



13 January 2025

Ministry for Regulation
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By email: RSBconsultation@regualtion.govt.nz

Proposed Regulatory Standards Bill

1. Thank you for this opportunity to make a submission on the proposed Regulatory Standards Bill.

Background

2. Orion New Zealand Limited (Orion) owns and operates the electricity distribution infrastructure in Central Canterbury, including Ōtautahi Christchurch. Our network is both rural and urban and extends over 8,000 square kilometres from the Waimakariri River in the north to the Rakaia River in the south; from the Canterbury coast to Arthur's Pass. We deliver electricity to more than 228,000 homes and businesses and are New Zealand's third largest Electricity Distribution Business (EDB). Orion and its various predecessors have been providing this essential service to the region for close to 120 years.
3. Orion is a Lifeline Utility for the purposes of the Civil Defence Emergency Management Act 2002. Orion has a statutory duty under this legislation to ensure it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after an emergency.
4. Orion has a fully owned subsidiary, industry service provider Connetics, and together with Orion the two organisations make up the Orion Group.
5. Central Canterbury is a place of rapid growth and transformation, embracing change and innovation, with Ōtautahi Christchurch at the heart of this diverse and vibrant region. Electricity distribution has always been an essential service that underpins regional, community and economic wellbeing. Our

service is vital to the wellbeing and livelihood of the people and businesses who live and operate here. Now, it also has a critical part to play in New Zealand's transition to a low carbon economy.

6. In this context Orion's Group Purpose of "Powering a cleaner and brighter future with our community" is central to all we do. As Aotearoa New Zealand transitions to a low carbon economy, the energy sector has a critical part to play, primarily through electrification. Orion has established its purpose to be a vital player in that transition for our community and our region. We are focused on helping our community realise its dreams for a future that is new, better, and more sustainable over the long term.
7. We are very conscious that we face a rapidly changing and massively different energy environment in the decades ahead. The changing landscape facing Orion is primarily driven by three factors – climate change, new technology and increasing demand for electricity. The increasing demand for electricity is driven by the need to both enable decarbonisation at pace, and support population growth.
8. The electricity industry is highly regulated, via multiple regulatory agencies.¹ By way of example, Orion, as an EDB, is subject to regulation under the Commerce Act 1986.² We are also subject to regulation under the Electricity Industry Act 2010 and the Electricity Industry Participation Code 2010, as well as the Electricity Act 1992.³ We comply with our obligations and constructively engage with agencies on key regulatory developments. We have a keen interest in a robust law-making process and regulation that is up to date and achieves its stated objectives.
9. In this context, we provide some comment on some of the questions you have raised in the Discussion Document (beginning at question 6). However, Orion submits that it does not support

¹ See the MBIE website which summarises the electricity industry regulatory framework. See [Electricity industry regulatory framework | Ministry of Business, Innovation & Employment](#)

² Also see the related determinations under this Act such as the Electricity Distribution Services Input Methodologies Determination 2012 and the upcoming Electricity Distribution Services Default Price-Quality Path Determination 2025.

³ Examples under the Electricity Act 1992 include the Electricity (Safety) Regulations 2010 and Electricity (Hazards from Trees) Regulations 2003.

the proposed Regulatory Standards Bill as set out in the Discussion Document.

Question Responses

6. What are your overall views on the quality of New Zealand's regulation?

10. It is not immediately clear to us what is meant by quality regulation or regulatory quality or how these concepts are to be measured. We note that there are already processes in place to assess regulatory proposals and check whether they meet particular requirements. In a modern democracy, regulation will always need to grapple with political priorities, private interests pushing for particular outcomes, and time pressures. Whether or not this leads to “good quality” regulation is another matter.
11. However, there are some matters which we consider are important in designing and promoting regulation, such as
 - A clear statement of the problem that the regulation is trying to solve,
 - Clear objectives for the proposed regulation,
 - Clear articulation of the regulatory impacts including a cost/benefit analysis,
 - Proportionality such that the regulation is fair and equitable in the way the proposal treats regulated parties,
 - Public good assessment of proposals,
 - Whole of systems thinking,
 - Role clarity between regulators (see our discussion below), and
 - Clear process and responsibilities where one regulator's proposals/direction impacts within another regulator's scope.

7. What are your overall views on the current arrangements in place to promote high quality regulation?

12. Generally speaking, we consider that the current arrangements in place are “appropriate” but there can be stress points where there are different regulatory agencies with an overlap of regulatory responsibilities. In our view, the current arrangements would benefit from better communication between agencies where there are overlapping regulatory regimes. For example in relation to EDBs,

the Commerce Commission, which is established under the Commerce Act 1986 and has statutory functions under that Act, is responsible for information disclosure regulation and default/customised price-quality regulation. The Electricity Authority, which is established under the Electricity Industry Act 2010, has its main objective to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers. There can be confusion where these regulatory regimes intersect, and it can be questionable whether one or both regulatory agencies have consulted with each other and discharged their stewardship responsibilities for the regulatory systems they work within.⁴

8. Do you ever use RISs to find out information about proposed government regulation? If so, how helpful do you find RISs in helping you make an assessment about the quality of the proposed regulation?

13. As a matter of practice, we use RISs to find out information about proposed government regulation. We generally find them helpful in making our own assessments about the quality of proposed regulation. However, RISs are not always complete and sometimes are not provided at all. A stricter regime for the provision of RISs would be helpful.

9. Do you ever use disclosure statements to find out information about a Bill? If so, how helpful do you find disclosure statements in helping you make an assessment about the quality of the Bill?

14. As a matter of practice, we use disclosure statements to find out information about Bills. Again, we generally find them helpful in making our own assessments about the quality of Bills.

10. What are your views about the effectiveness of the regulatory oversight arrangements currently in place?

15. We consider that the current regulatory oversight arrangements in place are suitably effective and sufficient. In this regard, we have considered:

- The role of Parliament (including question time and the work of Officers of Parliament) and select

⁴ For example, see the submissions to the Electricity Authority in 2023 on the proposed amendments to the Default Distributor Agreement, and whether or not the Authority is acting outside of its powers in this regard. See <https://www.ea.govt.nz/projects/all/default-distributor-agreements/consultation/default-distributor-agreement-and-consumption-data-templates/>

committees,

- The specific role of the Regulations Review Committee,
- The Parliamentary Counsel Office and their specialist legal drafters,
- The Legislation Design and Advisory Committee,
- The Ministry of Justice and their work in carrying out NZBORA vetting, and
- The Office for Māori Crown Relations – Te Arawhiti.

16. We have also taken into account the overall process of policy approvals, engagement/consultation between Government agencies and the Cabinet approval process. It is difficult to see how an additional layer of regulatory oversight will make the system more efficient, effective, or deliver further net benefits to New Zealanders.

11. What are your views on setting out requirements for regulatory quality in legislation? Are there any alternatives that you think should be considered?

17. Our view is that the requirements for regulatory quality should not be set out in legislation. We are concerned about the high risk of unintended consequences with setting these principles out in a statute. We simply do not know how these principles will play out. Importantly, the Ministry for Regulation also advises against proceeding with this approach.

18. However, if the Government is minded that something must be done, we agree with the Ministry that the better approach is to build on the disclosure statement regime (through Part 4 of the Legislation Act 2019). Parliament has already seen fit to introduce a mechanism that will allow for the issuing of regulatory standards via government notices that requires approval by the House of Representatives. Our view is that the better course of action would be to bring Part 4 of the Legislation Act into force and make use of government notices under that part.

19. In addition, the Government can continue to use Regulatory Systems Amendment Bills, which are described by MBIE as follows:

RSABs aim to improve regulatory systems by ensuring that they are effective, efficient and align with best regulatory practice. The amendments in these Bills achieve this by:

- *clarifying and updating statutory provisions in each Act amended, to better give effect to*

the purpose of that Act and its provisions

- *addressing regulatory duplication, gaps, errors, and inconsistencies within and between different pieces of legislation*
- *keeping the regulatory system up to date and relevant; and*
- *removing unnecessary compliance and implementation costs.*

An RSAB is a package of separate omnibus bills (bills that amend multiple pieces of legislation) that are treated as cognate (related) and progress through the parliamentary process together.⁵

20. We think the Government could make more use of these types of Bills where there are concerns about “legislative quality”.

12. What are your views on setting principles out in primary legislation?

21. We do not agree with this approach of setting out the principles in legislation, and we are concerned about the selection of some principles as opposed to others. The interim RIS produced by the Ministry for Regulation notes that *“Having legislation design principles in primary legislation means that they are much less flexible in responding to changes in regulatory best practice, societal expectations and understanding of how systems operate. The selection of principles relating to legislative design is narrow in nature (i.e. with a focus on property rights and freedoms and liberties) and excludes other key principles relevant to legislative design”*.
22. We are concerned that setting out these principles in legislation is liable to create confusion where there is overlap with existing principles in other legislation such as the New Zealand Bill of Rights Act 1990. We also think it likely that there will be litigation about the meaning of these principles (as included in the Discussion Document). We can foresee judicial review proceedings or proceedings under the Declaratory Judgements Act 1908 to settle the meaning of these principles. Such litigation could take years and will incur further costs in time and money.
23. Overall, we think it will add a new layer of process costs to the promotion of regulation (and currently

⁵ See <https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-systems-amendment-bills>

those costs are undefined), and add further time pressures to the process. It is not immediately clear what the benefits will be or that it will result in a reduction of red tape. It may have the opposite effect of creating more red tape.

13. Do you have any views on how the principles relate to existing legal principles and concepts?

24. Put simply, it's not clear how the principles relate to existing legal principles and concepts, and we refer to our comments immediately above.

14. Do you agree with the focus of the principles on: a. rights and liberties? b. good law-making processes? c. good regulatory stewardship?

25. See our earlier comments.

15. Do you have any comments on the proposed principles themselves?

26. Yes. As a network utilities infrastructure company, we are particularly concerned about the principle relating to the taking of property. We rely on a mixture of negotiated agreements with private property owners such as easements and licences to locate and access our infrastructure. We also rely on the provisions of the Electricity Act 1992 in relation to our existing works.⁶ Existing works are ordinarily located on privately held land. We have statutory rights of access to our existing works and we are able to inspect, maintain⁷ and operate our existing works.
27. The proposed principle provides that legislation should not take or impair, or authorise the taking or impairing of, property without the consent of the owner unless:

⁶ Existing works are works that were constructed before 1 January 1993; and includes any works that were wholly or partly in existence, or work on the construction of which commenced, before 1 January 1993. Works

(a) means any fittings that are used, or designed or intended for use, in or in connection with the generation, conversion, transformation, or conveyance of electricity; but

(b) does not include any part of an electrical installation.

⁷ Maintenance includes

(a) any repairs and any other activities for the purpose of maintaining, or that have the effect of maintaining, existing works; and

(b) the carrying out of any replacement or upgrade of existing works as long as the land will not be injuriously affected as a result of the replacement or upgrade.

- There is good justification for the taking or impairment
- Fair compensation for the taking or impairment is provided to the owner
- Compensation is provided to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or impairment.

28. We are not sure whether each of the bullet points are cumulative, but we suspect they are so that each bullet point must be met if the owner does not consent to the taking. It is troubling that key concepts of this principle are undefined, for example “property”, “taking”, “impairment”.
29. It is simply not clear to us how this principle will play out when it comes to the protection of existing rights for network utility owners or future applications by network utility operators for resource consents and the like. Such provisions could make it harder for EDBs to build and maintain distribution networks, and ultimately constraining our ability to provide electricity to our community.
30. We are concerned that this may in fact hinder (and not help) the implementation of the Government’s Electrify New Zealand policy. It is also not clear to us how this principle will operate in the context of climate adaptation and when difficult decisions will need to be made in terms of managed retreat from certain coastal areas. Again, we have a specific interest in this aspect because some of our infrastructure will be vulnerable to coastal inundation in the future.

16. In your view, are there additional principles that should be included?

31. No comment.

17. Do you agree that there are insufficient processes in place to assess the quality of new and existing regulation in New Zealand? If so, which parts of the process do you think need to be improved?

32. There are processes in place to assess the quality of new and existing regulation. These processes can be adhoc which can be an advantage or a disadvantage. It allows for flexibility but it can also lead to delays and ongoing rounds of engagement.
33. Some structure around these types of processes would be helpful if it leads to more certainty and transparency.

18. Do you think that the new consistency checks proposed by the Regulatory Standards Bill will improve the quality of regulation? Why or why not?

34. Given that detailed processes are yet to be drafted, it is difficult to see how these consistency checks will work in practice.

19. Do you have any suggested changes to the consistency mechanisms proposed in this discussion document?

35. No comment.

20. Which types of regulation (if any) do you think should be exempt from the consistency requirements proposed by the Regulatory Standards Bill, (for example, regulation that only has minor impacts on businesses, individuals, and not for profit entities, regulation that corrects previous drafting errors, or regulations made under a declared state of emergency)?

36. We think it will be difficult to compartmentalise types of regulation that will be exempt. There will be definitional issues to overcome.
37. The Discussion Document also proposes that the Minister for Regulation will have a power to determine that some types of regulation are not required to comply with consistency requirements. In our view this discretion should not sit with the Minister. If there is going to be a provision for exemptions then these exemptions should be clearly set out in the legislation itself.

21. Have you used any of the existing mechanisms described above to raise issues or bring complaints about the quality of regulation to the Government? If so, did you find them effective?

38. No comment.

22. Do you think that New Zealand needs a new structure or organisation to consider complaints about the quality of regulation? Why or why not?

39. Our submission is that New Zealand does not need a new structure. We refer to the comments of Emeritus Professor Jonathan Boston, ONZM in his recent essay on the Regulatory Bill⁸ at paragraph

⁸ See [Regulatory bill: Emeritus Professor Jonathan Boston, ONZM](#)

49 where he states that

“But establishing a separate Board to undertake such a task (along with several related functions) is of doubtful merit. First, in practice the Board is likely to duplicate the analytical work and legal advice provided by the Ministry for Regulation, Crown Law, and other government departments. In short, it will simply add to the costs of public administration. Second, as argued above, much existing and proposed legislation is likely to be inconsistent with one or more of the proposed principles of responsible regulation – and for good reasons. Simply drawing attention to such inconsistencies is not likely to affect the political appetite for amending legislation. Further, it seems destined to cause considerable political frustration. Third, and related to this, the members of the Board will face the constant challenge of assessing important and unavoidable policy trade-offs.”

23. If a new structure is created specifically to consider complaints about regulation: a. do you think a Regulatory Standards Board would be the best mechanism to do this? b. are there any alternatives that you think would be preferable to the proposed Board for investigating complaints about regulation?

40. See our comments above at question 22.

24. Do you have any views on the detailed design of the proposed Board, including how it would operate and the proposed number of members?

41. No comment.

25. In your view, what individual skills or experience should Board members have?

42. No comment.

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

43. We support an emphasis on regulatory stewardship, and the Government promoting up to date and fit for purpose regulation. However, regulatory stewardship **needs to be properly resourced and funded**, and given the appropriate parliamentary time (if required). If there is no change to agency budgets specifically for this purpose, we query how government agencies will be able to promote

such regulatory stewardship. By way of example, we refer you to the current consultation being undertaken by the Electricity Authority to its levy-funded appropriations for 2025/26. The consultation paper explains the choices the Authority must make depending on the levy funded appropriation for next year.⁹ Without an increase to the levy, there is little scope for regulatory stewardship related work.

27. Do you agree that there may be some situations where a power for the Chief Executive of the Ministry for Regulation to obtain information will be required to help decide whether a regulatory review is warranted and to inform regulatory reviews?

44. No comment.

28. Do you agree that the proposed information gathering powers are justified for the purpose of informing regulatory reviews? Do you think the powers should apply to all the types of entities listed above, or only some?

45. No comment.

29. Do you think the information gathering powers are broad enough to enable the Ministry for Regulation to undertake regulatory reviews effectively and efficiently?

46. No comment.

30. Do you think any safeguards or procedures should be applied to limit how the information gathering powers are used by the Ministry for Regulation? What safeguards do you think should be put in place?

47. No comment.

31. Do you support the proposals in this section in relation to the Ministry for Regulation's broad oversight role?

48. No comment.

⁹ See https://www.ea.govt.nz/documents/6012/Levy-funded_appropriations_202526_-_consultation_paper.pdf

32. Are there any other measures you think a Bill should contain to support the quality of regulation?

49. No comment.

33. Do you think the overall proposal will be effective in raising the quality of regulation in New Zealand?

50. In our view, the current proposal is fraught with difficulty. We refer to our comments above.

34. Do you think there are other provisions that should be included in the Bill. If so, what would they be?

51. No comment.

35. Would you prefer any alternative options to the Bill, including non-legislative options?

52. We do not support the current proposal. We refer to our comments above.

Concluding comments

53. Thank you again for the opportunity to provide this submission.

54. If you have any questions please contact Vivienne Wilson, Policy Lead,
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Yours sincerely

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