

New Zealand Law Society

REGULATORY STANDARDS BILL

Introduction

1. The Regulatory Standards Bill (Bill) is identical in all material respects to the draft bill proposed in Part 3 of the *Report of the Regulatory Responsibility Taskforce* in September 2009.
2. The New Zealand Law Society (Law Society) made comments on that earlier proposal by way of its response to the Treasury's discussion paper entitled *Questions arising from the Regulatory Responsibility Bill prepared by the Regulatory Responsibility Taskforce*.
3. That submission, made by letter of 30 August 2010, remains relevant to the Bill now proposed. A copy is attached.
4. The Law Society recognises, however, that its members will hold a range of views both as to the premises on which the Bill is based and as to its likely efficacy. Indeed we expect that Law Society members may well make submissions on the Bill that express a range of views.
5. In this present submission, therefore, the Law Society does not express a view as to the merits of the proposal, and does not further elaborate on matters raised in 2010 in relation to the Taskforce's proposed bill. In this submission the Law Society aims instead to assist the Committee by analysing the nature and scope of the Regulatory Standards Bill, and especially its interaction with the New Zealand Bill of Rights Act 1990.
6. The Law Society's essential point is that the Bill, if enacted, will be of constitutional significance and come to occupy the space in New Zealand's 'unwritten constitution' alongside (and indeed, will partially supersede and expand) the New Zealand Bill of Rights Act.
7. The Law Society considers that if this step is to be taken it should be taken carefully. There should be (to use the words of the Bill) consultation 'to the extent practicable'; 'careful evaluation of the issue concerned'; consideration of 'the effectiveness of any relevant existing legislation and common law'; consideration of other options ('including non-legislative options'); of 'potential adverse consequences'; and whether it is the 'most effective, efficient and proportionate response to the issue concerned'.
8. The Law Society knows that its members will have different views on these matters, as will society at large. So, too, there may be different views over which important values should be

affirmed as fundamental principles to regulate the content of all legislation. On such an important subject as substantive standards for legislation, the Bill deserves wide consultation.

9. Because the Bill is of constitutional significance it should be considered as part of the current review of the New Zealand Constitution. That would assist in ensuring the degree of consultation required for such a measure.

Constitutional importance of the proposed Bill

10. The proposed law, if enacted, will be of constitutional significance. It will enshrine a set of standards that all New Zealand legislation must reach; it will empower courts to rule upon whether those standards have been met; require courts to interpret legislation consistently with those standards where possible; and, where that is not possible, require them to declare that the legislation is inconsistent. It will require all public entities to use best endeavours to review the legislation that each administers, for consistency with those standards.
11. The set of standards enshrined is in clause 7(1) of the Bill. They are called ‘Principles of responsible regulation’. It is provided, by clause 7(2), that any incompatibility with the principles will be justified to the extent that it is reasonable and demonstrably justified in a free and democratic society.
12. The Bill therefore adopts the form and structure, and some of the text, of the New Zealand Bill of Rights Act. That Act similarly sets standards, by affirming a set of ‘rights and freedoms’ drawn from the International Covenant on Civil and Political Rights and requiring that they may be subject only to such ‘reasonable limits’ as are ‘prescribed by law’ and ‘demonstrably justified in a free and democratic society’. The standards set by the New Zealand Bill of Rights Act must be met not only by legislation but also by action. That is, the New Zealand Bill of Rights Act applies not just to laws but also to ‘acts done’ by the three branches of government and by persons or bodies who perform a public function (see section 3).
13. The New Zealand Constitution is sometimes described as standing on three pillars: the Constitution Act 1986 defining the institutions and powers of the state, the New Zealand Bill of Rights Act defining the rights of citizens, and the Treaty of Waitangi as the foundational instrument that facilitated the constitution. That being so, and because the proposed Regulatory Standards Act would affirm rights and constitutional principles, it too would have a claim to being a constitutional pillar.

The Regulatory Standards Bill as a Bill of Rights

14. For its part the Bill describes its standards as ‘principles’. But – as the Short Title to the Bill attests by its use of the word ‘standards’ – these principles are intended to be applied as hard-edged standards and not just as a rough guide (as the word ‘principles’ might otherwise suggest). Indeed, the architecture of the Bill revolves around persons being able to declare whether legislation is or is not consistent with the principles. (Ministers and Chief Executives must do so before a bill is enacted, while judges are empowered to do so afterwards, and all public entities must review their legislation).

15. Further, those principles that are expressed as rights (see the discussion below) are plainly intended to function in the same way as rights in the New Zealand Bill of Rights Act. That is, a ‘principle’ that persons have a right to own property and to be fully compensated for impairment, with which all law must be consistent, is no different from a right to have a law that is consistent with those rights. The same goes for the principles that legislation not diminish liberty and freedom of choice. They are equivalent to individual rights that liberty not be diminished – albeit that ultimately, as with the New Zealand Bill of Rights Act itself, the rights do not prevail over express legislation and can only be vindicated by a judicial declaration of inconsistency.

16. The specific standards proposed by the Regulatory Standards Bill can be analysed as falling into three broad categories:
 - (a) First, some are specifications of the *features that a law should have*, or of the *process* by which a law should have been brought into being. In this category, for example, is the principle that ‘the law should be clear and accessible’ (clause 7(1)(a)(i)) and the further principles that a law should not be made unless there has been consultation and ‘careful evaluation’ of various matters such as ‘the issue concerned’ and whether it produces ‘benefits’ that outweigh the ‘costs’ (clause 7(1)(i) to (k)).

 - (b) Second, some of the proposed standards speak to matters of structure and design of New Zealand institutions: that the courts’ role is to authoritatively determine the meaning of legislation (clause 7(1)(f)) and that matters of ‘legal right and liability should be resolved by the application of law’ (clause 7(1)(b)), and that taxes be imposed only by Parliament under an Act (clause 7(1)(d)).

 - (c) But most of the standards are in the third category – rights and freedoms for persons, commonly known as ‘human rights’. These are:

- Rights against retrospective penalisation (clause 7(1)(a)(ii));
- Equality before the law (clause 7(1)(a)(iii));
- Liberty, personal security, freedom of choice or action (clause 7(1)(b));
- Rights to own, use and dispose of property (clause 7(1)(b));
- The right not to have property taken or impaired without full compensation (clause 7(1)(c)).

17. Some of the principles replicate standards already set in other statutes (for example, the principle about taxation in clause 7(1)(d) replicates the requirement in section 2 of the Constitution Act 1986). Others replicate powerful premises of the common law applied by the courts (for example, the courts' role in authoritatively determining the meaning of legislation: clause 7(1)(f)). Some of the human rights replicate those in the New Zealand Bill of Rights Act, as discussed next.

Overlap with, and extension of, the New Zealand Bill of Rights Act

18. The human rights principles themselves can be divided into two categories.

- (a) First, some of the proposed human rights principles replicate, but at a higher level of generality, rights and freedoms already in the New Zealand Bill of Rights Act. These are the 'principles' in clause 7(1)(b) about 'liberty', 'personal security', 'freedom of choice or action' and the principle that 'all are equal before the law' in clause 7(1)(a). Liberty and freedom of choice will encompass all the rights set out in sections 13 through 18 of the New Zealand Bill of Rights Act (rights to freedom of conscience and religion, to manifestation of belief, to expression, movement, association and assembly). For its part the principle of 'personal security' embraces at least the rights in the New Zealand Bill of Rights Act against disproportionate treatment and non-consensual medical treatment or experimentation (sections 9 to 11). And the principle of equality in clause 7(1)(a)(iii) embraces section 19 of the New Zealand Bill of Rights Act which is a right to be free from discrimination on certain enumerated grounds such as race, sex and marital status.
- (b) Altogether, then, the principles in this category express, but at a higher level of generality, all of sections 8 through 19 of the New Zealand Bill of Rights Act, save for the right to vote in section 12.
- (c) Second, some of the affirmed human rights principles are new and hence an effective extension of the New Zealand Bill of Rights Act. The right to own and use and dispose

of property (clause 7(1)(b)), and to full compensation for taking or impairment (clause 7(1)(c)), are not in the New Zealand Bill of Rights Act.

19. The reference to full compensation for “impairment” of a property right that is short of a complete taking means the Bill would establish a compensation right broader than the property rights protections in most jurisdictions, including the United States. The intention in the Bill is that all regulatory restrictions on property rights going forward would give rise to a compensation claim.
20. That the inclusion of such a right will generate complex questions is illustrated by these simple examples: when disposal of assets to a preferred buyer is prohibited by the overseas investment regime; when use of land for intensive dairying is prevented by resource management rules; when ability to fish under the quota management system is restricted by new marine reserves that reduce fishing areas; and the imposition of price control on a monopoly business.
21. In each situation there is a reasonable prospect that sooner rather than later there will be litigation funded by parties who will not be deterred by the fact that they cannot get a substantive remedy. They will likely be looking to involve the judicial system in their wider campaigns against some policy, or to cause political embarrassment or promote change.
22. Those may all be legitimate uses of the judicial process, as indeed now some judicial review proceedings are brought without any real prospect of a substantive remedy. However, whether this should be encouraged is a matter for a debate that has not yet occurred. It seems reasonable to suggest that if such proceedings are to be allowed or encouraged, the judiciary should be given some parameters, and use of vague terms such as "impairment" with an expectation that over time a body of judicial interpretation will develop is not a desirable state of affairs.
23. If the proposed Bill is enacted, a number of issues will arise as to its interaction with the New Zealand Bill of Rights Act. These are briefly addressed below.
24. Because the Bill affirms human rights at a higher level of generality (liberty, equality, security) it is likely they extend more broadly than the specific rights in the New Zealand Bill of Rights Act. To give one example, the idea of reproductive ‘liberty’ was the driver of the United States Supreme Court decision in *Roe v Wade*¹ that struck down the abortion laws in Texas on the ground of its inconsistency with the 14th Amendment and its guarantee of ‘liberty’. Similarly,

¹ 410 US 113 (1973),

the idea of liberty is understood in the United States to embrace the right to make certain other fundamental personal decisions (for example, about who has access to one's children,² or what languages they learn³). In an earlier era (but now disavowed) the US Supreme Court construed liberty to include freedom of contract and hence immunity of employers from certain forms of labour regulation.⁴ In New Zealand any such potential applications are not covered by the New Zealand Bill of Rights Act, given that it does not affirm a general right to 'liberty' and instead sets out specific iterations of the broader liberty principle drawn from the International Covenant on Civil and Political Rights, viz expression, association, assembly, religious freedom and manifestation, and movement.

25. This means that the Regulatory Standards Bill, if enacted with a general principle of 'liberty' and 'freedom of choice', would be a more comprehensive coverage (although this would depend ultimately on the interpretation given to the key words and phrases 'liberty' and 'freedom of choice' and whether they extended to such things as abortion, voluntary euthanasia and other fundamental matters).
26. Similarly, a broad guarantee of "equality" in the proposed Bill goes further than the rights against discrimination on specific grounds that are presently covered in section 19 of the New Zealand Bill of Rights Act. All legislative distinctions can potentially infringe equality – again a feature of United States law which similarly guarantees "equal protection" – and an approach would need to be devised that enabled those applying such a "principle" to discern when legislative distinctions are justified and when they are not.
27. But equally as importantly the Bill if enacted would affirm new rights that are not in the New Zealand Bill of Rights Act. These are the rights to property and to compensation.
28. One consequence of having a Regulatory Standards Bill that both replicates and is broader than the New Zealand Bill of Rights Act is that it will (or may) serve to devalue the New Zealand Bill of Rights Act. There are particular reasons why litigants would prefer to frame their cases under the proposed Bill. One reason is that, as mentioned, rights in the Bill may be interpreted more broadly than those in the New Zealand Bill of Rights Act. Another is that the Bill will specifically allow (by clause 12(1)) judicial declarations of inconsistency in 'any proceedings'

² *Troxel v Granville* 530 US 57 (2000).

³ *Meyer v. Nebraska*, 262 US 390 (1923). Justice McReynolds in that case noted: "liberty" protected by the Due Process clause "[w]ithout doubt...denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

⁴ *Lochner v New York* 198 US 45 (1905).

brought for declarations under that clause, or in judicial review proceedings. In contrast, the New Zealand Bill of Rights Act itself does not allow for judicial declarations of inconsistency and, while the courts have indicated several times that making such declarations is a possibility, their reluctance to do so in practice is generally explained by commentators as resting upon the uncertainty of their mandate to do so. (Conversely, there is an express mandate in equivalent statutes in other jurisdictions such as the United Kingdom Human Rights Act 1998 and the Victorian Charter of Human Rights and Responsibilities 2006).

29. The overlap (and potential extension) that operates between the Bill and the New Zealand Bill of Rights Act will be confusing and could have ‘unintended effect’ so far as the New Zealand Bill of Rights Act is concerned. In comparable jurisdictions it is routine to affirm all fundamental rights in a Bill of Rights or similar, if such affirmation is to be done at all (it is not in Australia, which has no federal level bill of rights). Spreading rights across two documents with both overlapping and different mechanisms in each would be needlessly confusing. For example, inconsistency reports are required under section 7 of the New Zealand Bill of Rights Act while a two-stage certification process is required under clause 8 of the Bill; declarations of inconsistency are only implicitly possible under the New Zealand Bill of Rights Act yet positively allowed by the Bill; overlapping rights in the Bill are broader than those included the New Zealand Bill of Rights Act; property rights are in the Bill and not in the New Zealand Bill of Rights Act; and the New Zealand Bill of Rights Act is able to be invoked in wider circumstances than the Bill which is limited to proceedings for declarations and judicial review.

Linking to the Constitutional Review

30. All this leads to the suggestion (to use the architecture metaphor common in discussion of constitutions) that the solution to any problems might better be found in redesign than in *ad hoc* and complex addition.
31. The fact that there is a constitutional review process presently under way suggests that this Bill might be considered as part of that process.
32. Other matters that might then usefully be considered in such a review are briefly listed:
- (a) The requirement for certification by both a Chief Executive and responsible Minister may be problematic if it requires a Chief Executive to express a personal view that is different from his or her Minister;

- (b) As to section 7(1)(a)(iv), because ‘administrative discretion’ is unavoidable in modern society and is routinely conferred by statutes using formulations such as ‘The Minister may ...’, this is best amended to read ‘rather than the arbitrary exercise of administrative discretion’;
- (c) There is room for doubt whether the concept, in section 7(2), of ‘reasonable’ and ‘demonstrably justified’ incompatibility is conceptually appropriate outside the human rights field. When used for a set of standards that includes matters of process and technique, it does not seem apt. All legislation and policy making will involve the weighing of numerous interests and, in many cases, less than complete recognition of them all. It is going to be complex in many cases to identify the allegedly unrecognised interests alongside the “rightly-pursued” interests and to weigh these against each other in any meaningful sense.
33. Finally, there may be a range of views in the community about these and other principles that could be candidates for inclusion in a statute that sets standards for other statutes. The debate that might be engendered by any re-evaluation of the New Zealand Bill of Rights Act itself would likely be engendered by broad consultation over a Regulatory Standards Bill that is designed to occupy the same field. Matters then to be considered might include whether it should include social and economic rights, mention the Treaty of Waitangi or the environment, or require that there be consistency with New Zealand’s international obligations. To date the Bill has not had that broad consultation process.

Recommendation

34. That the Committee recommend to the House that the Bill be discharged and that the contents and submissions upon it be referred to the Constitutional Review Group.



Jonathan Temm
President
6 September 2011

Attached: New Zealand Law Society submission dated 30 August 2010 (*Questions Arising from the Regulatory Responsibility Bill, June 2010*)



30 August 2010

FILE COPY

Regulatory Quality Team
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By email: regulation@treasury.govt.nz

Questions arising from the Regulatory Responsibility Bill, June 2010

The New Zealand Law Society (Society) welcomes the opportunity to respond to *Questions arising from the Regulatory Responsibility Bill prepared by the Regulatory Responsibility Taskforce, June 2010* (discussion paper).

The need for a Regulatory Responsibility Bill

- a. Do you agree that the quality of legislation (Acts, statutory regulations, tertiary legislation) in New Zealand is often not as good as it could or should be? If so, what do you see as the main problems with quality, and the main causes of those problems? If not, please explain the reasons for your view.

This question highlights the central problem with the Regulatory Responsibility Bill (RRB) process thus far – problem definition. In this sense the RRB is failing to meet its own standards for policy development.

The “quality of legislation” could refer to a number of possible problems with legislation, and thus implicate a number of possible causes. In discussions of the RRB and the quality of legislation it is often not clear what particular aspect of quality is being referred to, and indeed this can be a moving target. As a result participants in the debate run the real risk of talking past each other.

For example, a reference to poor quality legislation could be implying:

- Poor legislative drafting
- Poor regulatory design, resulting in poor implementation of an otherwise sound policy choice (for example, unintended consequences)
- Poor policy choice (e.g. poor problem definition, poor selection of policy response, costs exceeding benefits, poor prioritisation of limited government resources)
- That higher level constitutional principles have been offended – human rights, property rights, socio-economic rights or principles, etc.

It is unlikely that the question relates to the first aspect of quality identified above – the technical quality of legislation, how clearly and economically drafted it is, and so on. We do not understand stakeholders to be suggesting this is the issue, and, in general, the Society considers the quality of legislation in fact to be very high.

However, it is not clear that there is a consensus as to which of the other aspects of quality of legislation are at issue and should be addressed. Equally, the potential underlying causes need to be investigated and isolated. Looking at the potential quality problems, the potential causes to be investigated could include:

- A lack of commitment to higher level constitutional principles (raising the question of which ones)
- A need to invest in the skills, capacity and resources of the public sector
- The political imperative of the three year election cycle and its impact on quality policy processes
- The role of Ministers' offices in the policy process
- The role and capacity of opposition research units – given the political imperative of a new government delivering on its election promises, policy developed by opposition research units has assumed a growing importance

It is not clear that the RRB process has, as yet, isolated the aspect of quality that is said to be lacking, demonstrated this is so, and identified the underlying cause. While the select committee considering the RRB heard from submitters agreeing there was a problem with the quality of legislation, it is not clear whether submitters all agreed that the problem was at the level of constitutional principle, policy choice, regulatory design, or some other aspect of quality.

The RRB as currently drafted assumes the problem is one of a lack of commitment to particular constitutional principles, and the debate over the Bill has proceeded in those terms. This raises some important policy questions as to whether some principles (e.g. property rights) should be prioritised over others (e.g. socio-economic rights; Treaty of Waitangi principles). It is likely that, in the community, there are diverse views about the overall quality of legislation framed at this level, and the diversity would reflect different conceptions of the role of government. The Society is reluctant to comment on these policy choices, as its members might reasonably hold different views. However this submission will focus on the issues of problem definition discussed above, and the questions asked in this consultation as to the likely effect or impact of the proposals in the RRB.

- b. Do you agree that existing parliamentary and administrative processes are unlikely to be sufficient to encourage substantial improvements in the quality of legislation? Please explain the reasons for your view.

This question raises the issues of problem definition discussed above. Until there is clarity as to the aspect of quality at issue, and the underlying cause, it is difficult to comment on which existing parliamentary and administrative processes are relevant.

The nature and scope of the Bill

- a. Do you agree that systematic testing of legislation against a set of established principles will help improve regulatory quality?

Principles could be selected to address the various aspects of quality discussed above. However it is far from clear that this approach would improve quality. The principles are at a high level of generality and it is not difficult to imagine that most legislative proposals could and would be regarded by their proponents as being consistent with the principles.

- b. What is your view on the range and appropriateness of the principles identified by the Taskforce?

It is unclear in the Taskforce Report and in this set of questions how the principles have been chosen or on what basis they could be considered “established”, or more established than other principles.

Also, it can be said that some of the principles replicate general principles of law already operating (e.g., the principles about taxation) or are so broad that they are susceptible to unpredictable interpretations (liberty, personal security, freedom of choice or action), or are better placed (if they are to operate in the legal system) in the New Zealand Bill of Rights Act 1990 (e.g. property).

But it is very easy to foresee that New Zealanders could equally propose various other sets of principles. Some would argue for the inclusion of socio-economic rights, or of the Treaty of Waitangi, or of multiculturalism and social inclusion – all these could be declared as principles against which legislation had to be tested. Once again, it is not clear that this would be an advance, as governments and legislators of the day are likely, in their own various ways, to regard their proposed measures as compatible with the principles.

All that said, there might be some advantages gained by requiring that policy-makers turn their minds to a stated set of principles. The greater problem is the expectation in the RRB proposal that these principles are capable of ready discernment such that it can be said of a particular proposal that it infringes them.

- c. If you favour additions or changes to these principles, what would they be and why?

The Society does not itself advance additions or changes. Rather, in the answers it has given to the previous two questions it suggests that the articulation of general principles does not amount to the benchmark that may be envisaged.

- d. The Taskforce considered that all levels of legislation (i.e. primary, secondary, and tertiary) should be tested against a set of principles. What levels of legislation do you think would benefit from such testing?

If there were to be principles at all, then there is no reason they should not apply to all three levels.

The effectiveness and impact of the Bill

- a. Do you agree that stronger benchmarking, transparency and monitoring mechanisms will improve the quality of New Zealand's legislation? Are there other mechanisms that you consider would be superior? Please explain the reasons for your view.

As suggested above, the articulation of the principles may do some good in turning the minds of legislators and policy-makers to some foundational issues. But all this could be imposed by government of its own volition, and does not need to be imposed by legislation.

- b. What are the likely effects of the principles/certification/declaration of incompatibility incentive structure?

The declaration of incompatibility structure takes an idea developed in the limited field of human rights law (notably the United Kingdom's Human Rights Act 1998) and seeks to render it applicable to the whole range of legislative measures that affect liberty and property. It has the capacity to "judicialise" controversies about social and economic policies, and to tie up the time of government employees and the judicial system in attending to litigation.

- c. What are the likely effects of the requirement that Ministers and Chief Executives responsible for legislation certify as to its compliance with the Principles of Responsible Regulation, including the likely effects on the relationship between Ministers and government officials?

As suggested above, the articulation of the principles may do some good in turning the minds of legislators and policy-makers to some foundational issues. But all this could be imposed by government of its own volition, and does not need to be imposed by legislation.

Also, as noted already, the generality of the principles means that most policies could be regarded as being consistent with the principles, at least by those who are advancing them.

- d. Are the courts the best external body to assess the consistency of legislation with the principles set out in the Taskforce's Bill? If not, what other bodies might fulfil this role?

The Society submits that the answer to this question is a clear no, so far as courts are concerned. Reasons for this view include the fact that the courts' expertise is with law, whereas the assessing of the way in which the principles operate will take the courts into other fields.

- e. What are the likely effects of giving the courts, or your preferred alternative agency if you have one, a role in assessing whether legislation is compatible with a set of legislative principles?

It could lead to much litigation, or else perhaps none – the latter if the declarations were not heeded by governments. Either is problematic.

- f. Under the Bill, a court's exercise of the declaration of incompatibility procedure does not affect the validity of the legislation at issue. Nevertheless, some commentators suggest that the Bill will alter the relationship between Parliament and the courts, particularly given that the courts must take into account whether any breach of the principles is

“justified in a free and democratic society” when deciding whether to make a declaration of incompatibility.

- Do you think that such suggestions are accurate?

The Society thinks that the proposal would force courts to enter into arenas that they are not well suited for and which are not legal issues as such. The problem, therefore, is not so much that “declarations” might alter the relationship between the courts and the legislature – though this could be a consequence – but that the proposal invites the litigation of social and economic policies. If this type of litigation were to be taken up by citizens and corporations, it could overwhelm the courts. On the other hand, if it proved to be of little value to litigate – because courts would not readily make declarations or because they had no impact on government – then the principles themselves would become impotent and perhaps undervalued.

Conversely, when (as is the status quo) they are not written down and declared in legislation, these principles have a clarity and force (along with others of course). But they are debated in the political realm.

- If so, do you think that the potential benefits of improving the quality of legislation in New Zealand are such that alterations to the relationship between Parliament and the courts are justified?

No. This is far from established. Any alteration to the relationship between Parliament and the courts is a significant constitutional change and such changes should be made only after a considered full review of New Zealand’s constitutional structure.

- Could the Bill be improved in this respect?

It could restrict its proposals to a Chief executive or Ministerial certification process alone. This alteration however would not address the points made above about the quality of legislation and the appropriateness of the principles selected.

- g. The Bill directs the courts to prefer interpretations of legislation that are consistent with the principles (initially only in respect of new legislation, but applying to all legislation after 10 years). The New Zealand Bill of Rights Act contains a similar provision. What do you think the likely effects of this provision would be on the body of New Zealand law?

In most respects it is likely to be minimal. Insofar as property is concerned, it could be greater. But the answer then is to promote an amendment to the New Zealand Bill of Rights Act for the inclusion of a right to property so that all rights are dealt with in that one statute. While a recent members Bill proposed such an addition to the New Zealand Bill of Rights Act, it lacked the policy work needed to make choices about the framing of the amendment, and the full public engagement necessary for legitimacy.

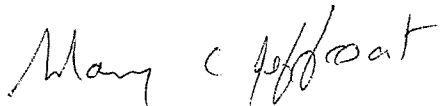
Clarifications on the Regulatory Responsibility Bill and potential alternative mechanisms?

- a. Are there any other aspects of the Regulatory Responsibility Bill that you consider could be clarified or improved?
- b. The Taskforce's Regulatory Responsibility Bill suggests one set of measures for improving regulatory quality in New Zealand. Given your answers to the questions outlined above, can you think of any possible measures not suggested by the Taskforce that might help improve regulatory quality? These measures may be supplementary to the Taskforce's suggestions or in place of some or all of them. Please explain the reasons for your view.

There is nothing to add at this point to the matters already raised.

This submission was drafted with the assistance of the Society's Law Reform Committee. For further information, please contact the Committee's secretary, Vicky Stanbridge (NZLS Legal Affairs Department), ph (04) 463 2912 or vicky.stanbridge@lawsociety.org.nz.

Yours sincerely



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