

18 November 2019

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Secondary Legislation Bill

1. We have considered whether the Secondary Legislation Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 20527/5.2). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. The Bill has been developed alongside the Legislation Act 2019 ('the new Legislation Act') to implement the new definition of "secondary legislation" in section 5 of the Legislation Act. The new Legislation Act establishes a unified category of secondary legislation to replace the current, complicated definitions of legislative instruments and disallowable instruments in the Legislation Act 2012. It also provides for improved access to secondary legislation over time through increasingly consistent and centralised publication.
4. The policy objective of the Bill is to unambiguously determine what constitutes secondary legislation in New Zealand to make it easier for individuals and businesses to find the law that applies to them and to facilitate Parliament's oversight of secondary legislation. The objective is achieved by amending over 2,500 provisions in over 550 Acts that empower the making of an instrument that is legislative in nature to state expressly that instruments made under those provisions are secondary legislation.
5. The Bill also sets out a small number of exemptions from the publication and presentation requirements of the new Legislation Act where these are warranted by the nature of the instruments in question. The Bill also inserts alternative publication requirements for the few instruments that are currently treated as legislative under the Legislation Act 2012 but will not become secondary legislation under the Bill. It also removes references to the Legislation Act 2012 and amends terminology to align with the new Legislation Act.
6. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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