

Supplementary Departmental Disclosure Statement

Legislation Bill

A supplementary departmental disclosure statement for a Bill the government is proposing to amend seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill in amended form.

It highlights material changes to previous disclosures relating to:

- 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.

The original disclosure statement for the Legislation Bill dated 31 March 2017, can be found at this link <http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2017-275.pdf>

This supplementary disclosure statement was prepared by the Parliamentary Counsel Office.

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

15 October 2019

Contents

Contents..... 2

The Main Area of Change to the Original Disclosure..... 3

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information 5

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features 9

The Main Area of Change to the Original Disclosure

This is a supplementary disclosure statement for the Legislation Bill.

The main area of change to the original disclosure statement is a proposal, by way of supplementary order paper (SOP), to define one coherent class of secondary legislation prior to the commencement of obligations on makers of secondary legislation to lodge information about the legislation with the Parliamentary Counsel Office.

Part One: General Policy Statement

The Legislation 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.

Currently, the Legislation Bill provides that from its main commencement date (ie, the date on which it repeals and replaces the Legislation Act 2012), makers of secondary legislation will have 1 year in which to lodge details of all their in-force secondary legislation with the PCO for publication on the New Zealand Legislation website. From that time onwards, makers will have to lodge information about any new secondary legislation with the PCO as a pre-condition of that legislation coming into force.

To enable makers of secondary legislation to lodge information, the PCO will have to establish an electronic lodgement system and support processes for agencies to use the system.

The changes to the Legislation Bill proposed in the SOP enable the obligations on makers of secondary legislation to lodge information with the PCO to be triggered separately at a later date when the lodgement solution is available.

In the meantime, instruments that become secondary legislation will continue to be published as they are now.

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?	No
--	----

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	Yes
This Bill carries over the implementation of the Transparency and Anti-Corruption Chapter of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the CPTPP) that is currently found in Part 2A of the Legislation Act 2012.	

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
The following National Interest Analysis report was prepared: https://www.parliament.nz/en/pb/sc/reports/document/SCR_78363/international-treaty-examination-of-the-comprehensive-and#RelatedAnchor	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	Yes
The Treasury produced 2 regulatory impact statements (dated 29 January 2013 and 18 May 2017) to help inform the main policy decisions taken by the Government relating to the contents of Part 4 of this Bill. A copy of these regulatory impact statements can be found at— <ul style="list-style-type: none">• http://purl.oclc.org/nzt/f-1541 and http://purl.oclc.org/nzt/f-1959• http://www.treasury.govt.nz/publications/informationreleases/ris	

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?	NA
---	----

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
---	----

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
For Part 3 of the Bill, impacts of the policy have been assessed through the business case and subsequent cost benefit analysis for the processes and systems needed to enable agency-drafted legislation to be published on the NZ Legislations website. The business case and analysis contains information that is potentially budget sensitive and therefore is not publicly available. The policies to be given effect to by the SOP to the Bill bring forward the benefits of defining secondary legislation that would otherwise be delayed.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be affected by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	No
(b) the nature and level of regulator effort put into encouraging or securing compliance?	No
The policies to be given effect to by the SOP to the Bill are not affected by levels of compliance.	

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?

The policies to be given effect to by the SOP to the Bill allow New Zealand to continue to meet its international obligation and are otherwise consistent with those obligations.

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?

The policies to be given effect to by the SOP to the Bill do not affect Maori rights or interests protected by the Treaty of Waitangi.

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?

No

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

3.4.1. Was the Ministry of Justice consulted about these provisions?

N/A

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

3.5.1. Was the Privacy Commissioner consulted about these provisions?

N/A

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
All governmental departments and the Office of the Clerk were consulted in the development of the policy proposal.	

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
The policy details relevant to the SOP have been assessed for workability and completeness with a Project Board comprising internal and external members, a reference group comprised of departmental officials, the Regulations Review Committee, the Legislation Design and Advisory Committee and individual departments. Feedback from the assessment has been incorporated into the SOP where appropriate.	

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 charges 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 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
See Appendix 3 of the original disclosure statement: http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2017-275.pdf	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	Yes
The SOP amends the regulation making power in clause 145 to better enable the staggered approach to implementation of publication requirements under the Bill and to supplement the provisions dealing with obligations under the Transparency and Anti-Corruption Chapter of the CPTPP.	

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
--	----

