

**Government Response to  
Report of the Regulations Review Committee on  
*Inquiry into the principles determining whether delegated legislation is  
given the status of regulations***

**Presented to the House of Representatives  
in accordance with Standing Order 251**

**Government response to  
Report of the Regulations Review Committee on its  
Inquiry into the principles determining whether delegated legislation is given the  
status of regulations**

**Introduction**

The Government welcomes the Committee's report which represents a considered analysis of the principles that determine whether delegated legislation is classified as 'regulations'. The report has clearly set out the issues that arise with the current definition of 'regulations' under the Regulations (Disallowance) Act 1989.

The Committee has made two recommendations to the Government. The Government responds to those recommendations in the report in accordance with Standing Order 251.

The Committee's recommendations are for legislative change. The Government does not support legislative change at this time, but proposes to implement administrative measures to address some of the Committee's concerns and to monitor the operation of the legislative solution adopted in Australia.

**Recommendations and Government response**

The Regulations Review Committee recommends to the Government that:

**Recommendation 1:**

It amend the definition of "regulations" in the Regulations (Disallowance) Act 1989 and the Interpretation Act 1999 in line with the definition of "legislative instrument" set out in the Australian Legislative Instruments Act 2003.

**Response:**

The Government does not support the Committee's recommendation for legislative change at this time. It is not yet clear that adopting the definition of 'legislative instrument' from the Australian Legislative Instruments Act would provide greater clarity. This is not a straightforward test to apply. The proposed provision would capture a very wide range of instruments and have significant effects on the administrative processes of Government departments and a range of other groups who issue instruments of legislative character. The definition of 'legislative instrument' only took effect in Australia on 1 January 2004. It would be prudent to monitor the operation of the definition in Australia before considering whether to adopt it in New Zealand legislation.

While the Government does not support legislative change at this time, it does agree that:

- (1) where primary legislation or amendments to primary legislation are being proposed that include a power to issue instruments that are legislative in nature

officials should be required to notify Cabinet and provide reasons if the instruments will not be subject to the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989. Guidelines will be needed to assist in identifying what amounts to 'legislative in nature' for the purposes of this administrative requirement. The definition of 'legislative instrument' in section 5(2) of the Australian Legislative Instruments Act could be used as a starting point; and

- (2) administrative criteria should be developed for determining when it is appropriate that instruments that are legislative in nature are not treated as regulations. Officials would then be required to consider these criteria when developing primary legislation.

These two new requirements will be implemented through the development of an appropriate Cabinet Office circular, to be incorporated into the Cabinet Manual or the *Step by Step Guide* as appropriate. The advice of the Legislation Advisory Committee will be sought as the Cabinet Office circular is being developed.

In addition, the Government will monitor the first two years of operation of the definition of 'legislative instrument' in the Australian Legislative Instruments Act to ascertain the effectiveness of the definition in practice.

#### **Recommendation 2:**

The amendment to the Regulations (Disallowance) Act 1989 should include provisions that relate to the establishment of a register of legislative instruments as set out in the Australian Legislative Instruments Act 2003.

#### **Response:**

As the proposal for a register of legislative instruments emanates from the Australian Act, it follows that this recommendation will also not be implemented at this time.

#### **Conclusion**

The Government welcomes the Committee's considered analysis of the principles that determine whether delegated legislation is classified as 'regulation'. Although the Government does not support legislative change at this time, the Government will introduce new administrative requirements to address some of the Committee's concerns and at the same time monitor the operation of the legislative solution adopted in Australia.