



TCF submission on the proposed Regulatory Standards Bill

23 December 2024

Introduction

1. Thank you for the opportunity to make a submission on the [proposal for a Regulatory Standards Bill](#).
2. The following comments are provided on behalf of the New Zealand Telecommunications Forum (TCF). The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand telecommunications customers. Our members include network operators, retail service providers and the tower companies that own and operate cell towers.
3. The telecommunications sector is subject to industry specific regulation (the Telecommunications Act), with a dedicated regulator (the Telecommunications Commissioner at the Commerce Commission). It is also subject to more generic regulation in a wide range of areas including competition, consumer protection, emergency management, privacy, resource management and corporate law.
4. We support the establishment of high-quality regulatory standards to help ensure that regulation keeps up with societal change and drives productivity, and that the quality of the existing stock of regulation is improved.
5. In this submission we focus on
 - a. Question 6: views on the quality of New Zealand's regulation
 - b. Question 15: comments on the proposed principles
 - c. Question 16: suggested changes to proposed consistency mechanisms
 - d. Question 26: strengthened regulatory stewardship obligations.

Preliminary questions

Question 6: what are your views on the quality of New Zealand's regulation?

6. We think the quality of New Zealand regulation (its development and application) is variable, so support the objectives of the Bill and the work of the Ministry for Regulation. We agree with the points made in the discussion document¹ about there being few checks and balances in place in relation to the performance of existing regulation, or the monitoring of agency stewardship of regulatory systems. Invasive regulatory decisions can be made in the context of very broad powers with little oversight.
7. On the legislative side we often see (and participate in) high quality policy development processes, with comprehensive regulatory impact analysis. But sometimes good regulatory practice is lacking. A recent example of this is aspects of the [Customer and Product Data Bill](#) which includes a regulation making power to bring sectors into an invasive and high cost regime without a requirement to analyse the level of competition in the sector, or consider existing regulations or industry initiatives that may serve the same purpose. Another example is the DPMC resiliency policy programme which proposed starting with new regulation when non-regulatory options had not been fully considered.
8. While regulators usually exercise their powers in accordance with good regulatory practice, we have experienced instances where powers are exercised without sufficient work on problem definition, evidence of impacts, identifying alternative options and cost benefit analysis. There can be a tendency to add new requirements without evaluating the impact of existing ones or considering cumulative burden.
9. Identification of industry costs of proposed regulation can be a weakness in policy making. While officials sometimes work directly with a sector to understand costs (recent engagement with DPMC is a good example of this), regulatory impact analysis can make assumptions about costs that are much lower than industry reality. We sometimes don't see these estimates until a RIS is published and policy decisions have been made. Examples of this include cost estimates for introducing a consumer data right, and for assisting law enforcement with obligations under the Budapest Convention.
10. The sector also deals with out of date regulation that hasn't kept up with changes in the market and in technology, that stifles innovation and limits the ability to provide essential services to New Zealanders. This can be an issue in industry specific regulation but also more generic areas such as resource management. Examples include the National Environmental Standards for Telecommunications (last updated in 2016), and aspects of Telecommunications Act (a levy calculation method that is inefficient and lacks transparency, and technology specific telecommunications service obligations).
11. Overlapping (or conflicting) regulatory requirements across different regulatory systems is also an issue for the telecommunications sector. We have experience of this at the policy

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development stage, for example trying to make sense of a range of proposals and initiatives related to resilience that have no overarching strategy. This included work on an Emergency Management Bill, DPMC work on new regulation for resilience, various local government initiatives and government inquiries. Not fully considering the privacy implications of a policy proposal on industry is another example of conflicting requirements.

12. Having regulatory standards that must be complied with by all policy makers, ministers and regulators would help achieve consistently good regulatory practice.

Discussion area one: principles of responsible regulation

Question 12: what are your views on setting principles out in primary legislation?

13. The advantage of including the principles in legislation (compared to guidance) is that regulatory standards are more likely to be complied with, for example giving officials something stronger to refer to in potentially difficult conversations with ministers about the need for regulatory impact analysis, the time it takes to do a process properly, and making room in the work programme for the review of outdated legislation or for regulatory system reviews.
14. There will also be flow on benefits for government, industry and the economy. The right regulatory standards will bring efficiency and productivity gains, and costs will be minimised for end users. This can be achieved through the principles helping to avoid additional regulations that are not needed, and cutting red tape in existing regulations.
15. We also note the need for departments to be appropriately resourced to comply with the principles.

Question 15: do you have any comments on the proposed principles?

16. We support the proposed principles as a starting point, and propose three changes or additions to the regulatory stewardship section.
17. The first is the addition of a principle requiring regulators to carry out regulatory impact analysis before deciding whether to exercise discretion to apply a regulatory power. For example, defining the problem, gathering evidence about the magnitude of the problem, looking at a range of intervention options including non-regulatory ones, and doing cost benefit analysis.
18. The second proposal is to apply the principle of proportionality to regulators. The burden of rules and their enforcement should be proportionate to the benefits that are expected to result. Proportionality is mentioned in relation to legislation (bullet point one under regulatory stewardship) but not in relation to the exercise of regulatory powers once they are included in legislation. This could be added as a stand alone principle or included as part of the first suggestion about regulatory impact analysis.
19. The third suggestion is to include the concept of deregulation. There should be an assumption that regulatory interventions are assessed to see if they have addressed market failures, and removed when no longer needed. The last bullet point under regulatory

stewardship talks about the importance of reviewing the performance of a regulatory system, but doesn't speak to the possibility of de-regulation. The overarching principle should be that regulations are only introduced or maintained when there is a clear case of significant market failure to deliver the intended outcomes.

Discussion area two: mechanisms to assess consistency

Question 19: do you have any suggested changes to the consistency mechanisms proposed in this discussion document?

20. The section on assessing consistency refers to new regulatory proposals and the review of existing regulation, but does not mention the exercise of powers under existing regulation. We suggest this be expressly added.

Discussion area four: supporting the Ministry of Regulation work to have oversight of regulation

Question 26: do you support the proposals in this section for strengthened regulatory stewardship expectations on agencies to be set out in a Bill?

21. We support setting a broad requirement for agencies in relation to regular review, maintenance and improvement of the legislation they administer and requiring responsible agencies to develop and publicly report against plans to review their stock of legislation.
22. It will be important that agencies are sufficiently resourced to carry out this regulatory stewardship work.
23. For further information please contact kim.connolly-stone@tcf.org.nz in the first instance.

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