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PROPOSED “REGULATORY STANDARDS BILL”:

A NEW ASSAULT ON TE TIRITI AND A TROJAN HORSE FOR THE TREATY PRINCIPLES BILL

A hikoi of 40,000 to Parliament and several hundred thousand submissions opposing the Treaty Principles Bill should have sent a message to the Crown that they cannot get away with cancelling Te Tiriti o Waitangi.

With attention focused on the TPB, the Coalition has been stealthily advancing another promise that ACT extracted as the price for supporting National and NZ First in this toxic government. This one sounds more boring and is less directly in-your-face on Te Tiriti. That’s why it’s so dangerous for Te Tiriti and Aotearoa generally.

What is ACT trying to do?

In a nutshell, ACT wants to require all new laws, regulations, regulatory systems and basically anything the government does to influence behaviours, to be based on an extreme hands-off approach that gives primacy to individual rights, especially private property rights. Existing laws would also be reviewed over time to meet those priorities. And those with property rights, including corporate lobbyists for mining, tobacco, GMOs, can complain to a board appointed by the “Minister for Regulation” that a law or regulation doesn’t comply with those narrow priorities. Icing on the cake: those corporations can sue the government for compensation if new laws impact negatively on their property rights, including their profits. So forget about reversing the fast-track decisions, genuine moves to address the climate crisis, or controls over abuse of power by Big Tech.

Where ACT get this idea from?

ACT has been trying to put this straightjacket on regulating for the past 30 years. *It has been to Parliament three times already and voted down each time*, most recently in 2021. The first draft was developed by the Business Roundtable as part of their Rogernomics revolution. They describe it, along with privatisations and other neoliberal strategies, as creating the “economic constitution” for New Zealand: setting the meta-rules for making the detailed rules.

What’s the place of te Tiriti o Waitangi in this?

As with everything else from this government, Te Tiriti and rangatiratanga are treated with contempt. There’s no reference to Te Tiriti or even “Treaty principles” as a factor to consider in regulating. The “rule of law” is narrowly defined and would exclude tikanga. And there’s no requirement for Māori involvement in decisions, even that directly affect them. The only exclusion would be for laws that implement Treaty settlements. So if this gets adopted, it would lay the groundwork for writing Te Tiriti out of the advice and decision making processes that inform laws and other regulations. The Crown is going backwards, when we need Tiriti-based constitutional transformation.

Were Māori even asked about this?

No. ACT admits it only did “targeted engagement” with a handful of fellow-travellers who have previously championed the Bill.

Were Crown officials asked for advice on Te Tiriti?

A “preliminary Treaty impact analysis” assessed the proposal against the “Treaty principles” of “partnership, participation and protection”, but also those of rangatiratanga, kāwanatanga and equity. Almost all their advice is blacked out in the version that was released. An Official Information Act request has been made to get the whole thing.

Do we know what the officials’ advice on Te Tiriti was?

Only a bit. It is clear that officials advised Seymour and the Cabinet that the Bill would the Crown’s Tiriti obligations:

“Of significance is that the proposals do not include a principle related to the Treaty/te Tiriti and its role as part of good law-making, meaning that the Bill is effectively silent about how the Crown will meet its duties under the Treaty/te Tiriti in this space. While this does not prohibit the Crown complying with the Bill in a manner consistent with the Treaty/te Tiriti, we anticipate that the absence of this explicit reference may be seen as politically significant for Māori and could be perceived as an attempt by the Crown to limit the established role of the Treaty/te Tiriti as part of law-making....

The absence of a principle relating to the Treaty/te Tiriti may be seen as implying that it is of lesser importance, with no obligation for Ministers to disclose and justify inconsistencies with the Treaty/te Tiriti as part of law-making. ...

Given the Bill does not explicitly refer to the Treaty/te Tiriti or tino rangatiratanga, there may be uncertainty as to how law-makers would be required to consider Māori cultural values and systems of law relating to property, including tikanga. This critique also applies to how the Bill would protect the rights and wellbeing of whānau, hapū and iwi, (including future generations) or the environment. Finally, the Bill is not clear how the proposed principles could apply to protected Maori land.

The officials also refer to the Tribunal’s constitutional kaupapa inquiry

The Bill may be relevant to current and upcoming matters before the Waitangi Tribunal, including the Constitutional Kaupapa inquiry (Wai 3300) which pertains to claims that include grievances relating to the constitution and self government.

The Waitangi Tribunal has made an indication that some of the central themes of the inquiry will likely include tino rangatiratanga, mana motuhake, autonomy, and self-governance; kāwanatanga, constitutional legitimacy and sovereignty; parliamentary sovereignty and systems; tikanga tuku iho me ngā ture pākehā; national models of Māori self-government; and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Te Tiriti o Waitangi.

THE NEXT PARAGRAPH, WHICH IS THE OFFICIALS’ CONCLUSION & ADVICE IS BLACKED OUT!

How does ACT justify this Bill?

The same double-speak as the Treaty Principles Bill by the same Minister David Seymour. ACT describes this as “based on principles of good law-making and economic efficiency”. The process of developing regulation is meant to be evidence-based with public engagement, especially of those affected, and transparency of decision-making – exactly the opposite of what David Seymour did with the Treaty Principles Bill. But even if the process under this Bill met those standards, it would still be informed by ACT’s extreme libertarian principles.

Does the Coalition Agreement say this will become law?

Unlike the Treaty Principles Bill, where National and NZ First only said they would support it to select committee, National promised they will: “Legislate to improve the quality of regulation, ensuring that regulatory decisions are based on principles of good law-making and economic efficiency, by *passing* the Regulatory Standards Act as soon as practicable.” David Seymour was made Minister for Regulation, so he is in charge of the content, process, timing of what gets put to Cabinet and for consultation, and then to Parliament with Cabinet’s approval.

Where is the proposal at now?

A discussion paper on the Bill went out for consultation on 19 November, closing on 13 January 2025 – so another of those sneaky processes over Christmas/New Year when people are meant to be on holiday. ACT’s plan was to introduce a Bill to Parliament in March.

What do we know about submissions on this?

As people woke up to what was happening, there has been a major effort to challenge what Seymour and the Coalition Government are doing. Around 23,000 submissions, many from Māori, opposed ACT’s attempt to lock in extreme neoliberal ideology and to override Te Tiriti, yet again. The Bill’s even unpopular with pro-business and National Party people, because it would stop much needed legislation. Commissioner for the Environment Simon Upton, a former National Party Minister, has publicly dissed it. Even the Ministry for Regulation that Seymour created doesn’t support it. Treasury rejected it the last time round, and presumably will continue to.

What happens next?

The newly created Ministry for Regulation, under its Minister David Seymour, will analyse the feedback to inform a Bill, and says the Government plans to introduce it later this year (when is unclear, given ACT wanted it introduced in March). So it seems a foregone conclusion that it will be introduced, even if it is fundamentally flawed and however strong the opposition has been from all quarters. It’s another example of a Party with under 9% of the vote using the Coalition Agreement to secure far-reaching changes that constitute fundamental breaches of Te Tiriti.

Is this something for the Waitangi Tribunal?

Some claimants in the Constitutional Kaupapa urgency hearing on the Treaty Principles Bill and proposals to remove references to Treaty principles from statutes are proposing to ask the Tribunal to extend that urgency to this proposed Bill.

What can we do to stop this Bill?

Because National has agreed that this will become law, the pressure needs to pile on them politically, as well as NZ First that has agreed to support the National-ACT promises. That includes making the link between the Treaty Principles Bill, which National and NZ First say they oppose, and the proposed Regulatory Standards Bill.

29 January 2025

To find out more, see:

<https://www.rnz.co.nz/news/political/538784/regulatory-standards-bill-slammed-as-dangerous-call-for-alarm-bells>

<https://www.rnz.co.nz/news/political/538931/the-regulatory-standards-bill-what-you-need-to-know>

<https://melanienelson.substack.com/p/will-the-regulatory-standards-bill>

<https://e-tangata.co.nz/comment-and-analysis/the-dangerous-bill-flying-under-the-radar/>

<https://open.spotify.com/episode/6VfC4AgpbxITx5FN4eKics?si=6458ed3f73864850&nd=1&dlsi=539cfc848f3a4930>

<https://www.regulation.govt.nz/assets/Publication-Documents/Preliminary-Treaty-Impact-Analysis-for-the-proposed-Regulatory-Standards-Bill.pdf>

<https://www.regulation.govt.nz/assets/RIS-Documents/Interim-Regulatory-Impact-Statement-Legislating-to-improve-transparency-of-the-quality-of-regulation-v2.pdf>