

How the red-tape crusader is failing in his own mission

Does the Treaty Principles Bill pass Seymour's tests of quality law-making?

Kathy Spencer

David Seymour is on a mission to tidy-up and improve the quality of New Zealand's laws and regulations – a mission also known as “cutting red tape”.

Having set up his new Ministry for Regulation, Seymour has embarked on the second major plank of his red tape mission: a proposed Regulatory Standards Bill that will set rules about how to make rules.

This is the fourth time that essentially the same bill has been promoted by leaders of ACT. Previous attempts were led by Rodney Hide in 2006 and 2011, and then by Seymour in 2021 and currently.

To me, the idea of reducing red tape by adding more bureaucracy and legislation has always seemed like a massive contradiction, and that is proving to be the case.

The Treaty Principles Bill

As we know all too well, Seymour has another highly significant piece of legislation in the works: the Principles of the Treaty of Waitangi Bill, which aims to “create greater certainty and clarity to the meaning of the principles in legislation”.

Does the Treaty Principles Bill pass the tests for quality law-making proposed by David Seymour? An excellent piece of analysis from the Ministry of Justice provides the answer.

One of Seymour's proposed standards for good law-making is that affected parties should be consulted. The Justice officials point out, however, that they were directed to conduct a process with no public consultation on policy. Instead, public engagement would occur as part of the select committee process.

That's a problem at a fundamental level because Māori, as the Treaty partner, did not get a say in the preparation of a bill about the principles of their Treaty.

The lack of consultation, together with tight timeframes, also meant that officials had to restrict their analysis to two options – the Treaty Principles Bill as proposed, or the status quo.

That's contrary to the proposed quality standard stating that all options should be considered, including ones that don't actually require legislation.

Another of Seymour's quality tests is that a law should be the most effective response to an issue. Fatally, however, both the Waitangi Tribunal and the Justice Ministry concluded that the principles in the bill were inconsistent with the Treaty.

Officials therefore came to the judgement that the status quo would provide greater certainty about the Treaty's principles than progressing the bill.

If David Seymour himself isn't going to comply with his standards for quality law-making, what is the point of them?

To justify his red tape mission, Seymour created an impression that no-one was focussed on regulation quality. However, the discussion document on the Regulatory Standards Bill sets out a long list of mechanisms already in place, including the list below.

Treasury and MBIE between them already had responsibility for regulation oversight before most of these functions were transferred to the new Ministry for Regulation.

Next, there's the Parliamentary Counsel Office which is expert in drafting legislation and advises on the coherence and accessibility of New Zealand's law.

Parliament itself has an important role in ensuring quality, including through the Regulations Review Select Committee.

Then there's the Legislation Design and Advisory Committee which publishes the Legislation Guidelines (endorsed by Cabinet) and gives advice to government agencies that ask for it.

Most legislation must be accompanied by a disclosure statement setting out relevant background material, outlining the quality assurance processes undertaken, and noting any significant or unusual provisions.

Finally, there's a requirement for all agencies submitting proposals to Cabinet to complete a regulatory impact statement. This aims to ensure that all impacts and alternatives have been properly considered before new regulations, or changes to old ones, are agreed.

We simply don't need a new piece of legislation on top of all this, and the Ministry for Regulation seems to agree.

Having analysed the pros and cons of Seymour's Regulatory Standards Bill, officials concluded that a better and cheaper way to achieve the bill's objectives would be to build on the existing disclosure statement regime and provide for more regulatory oversight.

While Seymour is usually a champion of exactly this kind of analysis, on this occasion he rejected the advice prepared by his own officials, telling *The Post*:

"The bureaucracy has opposed laws restricting their right to poke around in New Zealanders' lives for 20 years..."

In my view, that makes no sense. Any rights to "poke around in New Zealanders' lives" aren't created by the bureaucracy. That job falls to our duly elected members of parliament and surely that's how the system is supposed to work.

Thank goodness for the "back office" public servants who have displayed integrity and skill when speaking up about the shortcomings of the two pieces of legislation being proposed by David Seymour. Neither bill is needed and both are problematic.

So far, the officials are winning the battle of the regulations. More power to their elbows.

Kathy Spencer was a Deputy Director-General in the Ministry of Health, a General Manager in ACC, and a Manager in the Treasury.