

## Submission of The Ecology Justice and Peace Commission of the Catholic Archdiocese of Wellington on the Regulatory Standards Bill

1. The Wellington Catholic Archdiocese Commission for Ecology, Justice and Peace is established to:

*contribute to and participate in work for justice and peace inspired and informed by Catholic Social Teaching. The Commission's key responsibilities are: Supporting the communities of the Archdiocese and wider community to hear and actively respond to the cry of the earth and the cry of the poor; Scrutinising all issues and institutions in society and in the Archdiocese in the light of Catholic social teaching*

2. We have serious reservations about the Bill and do not think it should proceed. In what follows, we do not address every aspect of the Bill, but confine ourselves to those which cause us the most concern.
3. The Explanatory Note says:

The Regulatory Standards Bill aims to reduce the amount of unnecessary and poor-quality regulation by increasing transparency and making it clearer where legislation does not meet standards. It intends to bring the same discipline to regulatory management that New Zealand has for fiscal management.

The Bill aims to—

- promote the accountability of the Executive to Parliament for developing high quality legislation and exercising stewardship over regulatory systems; and
  - support Parliament's ability to scrutinise Bills; and
  - support Parliament in overseeing and controlling the use of delegated powers to make legislation.
4. The Bill proposes to do this by laying out a set of principles which should guide regulation, by requiring public sector heads (chief executives, as they are now called) to report on various matters, and by establishing a Regulatory Standards Board which can investigate and report on its own initiative, on ministerial reference, or in response to complaints.
  5. In the first place, the Bill speaks of 'regulation' but it in fact refers to legislation (made by parliament) as well as to 'regulations' (made by the executive under authority conferred by legislation).

6. The bill asserts a problem (poor quality, implicitly excessive, regulation) the existence of which is debatable. What a mine owner might regard as excessive regulation might reasonably be regarded by a miners' union as necessary to protect life and health. A landlord might regard the requirement to meet certain standards of heating and ventilation, and not to terminate a tenancy without reason, as excessive regulation. A tenant might regard the same requirement as ensuring stable residence in a healthy house.
7. The core of the Bill is clause 8, which specifies the 'principles of responsible legislation', which should guide regulation. These principles are also all debatable, are expressed in very general terms, and leave out some very important considerations.
8. We will comment on each part.
9. Part 8(a) on the rule of law is very general. Much of it is unexceptionable.
10. Part 8(b) leaves almost everything open to interpretation. What is 'unduly' limiting a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person?
11. Some farming lobbies object to environmental regulation which others regard as essential to protect water quality or ecosystems. As above, landlords and tenants might have quite different views on residential tenancy legislation which, of its nature, is more or less prescriptive about the use of property.
12. Part 8(c) on taking property - again, everything is open to interpretation. What is a 'good justification'? The principle of appropriate compensation implies an equality of interests, such that a polluter might be entitled to compensation even if the taking or reducing that polluter's property right restores or ensures a community's clean water. It has also been plausibly suggested that the Bill 'would enable commercial interests to seek public compensation if legislation impairs their intellectual property or reduces their profits. Public health examples where compensation could potentially be claimed include: tobacco controls such as denicotinisation of cigarettes, alcohol restrictions such as sponsorship bans, controls on unhealthy food and drink such as limiting marketing to children'.<sup>1</sup> It might be an extreme example in today's context, but when slavery was abolished in the British Empire in 1833 slaveowners received extraordinarily generous compensation for the loss of their 'property'. The formerly enslaved received nothing.
13. The effect here is to minimise any consideration of the public interest or the common good. We therefore also regard as extremely problematic the principle that compensation be paid by or on behalf of those deriving the benefit. The assumption is that benefits are only derived by individuals, not society as a whole. Again, let us consider, as above, the case of a polluter required to cease or mitigate the pollution.

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<sup>1</sup> <https://www.phcc.org.nz/briefing/regulatory-standards-bill-threatens-public-interest-public-health-and-maori-rights>

14. Parts 8(d) to 8(f) on taxes, fees, and levies: despite the reference to Parliamentary control of public finance, clause 8 (d) appears to limit the ability of Parliament to use money raised by charging or taxing one activity to fund another.

15. Part 8(f) states that

legislation should impose, or authorise the imposition of, a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both— (i) the benefits that the class of payers is likely to derive, or the risks attributable to the class, in connection with the objective or function; and (ii) the costs of efficiently achieving the objective or providing the function.

On the face of it, this clause would prohibit any levy which is intended to fund broader public policy objectives. For example, a tobacco company could claim that a levy on tobacco, which is intended to fund smoking cessation programmes, or a general public health objective, confers little benefit on the company as the payer.

16. There are some more general problems. The Bill is silent on many important principles: most fundamentally te Tiriti o Waitangi/the Treaty of Waitangi, environmental sustainability, the New Zealand Bill of Right Act, and ensuring that the basic needs of every person to reasonable shelter, food, and other necessities of life are met. It is our view that at least te Tiriti should be included in the Principles, and we would suggest these other considerations as well.

17. The Bill is framed around an ideal of the autonomous individual (individuals here including entities with legal personality, such as companies). It implies a default position of absolute rights to property. Catholic Social Teaching has different emphases. It approaches persons in relation to each other, that is, in community. While recognising the rights of individuals, we are also all connected to each other. Catholic Social Teaching does not regard private property as an absolute right. Private property may be held to the extent compatible with the common good, and that common good is more than an accumulation of individual goods. There are fundamental rights which each person has – essentially, to a decent and dignified life – which are greater than the right of private property. There are rights of communities and of society as a whole, for example, to clean air and water. These considerations apply, as Pope Francis emphasised, also across the generations, especially in terms of environmental sustainability. We think, too, that these views might be shared by many people from different philosophical foundations.

18. There are also some more practical reasons for objecting to the Bill.

19. The Bill provides that a Regulatory Standards Board will be entirely appointed by the Minister of Regulation. There are already bodies charged with reviewing regulation and legislation: the Ombudsman, the High Court, Parliamentary Select Committees, the Waitangi Tribunal, the Auditor-General, among others. This Bill therefore proposes an additional body, responsible to no one except the Minister, and with a brief to inquire into existing legislation as well as proposed legislation.

20. If the proposed Board doesn't override the role of parliament, of the courts, and of the likes of the Ombudsman and the Auditor-General it's a waste of time and money, and if it does, it's a constitutional outrage. As it would be appointed entirely by the Minister, the Board is certainly not 'independent' as the explanatory note claims.
21. In any case, there is already a Legislation Design and Advisory Committee. That Committee publishes comprehensive Legislation Guidelines, the most recent edition of which appeared in 2021.<sup>2</sup> This Committee consists of nineteen members and two alternates, and the members include senior public servants, senior legal practitioners, and even a representative of the Institute of Directors. Its function is to promote quality legislation by advising departments, setting standards, and reviewing Bills. It is 'not concerned with the policy objectives of legislation; its focus is on good legislative practice and public law issues'.<sup>3</sup>
22. In light of that, a further Board would appear to be quite unnecessary, and that the Regulatory Standards Bill would be entirely appointed by the Minister a cause for serious concern.
23. Emphasis has been placed on the non-enforceability of the Bill's provisions. However, as some eminent scholars in law, public policy, and public health have pointed out, while the Bill

does not create constitutionally superior law, it is nonetheless constitutionally significant. In effect, it would establish a "regulatory constitution" or a "second Bill of Rights", influencing and constraining the purposes for which public power can be employed in accordance with a set of principles that are philosophically narrow and ideologically skewed towards libertarianism. The aim, in other words, is to ensure that virtually all legislation is tested against a highly specific template or "control gate", one that disregards the principles and articles of te Tiriti o Waitangi, ignores Māori rights and interests, and discounts most of the core values underpinning modern welfare states. As such, the RSB seeks to create an anti-Treaty and anti-welfare state quasi-constitution.<sup>4</sup>

24. In short, the Bill assumes a problem that is asserted, rather than shown, to exist. It is not self-evident that regulation is excessive or inappropriate, and it is not self-evident that regulation is prima facie to be regarded with suspicion.
25. Catholic Social Teaching and pluralist democratic thought alike emphasise that the role of government is to harmonise different interests, and that individuals, families, and civil society organisations 'cannot achieve their full development by themselves for living a truly human life. Hence the necessity of political institutions'. As a consequence, 'The

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<sup>2</sup> <https://www.ldac.org.nz/>

<sup>3</sup> <https://www.ldac.org.nz/about>

<sup>4</sup> <https://www.phcc.org.nz/briefing/regulatory-standards-bill-threatens-public-interest-public-health-and-maori-rights>

proper reconciling of the particular goods of groups and those of individuals is, in fact, one of the most delicate tasks of public authority'.<sup>5</sup>

26. We think this Bill fails to appreciate those important points. Regulation is often necessary to protect the vulnerable and the common good. We need not repeat the examples we have given on this point. Some might think that the Bill pronounces a set of principles which are so general as to be meaningless. We think the Bill omits reference to fundamentals, not least to Tiriti o Waitangi, and also the Bill of Rights and the principles of community well-being, the rights of all to a decent standard of living, and long-term environmental sustainability. By these omissions, and by its philosophical focus on the individual without community, the Bill is gravely flawed.

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<sup>5</sup> Compendium of the Social Doctrine of the Church, paragraphs 168-69.  
[https://www.vatican.va/roman\\_curia/pontifical\\_councils/justpeace/documents/rc\\_pc\\_justpeace\\_doc\\_20060526\\_compendio-dott-soc\\_en.html#Tasks%20of%20the%20political%20community](https://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html#Tasks%20of%20the%20political%20community)