NEW ZEALAND LAW SOCIETY

NZLS EST 1869

Legislation Bill 2017

23/02/2018

Submission on the Legislation Bill 2017

1. Introduction

1.1. The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Legislation Bill 2017 (Bill).

1.2. The Law Society is the statutory body established in 1869 that regulates New Zealand's 13,000 lawyers. One of its statutory functions is to *"assist and promote, for the purpose of upholding the rule of law and* facilitating *the administration of justice in New Zealand, the reform of the law"*.[1] The Law Society makes submissions on legislative design and points of legal concern, and seeks to assist in the production of quality legislation that will advance the rule of law, observe constitutional principle and conform with established legislative standards. It carries out this work pro bono, in the public interest.

1.3. The Law Society's submission on the Legislation Bill is based on its experience in dealing with legislation. The Bill addresses important legislative and constitutional considerations, and the Law Society supports its introduction. The Law Society would like to be heard in support of this submission.

1.4. The quality of legislation is of the utmost importance to society. Poor legislation leads to uncertainty and costly disputes. It is important that New Zealand, as a liberal democratic state committed to the rule of law, keeps its legislation and methods of making law organised, transparent and accessible. Measures in this Bill show that Parliament is addressing its fundamental constitutional obligations as legislator.

1.5. The Law Society supports recent measures to improve the quality of legislation, including (as discussed below) measures contained in the current Bill. The measures include:

- The establishment of the Legislative Design and Advisory Committee to advise on the design of Bills before they are finalised and to present submissions on bills at select committee.
- Amendments to the State Sector Act 1988 that promote the responsibility of chief executives to attend to the effective stewardship of "the legislation administered by the department or departmental agency".
- The programme promoted by the Office of the Clerk to enhance legislative scrutiny by select committees and to provide guidance and advice to the committees on improving legislative content.
- The Access to Subordinate Legislation Project [clause 3 and Part 3 of the Bill], which aims to improve access to legislation by publishing all subordinate instruments on the New

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1 Lawyers and Conveyancers Act 2006, section 65(e).

Zealand legislation website.[2]

- The Revision Bill programme conducted under the Legislation Act 2012 that will over time assist the revision and consolidation of statutes.

1.6. The Bill will improve access to legislation by providing that all secondary legislation, other than that made by local authorities, must be published on the New Zealand Legislation website, presented to the House and be disallowable (unless a restricted and specified exemption applies). The explanatory note acknowledges that currently

> "the absence of a single authoritative place where individuals, businesses and Parliament can access this important type of legislation [secondary legislation] –
>
> - limits the ability of individuals and businesses to identify their rights and obligations; and
> - frustrates Parliament's oversight of secondary legislation."[3]

1.7. This submission comments on:

- the issue of stewardship of legislation;
- specific provisions in the Bill.

2. Stewardship of legislation: monitoring legislation post-enactment

2.1. In addition to the welcome developments outlined above, the Law Society considers that additional changes would enhance the quality of legislation. In particular, consideration should be given to providing for legislation to be monitored to assess whether it is achieving its objects and whether it has resulted in unintended consequences. There is a tendency to pass statutes, but not to devote resources to ensuring that they work effectively in practice. There has been some progress made in this respect, as reflected in the regulatory stewardship and management initiative led by Treasury,[4] and there may be merit in such stewardship efforts being codified in this Bill to support the stewardship obligations that already exist for Departmental CEOs in section 32(1)(d) of the State Sector Act 1988.

3. Part 1 – Preliminary provisions

Clause 3: Purpose of the Act

3.1. Efforts to improve the production of high quality legislation that is easy to find, use and understand are to be encouraged. The Bill proposes that all secondary legislation be made

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2 As noted in the explanatory note to the Bill (p2), there are more than 100 agencies in New Zealand empowered to make secondary legislation, which makes this a project of high importance to ensure subordinate legislation is accessible in accordance with the requirements of the rule of law.

3 Explanatory note to the Bill, p2.

4 See: http://www.treasury.govt.nz/regulation - which deals with the approach to regulatory management and the preparation of regulatory stewardship strategies by government departments.

available on the government legislation website. This step will significantly improve people's ability to access the law and to understand the obligations and rights it affords them. One of the important purposes articulated in clause 3 is to require all legislation to be published electronically in one place, with limited exceptions. While ambitious, the Law Society considers this is a worthwhile goal, and will be achievable if properly resourced.

3.2. The rule of law requires that all legislation be available and accessible. The digitisation of the New Zealand statute book on the Parliamentary Counsel Office website is a great advance. This present project involving subordinate forms of law is just as important.[5]

3.3. Clause 3(b) includes the purpose of allowing legislation to be shorter, simpler and more consistent. The length of the New Zealand statute book is great and efforts to shorten it (which include the modifications in Part 2 of the Bill) are to be encouraged.

Clause 5 – Interpretation – definition of "secondary legislation"

3.4. Clause 5 of the Bill contains a definition of "secondary legislation". The effect of that definition is that an instrument made under an Act will only be "secondary legislation" if the Act says it is. That has implications for Parliament's oversight of secondary legislation. If the empowering Act does not say that instruments made under it are secondary legislation, then those instruments will not be subject to the disallowance procedures in Part 5 of the Bill.

3.5. The Legislation Act 2012 currently provides that disallowable instruments include legislative instruments and instruments that are otherwise identified in primary legislation as disallowable. As a safety net, instruments that have a "significant legislative effect" are also included as disallowable instruments. This is a way of catching any instruments that may not fall within the first two categories. These terms have been found to be difficult to understand and apply in practice. So, the Regulations Review Committee recommended the removal of the "significant legislative effect" test from the legislation, as well as requiring amendment of each empowering provision to state clearly the category into which its instrument falls.

3.6. The Law Society has previously highlighted the need to ensure that the disallowance procedures are available for all secondary instruments with legislative effect.[6] Its submission in 2014 pointed to the Australian approach which is aimed at ensuring that instruments with a "legislative

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5 It is often difficult to identify and find secondary legislation, and there can be uncertainty about whether the currently published copy is the most up-to-date. The situation encountered by Miriam Dean QC in the *Whey Protein Inquiry* – where the applicable regulations were complex, overlapping, not easy to identify and difficult to interpret – clearly illustrates the point: see *Interim Report on New Zealand's Dairy Food Safety Regulatory System, Government Inquiry into the Whey Protein Contamination Incident*, December 2013, at 11, 32.

6 New Zealand Law Society submissions to the Regulations Review Committee (a) on the Legislation Bill, 27 September 2010, available at https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/49SCRR_EVI_00DBHOH_BILL10035_1_A135023/law-society and (b) on the *Inquiry into oversight of disallowable instruments that are not legislative instruments*, I 16 H, 4 April 2014, at [7]-[18], available at https://www.lawsociety.org.nz/news-and-communications/law-reform-submissions/submissions-on-discussion-papers.

character"[7] are captured. The same concern remains in relation to the current Bill. In particular, the Law Society is concerned that a consequence of the removal of the "significant legislative effect" test may be that secondary legislation that should be disallowable – because it determines or changes the law – could escape such Parliamentary scrutiny. That could easily occur if its empowering legislation omitted to state that it was secondary legislation.

3.7. The Australian legislative approach was refined in 2016 and no longer refers to "legislative character", but seeks to define legislative instruments by reference to three key concepts:

(a) an instrument described or declared by a law (including the Legislation Act 2003) to be a legislative instrument

(b) an instrument registered on the Federal Register of Legislation to be a legislative instrument

(c) an instrument made under a power delegated by the Parliament that determines the law or alters its content.[8]

3.8. The approach in the Bill is aligned with two of the three key concepts of the Australian approach, by identifying in primary legislation whether an instrument is secondary legislation and to require publication of all secondary legislation on the government legislation website. But, as noted above, the omission of the third concept, where an instrument made under a power delegated by Parliament that determines the law or alters its content, may have the unintended consequence of reducing oversight of secondary legislation. In particular, the approach proposed in the Bill would result in a determination being made about the legislative character of an instrument solely by reference to its definition in the empowering legislation, with no reference to the effect the instrument may have.

3.9. For example, a regime of granting exemptions or imposing requirements by a regulatory authority which has the effect of law-making, would not be subject to disallowance if these powers were not originally identified in the empowering legislation as "secondary legislation".[9] There can be a fine line for regulatory agencies between whether an activity involves the exercise of a law-making power or is merely a decision made under the exercise of a statutory power. Oversight is required of the delegation of Parliament's law-making role. The omission of the "significant legislative effect" limb may allow the making of instruments which have the effect of law-making, but are not captured by the definition of "secondary legislation" as defined in the Bill, and are therefore not disallowable.

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7 Defined in turn as instruments that determine the law or alter the content of the law, rather than applying the law in a particular case and which has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right, see Legislative Instruments Act 2003 (Cth), now renamed as the Legislation Act 2003 (Cth).

8 Legislation Act 2003 (Cth), s8. The previous description of "legislative character" is now included in the definition of a "legislative instrument" under s8(4).

9 The erosion of law-making controls caused by the granting of exemptions is discussed in the Report of the Regulations Review Committee, *Inquiry into the use of instruments of exemption in primary legislation,* I.16Q, September 2008.

3.10. Accordingly, the approach taken in the Bill may significantly reduce the level of parliamentary oversight of instruments that may fall outside this definition, yet have legislative effect. It follows that there is the potential for the Bill to erode or undermine the role of the Regulations Review Committee and have a detrimental effect on the checks and balances that should apply to numerous other instruments made under delegated powers.

3.11. The substantive nature of an instrument should take primacy over its form. If the instrument determines the law or alters its content as opposed to being merely administrative in nature, then it should be treated as a legislative instrument (whatever the name) and be subject to parliamentary oversight. A further limb to the definition, acting as a safety net to capture such instruments, is required in addition to identifying secondary legislation in an empowering provision.

Consequential amendments

3.12. The Bill proposes the introduction of a subsequent Bill to make consequential amendments to various Acts identifying all the instruments that currently exist and meet the proposed new definition for “secondary legislation”. It appears from the Bill's explanatory note (p5) that this was intended when the Bill was introduced in June 2017. It states the "consequential amendment Bill [is] to be introduced while this Bill is being considered by Parliament”. It is not clear what criteria will be applied to determine which instruments will be included. This increases the uncertainty regarding this important change to legislative process and oversight. This approach undermines full disclosure in the legislative process as persons affected by it do not have certainty regarding its extent and effect.

4. Part 2 – Interpretation and application of legislation

4.1. Part 2 largely re-enacts the Interpretation Act 1999, with some modifications. Generally, these modifications align with case law and current interpretative practice. The following specific comments are made on individual clauses.

Clause 13 – "writing"

4.2. The definition of "writing" in clause 13 needs further consideration. As drafted, the definition is the same as that in section 29 of the 1999 Act, but with the addition of a "but see" reference to Part 4 of the Contract and Commercial Law Act 2017, which provides for meeting written requirements by electronic means.

4.3. The way the definition works is by adopting a narrow and somewhat dated definition of “writing", requiring a "visible and tangible form and medium (for example, in print)", but acknowledging the more permissive approach taken in the Contract and Commercial Law Act 2017, which allows (section 222) "[a] legal requirement that information be in writing [to be] met by information that is in electronic form if the information is readily accessible so as to be usable for subsequent reference."

4.4. Further thought should be given to whether the Contract and Commercial Law Act definition of writing, or something similar, is acceptable as the default definition for the purposes of the general definition in clause 13 of the Bill. Alternatively, a "hybrid" approach, as in clause 62 of the Bill, might be adopted. The definition in clause 62 corresponds to the definition of "writing" in section 29 of the Interpretation Act 1999 as it was originally enacted, before being amended in 2003 by the Electronic Transactions Act 2002.

Clause 23 – examples do not limit provision but may extend its operation

4.5. The words "but may extend its operation" should be added to subclause (1) of clause 23, to align it with the heading. Notwithstanding clause 10(3) ("The text of legislation includes the indications provided in the legislation"), this change will improve the clarity of the provision.

Clause 54(2) – calculation of periods

4.6. Subclause (2) of clause 54 should be removed from the Bill as it is complex, ambiguous and seems to conflict with subclause (1).

4.7. The main purpose of items 1 and 2 in subclause (2) seems to be to make clear that reference to a period within which something may or must be done does not preclude the thing being done before the period commences. This is clear from the examples for items 1 and 2. But the problem with including this clarification is that it creates ambiguities between the two subclauses. For example, the meaning of the following provision may differ according to item 2 of subclause (1), from its meaning according to item 2 of subclause (2):

> "Any party who is dissatisfied with a decision given by a Disputes Tribunal may, within 10 working days after notice of the decision is given to that party, appeal to a District Court Judge."[10]

4.8. Arguably, under subclause (2), the appeal period is one day shorter because (according to item 2, column 2) the period in which the thing must be done includes the day of the decision.

4.9. Further, item 3 of subclause (2) seems unnecessary as item 6 of subclause (1) seems to have the same effect.

4.10. The explanatory material provided with the Bill does not describe problems arising under the present law, in calculating periods, that would justify the complex provisions proposed in clause 54(2). The equivalent Australian provisions (Acts Interpretation Act 1901, section 36(1) (Aust)) and the current New Zealand provision (section 35 of the 1999 Act) are much more straightforward and less likely to result in ambiguity.

Clauses 62-65 – Power to incorporate by reference

4.11. The question of material incorporated by reference into legislation has long been fraught with difficulties. The position has become clearer in recent years, and the updated provisions in clauses 62 to 65 will further assist. There are two issues related to those provisions:

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[10] Motor Vehicle Sales Act 2003, Schedule 1, clause 16(1).

(a) One of the grounds for incorporating material by reference is that it deals with "technical matters that can reasonably be regarded as being impractical to include in, or publish as part of, the secondary legislation" (clause 63(1)(c)). This can be a difficult question to answer with many pieces of secondary legislation, which already deal with technical issues, particularly where they are sector-specific. In some of those instances, almost everything could be said to be of a technical nature. Consideration should therefore be given to using an alternative term, such as “highly detailed matters” or something similar, which is likely to work better in a wider range of situations.

(b) It is not completely clear whether documents that are made by the person or entity that makes the secondary legislation can be incorporated by reference. There is no apparent reason why the person or entity should not be able to incorporate its own material by reference. It appears to be consistent with parliamentary reports on incorporation by reference and does not appear to offend the principles of the Legislation Design and Advisory Committee. The documents incorporated by reference will still need to meet the tests in clause 63.

4.12. Further, the dropping of the criteria “too large” from the test for material incorporated by reference should be reconsidered. The reason given for dropping the criteria is that, it is thought in the age of electronic publication, no document is too long to publish. That may be the case from the perspective of the publishing agency. However, from a user's point of view, even electronic documents can be too long to use easily and many users will look to print copies. It may therefore make legislation more accessible and transparent to retain “too large” or a similar criterion.

5. Part 3 – Drafting and publishing of legislation

5.1. Clause 66 limits the role of the Parliamentary Counsel Office (PCO) in drafting legislation. Many of the more recent varieties of secondary legislation contain rules that are legally enforceable and important, in that they create criminal offences, but they are not drafted by PCO in many instances. This is undesirable as a general rule. The standards of the New Zealand PCO are high and the need to maintain consistency is an important goal. Uniformity of approach and the application of consistent principle can best be achieved by using PCO as the universal drafter of legislation, unless there are very good reasons for PCO not to undertake the drafting, such as there being a need for close co-operation between drafters and technical advisors that overrides the reason for situating drafting functions in the PCO.

5.2. Under clause 66(d)(iii), secondary legislation not covered by sub-paragraphs (i) and (ii) of clause 66(d) or by a direction of the Attorney-General will be drafted by the PCO only by agreement with the chief executive of the administering agency. Consideration should be given to reversing the way sub-paragraph (iii) is drafted, to create a presumption that secondary legislation is drafted by PCO unless, for good reason, the chief executive of the administering agency and the Chief Parliamentary Counsel agree otherwise. Not only would this give the Chief Parliamentary Counsel greater oversight of the drafting of secondary legislation, it would also enable the Chief

Parliamentary Counsel to exercise some control over drafting of legislation outside PCO through the conditions of any agreements entered into under sub-paragraph (iii).

5.3. It also follows from what has just been stated that drafting of primary tax legislation, at least, should be moved back to PCO, as was recommended by the Law Commission.[11] The PCO is a custodian of constitutional standards and uniform drafting practices. It is undesirable in principle for officers of a department to draft legislation under the instructions of the same department, without the important influences of the wider stewardship role that PCO provides.[12]

5.4. The requirement that PCO must publish all legislation in clause 68 is important as access to all instruments with legal force is critical in any democracy. The provisions in clauses 73 to 74 (regarding lodgment with PCO of secondary legislation not drafted by it) would not be necessary were there a requirement for PCO to draft all legislation.

5.5. Clause 72, which would suspend the commencement of secondary legislation until it is published, is an important step towards ensuring that legislation is available and able to be complied with before it commences. This approach broadly aligns with the recommendation made by the Law Society in 2014 when it proposed an approach that is similar to the Australian Federal Register of Legislative Instruments.

5.6. In relation to clauses 73, 74 and 76, to repeat, apart from where good reason is established and agreed, all primary or secondary legislation should be drafted by PCO. Appropriate controls should be in place if an exemption is given from the publication obligations.

5.7. In relation to clause 76, exemptions should be granted sparingly. The principle must be that everything that is law must be accessible and available.

5.8. In this regard, clause 76(1)(a), the exemption from publication where it is not practical to electronically publish secondary legislation, is at risk of applying in situations where the cost of electronic publication by PCO is too high. While PCO should not be required to go to extreme lengths to publish secondary legislation, it would be desirable to provide that cost cannot be relied on as a ground for non-publication under clause 76(1)(a) unless the Chief Parliamentary Counsel is satisfied that the costs of publication significantly outweigh the benefits, including the non-financial benefits, and in light of the principle that the public should be able to access legislation at no or low cost.

5.9. Clause 76(1)(c), which allows the Chief Parliamentary Counsel to approve alternative means of publication, should be amended to require:

- consideration of whether electronic publication by the agency that made the secondary legislation is possible as the first alternative;

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11 NZLC R107, Review of the Statutes Drafting and Compilation Act 1920, at 18-20.

12 As is recognised in clause 127.

- that the alternative form of publication ensures that the secondary legislation is accessible and available to the fullest extent possible, and at the lowest cost to the public reasonably possible.

5.10. The Law Society suggests the following qualifications to clauses 78 to 90:

Clause 86(l) – editorial changes

(a) Clause 86(l) would allow PCO to make editorial changes to include exact references to commencement dates or times. One of the specific advantages of this power of correction would be to allow commencement dates set by Order in Council to be inserted. For clarity, this form of change should be specifically mentioned as part of the example referred to in clause 86(l).

Clause 90 – changes to be noted in legislation

(b) Clause 90 restates the current requirement that, if editorial changes are made, then the relevant version of the legislation must indicate that fact in a suitable place and outline in general terms the changes made. Currently, this requirement is met by annotating legislation with a reference such as "This version was replaced on 10 November 2017 to make corrections to section 158(b)(ix) under section 25(1)(j)(ii) and (iv) of the Legislation Act 2012." While acknowledging the additional time and effort that could be required, it would further the Bill's accessibility objective, to add a requirement to indicate the specific changes made. This is particularly important where "obvious errors" are being corrected as is proposed under clause 86(k). There is room for debate about what is an "obvious drafting error" and how it should be corrected. At the least, it should be made as clear as possible in the legislation what changes of this nature have been made. Therefore, the word "general" in clause 90(b) should be replaced by the word "specific."

6. Part 4 – Disclosure requirements for Government initiated legislation

6.1. Clause 100 includes provisions that require disclosure statements for primary and secondary legislation. While there currently exists a practice of doing this, the obligation is imposed administratively by the Executive branch and can be changed. A legislative obligation to make such disclosure available as part of Government bills will reinforce the constitutional need for greater parliamentary oversight and public scrutiny. Reinforcing what the Bill defines as “legislative quality procedures” could do much to improve the quality of legislation introduced to the House and the scrutiny of it by the House. The essence of the proposal contained in the Bill involves:

(a) increased background material and policy information concerning bills,

(b) quality assurance assessments or processes used to test that the legislation is robust,

(c) departures from specified legislative guidelines or standards that have been endorsed by the Government,

(d) any other significant or unusual features of the legislation that should be drawn to the attention of the public and the House.

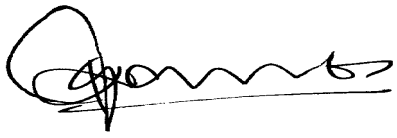
6.2. The Bill appropriately allows scope for the techniques it contains to develop further in the future. It is not clear why a separate minister from the Attorney-General is involved in this part of the Act. Perhaps it is thought that having two ministers involved in the processes concerning Government notices under clauses 106, 107, 108 and 109 will ensure greater rigour and deeper consideration of what will be contained in the notices. However, the important feature of the notices is that they will ensure a consistent approach across agencies as to what is disclosed. From that perspective, the involvement of the Attorney-General only is necessary. The involvement of a second minister could lead to inconsistency. The notices must, under clause 106, provide for the information that must be contained or linked to in disclosure statements and specify departure from legislative guidelines provided for in the provisions.

6.3. Consideration could be given to extending the material that is required to be disclosed. The nature of the administrative arrangements to be set up to administer the particular piece of legislation are important in assessing the provisions in a bill. So is the cost of the policies contained in the bill. Similarly, Treaty of Waitangi issues and Bill of Rights issues could also be relevant as they are likely to be discussed at select committee proceedings and be the subject of submissions where a bill raises points of concern.

6.4. Another matter that should be expressly added to disclosure material required under clause 103(1)(a) is the rationale underlying whether a statement is (or is not) made to the effect that an instrument is secondary legislation, for the purposes of the definition of "secondary legislation" in clause 5.

7. Part 5 – Parliament's oversight of secondary legislation

7.1. The obligation to present secondary legislation to the House of Representatives excludes certain secondary legislation. The role of parliamentary oversight is an important constitutional check on delegated legislative powers. Local authorities and other public agencies currently have the ability to make instruments that can have very significant impacts on the rights and obligations of the public. It is necessary that those instruments are subject to, or able to be made subject to, parliamentary oversight. The exclusions or exemptions from oversight in clause 113 do not support the constitutional protections that are required.



Tim Jones
Vice President
23 February 2018

Appendix: Summary of recommended changes to the Legislation Bill 2017

APPENDIX: SUMMARY OF RECOMMENDED CHANGES TO THE LEGISLATION BILL 2017

Summary of recommendations – Part 1

Clause 5

The definition of "secondary legislation" in clause 5 should be aligned with the approach taken under s 8 of the Legislation Act 2003 (Cth) in Australia. Any distinctions made in respect to local authority legislation and any other instruments should be addressed substantively, not by virtue of the form they take. The three key concepts of the definition of "secondary legislation" should include:

(a) an instrument described or declared by a law (including by the Bill) to be secondary legislation

(b) an instrument published on the government legislation website as secondary legislation

(c) an instrument made under a power delegated by the Parliament that determines the law or alters its content.

Summary of recommendations – Part 2

The Law Society recommends:

(a) Amendment of the definition of "writing" in clause 13 to harmonise it with the definition used in Part 4 of the Contract and Commercial Law Act 2017 (and the definition of "written material" in clause 62).

(b) Amendment of the text of clause 23 to align it with its heading.

(c) Removal of subclause (2) of clause 54 and that consideration be given to simplifying subclause (1).

(d) Replacing the term "technical" in clause 63(1)(c) with a more appropriate term such as "highly detailed".

(e) Clarifying in clause 63 that makers of secondary legislation can incorporate by reference material that they have made themselves.

(f) Reinserting the criteria "too large" or similar in clause 63(1)(c).

Summary of Recommendations – Part 3

The Law Society recommends that:

(a) All secondary legislation is drafted by PCO unless good reason is established and agreed by the chief executive of the administering agency and the Chief Parliamentary Counsel.

(b) The drafting of tax legislation to be done by PCO rather than Inland Revenue.

(c) Consideration be given to amending clause 76 to ensure that exemptions from publication of secondary legislation are only granted sparingly, that the agency which made the legislation should ordinarily be required to publish it electronically, and that the alternative form of publication is accessible and available to the fullest extent possible and at the lowest reasonable cost.

(d) Clause 86(l) be amended to make it clear that commencement dates set by Order in Council can be inserted as editorial changes.

(e) The word "general" in clause 90(b) is replaced with the word "specific."

Summary of recommendations – Part 4

The Law Society recommends:

(a) Amending the Bill to provide only for the involvement of the Attorney-General under this Part.

(b) That consideration be given to extending the requirements for material that should be disclosed under clause 103.

(c) Amending clause 103(1)(a) to require disclosure of the rationale underlying whether a statement is (or is not) made to the effect that an instrument is secondary legislation, for the purposes of the definition of "secondary legislation" in clause 5.

Summary of recommendation – Part 5

The Law Society recommends that the Committee consider removing the proposed exclusions and exemptions from parliamentary oversight (in clause 113). Alternatively, the Committee could provide for the Regulations Review Committee to consider any instrument for disallowance if it has law-making effect.

Summary of recommendation – consequential amendments

All legislation that is intended to be affected by this Bill should be identified now and addressed as part of this legislative change. It appears from the Bill's explanatory note (p 5) that this was intended when the Bill was introduced in June 2017. It states the "consequential amendment Bill [is] to be introduced while this Bill is being considered by Parliament."