

## **In Confidence**

Office of the Attorney-General

Chair, Cabinet Business Committee

## **Government Response to the Report of the Regulations Review Committee on the inquiry into the parliamentary scrutiny of confirmable instruments**

### **Proposal**

- 1 This paper seeks Cabinet Business Committee approval of the Government's response to the Regulations Review Committee inquiry into the parliamentary scrutiny of confirmable instruments.

### **Background**

- 2 On 4 March 2020, the Regulations Review Committee initiated an inquiry to determine whether the current process for parliamentary scrutiny of confirmable instruments is effective and whether any changes are required to parliamentary or government processes to make parliamentary scrutiny of confirmable instruments more effective.
- 3 The Regulations Review Committee initiated the inquiry after its consideration of the Subordinate Legislation Confirmation Bill (No 2) 2018 and the Subordinate Legislation Confirmation Bill (No 4) 2019 raised concerns for the Committee.
- 4 In particular, the Regulations Review Committee undertook the inquiry to improve understanding of the value of the confirmation process, to consider whether there is a need for more guidance and to determine whether any changes were required to enable more effective scrutiny.

### **The Regulation Review Committee findings**

- 5 The Regulations Review Committee made three recommendations. These are that the Government—
  - 5.1 take note of the situations when, in the view of the Regulations Review Committee, the confirmation process may be inappropriate for secondary legislation; and
  - 5.2 consider revoking the special provisions (section 47D of the Legislation Act 2012) relating to annual confirmable instruments; and
  - 5.3 make greater use of Standing Order 326(2) to refer draft confirmable instruments to the Regulations Review Committee for consideration before they are made.

### **Comment on the Regulations Review Committee findings and recommendations**

- 6 I propose the response state that the Government—
  - 6.1 has taken note of, and agrees in principle with, the situations when, in Regulations Review Committee's view, the confirmation process may be inappropriate for secondary legislation and proposes to make amendments to the Legislation Act 2019 as suitable legislative opportunities arise to remove the requirement for confirmation in those circumstances; and

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- 6.2 agrees that the special provisions relating to annual confirmable instruments should be repealed because they are no longer needed and it would be simpler; and
- 6.3 will consider referring draft confirmable instruments under Standing Order 326(2) in appropriate cases.

### Timing of the Government response

- 7 The Government response must be presented to the House of Representatives by 18 February 2021 to ensure compliance with Standing Order 256.

### Consultation

- 8 The following departments and agencies have been consulted on the proposed Government response: Department of Internal Affairs, Department of the Prime Minister and Cabinet, Inland Revenue Department, Ministry for Primary Industries, Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry of Social Development, Ministry of Transport, New Zealand Customs Service, New Zealand Defence Force, New Zealand Police, Reserve Bank of New Zealand, the Treasury, and the Crown Law Office.
- 9 The Legislation Design and Advisory Committee was also consulted in relation to its work to provide guidance to support better quality legislation.

### Financial Implications

- 10 There are no financial implications for the proposals in this paper.

### Communications

- 11 The proposals in this paper are expected to be communicated by being presented in the House of Representatives.

### Proactive Release

- 12 The Attorney-General intends to release this paper proactively in whole or part within 30 business days of final decisions.

### Recommendations

- 13 The Attorney-General recommends that the Cabinet Business Committee:
  - 1 **note** that on 10 August 2020 the Regulations Review Committee presented its report to the House of Representatives entitled “Inquiry into parliamentary scrutiny of confirmable instruments”
  - 2 **note** that the Regulations Review Committee recommended that the Government—
    - 2.1 take note of the situations when, in the Regulations Review Committee’s view, the confirmation process may be inappropriate for secondary legislation

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- 2.2 consider revoking the special provisions relating to annual confirmable instruments (section 47D of the Legislation Act 2012)
- 2.3 make greater use of Standing Order 326(2) to refer draft confirmable instruments to the Regulations Review Committee for consideration before they are made
- 3 **note** the submission of the Attorney-General and in particular his advice that the Government—
  - 3.1 take note of, and agree in principle with, the situations when, in the view of the Regulations Review Committee, the confirmation process may be inappropriate for secondary legislation and proposes to make amendments to the Legislation Act 2019 as suitable legislative opportunities arise to remove the requirement for confirmation in those circumstances
  - 3.2 agrees that the special provisions (section 47D of the Legislation Act 2019) relating to annual confirmable instruments should be repealed because they are no longer needed
  - 3.3 consider referring draft confirmable instruments under Standing Order 326(2) in appropriate cases
- 4 **approve** the Government response, attached to this paper, to the Report of the Regulations Review Committee entitled "Inquiry into parliamentary scrutiny of confirmable instruments"
- 5 **note** that the Government response must be presented to the House of Representatives by 18 February 2021
- 6 **invite** the Attorney-General to present the Government response to the House of Representatives in accordance with Standing Order 256.

Authorised for lodgement

Hon David Parker

**Attorney-General**