

ENA submission to the *Have your say on the Proposed Regulatory Standards Bill* discussion document

Submission to the Ministry for Regulation

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1 Introduction

Electricity Networks Aotearoa (ENA) appreciates the opportunity to make a submission to the *Have your say on the Proposed Regulatory Standards Bill* discussion document (referred to as ‘the Discussion Document’).

ENA is the industry membership body that represents the 29 electricity distribution businesses (EDBs) that take power from the national grid and deliver it to homes and businesses (our members are listed in Appendix A).

EDBs employ 10,000 people, deliver energy to more than two million homes and businesses, and have spent or invested \$8 billion in the last five years. ENA harnesses members’ collective expertise to promote safe, reliable, and affordable power for our members’ customers.

ENA supports the intent of the proposed Regulatory Standards Bill (referred to as ‘the Bill’), as it aims to improve the quality of regulation, ensuring that regulatory decisions are based on principles of good law-making and economic efficiency. Regulation and regulatory practice that is consistent with these principles is especially important for EDBs as electricity distribution is a heavily regulated industry. EDBs continue to play a critical role in helping Aotearoa to achieve net carbon zero by 2050. As Aotearoa shifts to electrifying more things – like our homes, cars and businesses – there is an increasing importance that we have regulation which is fit for purpose and effective.

2 Why a regulatory Standards Bill?

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

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

The operations of EDBs are highly regulated, principally by both the Electricity Authority and the Commerce Commission. Non-exempt EDBs are further subject to significant economic regulation by the Commerce Commission, which includes determining how much these EDBs can spend on building and operating their networks and setting the maximum revenue that they can earn. The electricity distribution sector has been in a relatively steady state for much of the last 40 years with innovation and change occurring at an incremental pace. The prevailing regulatory regimes have suited this steady-state operating environment.

Today, however, the scale and timing of spending by EDBs needed to facilitate New Zealand’s transition to electrification is highly uncertain. In addition, a changing climate and increased natural hazard risk means that investments must be made to ensure that our critical infrastructure is resilient.

Set against these challenges, our previously ‘steady-state’ regulatory regime must now be sufficiently modern and flexible to keep pace with New Zealand’s transition to a low-carbon, electrified New Zealand.

ENA is encouraged by the recently announced review of the Commerce Act 1986, and we look forward to participating in the consultation process in early 2025. ENA considers the absence of ‘sustainability’ in the statutory objectives of both the Commerce Commission and the Electricity

Authority is a significant shortcoming that affects the quality of the regulation developed by both agencies.

Regulators must make decisions that carefully balance the costs of decarbonisation against the three pillars of the energy trilemma—affordability, reliability, and sustainability. Amending the Commerce Act to explicitly require the Commerce Commission to consider climate change in its decisions would help address the trilemma. Such an amendment would ensure the regulatory regime evolves to better support decarbonisation efforts while aligning with societal expectations for climate action. This approach would also enable regulators to make decisions that promote efficiency, affordability, and sustainability in parallel.

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?

ENA rarely uses RISs to find out information about proposed government regulation. We have found they can be poorly drafted and formatted, making them difficult to read. In addition, in our experience, they have little practical effect on the policies that government enacts.

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?

ENA does not use disclosure statements to find out information about a Bill.

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

ENA does not see that the existing regulatory oversight arrangements have much practical effect on the policies that government, or its agencies, enacts. If there is an effect, it is not visible to us.

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

ENA believes the Bill also represents a positive step in enhancing the quality of regulation in Aotearoa. However, the effectiveness of the Regulatory Standards Bill will largely depend on how decisions to regulate are approached and managed. This includes ensuring that the processes leading to regulatory decisions are transparent and evidence based. It requires a shift away from reactive or politically driven regulation towards a more deliberate, systematic, and principles-based approach. How well the government and its agencies adopt and implement these improved decision-making practices will ultimately determine whether the Bill achieves its goal of fostering high-quality regulatory frameworks.

Improving regulatory practices in Aotearoa requires addressing the underlying reasons for government decisions to regulate. These decisions must be based on clear and well-justified reasoning. ENA has observed that some government and regulator consultation documents include

cost benefit analyses that lack substance and a credible evidence base. Instead, they often present superficial statements that appear to fulfil procedural requirements but fail to meet a meaningful standard of scrutiny. Despite these shortcomings, and associated criticisms as part of submissions, the consultation on the proposed regulation often proceeds regardless. Without changes at this fundamental step, other reforms or interventions aimed at enhancing regulatory processes are unlikely to be fully effective.

Before deciding to regulate, the government must clearly understand the problem it is trying to address. Regulation should only be justified in cases of significant market failure, where the market cannot adequately address the issue on its own. Because markets often self-correct faster than governments can intervene, the government should have a high burden of proof to demonstrate that the benefits of regulation outweigh its costs, including potential unintended consequences like non-compliance. ENA has found that some government consultation papers have failed to ask the most basic question—whether there is even a significant problem that needs solving—before proposing regulatory changes.

Recommendation: All proposals for regulation are required to include a clear evidence-based problem analysis to comprehensively define the issue, who is affected, the nature and scale of the problem and why intervention is necessary.

Recommendation: All proposals for regulation be required to include a detailed (and quantified) cost-benefit analysis conducted by an independent agency, similar to the former Productivity Commission, to ensure an impartial assessment of the regulation's potential impacts, including costs, benefits, and any unintended consequences.

Recommendation: When regulation is put in place, the responsible minister should be required to issue an accompanying statement explaining how the regulation addresses the problem statement and how it is justified on the basis of the cost benefit analysis. If the regulation is not justified on the basis of the cost benefit analysis, the minister should explain why the government nevertheless thinks the regulation is needed and justified.

3 Discussion area one: setting standards for good regulation

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

ENA agrees with the comments in the interim RIS produced by Ministry of Regulation (MfR) officials 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.”¹ A version of these principles already exists as part of the Legislation Design and Advisory Committee (LDAC) guidelines. Codifying only a select few principles in primary legislation risks disregarding or devaluing the many other sound principles in the LDAC guidelines.

¹ New Zealand Treasury, 2024. *Interim Regulatory Impact Statement: Legislating to improve transparency of the quality of regulation*, p. 27.

Recommendation: Either all guidelines are elevated as principles in primary legislation, or none are elevated. We emphasise that the issue lies not in the absence of good guidance but in its lack of adherence.

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

ENA has no comment to make here.

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

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

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

ENA is concerned that the strong focus on these principles will mean property rights and compensation will be evaluated in isolation from the broader goals and objectives of the legislation being considered. For example, within the replacement to the Resource Management Act (RMA) it may be appropriate to place restrictions on the use of property, given the intent of the legislation is directed towards sustainable management as opposed to solely the rights and liberties of the individual. There will always be competing principles, but only elevating a select few of those in the LDAC guidelines into primary legislation will mean these could take priority over those that aren't in primary legislation.

Recommendation: The principles outlined in the Discussion Document are not adopted and instead the status quo remains. The LDAC guidelines already broadly cover these principles, and recognises that there are some laws, like the replacement RMA, where it may be appropriate to place restrictions on the use of property.

4 Discussion area two: Showing whether regulation meets standards

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?

As we have outlined above, while there are processes in place to assess the quality of regulations and policy proposals (like RISs), these processes are often not detailed or rigorous enough. As a result,

unintended consequences of regulations may not be properly identified or minimised. For existing regulations, there may be only occasional, informal reviews, but no consistent or thorough processes to ensure these regulations are still effective and appropriate for their intended purpose.

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?

ENA supports the idea of regular consistency checks on regulations to ensure they are fit for purpose and remain appropriate over time. While government agencies strive to keep regulations up to date, the reality is that political pressures often defer attention away from this task, diverting resources to focus on short-term, reactionary efforts rather than long-term planning. This can result in regulations becoming outdated and less effective. Therefore, ENA believes that the new consistency checks proposed by the Regulatory Standards Bill will improve the quality of regulation by providing a structured and consistent approach to ensuring regulations evolve with changing circumstances.

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

ENA supports the establishment of a Regulatory Standards Body to oversee consistency checks. This Body would provide a focused and consistent approach to improving the quality of regulation across government. It could also help mitigate the impact of resource allocation constraints. ENA has no specific changes to propose at this stage, but we would like to stress the importance of ensuring that the Body has adequate expertise and independence to carry out its mandate effectively.

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)?

ENA agrees that the MfR should have the flexibility to determine which types of regulation should comply with the consistency requirements proposed by the Regulatory Standards Bill. However, these exemptions should be narrowly defined and limited to specific cases. ENA believes the MfR should exercise discretion in assessing which regulations need to comply with the consistency requirements, ensuring that attention is focused on those regulations that have the potential to significantly improve regulatory effectiveness.

EDBs are highly regulated so there is significant importance to having regulatory stability. Equally important is ensuring that the processes regulators use are consistent, rigorous, and aligned with best practices. We expect independent regulators to adhere closely to key guidance documents, such as *Government Expectations for Good Regulatory Practice* and *Starting Out with Regulatory Stewardship*, to support robust regulatory processes specific to our sector.

We also see value in the Ministry for Regulatory Stewardship (MfR) having oversight to ensure that regulators meet high standards for good regulatory practice. A focus on process integrity—ensuring consistency, rigor, and appropriate scrutiny—is essential to maintaining confidence in the regulatory system. If this is achieved, then collaboration and communication with industry will improve and regulation will surely be of a higher quality

5 Discussion area three: Enabling people to seek independent assessment of whether regulation meets standards

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?

ENA has no comment to make here.

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?

The existing responsible ministers and ministries should be able to receive and appropriately respond to complaints about the quality of the regulation for which they have responsibility. There should not be a need to establish a new structure or organisation to ensure this is the case. If this is not a current responsibility ministers or ministries have, it should become one.

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?

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?

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

ENA understands the Government's rationale for proposing a Regulatory Standards Board instead of relying on the courts to assess whether regulatory initiatives meet appropriate standards. While generally supportive of this approach, we would like to emphasise the importance of the Board's independence from Government in its composition and the broad range of expertise needed. In particular, the Board should have legal, economic, and cost-benefit analysis expertise to ensure that regulatory initiatives are robust and well-founded. ENA suggests that the MfR clearly outlines the specific qualifications and expertise required for Board members. This would help maintain long-term public confidence in the Board's work and recommendations.

Regarding the role of the courts, ENA notes that from the Discussion Document it is still unclear how the proposed Bill will address this issue. Further clarification and refinement on this point would be valuable to ensure the relationship between the Board and the courts is clear and well-defined.

6 Discussion area four: Supporting the Ministry for Regulation to have oversight of regulatory performance

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

Yes, ENA supports these proposals. However, we caution the MfR against creating processes that become mere 'tick-box exercises' to meet expectations. It is essential that real, meaningful action is taken, rather than simply meeting the bare minimum requirements.

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?

ENA would expect that government agencies would be cooperative with the MfR (given all parties are part of 'the government') when a regulatory review is undertaken, or to gather information to decide if such a review is warranted. To this end, it isn't clear why the Chief Executive of the Ministry for Regulation would need such a power to obtain information?

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?

ENA has no comment to make here.

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

ENA has no comment to make here.

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?

ENA is generally comfortable with the proposed information-gathering powers that will be given to the MfR.

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

Yes, ENA is generally comfortable with these proposals.

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

ENA has no comment to make here.

7 Appendix A

Electricity Networks Aotearoa makes this submission along with the support of its members, listed below.

- Alpine Energy
- Aurora Energy
- Buller Electricity
- Centralines
- Counties Energy
- Firstlight Network
- Electra
- EA Networks
- Horizon Networks
- Mainpower
- Marlborough Lines
- Nelson Electricity
- Network Tasman
- Network Waitaki
- Northpower
- Orion New Zealand
- Powerco
- PowerNet (which manages The Power Company, Electricity Invercargill, OtagoNet and Lakeland Network)
- Scanpower
- Top Energy
- The Lines Company
- Unison Networks
- Vector
- Waipa Networks
- WEL Networks
- Wellington Electricity
- Westpower