

**RESPONSE TO CONSULTATION FROM THE ROYAL FOREST & BIRD
PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED
ON A PROPOSED REGULATORY STANDARDS BILL**

To: Committee Secretariat Justice Committee
Parliament Buildings
Wellington

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Introduction and summary

1. The Royal Forest and Bird Protection Society Incorporated (Forest & Bird) has been Aotearoa New Zealand's independent voice for nature since 1923.

Forest & Bird's constitutional purpose is:

To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

2. Forest & Bird has over 100,000 members and supporters who are passionate about protecting and restoring nature in rural and urban areas throughout the country.
3. New Zealand is a biodiversity hotspot. Plants and animals here evolved in isolation for millions of years, creating an astonishing number and diversity of endemic species including flightless birds and giant snails, found nowhere else on earth. Unfortunately, New Zealand has one of the worst extinction rates in the world on the planet, with many more plants and animals threatened with extinction than anywhere else.
4. New Zealand has the dubious distinction of having the highest proportion of threatened species in the world.¹ Of our terrestrial species that have been assessed, 76% of native freshwater fish, 25% of native freshwater invertebrates, 33% of native freshwater plants, 46% of vascular plants, 74% of terrestrial birds, 66% of native birds, and 94% of reptiles are either threatened or at risk of being threatened with extinction, as well as our bat species (two threatened, two at risk, one is unknown). In our marine environment, the largest in the OECD, where we have more species of breeding seabird than any country, 90% of those seabirds, and a quarter of our marine mammal species are threatened or at risk of extinction.²
5. When it comes to the unique ecosystems found here in Aotearoa, of the 71 ecosystems identified as rare, 45 are threatened with collapse, including 16 ecosystems in inland alpine areas.

¹ Bradshaw CJA, Giam X, Sodhi NS (2010) Evaluating the Relative Environmental Impact of Countries. PLoS ONE 5(5): e10440. <https://doi.org/10.1371/journal.pone.0010440>.

² MfE & StatsNZ. (2022). New Zealand's Environmental Reporting Series: Environment Aotearoa 2022. Publication number: ME 1634

6. Research shows that more than any other country, New Zealanders' concept of national identity is closely tied to our connection to the land and to nature. This is despite us having a highly urbanised community (around 87% of us live in cities in towns).³ For Māori, this connection is one of whakapapa, to describe one's identity by the mountains, rivers, lakes and oceans that determine who you are.⁴
7. Due to the highly threatened status of our native species and ecosystems, New Zealand has a national and a global responsibility, through our international agreements (Convention on Biological Diversity and the Kunming-Montreal Global Biodiversity Framework), to ensure that these are protected through appropriate regulation and policy. Nationally, this is set out in the Aotearoa New Zealand Biodiversity Strategy – Te Mana o te Taiao, which sets the strategic direction for protecting our biodiversity through our various statutory tools for the next thirty years.
8. Protecting natural resources is fundamental to New Zealand's economy and 70% of our exports rely on the ecosystem services provided by our natural resources, according to the Sustainable Business Council of New Zealand.
9. Against this background, Forest & Bird is dismayed that the government is proposing legislation that seeks to constrain the ability to regulate to protect our natural environment.
10. This is now the third attempt to introduce a version of this Bill, which has the objective of preferring a limited selection of individual freedoms and private property rights in legislation. If enacted, the result would be to limit the ability to use regulation to support other collective values, such as environmental, human rights, social and cultural values.
11. The main difference between the current proposal and previous versions is that an active role for the judiciary is no longer being proposed, with any complaints to be directed to a newly constituted Regulatory Standards Board (RSB). Although removing the active role of the judiciary would possibly make the Bill less objectional from a constitutional perspective, it is also likely to make the Bill largely ineffectual. Members of the RSB would be

³ <https://www.doc.govt.nz/globalassets/documents/conservation/biodiversity/anzbs-2020.pdf>

⁴ Clifton, J. 2010: Choice, bro. The Listener, 3 July 2010

appointed by the Minister (and therefore lack independence), and their recommendations would be non-binding. The interim RIS points out that “the proposals would involve additional resourcing and are likely to be costly”.⁵ This investment of resources is likely to have limited practical impact given that the primary role of the RSB would be to provide non-binding recommendations on ad-hoc complaints.

12. The principles of liberty and property, as proposed in the Bill, raise significant concerns. Much of Aotearoa’s regulation inherently involves balancing conflicts between individual interests and the broader needs of the environment, the public, and future generations. Elevating individual freedoms and property rights above the common good risks undermining both community well-being and environmental resilience, leading to outcomes detrimental to our environment, and society as a whole.
13. Regulation or deregulation that prioritises economic efficiency over other considerations is proven to be poor, as evidenced by numerous failures in Aotearoa’s history. Examples include the Pike River mining disaster, the leaky buildings crisis, the Government's half-billion-dollar commitment to clean up the Tui Oil Field, and the exacerbation of Cyclone Gabrielle's impacts due to inadequate forestry regulations. These instances highlight the long-term costs and societal harm of regulation that privileges economics over our environment and our people.
14. Forest & Bird supports the general objective of ensuring consistent, efficient and effective regulation. Careful consideration of how best to achieve this objective, in the context of previous iterations of the proposed Bill, has resulted in provisions now contained in the Legislation Act 2019. Forest & Bird supports the recommendation of the Ministry for Regulation that the more sensible approach would be to bring Part 4 of the Legislation Act 2019 into force and combine this with appropriate non-statutory guidance.
15. Forest & Bird considers that the various reasons why similar versions of this Bill have been rejected in the past remain valid.

⁵ Ministry for Regulation “Interim Regulatory Impact Statement: Legislating to improve transparency of the quality of regulation”, at 9, 29, 31.

Environmental Grounds

16. From an environmental perspective, the proposed Bill has the potential to be very damaging, potentially impeding appropriate regulatory action on a wide variety of very important environmental issues.
17. The Bill offers a narrow selection of the issues that should be considered when developing law, implementing policy, and approving regulations, which is completely out of step with international norms and obligations.
18. As submitted by the Environment and Conservation Organisations of NZ in 2011, the Bill would make applying the precautionary principle impossible and would fail to capture the international context and requirements for regulations that may arise from New Zealand's international obligations.⁶
19. Areas of environmental regulation that would be impacted by the Bill include:
 - climate change response
 - protection of the ozone layer
 - trade in hazardous waste
 - dumping of waste
 - discharges to land and water
 - fisheries sustainability
 - intensive farming
 - mining
 - management and control of hazardous substances
 - control on imports of new organisms
 - control of genetically modified organisms.
20. This is not intended to be an exhaustive list. Before introducing a Bill such as this, Forest & Bird considers that there would need to be a proper analysis of the likely impacts across the entire spectrum of regulation.

Constitutional Grounds

21. As above, the principles set out in the Bill are selective and incomplete. Forest & Bird considers that a proper and fulsome consultation process

⁶ The Environment and Conservation Organisations of NZ (ECO) submission on the Regulatory Standards Bill, 18 August 2011.

would reveal a lack of normative support in New Zealand society for such a limited and unbalanced approach to regulation.

22. As submitted by the New Zealand Law Society in 2011, the Bill would result in confusing overlap with the New Zealand Bill of Rights Act 1990, and (at least in previous iterations) uses vague terms to go much further than most jurisdictions (including the United States) in terms of compensation for the impairment of property rights.⁷
23. The Law Society concluded that legislation of this kind should only be considered as part of a wider constitutional review process, rather than through ad hoc and complex legislative additions.⁸ Forest & Bird agrees with this conclusion.

Pragmatic Grounds

24. Forest & Bird considers that the Bill would not achieve its intended objective of ensuring better regulation. As above, the chosen principles are selective and incomplete, and the proposed process for assessing regulation against these principles is ad-hoc and non-binding.
25. In these circumstances, it is not clear why businesses would invest time and money in taking complaints to the RSB. There is therefore a real likelihood that the investment involved in setting up and maintaining the RSB would be wasted.
26. It also seems very unlikely that the Bill would improve New Zealand's international standing within the OECD. The consultation documents refer to OECD assessments and comparisons, suggesting that "New Zealand tends to rank low relative to other countries in relation to oversight and quality control of regulation".⁹
27. However, the most recent OECD Regulatory Policy Outlook in fact describes improvements in New Zealand over recent years, stating that:¹⁰

New Zealand has progressively refined its regulatory management policy in recent years. Regulatory stewardship represents a defining principle within the

⁷ New Zealand Law Society submission on the Regulatory Standards Bill, 6 September 2011, at [18] – [29]

⁸ Ibid, at [30] – [34]

⁹ Ministry for Regulation "Have your say on the proposed Regulatory Standards Bill", November 2024, at 6.

¹⁰ OECD Regulatory Policy Outlook 2021, at 270.

Public Service Act 2020, and the Chief Executive of the Treasury was recently given formal responsibility for its promotion across the public service. This approach applies to all regulatory agencies and involves adopting a whole-of-system, lifecycle view of regulation. It also involves an increased focus on international regulatory co-operation (IRC) in the design and ex ante assessment of new proposals. This will soon be supplemented by an IRC Toolkit, which will build on practical experiences to identify a series of IRC options for reducing regulatory overlap and improving coherence with key partners.

28. Moreover, OECD ratings are based on compliance with OECD recommendations. These recommendations do not share the narrow selective principles of the proposed Bill. Instead, they refer to wider “economic, social and environmental benefits”. For example, recommending that OECD countries should:¹¹

Commit at the highest political level to an explicit whole-of-government policy for regulator quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.

29. Finally, if enacted, the proposed Bill would be unlikely to stand the test of time. Legislation, such as this, that does not enjoy any real measure of cross-party or popular support is very unlikely to survive a change in Government. The result is that the Bill would be likely to have the opposite effect to that which is intended. Rather than simplifying regulation, it would result in further complexity and uncertainty.
30. Forest & Bird considers that it would be much better to try to ensure good regulation against a more complete and widely accepted set of criteria.

Conclusion

31. As Professor Jane Kelsey pointed out in her commentary on previous iterations of this Bill, “... the political, normative, economic, reputational and institutional conditions that are necessary for its enactment, effective

¹¹ OECD, Recommendation of the Council on Regulatory Policy and Governance, 2012, Recommendation 1.

implementation and long-term sustainability do not exist”.¹² Forest & Bird considers that this remains the case today.

32. If enacted, the Bill would result in an inefficient and complicated double-up, offering an incomplete, ad-hoc and unbalanced solution to the complex problem of ensuring good regulation.
33. Crucially, an alternative and better approach is already provided for in legislation, resulting from the work done on previous versions of this Bill. Forest & Bird supports the Ministry for Regulation’s recommendation that a better option would be to use Part 4 of the Legislation Act 2019, together with appropriate non-statutory guidance. Forest & Bird considers that work on the Regulatory Standards Bill should now be stopped.
34. Finally, in its previous versions, the Regulatory Standards Bill has sought to preference individual and economic rights, to the detriment of collective well-being and environmental protection. This narrow approach fails to reflect the shared values of many New Zealanders, who place significant importance on the health of their communities and ecosystems. Moreover, it contradicts New Zealand’s international responsibilities to uphold environmental sustainability and address global challenges such as climate change and biodiversity loss.

¹² Jane Kelsey “Regulatory Responsibility: Embedded Neoliberalism and its Contradictions” Policy Quarterly 6:2, May 2010, at 38.