they say the legislation it takes their property without paying compensation, or that it doesn't adhere to the "every person is equal before the law" principle) (cl 32). The Board can then follow out an inquiry into that piece of legislation. While the recommendations of the Board are non-binding, complaints to the Board provide a powerful avenue to lobby and challenge the legislation especially given the Minister for Regulation has the power to choose the members of the Board.

The Bill should be rejected in its entirety

The Bill is designed to implement ACT's political ideology at the expense of fundamental collective interests including the protection of the natural environment.

The origins of the bill can be traced directly to New Zealand's own far-right think tank - The Business Roundtable (now known as the New Zealand Initiative). A report written by Bryce Wilkinson for the Business Roundtable became the foundation for earlier versions of the bill.

If enacted, it will, without doubt, erode environmental protection, lead to extinction of precious native wildlife, and impair the Government's ability to take action on climate change. It is not consistent with nor honours our founding document,Te Tiriti o Waitangi.

It attempts to erase consideration of the environment, collective wellbeing and Māori rights guaranteed under Te Tiriti o Waitangi from all legislation going forward. This is achieved not only by its broad framework and Principles, but through dangerous provisions such as cl 8(3) that will see private companies financially compensated if any legislation, aimed at protecting and enhancing the natural environment or the public interest, impaired a company's property.

While Greenpeace Aotearoa's submission is focussed on the substance of the Bill, the legislative process surrounding this Bill is enough to warrant its rejection. Following the urgent inquiry, the Waitangi Tribunal found that the Crown's progression of the Bill did not include "targeted and meaningful engagement with Māori" and therefore

violated its partnership obligations to consult with Māori in good faith[7]. The Crown also breached its obligations of active protection in "progressing with the policy in the face of clear opposition by Māori and concerns raised by officials as to the constitutional significance of the proposed Bill and its potential impacts on the Crown's ability to uphold its Te Tiriti/Treaty obligations to Māori".[8] The Tribunal recommended the Crown "immediately halt the advancement" of the Bill.[9]

Greenpeace does not support this Bill. We wish to be heard in support of our submission

Annex 1 – About Greenpeace Aotearoa

Greenpeace is a global, independent campaigning organisation that acts to protect and conserve the environment and to promote peace. Greenpeace is one of the world's largest and oldest environmental organisations, operating for half a century, since 1971, and now works in more than 55 countries. The New Zealand branch of Greenpeace (Greenpeace Aotearoa) was founded in 1974 and represents many tens of thousands of supporters. Our mission is to ensure Earth's ability to nurture life in all its diversity.

Greenpeace Aotearoa recognises Te Tiriti o Waitangi signed in Te Reo Māori on 6 February 1840 as the foundation for the relationship between the Crown (and so the New Zealand Government) and the indigenous hapū of Aotearoa. Greenpeace Aotearoa recognises that Te Tiriti o Waitangi affirmed the sovereignty of the tangata whenua, which has never been relinquished despite the violent colonisation of Aotearoa.

[7] Waitangi Tribunal *Interim Regulatory Standards Bill Urgent Report* (Wai 3470, 2025) at [44]
[8] Ibid.
[9] Waitangi Tribunal *Interim Regulatory Standards Bill Urgent Report* (Wai 3470, 2025) [87].