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Te Ohu Kaimoana feedback on Regulatory Standards Bill

Tēnā koe,

Ka ū tonu mātau kia whakaratoa te iwi.

I am writing this letter on behalf of Te Ohu Kaimoana. This notes our feedback on the proposed contents of the Regulatory Standards Bill (The Bill). Since 2006, there have been attempts to pass a bill such as this into law. We acknowledge the journey this has taken.

While we understand and respect the intent to enhance regulatory transparency and accountability, we are concerned that there is a risk this Bill will undermine core principles which are essential to the Treaty partnership, equity and good environmental stewardship.

Over time the earth's landscape has changed through its own evolutionary process. We understand and agree that there is a natural accord in how this is done. We understand and are continuing to understand this through our own mātauranga and through western sciences. We believe in sustaining our environment within its natural law and balance by managing the impact and role human's have in perpetuating any impact on our environments, such as climate change or land-based effects on our oceans. Not only should we be looking for a regulatory system that manages the impact we are making but also one that enables and restores the health and wellbeing of our environment.

Often it is considered that economic benefits and environmental protections cannot coexist. We disagree with this view and believe that with good regulation, enabling innovative regulation, and appropriate decision making the two can co-exist for the long-term benefit of future generations.

There are four main points we would like to raise within this letter.

1. Our position
2. The role of Te Ohu Kaimoana
3. Omission of Te Tiriti o Waitangi and Treaty Settlements from the Bill
4. Narrow Principles of what should be responsible legislation
5. Final statements

Our position

Te Ohu Kaimoana is to oppose this Bill in its current form.

Te Ohu Kaimoana role

Te Ohu Kaimoana Trustee Limited is the corporate trustee for Te Ohu Kaimoana (also known as the Māori Fisheries Trust) and the Takutai Trust (also known as Māori Commercial Aquaculture Settlement Trust). Both have been established by legislation – the Māori Fisheries Act 2004 and the Māori Aquaculture Claims Settlement Act 2004. Our purpose, among others, is to assist the Crown to discharge its obligation under the Māori Fisheries Deed of Settlement and the Treaty of Waitangi.

As such, we extend the invitation to the Ministry of Regulation to engage with us on any further work that is carried out on this bill or one of this nature as, and when, it impacts upon the Māori Fisheries and Aquaculture Settlements. This is to ensure the nuance of the Crown's commitments, made through our Māori Fisheries Settlements, are upheld.

Omission of Te Tiriti and Treaty Settlements

This Bill states it seeks to determine the value that legislation and regulation are based on.

However, this Bill does not reference the New Zealand Bill of Rights Act 1990 or Te Tiriti o Waitangi. This is a significant omission, as both are foundational to New Zealand's constitutional and legal framework. Further, by omitting these references it also falls silent on any reference to tino rangatiratanga or the Crown's obligations to engage with Māori. Omission of these provisions excludes iwi and hapū engagement, and this will result in the marginalisation of the Māori voice in this space.

The statement 'every person is equal before the law' comes from the Bill of Rights Act and is repeated within the Bill. There is an additional layer to this that is promised under Te Tiriti o Waitangi. Māori were guaranteed Tino Rangatiratanga over their lands, people and taonga. It is well argued that the fruition of this guarantee did not happen. Two examples of this are when land was confiscated and our own language, a taonga, was legislatively banned from being spoken or taught within the education system.

This, amongst other grievances against Te Tiriti, has created social and economic intergenerational disparity amongst Māori, one where Māori, are overrepresented in both crime and low socio-economic statistics. This leads to an approach from government to apply equity-based decision making rather than equality-based decision making. The way this bill is written reduces the scope of the Crown and the role of the courts to make these decisions and instead the Bill will prioritise individual gain rather than the gain of collective New Zealanders.

Narrow Principles of what should be responsible regulation

To do this goes against 'good law making' and 'regulatory stewardship'. Further to this is a constitutional overreach in power due to the narrowing scope of the Crowns responsibilities through the Bill; there is no mention of any existing settlements or future settlements.

This provides ministers with the power and ability to remove Iwi, Iwi entities, Kaitiaki and Hapu from the role they currently have within the regulatory system. To remove this role would be to undo the commitments made between the Crown and Iwi, Iwi entities, kaitiaki and Hapu. Regulations should balance economic considerations with the protection of vulnerable populations and the environment. In its current form, this Bill appears to place emphasis on economic efficiency and property rights rather than ensuring there is consideration for long-term sustainability. This narrow prioritisation risks sidelining essential considerations like environmental sustainability, equity and upholding the values of a Treaty partner.

More specifically for the Māori Fisheries settlements there are legislative responsibilities on the Crown that are enabled through regulatory processes that must be maintained. We extend the invitation to further discuss this with you and provide appropriate provisions within a draft Bill.

Final statements

We understand that this is a consultation document and further drafting of the bill is to take place. We would like to reiterate we oppose the Bill in its current form. We would like to extend the invitation to work with the Ministry of Regulation to remedy the concerns we have raised. We would also like to extend the invitation to work with the Ministry of Regulation on all matters relating to the use of or impact on, the coastal and marine environment.



13/01/2025

Kylie Grigg

Date

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