

# Submission from Straterra to the Ministry for Regulation Regulatory Standards Bill Discussion Document January 2025

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## Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Our membership is comprised of mining companies, explorers, researchers, service providers, and support companies.
2. We welcome the opportunity to comment on the discussion document, [Have your say on the proposed Regulatory Standards Bill](#) (the document).
3. We support the introduction of a Regulatory Standards Bill as broadly described in the discussion document.
4. Due to the truncated nature of this consultation with the Christmas period falling within it, we are making only high-level comments on the document, but we look forward to being involved in the consultation process when the bill is drafted.
5. We also offer examples from the minerals sector as to why the processes around new regulation need to be improved.
6. We are happy to discuss our submission.

## Background

7. We strongly support steps to improve the quality of new and existing regulation in New Zealand.
8. We agree with the document about the costs of bad regulation which can stifle innovation and give rise to numerous unintended consequences. This is the case with/experience of the minerals sector, as it is with the economy as a whole.
9. The current arrangements that promote regulatory quality in New Zealand (i.e. regulatory impact statements and disclosure agreements, etc) are not working as well as they should. We support specific requirements, as proposed in the document, for ongoing review and maintenance of legislation and regulatory systems.
10. We agree with the observation from the Legislation Design and Advisory Committee that there is a tendency towards using legislation in cases where it was not strictly required, or to address matters already covered in existing legislation. There is a large stock of outdated or no longer fit-for-purpose legislation which needs to be repealed, much of which impacts the minerals sector.
11. There are several areas of overlapping regulations impacting the minerals sector where duplication and /or contradictions occur. For example, the Minerals Programme for Minerals (Excluding Petroleum), which covers minerals permits under the Crown Minerals Act and is currently being reviewed,

duplicates resource consenting requirements under the Resource Management Act and contradicts health and safety requirements under the Health and Safety at Work Act 2015.

12. We have raised our concerns with the relevant agencies, but we consider one of the benefits of the Regulatory Standards Board and other features of the proposed bill, discussed later in the submission, would be to address these and prevent them from occurring in the future.
13. There are also examples of new regulations being introduced with unintended consequences (see box / examples later in the submission) meaning they are not workable for the minerals sector and while the Government has recognised this and worked with the industry to fix these glitches, better processes are needed to prevent them from happening again.

## **Discussion area one: Setting standards of good regulation**

14. The bill would provide a set of principles for responsible regulation which would act as criteria against which new regulatory proposals or existing regulation could be assessed.
15. We fully support this approach, and we broadly support the proposed principles as set out from page 21 of the document.
16. The proposed principles are largely based on the 2009 Regulatory Responsibility Taskforce recommendations, but include new principles focused on the review and maintenance of existing regulation. We are pleased with this addition as there are numerous examples of regulations becoming out of date or being overtaken by other overlapping regulations.
17. We note there may be competing interests in some of the principles, where, for example, a strong focus on rights and liberties might conflict with public interest goals. These and others are likely to require trade-offs.
18. It will be important that detailed guidelines are produced setting out how the principles should be interpreted and applied (as discussed in the next section).

## **Discussion area two: Showing whether regulation meets standards**

19. Ministers and government agencies would need to assess new and existing regulation and legislation against the principles of responsible regulation, as discussed in Discussion area two. Any departure from this should be justified by the responsible minister.
20. We fully support these assessments as regulations can easily become outdated. We support the transparency brought about by the requirement for the minister to justify any departures.
21. Some of the principles will be open to interpretation so we support guidelines being used to determine how consistency in this regard is assessed.
22. Would these guidelines be amended upon a change of government? We consider that would be preferable to on-going amendments made to the legislation as governments change.
23. As stated in the document, agencies' performance in relation to regulatory impact analysis requirements can be patchy, with many Regulatory Impact Statements (RIS) not fully meeting requirements. The bill will need to address how RISs can be improved or made more consistent and how they are aligned with the new system.
24. We support the requirement for the publication of any ministerial statements, along with the relevant key supporting information generated through the assessment process.

## Discussion area three: Enabling people to seek independent assessment of whether regulation meets standards

25. We support the proposal for the establishment of a Regulatory Standards Board.
26. It is important that the Regulatory Standards Board remains independent of Government and has a broad cross-section of expertise. As well as the areas of expertise outlined in the document, we consider there would also need to be expertise in cost/benefit analysis.
27. We support the role of the Regulatory Standards Board to make non-binding recommendations to ministers and to consider complaints about inconsistencies, implementation of regulation, and content and design of legislation.
28. The board would also be able to undertake reviews on its own accord or with the direction of the Minister for Regulation. We suggest there may be scope for public submissions to be made on the board reports on a regular basis.
29. While we support the establishment of this board, we note that it may not always be the most efficient way to fix bad regulation; new or existing.
30. Currently, where examples of flawed regulation are identified by industry, industry representatives have worked with the relevant department and/or minister to rectify it. This usually offers a fast and efficient approach to fix bad regulation.
31. However, there are cases where this may not occur and so the establishment of the Regulatory Standards Board and other components of the new bill will give confidence that flawed regulation can be fixed promptly. In the box below, we provide an example of where the Regulatory Standards Board would have been beneficial to the minerals sector. We are happy to provide more detail on this example.

### **Example: Fixing the flawed wetland regulations**

When flaws in the natural wetland regulations<sup>1</sup> were identified by Straterra, soon after their passage in 2020, the Environment Minister and officials admitted the error and undertook to work with the extractives sector to fix the issue and find a solution that worked for industry.

It took more than two years to fix the regulation and in the meantime, a number of important projects, including 15 quarry sites across New Zealand, were prevented from seeking resource consent. All in all, however, it was a good example of the industry and Government working well together to ensure fit for purpose, workable regulation.

Notwithstanding this, towards the end of the process the spirit of co-operation was abandoned, and a last-minute decision was made in the minister's office to exclude coal extraction from the solution whereas, it applied to the extraction of all other minerals. Not only was this decision later deemed by Crown Law to not be within the law, but the policy was flawed, given that coal is critical for energy security at the current time, and it had to be fixed by legislation last year.

We are hopeful that the establishment of the Regulatory Standards Board and other components of the new bill will prevent such things from happening again.

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<sup>1</sup> National Policy Statement Freshwater Management 2020

## **Discussion area four: Supporting the Ministry for Regulation to have oversight of regulatory performance**

32. Encouraging agencies to steward their regulatory systems more actively will be critical to improving the quality of regulation.
33. We agree with the proposed approach to strengthen regulatory stewardship by setting a broad requirement for agencies to regularly review, maintain, and improve the legislation they administer.
34. Currently there is inconsistency in how often this occurs.
35. We recognise increasing this would increase the administrative / compliance burden on agencies and would need increased resource. A balanced approach will be needed here.