

In Confidence

Office of the Attorney-General

Chair, Cabinet Business Committee

Government Response to the Report of the Regulations Review Committee on the review of secondary legislation made in response to COVID-19

Proposal

- 1 This paper seeks Cabinet Business Committee approval of the Government's response to the Regulations Review Committee final report providing its briefing on the review of secondary legislation made in response to COVID-19.

Background

- 2 In August 2020, the Regulations Review Committee presented to the House of Representatives a final report providing its briefing on the review of secondary legislation made in response to COVID-19. The briefing summarises the key findings of the four interim reports of the Regulations Review Committee in relation to its scrutiny of COVID-19 secondary legislation.
- 3 The first interim report was reported to the House in May 2020 and contains a record of scrutiny to the end of April 2020. The second interim report was reported to the House in June 2020 and examined the COVID-19 Public Health Response (Alert 2) Order, which came into force on 14 May 2020 Order and the subsequent Amendment Order.
- 4 The third interim report was reported to the House in July 2020 and examines the COVID-19 Public Health Response (Air Border) Order 2020 and the COVID-19 Public Health Response (Maritime Border) Order 2020. The fourth interim report was reported to the House in August 2020 and examined the COVID-19 Public Health Response (Air Border) Order 2020, which was made on 10 July 2020.

The Regulation Review Committee findings

- 5 The Regulations Review Committee made three recommendations. These are that—
 - 5.1 all departments with responsibility for secondary legislation should involve experts in legislative drafting and the constitutional principles underpinning the design of secondary legislation when designing secondary legislation; and
 - 5.2 the Government should make greater use of Standing Order 326(2) to refer draft secondary legislation to the Regulations Review Committee for consideration; and
 - 5.3 the Government should facilitate an all-of-government examination of COVID-19 secondary legislation (and powers to make that legislation) to seek ways of improving the quality of secondary legislation in future emergencies.

Comment on the Regulations Review Committee findings and recommendations

- 6 I propose the response state that the Government —

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- 6.1 supports the use of experts in legislative drafting and agrees that relevant constitutional principles should be considered in the design of secondary legislation; and
- 6.2 will consider referring draft instruments under Standing Order 326(2) in appropriate cases; and
- 6.3 notes the third recommendation, and in particular;
 - 6.3.1 understands that the Regulations Review Committee's 2016 report and the Legislation Design and Advisory Committee have indicated that it is not possible or desirable to legislate accurately and comprehensively for every eventuality in advance of emergencies
 - 6.3.2 notes that significant work is underway to learn from the use of legislation (including secondary legislation) to respond to the COVID-19 emergency, with a view to improving the quality of the ongoing response as well as the response to future emergencies
 - 6.3.3 notes that the legislative changes made in the COVID-19 Response (Further Management Measures) Legislation Act 2020, as well as the Immediate Modification Orders under section 15 of the Epidemic Preparedness Act 2006 will be reassessed in order to identify whether any changes could be made permanent
 - 6.3.4 notes that a programme of other work and guidance to support the quality of future responses is being carried out.

Timing of the Government response

- 7 The Government response must be presented to the House of Representatives by 15 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, the National Emergency Management Agency, 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 to 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 7 August 2010 the Regulations Review Committee presented to the House of Representatives a final report providing its briefing entitled “Review of secondary legislation made in response to COVID-19”
- 2 **note** that the Regulations Review Committee recommended that the Government—
 - 2.1 consider that all departments with responsibility for secondary legislation should involve experts in legislative drafting and the constitutional principles underpinning the design of secondary legislation when designing secondary legislation
 - 2.2 make greater use of Standing Order 326(2) to refer draft secondary legislation to the Regulations Review Committee for consideration
 - 2.3 facilitate an all-of-government examination of COVID-19 secondary legislation (and powers to make that legislation) to seek ways of improving the quality of secondary legislation in future emergencies
- 3 **note** the submission of the Attorney-General and in particular his advice that the Government—
 - 3.1 support the use of experts in legislative drafting and agree that relevant constitutional principles should be considered in the design of secondary legislation
 - 3.2 consider referring draft instruments under Standing Order 326(2) in appropriate cases
 - 3.3 note that work is underway to learn from the use of legislation to respond to the COVID-19 emergency and further preparation work and guidance to support the quality of the future response is being carried out
- 4 **approve** the Government response, attached to this paper, to the Report of the Regulations Review Committee entitled “Review of secondary legislation made in response to COVID-19”

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- 5 **note** that the Government response must be presented to the House of Representatives by 15 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

Proactively released by the Parliamentary Counsel Office