

**Hon Andrew Little**  
Minister of Justice

**Proactive release – The New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill**

Date of issue: 28 May 2020

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	<b>Response Mechanism for Declarations of Inconsistency under the New Zealand Bill of Rights Act 1990</b> <i>Cabinet paper</i> Office of the Minister of Justice Office of the Attorney-General 19 February 2020	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials, and section 9(2)(h) to maintain legal professional privilege. No public interest has been identified that would outweigh the reasons for withholding it.
2	<b>Response Mechanism for Declarations of Inconsistency under the New Zealand Bill of Rights Act 1990</b> <i>Cabinet Minute: SWC-20-MIN-0004</i> Cabinet Office Meeting date: 19 February 2020	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it.
3	<b>New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill: Approval for Introduction</b> <i>Cabinet paper</i> Office of the Minister of Justice 10 March 2020	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials, and section 9(2)(h) to maintain legal professional privilege. No public interest has been identified that would outweigh the reasons for withholding it.  <i>The copy of the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill provided to Ministers with this paper has been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the OIA to maintain legal professional privilege. Legislative instruments are publicly available at <a href="http://www.legislation.govt.nz/">www.legislation.govt.nz/</a>.</i>  <i>The departmental disclosure statement attached to the paper is publicly available at <a href="http://disclosure.legislation.govt.nz/">http://disclosure.legislation.govt.nz/</a>.</i>
4	<b>New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill: Approval for Introduction</b> <i>Cabinet Minute: LEG-20-MIN-0032</i> Cabinet Office Meeting date: 10 March 2020	Some information has been withheld in accordance with section 9(2)(h) of the OIA to maintain legal professional privilege. No public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Justice  
Office of the Attorney-General

Chair, Cabinet Social Wellbeing Committee

## **RESPONSE MECHANISM FOR DECLARATIONS OF INCONSISTENCY UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990**

### **Proposal**

1. This paper sets out a proposal for how the Executive and the House of Representatives should respond when the Senior Courts<sup>1</sup> declare an Act to be inconsistent with one or more of the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).

### **Executive Summary**

2. A declaration of inconsistency is a formal statement by a court or tribunal that an Act is inconsistent with a plaintiff's fundamental human rights protected by the Bill of Rights Act. When the Senior Courts make such a declaration, there is currently no mechanism to bring the matter to the attention of the House of Representatives. This means lawmakers may not have full regard for the declaration and breaches of rights might go unaddressed.
3. We propose to amend the Bill of Rights Act to require the Attorney-General to present the declaration to the House of Representatives within six sitting days after the declaration becomes final (i.e. all appeals have been dealt with or the time for an appeal has expired). This will enable Parliament to consider whether it wishes to repeal, amend, or affirm the provision in question. We also propose the Human Rights Act 1993 be amended so the response to a declaration of inconsistency by the Human Rights Review Tribunal is the same as the response to a declaration under the Bill of Rights Act.
4. We do not propose a statutory requirement for the House of Representatives to respond to declarations of inconsistency. Instead, how the House of Representatives responds should be left for it to determine under its Standing Orders. We envisage this will be similar to the existing requirement to refer reports of the Attorney-General about proposed legislation to the relevant select committee. If the timing of the Bill does not align with the review of Standing Orders, or if the Standing Orders Committee is unable to come to agreement then the process could be set out in a sessional order.

<sup>1</sup> High Court, Court of Appeal, and Supreme Court (refer section 4 of the Senior Courts Act 2016).

## Background

5. A declaration of inconsistency is a formal statement by a court or tribunal that an enactment is inconsistent with a plaintiff's fundamental human rights protected by the Bill of Rights Act. A declaration does not affect the validity of an Act, or anything done lawfully under that Act. However, it does signal that the court or tribunal considers an Act to infringe fundamental human rights in a way that cannot be justified in a free and democratic society.
6. The Human Rights Act 1993 empowers the Human Rights Review Tribunal to declare an Act to be inconsistent with the right to be free from discrimination affirmed in section 19 of the Bill of Rights Act. However, until recently, it has been less clear whether the courts can make declarations of inconsistency in respect of other rights affirmed in the Bill of Rights Act. This was settled in November 2018 when the Supreme Court, in *Attorney-General v Taylor*, determined that Senior Courts have the power to issue a declaration of inconsistency under the Bill of Rights Act.<sup>2</sup>
7. This decision raises the question of what should happen after the Senior Courts issue a declaration of inconsistency under the Bill of Rights Act. In February 2018, following decisions by the High Court and Court of Appeal in *Taylor*, Cabinet agreed, in principle, to amend the Bill of Rights Act to provide for declarations of inconsistency made by the Senior Courts [SWC-18-MIN-0006; CAB-18-MIN-0057 refers]. At that time, Cabinet invited the Minister of Justice to submit a detailed policy proposal following the release of the Supreme Court's decision in *Taylor*.

## Proposed statutory response mechanism for declarations of inconsistency

8. We propose amending the Bill of Rights Act to provide a statutory response mechanism when the Senior Courts issue a declaration of inconsistency under the Bill of Rights Act for the reasons outlined below. The proposal does not amend or alter the power of the Senior Courts to grant relief, including making declarations of inconsistency under the Bill of Rights Act.

## Reasons for a statutory response mechanism

9. Currently, there are two provisions of the Bill of Rights Act that can address inconsistencies with that Act. First, section 7 requires the Attorney-General to draw to the attention of the House of Representatives any provision of a Bill that appears to be inconsistent with the Bill of Rights Act. This gives Parliament the opportunity to address the inconsistency before the Bill is passed into law. However, Parliament may reach a different conclusion from that of the Attorney-General and choose to enact the legislation unchanged.
10. Secondly, where a provision of an Act is capable of more than one interpretation, section 6 of the Bill of Rights Act instructs the courts to prefer

<sup>2</sup> [2018] NZSC 104.

an interpretation that is consistent with that Act over any other interpretation. This gives the courts some discretion to avoid breaches of fundamental rights arising from enacted legislation.

11. However, sometimes the courts find that it is not possible to interpret an Act in a way that is consistent with the Bill of Rights Act. A declaration of inconsistency provides an additional safeguard by enabling the Senior Courts to make a formal statement that the Act is inconsistent with the Bill of Rights Act. Currently, the Bill of Rights Act lacks a mechanism to draw a declaration of inconsistency to the attention of the House of Representatives.
12. A statutory response mechanism would provide greater transparency by:
  - drawing the opinion of the Court that the legislation breaches fundamental rights to the attention of lawmakers and the public; and
  - enabling Parliament to reconsider the legislation, and decide whether it wishes to repeal, amend, or affirm the provision in question.


***Key features of a statutory response mechanism***

13. We propose that the Bill of Rights Act require the Attorney-General to bring a declaration of inconsistency to the attention of the House of Representatives. This would need to occur within six days after the conclusion of all court proceedings relating to the declaration, including the time available for appeals. This is the approach taken in the Australian Capital Territory (ACT) and Queensland, which have similar legislation. It ensures the House of Representatives receives the declaration promptly but without being unduly burdensome on the Executive.
14. When the Human Rights Review Tribunal issues a declaration of inconsistency under the Human Rights Act, there is a statutory requirement for the Government to present its response at the same time as the declaration. We do not propose that the Bill of Rights Act include the same requirement. In our view, requiring a Government response at this stage could pre-empt the deliberations of the House of Representatives and unnecessarily politicise the issue. A finding by a Court that an Act is inconsistent with the Bill of Rights Act is a significant matter and must be properly considered by Parliament in an unhurried manner.
15. The legislation will not prescribe the process the House of Representatives must embark on, as that is a matter properly for Parliament. How, and when, the House of Representatives responds will be for it to determine under Standing Orders.
16. For example, when the Attorney-General presents a report under section 7 of the Bill of Rights Act that a Bill is inconsistent with that Act, Standing Orders

require that report be referred to a select committee for consideration.<sup>3</sup> We envisage a similar “automatic” process when the Executive draws a declaration of inconsistency to the attention of the House of Representatives.

17. The Minister of Justice will propose that the Standing Orders Committee considers potential changes to the Standing Orders, including:
- A referral to a select committee, and
  - Report back to the House on recommendations, and
  - A debate in the House on the Select Committee’s report, and
  - A vote on whether to accept the Select Committee’s report.

18. s9(2)(f)(iv)



#### **Declarations of inconsistency under the Human Rights Act 1993**

19. We propose that declarations of inconsistency under the Human Rights Act be treated the same way as declarations under the Bill of Rights Act. Declarations under both Acts are about the consistency of legislation with the Bill of Rights Act and should have the same result.
20. This will provide greater certainty for plaintiffs about the response to a declaration of inconsistency issued by the Tribunal or the Senior Courts (either directly or on appeal from the Tribunal). It will also avoid a situation where a plaintiff may need to seek a declaration of inconsistency from the High Court rather than the Tribunal to ensure a more fulsome response.
21. This will require an amendment to the Human Rights Act 1993 to: a) remove the statutory requirement for a Government response; and b) shorten the time available for presenting the declaration (it is currently 120 days, reflecting the time needed to prepare a response).
22. Instead, any change to Standing Orders providing for the House of Representatives to consider declarations of inconsistency under the Bill of Rights Act would also apply to declarations under the Human Rights Act.

<sup>3</sup> Standing Order 265, *Standing Orders of the House of Representatives 2017*.

## Consultation

23. The Ministry of Justice has engaged with key organisations and experts including: Crown Law, Parliamentary Counsel Office, Office of the Clerk of the House of Representatives, the Legislation Design and Advisory Committee, the New Zealand Law Society, faculty members of university law schools, and other constitutional and human rights law experts.
24. The Ministry of Justice has also consulted the Treasury, the State Services Commission, the Human Rights Commission, and the Department of Prime Minister and Cabinet about the proposals in this paper.
25. The Minister of Justice met with the Speaker of the House of Representatives about the policy proposal and matters relating to the Standing Orders of the House of Representatives. s9(2)(f)(iv)  
[REDACTED]
26. Following Cabinet, the Minister of Justice intends to inform the Chief Justice and the Chair of the Human Rights Review Tribunal of these policy decisions.

## Financial Implications

27. The costs associated with the policy proposal are expected to be minor and will be met from agency baselines. The proposal will not affect how the Senior Courts make declarations of inconsistency. However, providing for a formal response by the Executive and the House of Representatives may strengthen the incentive for individuals to seek a declaration of inconsistency. Based on previous case volumes,<sup>4</sup> the Ministry of Justice expects the number of applications for declarations of inconsistency to be small. It is unlikely that the proposal will, therefore, have operational and financial implications for the Senior Courts and the Human Rights Review Tribunal that cannot be absorbed within baseline.

## Legislative Implications

28. This proposal will require amendments to the New Zealand Bill of Rights Act 1990. s9(2)(h)  
[REDACTED]

## Impact Analysis

29. The Treasury Regulatory Quality Team has determined that the regulatory decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements as they have no or only minor impacts on businesses, individuals or not-for-profit entities.

<sup>4</sup> Since 2007, there have been eight applications for declarations of inconsistency under the Bill of Rights Act to the High Court, which has only issued one. For additional comparison, since 2002, the Human Rights Review Tribunal has only received four applications and made three declarations of inconsistency under the Human Rights Act.

## Human Rights

30. The proposals in this paper are consistent with the Bill of Rights Act and the Human Rights Act. Declarations of inconsistency support the rights affirmed in the Bill of Rights Act by providing a mechanism for the courts to express a view about the consistency of legislation with that Act.

## Gender Implications

31. There are no specific gender implications arising out of this paper. However, freedom from discrimination on the basis of sex is a right affirmed in the Bill of Rights Act to which declarations of inconsistency would apply.

## Disability Perspective

32. There are no specific disability implications arising out of this paper. However, freedom from discrimination on the basis of disability is a right affirmed in the Bill of Rights Act to which declarations of inconsistency would apply.

## Publicity

33. We propose to release a media statement announcing policy decisions after the Minister of Justice has informed the Chief Justice and the Chair of the Human Rights Review Tribunal.

## Proactive Release

34. We propose to release this paper proactively 30 business days after final Cabinet decisions. The Minister of Justice will notify the Chief Justice and Chair of the Human Rights Review Tribunal prior to release.

## Recommendations

35. The Minister of Justice and the Attorney-General recommend that the Committee:
  1. **note** that in February 2018, Cabinet agreed in principle to amend the New Zealand Bill of Rights Act 1990 to provide for declarations of inconsistency made by the Senior Courts under this Act [SWC-18-MIN-0006; CAB-18-MIN-0057 refers];
  2. **note** that in November 2018, the Supreme Court in *Attorney-General v Taylor* upheld an earlier High Court decision to issue a declaration of inconsistency under the New Zealand Bill of Rights Act and confirmed the power of the Senior Courts to issue declarations of inconsistency;
  3. **agree** to amend the New Zealand Bill of Rights Act to require the Attorney-General to bring a declaration of inconsistency to the attention of the House of Representatives within six days after the conclusion of all court proceedings relating to the declaration, including the time available for appeals;

4. **agree** to amend the Human Rights Act to replace the existing response mechanism for declarations of inconsistency made under that Act with the same requirements proposed for inclusion in the New Zealand Bill of Rights Act;
5. **note** that it is not proposed to amend or alter the power of the Senior Courts to grant relief, including making declarations of inconsistency under the New Zealand Bill of Rights Act;
6. **note** any requirement for the House of Representatives to respond to a declaration issued by the Senior Courts under the New Zealand Bill of Rights Act would be left to it to determine under the Standing Orders of the House of Representatives;
7. **note** that the proposed changes to the Standing Orders could include a referral to a select committee, a report back to the House with recommendations, a debate in the House on the Select Committee's report, and a vote on whether to accept the Select Committee's report;
8. s9(2)(f)(iv) [REDACTED]
9. s9(2)(f)(iv) [REDACTED]
10. **invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office to give effect to the policy proposal.

Authorised for lodgement

Hon Andrew Little  
Minister of Justice

Hon David Parker  
Attorney-General



# Cabinet Social Wellbeing Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Response Mechanism for Declarations of Inconsistency under the New Zealand Bill of Rights Act 1990

Portfolios                      Justice / Attorney-General

On 19 February 2020, the Cabinet Social Wellbeing Committee:

- 1        **noted** that in February 2018, the Cabinet Social Wellbeing Committee agreed in principle, subject to the Minister of Justice submitting a detailed policy proposal, to amend the New Zealand Bill of Rights Act 1990 to provide for declarations of inconsistency made by the Senior Courts under this Act [SWC-18-MIN-0006];
- 2        **noted** that in November 2018, the Supreme Court in *Attorney-General v Taylor* upheld an earlier High Court decision to issue a declaration of inconsistency under the New Zealand Bill of Rights Act and confirmed the power of the Senior Courts to issue declarations of inconsistency;
- 3        **agreed** to amend the New Zealand Bill of Rights Act to require the Attorney-General to bring a declaration of inconsistency to the attention of the House of Representatives within six days after the conclusion of all court proceedings relating to the declaration, including the time available for appeals;
- 4        **agreed** to amend the Human Rights Act 1993 to replace the existing response mechanism for declarations of inconsistency made under that Act with the same requirements proposed for inclusion in the New Zealand Bill of Rights Act;
- 5        **noted** that it is not proposed to amend or alter the power of the Senior Courts to grant relief, including making declarations of inconsistency under the New Zealand Bill of Rights Act;
- 6        **noted** any requirement for the House of Representatives to respond to a declaration issued by the Senior Courts under the New Zealand Bill of Rights Act would be left to it to determine under the Standing Orders of the House of Representatives;
- 7        **noted** that the changes to the Standing Orders could include a referral to a select committee, a report back to the House with recommendations, a debate in the House on the Select Committee's report, and a vote on whether to accept the Select Committee's report;

8        s9(2)(f)(iv)

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s9(2)(f)(iv)

- 10 **invited** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office to give effect to the decision.

Vivien Meek  
Committee Secretary

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**Present:**

Rt Hon Jacinda Ardern  
Rt Hon Winston Peters  
Hon Kelvin Davis  
Hon Grant Robertson  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Andrew Little  
Hon Carmel Sepuloni (Chair)  
Hon Nanaia Mahuta  
Hon Stuart Nash  
Hon Jenny Salesa  
Hon Kris Faafoi  
Hon Tracey Martin  
Hon Willie Jackson  
Hon Aupito William Sio  
Hon Poto Williams  
Hon Julie Anne Genter  
Jan Logie, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for SWC  
Office of the Chair of SWC

**Hard-copy distribution:**

Minister of Justice  
Attorney-General

In Confidence

Office of the Minister of Justice

Chair, Cabinet Legislation Committee

## **New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill: Approval for Introduction**

### **Proposal**

1. I seek approval for the introduction of the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill (the Bill).

### **Policy**

#### **Background**

2. In February 2018, following decisions by the High Court and Court of Appeal in *Attorney-General v Taylor* determining that Senior Courts have the power to issue a declaration of inconsistency under the Bill of Rights Act<sup>1</sup>, Cabinet agreed, in principle, to amend the New Zealand Bill of Rights Act 1990 to provide for declarations of inconsistency made by the Senior Courts under this Act [SWC-18-MIN-0006; CAB-18-MIN-0057 refers].
3. A declaration of inconsistency is a formal statement by a court or tribunal that an enactment is inconsistent with a plaintiff's fundamental human rights protected by the New Zealand Bill of Rights Act. A declaration does not affect the validity of an Act, or anything done lawfully under that Act. However, it does signal that the court or tribunal considers an Act to infringe fundamental human rights in a way that cannot be justified in a free and democratic society.
4. The Bill requires the Attorney-General to bring a declaration of inconsistency to the attention of the House of Representatives within six days of the conclusion of all court proceedings relating to the declaration, including the time available for appeals.

#### **Why the Bill is needed**

5. When the Senior Courts make a declaration of inconsistency, there is currently no mechanism to bring the matter to the attention of the House of Representatives. This means lawmakers may not have full regard for the declaration and breaches of rights might go unaddressed. The Bill addresses this problem by requiring a formal report to be presented to the House of Representatives once a declaration becomes final.
6. A statutory response mechanism would provide greater transparency by:

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<sup>1</sup> [2018] NZSC 104.

- 6.1. drawing the opinion of the Court that the legislation breaches fundamental rights to the attention of lawmakers and the public, and
- 6.2. enabling Parliament to reconsider the legislation, and decide whether it wishes to repeal, amend, or affirm the provision in question.

### **Key changes in the Bill**

#### *Attorney-General to present the declaration to the House of Representatives*

7. The Bill will amend the New Zealand Bill of Rights Act to require the Attorney-General to bring a declaration of inconsistency to the attention of the House of Representatives within six sitting days after the declaration becomes final (i.e. all appeals have been dealt with or the time for an appeal has expired). This is the approach taken in the Australian Capital Territory and Queensland, which have similar legislation. It will enable Parliament to consider whether it wishes to repeal, amend, or affirm the provision in question.

#### *Amendments to the Human Rights Act 1993*

8. The Bill also amends the Human Rights Act 1993 so that the response to a declaration of inconsistency by the Human Rights Review Tribunal is the same as the response to a declaration under the New Zealand Bill of Rights Act. Declarations under both Acts are about the consistency of legislation with the New Zealand Bill of Rights Act and should have the same result.
9. The amendment will:
  - 9.1. remove the statutory requirement for a Government response; and
  - 9.2. shorten the time available for presenting the declaration to six days (it is currently 120 days, reflecting the time needed to prepare a response).

#### *No statutory requirement to respond*

10. The Bill does not propose a statutory requirement for the House of Representatives to respond to declarations of inconsistency. Instead, how the House of Representatives responds will be left for it to determine under its Standing Orders. This is expected to be similar to the existing requirement to refer reports of the Attorney-General about proposed legislation to the relevant select committee.

11. s9(2)(f)(iv)

### **Impact analysis**

12. The Treasury Regulatory Quality Team has determined that the regulatory decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements as they have no or only minor impacts on businesses, individuals, or not-for-profit entities.

## Compliance

**13.** The Bill complies with the following:

- 13.1. the principles of the Treaty of Waitangi;
- 13.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 13.3. the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached);
- 13.4. the principles and guidelines set out in the Privacy Act 1993;
- 13.5. relevant international standards and obligations; and
- 13.6. the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## Consultation

**14.** The following departments, agencies and individuals have been consulted on the proposals in this paper: the Department of the Prime Minister and Cabinet, the Treasury, the State Services Commission, Crown Law, the Parliamentary Counsel Office, the Office of the Clerk of the House of Representatives, the Legislation Design and Advisory Committee, the Human Rights Commission, the New Zealand Law Society, faculty members of university law schools, and other constitutional and human rights law experts.

**15.** s9(2)(f)(iv)



## Binding on the Crown

- 16.** Cabinet Circular (02) 4: *Acts Binding the Crown: Procedures for Cabinet Decision* notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown.
- 17.** The New Zealand Bill of Rights Act 1990 does not explicitly bind the Crown but section 3 states that it applies to acts done by:
- 17.1. the legislative, executive, or judicial branches of the Government of New Zealand; or
  - 17.2. by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.
- 18.** We propose that this Bill will follow that position and the Bill will not explicitly bind the Crown.

### **Allocation of decision-making powers**

19. The Bill does not in itself involve the allocation of decision-making powers between the executive, the courts, and tribunals. The Bill provides for a Parliamentary response to a judicial declaration of inconsistency.

### **Associated regulations**

20. No regulations will be required to bring the Bill into operation.

### **Other instruments**

21. The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

### **Definition of Minister/department**

22. The Bill does not contain a definition of Minister, department, or equivalent government agency, or chief executive or equivalent position.

### **Commencement of legislation**

23. The Bill will come into force the day after the date of Royal assent.

### **Parliamentary stages**

24. I intend to seek a shortened period of three months for Select Committee consideration. I propose that the Bill should be introduced to the House on 17 March 2020 and be enacted in July 2020.
25. I propose the Bill be referred to the Privileges Committee.

### **Proactive release**

26. I propose to release this Cabinet paper, and related Minute, with any necessary redactions, following the introduction of the Bill.

## Recommendations

27. The Minister of Justice recommends that the Committee:

1. s9(2)(h) [REDACTED]
2. **note** that the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill amends the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. It provides a process for Parliament to consider, and, if it thinks fit, respond to, a declaration of inconsistency made under the New Zealand Bill of Rights Act 1990, to give effect to Cabinet decisions [CAB-18-MIN-0057];
3. **approve** the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
4. **agree** that the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill be introduced on 17 March 2020; and
5. **agree** that the government propose that the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill be:
  - 5.1. referred to the Privileges Committee for consideration;
  - 5.2. enacted by July 2020.

Authorised for lodgement

Hon Andrew Little  
Minister of Justice



# Cabinet Legislation Committee

## Minute of Decision

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### New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill: Approval for Introduction

Portfolio Justice

On 10 March 2020, the Cabinet Legislation Committee:

- 1 **noted** that on 19 February 2020, the Cabinet Social Wellbeing Committee:
  - 1.1 noted that in November 2018, the Supreme Court in *Attorney-General v Taylor* upheld an earlier High Court decision to issue a declaration of inconsistency under the New Zealand Bill of Rights Act 1990 and confirmed the power of the Senior Courts to issue declarations of inconsistency;
  - 1.2 agreed to amend the New Zealand Bill of Rights Act to require the Attorney-General to bring a declaration of inconsistency to the attention of the House of Representatives within six days after the conclusion of all court proceedings relating to the declaration, including the time available for appeals;
  - 1.3 agreed to amend the Human Rights Act 1993 to replace the existing response mechanism for declarations of inconsistency made under that Act with the same requirements proposed for inclusion in the New Zealand Bill of Rights Act;

[SWC-20-MIN-0004]
- 2 **noted** that the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill gives effect to the above decisions, s9(2)(h) [REDACTED]
- 3 **approved** for introduction the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill [PCO 21110/1.15], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 4 **agreed** that the Bill be introduced on 17 March 2020;

5 **agreed** that the government propose that the Bill be:

5.1 referred to the Privileges Committee for consideration for a period of three months;

5.2 enacted by July 2020.

Gerrard Carter  
Committee Secretary

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**Present:**

Hon Chris Hipkins (Chair)  
Hon Andrew Little  
Hon Carmel Sepuloni  
Hon David Parker  
Hon Jenny Salesa  
Hon Julie Ann Genter  
Hon Eugenie Sage  
Michael Wood MP (Senior Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG

**Hard-copy distribution:**

Minister of Justice