Departmental Disclosure Statement

Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared jointly by the Parliamentary Counsel Office and the Treasury.

The Parliamentary Counsel Office and the Treasury certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

31 May 2017

Contents

Part One: General Policy Statement

Introduction

This Bill–

- rewrites and replaces the Legislation Act 2012 to implement publication and other reforms relating to the production of high-quality legislation that is easy to find, use, and understand; and
- updates and re-enacts the Interpretation Act 1999.

Policy objectives

The policy objectives of this Bill are to–

- enable easy access to legislation in New Zealand, and improve the overview and enforcement of regulatory regimes, by expanding the content of the New Zealand Legislation website. The website is the authoritative source of official legislation and will now include all secondary legislation, whether made by central Government or other government agencies (other than secondary legislation made by local authorities); and
- improve the accessibility of the law by incorporating the Interpretation Act 1999 into the Legislation Bill. This relocation will ensure that the main provisions of New Zealand legislation that are concerned with Acts and secondary legislation can be found in 1 statute; and
- improve the relocated interpretation rules for the courts and the public by addressing a small number of technical and operational issues identified since 1999; and
- further encourage the production of good legislation by increasing the availability of information about the development and content of new Government-initiated legislation. This is designed to inform the parliamentary and public scrutiny of that legislation; and
- clarify, update, and recast some of the provisions in the Legislation Act 2012 that are being carried forward.

Access to secondary legislation

The general policy objective is to address the problem that currently there is no single place where individuals or businesses can see all of New Zealand's legislation. Only Acts of Parliament drafted by the Parliamentary Counsel Office (PCO), Inland Revenue Department (IRD), and the Office of the Clerk (OOC), and secondary legislation drafted by the PCO, are published on the New Zealand Legislation website. More than 100 government agencies are empowered to draft and make secondary legislation, which is not generally published on the New Zealand Legislation website. Some of this

legislation is notified or published in the *New Zealand Gazette*. Some is published in newspapers or on various agency Internet sites. Some is not published at all.

The absence of a single authoritative place where individuals, businesses, and Parliament can access this important type of legislation–

- limits the ability of individuals and businesses to identify their rights and obligations; and
- frustrates Parliament's oversight of secondary legislation.

Part 3 of the Bill will improve access to legislation in New Zealand by providing that all secondary legislation, other than that made by local authorities,–

- must be published on the New Zealand Legislation website (unless a restricted and specified exception applies); and
- must be presented to the House of Representatives; and
- is disallowable (unless a restricted and specified exemption applies).

Consequently, these improvements will–

- provide individuals and businesses with better access to the law that affects them;
- make the overview and enforcement of regulatory regimes more efficient;
- modernise the requirements for presenting secondary legislation to the House of Representatives and therefore facilitate Parliament's examination of it; and
- enable better legislative schemes to be developed in the longer term.

Updating and relocating Interpretation Act 1999

The Interpretation Act 1999 is being relocated to improve accessibility to the principles and rules that it contains. The Interpretation Act 1999 applies to more than just the interpretation of legislation because it covers the commencement and repeal of legislation. This relocation completes the implementation of the Law Commission's recommendation in its 2008 report entitled *Presentation of New Zealand Statute Law* (NZLC R104) to bring together in 1 statute all of the provisions about legislation.

Part 2 of the Bill makes some technical improvements and clarifications to interpretation principles and rules to address developments and issues identified since 1999.

Disclosure statements for Government-initiated legislation

Part 4 of this Bill will require the departments that are primarily involved in developing a piece of Government-initiated legislation to disclose the following information held by them—

- useful background material and policy information concerning the legislation;
- the main quality assurance assessments or processes used to test that the legislation is robust;

- any departures from specified legislative guidelines or standards endorsed or adopted by the Government; and
- any other significant or unusual features of the legislation that should be drawn to the attention of the public and the House of Representatives.

The provision of information about the development and key features of Government-initiated legislation is intended to support more informed parliamentary and public scrutiny of that legislation. More informed scrutiny should encourage closer attention to the range of existing expectations for the development of legislation, and increase the likelihood that legislation will be robust and conform to accepted legal principles.

A disclosure statement will be required for most Government Bills, and for most substantive Government amendments to a Bill. The Minister responsible for *Part 4* and the Attorney-General may also jointly propose, for approval by the House of Representatives, that the disclosure statement requirements apply to 1 or more classes of secondary legislation.

To support a consistent approach to disclosure by departments, while recognising that expectations for the development of legislation will continue to evolve, the Bill requires the Minister responsible for *Part 4* and the Attorney-General to jointly propose, from time to time, a core set of information of the kind noted above that must be disclosed by departments. Once the core disclosures are approved, the Bill will allow the Minister responsible for *Part 4* to set some supplementary or more specific disclosure requirements.

Finally, to limit the potential for unintended consequences, the Bill makes clear that the disclosure obligation on departments is not intended to impose conditions or restrictions of any kind on the content of legislation, on the legislative processes of Parliament, or on the ability of the Government to develop legislation.

Updating the Legislation Act 2012

In bringing forward the content of the Legislation Act 2012, the Bill updates, recasts, and makes some small technical changes to some of the provisions in the Legislation Act 2012, in particular, to—

- recast the PCO's purpose and functions, and reinforce PCO's objective to promote high-quality legislation that is easy to find, use, and understand, and to exercise stewardship over legislation as a whole; and
- align PCO's secondment practices with the wider public sector to facilitate secondments to the PCO to develop leadership and management capability; and
- make small amendments to improve the revision programme powers and procedure; and
- update the standard provisions for the incorporation of material by reference in secondary legislation to make those provisions more flexible and technology neutral.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	**YES**

For Part 2 of this Bill (Interpretation and application of legislation):

"Presentation of New Zealand Statute Law" (NZLC R.104), New Zealand Law Commission in conjunction with Parliamentary Counsel Office, October 2008 (accessible at http://www.lawcom.govt.nz/project/presentation-new-zealand-statute-law?quicktabs_23=report).

For Parts 3 and 5 of this Bill regarding matters relating to the proposal to publish nearly all secondary legislation on the NZ Legislation website:

- Government Inquiry into the Whey Protein Concentrate Contamination Incident, Report on New Zealand's Dairy Food Safety Regulatory System, December 2013, p.31, accessible at https://www.dia.govt.nz/vwluResources/Government_Whey_Inquiry_Interim_Report_2_Dec_2013/%24file/Government_Whey_Inquiry_Interim_Report_2_Dec_2013.pdf .
- New Zealand Productivity Commission, Regulatory institutions and practices, June 2014, p 13., accessible at http://www.productivity.govt.nz/inquiry-content/1788?stage=4
- Regulations Review Committee's Inquiry into the oversight of disallowable instruments that are not legislative instruments (July 2014), accessible at https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH_SCR56729_1/inquiry-into-oversight-of-disallowable-instruments-that .

For Part 4 of this Bill (Disclosure requirements for Government legislation):

"Report of the Regulatory Responsibility Taskforce", September 2009 (accessible at http://www.treasury.govt.nz/economy/regulation/inforeleases/rrb/taskforcereport).

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	**YES**

The Part 3 publication proposal gives effect to New Zealand's signing of the Trans-Pacific Partnership Agreement at Auckland on 4 February 2016. The Agreement, which has not yet entered into force, contains transparency obligations that relate to the publication of legislation.

The proposal obviates the need for special provisions in the Trans-Pacific Partnership Agreement Amendment Act 2016 (which is not yet in force) requiring the publication of copies, and links to, secondary legislation to be brought into force.

The Agreement is available at https://www.tpp.mfat.govt.nz/text.

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	**YES**

MFAT prepared the Trans-Pacific Partnership National Interest Analysis dated 25 January 2016 and presented it to Parliament with the final text of the agreement for examination by the Foreign Affairs, Defence and Trade Select Committee. The NIA is available at

https://www.tpp.mfat.govt.nz/assets/docs/TPP%20National%20Interest%20Analysis.pdf

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	**YES**

The legislative proposals in Parts 2, 3, 5, and 6 of this Bill substantially re-enact the current law in the Legislation Act 2012 and the Interpretation Act 1999, improving legislative clarity and navigability, and removing redundant provisions. Some small proposals, for example, relating to the revision requirements in Part 3 would be suitable for inclusion in a Statutes Amendment Bill. Others, such as the proposal in Part 6 to recast the PCO's objectives and functions, have no or only minor impacts on businesses, individuals or not-for-profit entities. These proposals, therefore, were exempt from the Cabinet requirement to provide a regulatory impact statement.

Matters relating to the access to secondary legislation proposal in Part 3 are exempt because the matters are covered in a business case (following the Better Business Case methodology recommended by the Treasury).

Two Regulatory Impact Statements have directly informed decisions relating to Part 4 of the Bill:

- "Increasing the Visibility of Regulatory Quality Issues", The Treasury, 29 January 2013 (accessible at http://purl.oclc.org/nzt/f-1541), later supplemented by
- "Maintaining Fit-for-Purpose Legislative Disclosure Requirements", The Treasury, 18 May 2017 (accessible at http://purl.oclc.org/nzt/f-1959)

These build on an even earlier Regulatory Impact Statement provided to inform policy decisions on a different Bill - "Regulating for Better Legislation – What is the Potential of a Regulatory Responsibility Act?", The Treasury, 2 February 2011, (accessible at http://www.treasury.govt.nz/economy/publications/informationreleases/ris/pdfs/ris-tsy-rbr-mar11.pdf).

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	**NO**

Neither RIS met the normal threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. Regardless, since both RISs were prepared by a Treasury person closely linked to the RIA Team, alternative QA panels were convened to provide an independent opinion to Cabinet. These opinions are set out in full in Appendix One of this disclosure statement.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	**NO**

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	**NO**
For Part 3 of the Bill, impacts of the policy have been assessed through the business case for the processes and systems needed to enable agency-drafted legislation to be published on the NZ Legislations website. All costs of the proposal will be borne by the PCO and agencies empowered to make secondary legislation. The business case contains information that is potentially budget sensitive and therefore is not publicly available.	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	**YES**
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	**NO**
There are no estimates available for any of the potential costs or benefits associated with Part 2 of this Bill. The courts undertake statutory interpretation in deciding many of the cases heard but it is difficult to quantify the potential impact on legal decisions of the incremental changes to the interpretation rules. Greater certainty and clarity will benefit all users of legislation. For Part 3 of the Bill, impacts of the policy have been assessed through the business case for the processes and systems needed to enable agency-drafted legislation to be published on the NZ Legislations website. All costs of the proposal will be borne by the PCO and agencies empowered to make secondary legislation. The business case contains information that is potentially budget sensitive and therefore is not publicly available. For Part 4, initial estimates of the size of the potential costs of the disclosure requirements can be found on pages 12 and 14 of the RIS dated 29 January 2013, accessible at the link provided under Qu.2.3 above. More recent information, drawing on experience with disclosure statements under current administrative arrangements, suggests those cost estimates are likely to be too high. See Appendix One of this disclosure statement for more information.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	**YES**
(b) the nature and level of regulator effort put into encouraging or securing compliance?	**YES**

Parts 2, 5, and 6 do not create new obligations or standards or impact on existing obligations or standards. The changes to the standard incorporation by reference provisions in Part 2 and Schedule 2 are small adjustments to update and make more flexible current provisions, which will be easier to comply with.

For Part 3 of the Bill, the business case identifies and assesses options for systems and processes required for agencies empowered to make secondary legislation to comply. A high level of compliance is expected as: 1) only agencies that make secondary legislation (fewer than 200 organisations) are required to comply 2) secondary legislation must be published in accordance with the Act to have legal effect. The business case contains information that is potentially budget sensitive and therefore is not publicly available.

For Part 4, the expected costs outlined on pages 12 and 14 of the RIS dated 29 January 2013 were based on the assumption of an 80% rate of compliance with the full set of disclosure requirements and standards. A higher rate of compliance would increase expected costs proportionately, but the resulting higher standard of disclosure would also increase expected benefits.

While the analysis in the 2013 RIS included provision for monitoring and support effort from Treasury, PCO and the Office of the Clerk, very little of this time was expected to be spent on the active pursuit of departmental compliance standards. More active pursuit of departmental compliance standards by those parties would increase expected costs, but also increase expected benefits if departmental disclosures substantively improved.

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
For Part 2 of this Bill, no specific steps were taken, as PCO identified no specific international obligations directly relevant to the general rules relating to the interpretation of New Zealand legislation, and considered that the Bill does not affect the general principle that New Zealand legislation is to be interpreted consistently with New Zealand's international obligations. The proposal to publish secondary legislation on the New Zealand Legislation website in Part 3 of the Bill would ensure compliance with international transparency obligations such as those under the Trans-Pacific Partnership Agreement, done at Auckland on 4 February 2016. For Part 4 of this Bill, internal Treasury discussion did not identify any existing international obligations relevant to the Part. MFAT Legal was also approached, with the same result. Treasury also checked with officials engaged in trade negotiations that the proposed policy would support, or would otherwise be consistent with, any potentially foreseeable commitments in free trade agreements currently being negotiated by New Zealand. The PCO did not identify any existing international obligations relevant to Parts 5 and 6 of the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
For Part 2 of this Bill, no specific steps were taken, as PCO considered the provisions do not affect the general principle that New Zealand legislation is to be interpreted consistently with the principles of the Treaty of Waitangi. The PCO considered that Part 3 of this Bill is consistent with the Treaty of Waitangi as it has no direct effect on the rights and interests of Maori protected by the Treaty of Waitangi or common law, and simply imposes a new publication obligation on government departments and agencies that will make legislation easier to find. For Part 4 of this Bill, Treasury concluded that the provisions have no direct effect on the rights and interests of Maori protected by the Treaty of Waitangi or common law, as they simply impose a disclosure obligation on government departments. However, feedback received by Treasury indicates that Maori in particular are interested in having the disclosure statement include disclosures that would identify the implications of proposed legislation for the rights and interests of Maori, and that would support the general expectation that, if possible, legislation should be consistent with the principles of the Treaty of Waitangi. Like other specific content requirements, this is a matter best addressed in a Government notice issued under the Bill, rather than in the Bill itself. The PCO considered that Parts 5 and 6 of this Bill are consistent with the principles of the Treaty of Waitangi. The proposals relate to existing disallowance and confirmation processes for secondary legislation and the continuation of the PCO as a separate statutory office under the Attorney-General's control.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	**YES**
The advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report by the Attorney-General, is generally expected to be available on the Ministry of Justice website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights .	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	**NO**
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	**NO**

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	**NO**

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	**YES**
Information on the external consultation undertaken to support the development of the provisions in this Bill is set out in Appendix Two of this disclosure statement.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	**YES**
No additional testing has been undertaken for the provisions in Parts 2, and 5 to 6 of this Bill. Information on the additional testing undertaken to support the development of the provisions in Parts 3 and 4 of this Bill is set out in Appendix Two of this disclosure statement.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	**NO**

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	**YES**
The Bill provides for a power under clause 145 to make regulations requiring the payment to the PCO of fees and charges on discretionary publication requests from agencies e.g. correction of errors, publication in a non-standard form. The regulations will prescribe the amount of those fees and changes and the manner in which they are to be charged and calculated. The PCO would only be able to charge cost recovery fees/ charges. The ability to make these regulations is needed to reflect that these discretionary publication requests potentially may have a significant impact on PCO's resourcing.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	**NO**

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	**NO**
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	**NO**

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	**YES**
Part 6 of this Bill carries forward a protection from liability (in section 76 of the Legislation Act 2012) for the Chief Parliamentary Counsel and every employee, from any liability for an act done or omitted in good faith in performing their functions, duties or powers.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	**NO**

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	**YES**

Clause 145 provides for the Governor-General to make regulations in relation to:

- requirements for lodgement and publication;
- publication of official versions;
- exemptions from publication;
- fees that PCO can charge under the Legislation Act; and
- other matters contemplated by this Act necessary for its administration or to give it full effect.

Clause 20 of Schedule 1 provides that for 3 years after the date of commencement the Governor-General may make Orders in Council to amend empowering provisions for the purpose of re-categorising instruments as being secondary legislation, or not. These Orders in Council can be made only—

- for this tightly restricted and specified purpose of re-categorising; and
- on the Attorney-General's recommendation after consulting the committee of the House of Representatives responsible for the review of secondary legislation and having regard to the purpose of the power (to ensure instruments are classified as legislation (or not) on the basis of their legislative effect and consistent with the purpose of the Act).

Further explanation of these particular powers is set out in Appendix Three.

4.8. Does this Bill create or amend any other powers to make delegated legislation?	**YES**

Clause 2 enables the commencement of the whole Bill (apart from some early targeted amendments to the Legislation Act 2012, to align drafting responsibilities under other Acts, and some transitional provisions) to be brought into force by Orders in Council, with a long-stop date of the third anniversary after the date of Royal assent if not brought into force earlier.

Clause 40 provides that a power to make secondary legislation under an Act includes a power to make consequential amendments to secondary legislation made under another Act.

Clause 53 provides that a power to make forms includes a power to identify the information required in the form and set a person to approve the form or set the method of making the information available.

Clause 106 empowers the Attorney-General and the Minister for Regulatory Reform to issue one or more notices (approved by House resolution) providing for specific information to be included in a disclosure statement.

Subpart 2 of Part 1 of Schedule 1 provides that the Attorney-General may by written notice to agencies set end-dates for when agencies must publish their secondary legislation under the new publication requirements in Part 3. The Governor-General is also empowered to make an Order in Council setting a general end-date on this transition.

Other provisions are carried over from the Legislation Act 2012 –the power to incorporate material by reference (clause 63), revoke spent instruments (clause 81), renumber Acts (clause 87), and set legal qualifications of the Chief Parliamentary Counsel and Parliamentary Counsel (clause 135). Further explanation of these particular powers is set out in Appendix Three.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	**NO**

Appendix One: Further Information Relating to Part Two

Regulatory impact analysis – question 2.3.1

The independent opinion provided by a Treasury RIA Panel to Cabinet on the RIS dated 29 January 2013 was as follows:

"The information and analysis summarised in the RIS meets the quality assurance criteria.

It is complete in covering the option laid out in the National-Act Confidence and Supply Agreement; it provides convincing response to, and analysis of, the issues, given the difficulty of measuring the potential behavioural impacts and costs; and finally, it provides evidence of consultation with affected parties and agencies through several iterations of proposals in a clear and concise manner."

The independent opinion provided by the Regulatory Impact Analysis Review Panel (at MBIE) to Cabinet on the supplementary RIS dated 18 May 2017 was as follows:

"The Regulatory Impact Analysis Review Panel (of MBIE) has reviewed the attached Regulatory Impact Statement (RIS) prepared by the Treasury. They consider that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper."

Extent of impact analysis available – question 2.5(a)

Initial estimates of the size of the potential costs of the disclosure requirements (outlined in the RIS dated 29 January 2013), are likely to be too high, and total compliance costs are now not expected to exceed $1 million per year. The reduction is due to better estimates of the number of Bills, SOPs and secondary legislation now expected to require a disclosure statement (probably around half the initial estimated numbers in each case). This is only partly offset by longer average completion times (drawing on reported departmental experience on a limited sample of 16 Bills) and the possible need for some additional monitoring and support from lead agencies when these become a legislated requirement.

The longer average completion times for disclosure statements in the sample (21 hours vs the initial estimate of 12 hours per Bill) were almost entirely due to very high completion times for two large omnibus Bills that required coordination of input across many people. As a consequence, effort will be put into finding ways to reduce the costs of preparing and coordinating disclosures for large omnibus bills ahead of the changeover to a legislated requirement.

As noted in the 2013 RIS, officials did not identify a way to estimate the size of the expected benefits.

Appendix Two: Further Information Relating to Part Three

External consultation – question 3.6

For Part 2 of this Bill (incorporating the Interpretation Act 1999), the Parliamentary Counsel Office published a discussion paper on its website, entitled "Interpretation Act 1999: A Discussion Paper" dated 6 March 2013, for comment by 16 April 2013. 15 submissions were received and there was general support for the proposal to move the Interpretation Act 1999 into the Legislation Act 2012. The discussion paper can be accessed at http://www.pco.parliament.govt.nz/interpretation-act-discussion-paper/

For Part 3 of the Bill, consultation was undertaken with government departments on 18 April 2017. Supportive comments were received from departments. Departments and agencies were previously consulted on the proposal in July 2016, and again on the first Cabinet paper that sought approval of the proposal on access to secondary legislation in November 2016.

For Part 4 of this Bill (concerning disclosure requirements for government legislation), a summary of consultation undertaken in the lead-up to policy decisions being taken can be found on pages 18 and 19 of the RIS dated 29 January 2013, and on page 15 of the RIS dated 18 May 2017, accessible at the links provided under Qu.2.3.

Aside from the necessary consultation with government departments (on whom the obligations in Part 4 will fall), this has included:

- circulation of a Treasury discussion document in mid-August 2012 for targeted consultation with a range of external public law experts, as well as former Regulatory Responsibility Taskforce members and several bodies representing business interests that had previously shown interest in the Regulatory Standards Bill. Feedback was received from 21 individuals or groups through either written comments or face-to-face discussions. As noted above, a summary of this feedback can be found in the RIS.

- inviting comments in August 2013 from the Office of the Clerk of the House, the Law Commission, and the Privacy Commissioner on a legislative draft of Part 4, following on from discussions with these bodies during the earlier policy development phase, which led to a number of improvements to the provisions, particularly to avoid the legislative enshrinement of particular rules, practices or procedures of the House of Representatives.

- inviting further comments from the Office of the Clerk of the House on a number of occasions from 2015 onwards, as officials investigated ways to streamline the provisions (originally included in the 2014 Legislation Amendment Bill) to accommodate the likely need to make periodic and timely adjustments to the choice and form of the disclosures and the range of legislation requiring a disclosure. On all occasions the Office of the Clerk provided specific comments on draft provisions, most of which were accepted and are reflected in Part 4 of the Bill.

Other testing of proposals – question 3.7

For Part 3 of the Bill, the Bill was referred to the Legislation Design and Advisory Committee for advice on a power to amend, by Order in Council, empowering provisions to correct the legislative status of secondary legislation which affects their publication status.

The LDAC recognised that such a power is necessary in this context, and can be justified, as a time-restricted transitional power. It supported the proposal that the empowering provisions provide that regulations be made only for the tightly specified purpose of ensuring consistency

of legislative status in secondary legislation, on the recommendation of the Attorney-General, and after consulting with the Regulations Review Committee.

This power was also discussed with, and is supported by, the Regulations Review Committee.

The Office of the Clerk was also consulted on all aspects that affect House or Parliamentary processes and procedures, as was the Ministry of Justice on the disallowance aspects of the Bill.

For Part 4 of the Bill, there has been an administrative trial of disclosure statements for government-initiated Bills and substantive SOPs since August 2013. The Treasury hosts online disclosure templates and guidance for agencies and the PCO publishes the statements on a dedicated disclosure website (www.disclosure.govt.nz). This trial period has been helpful in:

- confirming there is reasonable public demand for the information contained in disclosure statements (based on ongoing increases in visitor numbers to the disclosure website),
- allowing officials to identify areas for improvement and further work, such as areas where those completing a disclosure statement are more likely to struggle to provide full or consistent answers, and which requirements and types of Bills are more likely to give rise to significant compliance costs for completing a disclosure statement, and
- informing the changes made to the provisions in the Bill from those originally included in the 2014 Legislation Amendment Bill.

Appendix Three: Further Information Relating to Part Four

Powers to make delegated legislation - question 4.7

Clause 145

Clause 145 provides for the Governor-General to make regulations in relation to the following:

- Requirements for lodgement and publication:

  Regulations are needed to specify the manner in which agencies are required to lodge secondary legislation with PCO once the technological solution has been fully developed.
- Publication of official versions:

  Regulations are needed to specify the features of official versions and impose requirements and conditions on how official versions are to be made available to the public.
- Exemptions from publication:

  Under the Legislation Bill all secondary legislation must be published. However, there will be instances where this will not be appropriate because:
    - they contain information that cannot be publicly disclosed, such as market-sensitive information in a takeovers notice, or overseas market access requirements for countries and markets with which New Zealand has negotiated confidential trade agreements; or
    - even the existence of the secondary legislation cannot be disclosed - this may arise in the case of market sensitive information, but is most likely to arise in the security and intelligence context.

  We anticipate that specific exemptions from the requirement to publish on the New Zealand Legislation website will be set out in the relevant empowering provisions. However, regulations are needed in exceptional situations where the empowering provisions do not provide for an exemption, but an exemption is clearly necessary and justified under the circumstances.

  Such exemptions are expected to be rare, and to be granted only in clearly justifiable circumstances.

- Fees that PCO can charge under the Legislation Act:

  The Bill provides for a power under clause 145 to make regulations requiring the payment to the PCO of fees and charges on discretionary publication requests from agencies e.g. correction of errors, publication in a non-standard form. The regulations will prescribe the amount of those fees and changes and the manner in which they are to be charged and calculated. The PCO would only be able to charge cost recovery fees/ charges.

  The ability to make these regulations is needed to reflect that these discretionary publication requests potentially may have a significant impact on PCO's resourcing.

- Other matters contemplated by this Act, necessary for its administration or to give it full effect.

  This is a conventional ancillary power that is confined to subsidiary or incidental matters under the Bill.

Clause 20 of Schedule 1

The approach taken in relation to defining secondary legislation will require a significant number of consequential amendments to be made to empowering provisions across the statute book.

Despite best efforts, it is inevitable that it will be necessary occasionally to amend some empowering provisions to re-categorise them. Re-categorising provisions when necessary is important, because—

- if an empowering provision does not state that an instrument is secondary legislative when it should do so, that instrument will not be published on the New Zealand Legislation website, presented to the House, or disallowable, when it should be; and
- if an empowering provision states that an instrument is secondary legislation when it is not, that instrument will be published on the New Zealand Legislation website, presented to the House, and disallowable, when it should not be.

To facilitate an orderly transition, the Bill provides that for the period of 3 years after the date of commencement the Governor-General may make Orders in Council to amend empowering provisions for the purpose of re-categorising instruments as being secondary legislation, or not. It is proposed that these Orders in Council can be made only—

- for this tightly restricted and specified purpose of re-categorising, and after consulting the responsible agency; and
- on the Attorney-General's recommendation after consulting the Regulations Review Committee.

This power was discussed with and is supported by the Legislation Design and Advisory Committee and the Regulations Review Committee.

Powers to make delegated legislation- question 4.8

Clause 2

The whole Bill (apart from some early targeted amendments to the Legislation Act 2012 and some transitional provisions) will be brought into force by Orders in Council, with a long-stop date of the third anniversary after the date of Royal assent if not brought in to force earlier. This delay is to ensure business and information technology changes mainly in relation to the proposal on access to secondary legislation are in place and agencies (that number over 100) are ready for implementation. Parts 2, 4, and 6 will be brought into force at the same time to avoid the confusion and uncertainty created by having two Legislation Acts in force at the same time.

In addition to the limit provided by the long-stop date, safeguards applying to the exercise of this power include potential disallowance by the House of Representatives.

Clause 40

This provision would allow an instrument made under one Act to make consequential amendments to an instrument made under another Act, if necessary and desirable.

An Act may amend other Acts and regulations. These changes can be minor and widespread; for instance, updating statutory references or statutory office names as a consequence of the substantive changes in a new Act.

Consequential amendments affecting other Acts may be out of date by the time an Act is passed and brought into force. This may happen where a new Act is introducing complex new policy requiring a new administrative infrastructure and its commencement is delayed until regulations are put in place. The law may not be accessible because people may miss changes

to Acts that may or may not be in force that affect other Acts. The proposal will help implement the Act in a flexible and timely way.

The proposal is not to allow Acts to be amended by secondary legislation. Consequential changes to instruments made under Acts would be able to be made quickly, keeping provisions up to date. The power will only be able to be exercised if it is necessary or desirable.

Clause 53

This provision states that a power to prescribe or approve forms includes a power to instead identify the information required in the form and either set out how the information must be provided or prescribe a person to set the form.

The purpose of this form is to ensure that legislation does not need to set the actual form. Doing this often undermines usability and design of forms. Instead legislation will be needed to set the key issue of which information the form must contain and either the format or medium for providing it or the person who will instead set the form.

Clause 106

This provision empowers the Attorney-General and the Minister for Regulatory Reform to issue one or more Notices providing for a set of core disclosures that must be included in a disclosure statement, to be approved by resolution of the House of Representatives.

The disclosures will include any departures from legislative guidelines or standards adopted by the government that have been identified by joint Ministers for this purpose. For example, elements of the 2014 Legislation Advisory Committee's Guidelines on Process and Content of Legislation, which the Government has adopted as its key point of reference for assessing whether draft legislation conforms to accepted legal and constitutional principles.

The Ministers will have discretion to recommend classes of secondary legislation that will require a disclosure statement, to be approved by resolution of the House (in the same way as proposed for the core set of disclosures).

Safeguards applying to the exercise of this power include: approval by resolution of the House of Representatives; and potential disallowance by the House of Representatives.

Subpart 2 of Part 1 of Schedule 1

This subpart provides that the Attorney-General may by written notice to agencies (copied to PCO) set end-dates for when agencies must publish their secondary legislation in accordance with the new publication requirements in Part 3 of the Bill. The end-date can apply to all the agency's legislation or only classes of it.

This is necessary in order to bring to an end the transitional period providing flexibility for agencies in their transition from the old to the new publication requirements.

The Governor-General also has the power to make an Order in Council setting a general end-date on the transition. At this time, all existing secondary legislation that is not published on the legislation website is automatically revoked. This power provides certainty, at an appropriate point, that the total legislative collection is published on the legislation website.

Safeguards applying to the exercise of these powers include potential disallowance by the House of Representatives.