Orion

19 June 2025

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

Dear Committee Members,

Regulatory Standards Bill

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

Summary of Submission

2. The main points of our submission are:

- We have a keen interest in robust law-making processes and regulation that is up to date and achieves its stated objectives. However, we do not consider that this Bill will meet its stated purposes in clause 3.

- The reasoning behind the selection of the principles of responsible regulation set out in clause 8 is not clear, and in fact goes against the Ministry for Regulation's advice. We are particularly concerned about principle relating to the taking of property in clause 8(c). Overall, we think this will hinder (and not help) the implementation of the Government's Going for Growth programme, including its Electrify New Zealand policy.[1]

- As far as we can tell, there will be no additional funding to Government agencies to undertake a demanding regulatory stewardship function and we query how government agencies will be able to promote such regulatory stewardship, and still achieve the Government's priorities such as

[1] See https://www.mbie.govt.nz/business-and-employment/economic-growth/going-for-growth/summary-of-government-actions/infrastructure-for-growth

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Electrify New Zealand.

- There are very few controls on the appointment of the Regulatory Standards Board which will not, in our opinion, promote the accountability of the Executive to Parliament. We have suggested some amendments which would allow for parliamentary scrutiny of the appointments to the board, and other controls relating to reappointment of board members.

- There is a risk that the Ministry of Regulation will be able to require agencies such as electricity distribution businesses to provide commercially sensitive information to the Ministry, and there are few controls in place to protect that information.

Background

3. 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 230,000 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.

4. 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.

5. Orion has a fully owned subsidiary, industry service provider Connetics, and together with Orion the two organisations make up the Orion Group.

6. 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.

7. 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.

8. 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.

9. The electricity industry is highly regulated, via multiple regulatory agencies.[2] By way of example, Orion, as an EDB, is subject to regulation under the Commerce Act 1986.[3] 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.[4] 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.

10. We made a submission to the Ministry for Regulation on the proposed Regulatory Standards Bill in January 2025.[5] At that time, we had a number of concerns with the proposals that now form the basis of the current Bill. Our concerns have not been allayed by the drafting of the Bill, and we repeat some of those concerns in this submission together with some additional comments.

Clause 8 – Principles of responsible regulation

11. We do not agree with the drafting of clause 8, and it is not clear to us why some principles of

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

[3] 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.

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

[5] See https://www.oriongroup.co.nz/assets/Our-story/Submissions/Other/Orion-submission-proposed-regulatory-standards-bill-January-2025.pdf

responsible regulation have been included in the Bill and others have not been included. We refer to Annex 2 of the Regulatory Impact Statement: proposed Regulatory Standards Bill, which sets out the summary analysis of specific principles. There is considerable concern about the drafting of these principles, including

a. The exact nature of the rule of law is contestable, and it does not appear that careful work has been carried out to ensure that any rule of law principles line up with settled legal understandings.[6]

b. The expression of the principle in relation to liberties is troublesome in that "*the values expressed in this principle do not have settled meanings, are open to interpretation, and incorporate concepts in a way that is broader than is generally recognised in other jurisdictions.*"[7]

c. The principle relating to the taking of property goes much further than current understandings in New Zealand and similar provisions in other jurisdictions.[8] As we previously submitted, as a network utilities infrastructure company, 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. 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, maintain and operate our existing works.

   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 much harder for EDBs to build and maintain distribution networks, and ultimately it ,may well constrain our ability to provide electricity to our community and support electrification at pace.

   We are concerned that this will hinder (and not help) the implementation of the

[6] For example, see the commentary in the RIS at p73 that "the force with which some of the principles are stated does not reflect some of the inherent uncertainties. For instance, a blanket requirement for all law to be 'clear and accessible' without any qualification could impose very onerous obligations, depending on how it was interpreted. In addition, 'clear' and 'accessible' lack precision in the context in which they are used, and it is not clear to whom the legislation must be clear".

[7] See page 73 of the RIS.

[8] See page 74 of the RIS.

Government's Going for Growth programme, including its 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.

In this respect, the Bill lacks the counterbalance, that at certain times it will be necessary to justify constraining liberty to protect the public interest. This means that government measures to protect the public interest, minimise public harm or safeguard the environment will be inconsistent with the proposed 'benchmark for good legislation'.[9] This is particularly relevant to proposals relating to protection of energy infrastructure and climate resilience. It could well be difficult to regulate on these matters if there is a rigid focus on individual rights.

We submit that if the principle relating to the taking of property is to be retained then a principle providing for the counterbalance must also be included in the Bill.

d. The principle relating to good law-making, and in particular the importance of consulting is drafted in such a way as to limit those persons who may be consulted in relation to a particular matter or thing. The reference to persons or representatives being directly or materially affected by legislation is considerably narrower than one would expect. It now appears to exclude persons who have an interest in a matter.[10]

12. Generally, we do not agree with the approach of setting out these principles in legislation. 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*."

13. We are also 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. 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

[9] See https://www.phcc.org.nz/briefing/regulatory-standards-bill-threatens-public-interest-public-health-and-maori-rights

[10] For example, see section 82 of the Local Government Act 2002 in comparison.

will incur further costs in time and money.

Clauses 9 to 12 – How principles apply when developing legislation

14. These clauses set out the requirement for a consistency accountability statement in relation to new Bills before Parliament. We repeat the comments we made in relation to the Discussion Document that we think it will add a new layer of process costs to the promotion of legislation (and currently 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.

Clauses 13 & 14 – How principles apply when developing legislation

15. These clauses also require consistency accountability statements for secondary legislation. We repeat our comments above at clause 14.

Clauses 15 to 22 – Regulatory stewardship

16. We support the promotion of 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). We understand from the Regulatory Impact Statement that the Ministry for Regulation consulted with Government agencies on drafts of the Cabinet Paper, Regulatory Impact Statement and Treaty Impact Analysis. The RIS records in relation to this consultation that[11]

- "*if all secondary legislation (in addition to new or amended primary legislation) was included in the requirement to assess consistency with the principles there would be significant cost and resourcing implications for agencies (and currently uncosted costs on local government, should bylaws be in scope of consistency assessments). Nearly all agencies indicated* ***it would be challenging or unworkable to undertake the work involved within existing baselines without impacting on future government priorities and legislative programmes***
    - *several agencies provided feedback around classes of secondary legislation that should be excluded from the requirements for consistency assessment on the basis that it would be*

[11] See p21-22 of the RIS.

costly and add little value.

- *some agencies further noted that the proposed requirements would detract from resources available to undertake stewardship of the regulatory systems they administer, given that consistency assessments have a considerably narrower focus on legislation.*"

17. We note that the Cabinet Paper "Policy Approvals for Progressing a Regulatory Standards Bill" states that "*Responsible Ministers and agencies will need to consider how to manage any residual resourcing implications within baseline, including trade-offs against other priorities in the absence of additional funding*."[12] 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, and still achieve the Government's priorities including Electrify New Zealand.

Clauses 28 to 40 – Regulatory Standards Board

18. In our submission on the Discussion Document, we said that New Zealand does not need a new structure, such as the Regulatory Standards Board. We referred to the comments of Emeritus Professor Jonathan Boston, ONZM in his essay on the Regulatory Bill[13] at paragraph 49 where he stated 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.*"

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[12] See https://www.regulation.govt.nz/assets/Publication-Documents/Information-Release-Policy-Approvals-for-Progressing-a-Regulatory-Standards-Bill-May-2025_v4.pdf at para 72.
[13] See Regulatory bill: Emeritus Professor Jonathan Boston, ONZM

19. The proposal for a Regulatory Standards Board has been retained in the Bill. If Parliament is minded to retain the proposal for the Board, we suggest that more controls be included about the appointment of the Board members, their qualifications, and the length of their terms (including as to reappointments). Such changes will promote better Parliamentary scrutiny of the arrangements in relation to regulatory stewardship, including Attorney-General feedback on any legal appointments and consultation with all parties in the House as to appointments.

20. Our submission is that the clauses 37 and 38 should be amended as follows:

21. We propose the following amendments to clause 37, clause 38(5), and new subclause (6):

37 Membership of board

The board must have not fewer than 5 members and not more than 7 members**, of whom at least 3 must be barristers and solicitors of at least 5 years' standing each**.

38 Minister must appoint members

(1) **Subject to this clause,** the regulatory standards Minister must appoint the members of the board.

…

(5) **Subject to subclause (6),** the Minister may only appoint a person who, in the Minister's opinion, has the appropriate knowledge, skills, and experience to assist the board to perform its functions.

(6) The Minister must not appoint a person as a member of the Board, unless

(a) in the case of a member who is a barrister or solicitor, the Minister has first consulted with the Attorney-General; and

(b) the Minister has consulted representatives of all political parties in Parliament; and

(c) the Minister is satisfied that collectively members are experienced in and knowledgeable of the process by which public and regulatory policy is

formed and given effect to.

22. We also propose an amendment to Schedule 2 which sets out further provisions relating to the Regulatory Standards Board.

1 Term of office of members

(1) A member holds office for 3 years or any shorter period stated in the notice of appointment.

(2) A member may be reappointed **but no member may be reappointed for more than 2 consecutive terms.**

Clauses 43 and 45 – Information for Regulatory Reviews

23. Clauses 43 and 45 relate to the requirement to provide information to enable regulatory reviews. It is not clear to us whether the reference to a non-public service agency in its capacity as an agency or person that performs a function imposed under legislation would apply to EDBs or not.

24. EDBs are required to comply with various pieces of legislation including the Commerce Act 1986, and Determinations made by the Commerce Commission under the Commerce Act, the Electricity Industry Act 2010 and the Electricity Industry Participation Code 2010. To some extent, this could be interpreted as exercising functions under legislation. If it is intended for these provisions to apply to EDBs and other commercial entities, then we would expect there to be provisions included in the Bill that apply confidentiality requirements to information provided to the Ministry for Regulation, as well as penalties for disclosing confidential information.

25. We note that in the absence of any provisions about the restrictions on the use of confidential information, the provisions in the Official Information Act 1980 will apply. However, we do not think that the Official Information Act 1980 necessarily strikes the right balance. If a person is dissatisfied with a decision of the Ministry with respect to an OIA request for commercially sensitive information relating to an EDB, then a complaint to the Ombudsman about the procedure of the Ministry for Regulation may come after disclosure has already occurred. The protection of commercially sensitive information is of the upmost importance and a balancing approach is not necessarily the right approach in all cases.

Concluding comments

26. Thank you again for the opportunity to provide this submission. We do not wish to be heard in relation to this submission.

27. If you have any questions please contact Vivienne Wilson, Policy Lead, Vivienne.wilson@oriongroup.co.nz, (03) 363 9898.

Yours sincerely

Vivienne Wilson

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