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## Minister welcomes Regulatory Responsibility Taskforce report

Rodney Hide

Regulatory Reform

The Regulatory Responsibility Taskforce's recommendations for improving the quality of law-making in New Zealand have been welcomed by Regulatory Reform Minister Rodney Hide.

"New Zealanders need to know how proposed laws will affect them," Mr Hide said. "We need better law making through greater transparency and greater accountability, and the Taskforce's recommendations will help us deliver that goal."

The Taskforce was established in April to provide independent expert advice on the Regulatory Responsibility Bill that was considered by Parliament's Commerce Select Committee in 2008. Former Treasury Secretary Dr Graham Scott chaired the Taskforce. Other taskforce members were Paul Baines, Richard Clarke QC, Jack Hodder, Hon David Caygill, Dr Bryce Wilkinson, and Dr Don Turkington.

Mr Hide said the Taskforce had improved on the original bill, which was a significant and pioneering piece of legislation.

The Taskforce has recommended that Ministers and Chief Executives be required to certify whether or not a regulatory proposal is consistent with a set of good practice regulatory principles, and to justify any departures.

"Under the Taskforce's Bill, anyone who feels that the principles have been breached and Ministers haven't been transparent about it can apply to the courts for a Declaration of Incompatibility," Mr Hide said. "However, Parliament's sovereignty will be totally maintained, as the courts will not be able to stop or over-ride legislation."

The establishment of the Taskforce was included in the ACT-National Confidence and Supply

Agreement and forms part of a government-wide review to lift the quality of regulation.

The Taskforce's report is available at:

<http://www.treasury.govt.nz/economy/regulation/rrb/taskforcereport>  
(<http://www.treasury.govt.nz/economy/regulation/rrb/taskforcereport>)

Questions on Regulatory Responsibility Taskforce's Report and Revised Bill

### **What does the bill do?**

The bill increases the transparency and accountability of law-makers. Before the introduction of any new legislation or regulations, Ministers and Chief Executives will certify against a set of good practice regulatory principles and justify any departures. This certification will make the political and economic costs of new legislation and regulations clearer, allowing more accurate and informed governmental and public debate before the legislation and regulations are introduced.

### **Does it threaten Parliamentary sovereignty?**

The Taskforce's bill will not operate to bar the enactment of legislation - Parliament is sovereign and ultimately may enact any laws it wishes. The principles contained in the bill are intended to ensure good policy development, enabling more accurate and informed governmental and public debate and consequently better legislation and regulation.

### **Is this constitutional reform?**

No. Although the courts are given a specific role, that role does not allow the courts to overturn or override legislation.

### **What role do the courts play?**

The courts will be given a new role of making Declarations of Incompatibility with the principles of the bill. This role will provide a check on the required certification of compliance with the principles completed by Ministers and Chief Executives. It explicitly excludes any power to make injunctive or compensatory orders.

### **What principles are contained in the Bill?**

The law should:

- Be clear and accessible, not impose obligations retrospectively, treat everyone equally and avoid administrative discretion around issues of rights and liabilities;
- Not diminish a person's liberty, security, freedom or rights to use property unless it is necessary to protect the liberty, security, freedom or rights of others;



- Not take or impair property unless it is in the public interest and full compensation is provided;
- Not impose a tax except under an Act;
- Not impose charges that are unreasonably high in relation to the benefits obtained from the good or service and the cost of efficiently providing it;
- Preserve the courts' role of determining the meaning of legislation;
- Provide an appeal on the merits in legislation that authorises a Minister, public entity, or public official to make decisions. It should also state the appropriate criteria for making those decisions;
- Not be made unless those affected are consulted, within practical limits;
- Not be made unless a careful evaluation of the issue, existing law, the public interest, options available, who does and does not benefit and all potential adverse consequences is undertaken;
- Not be made unless the benefits outweigh the costs; and
- Be the most effective, efficient, and proportionate response to the issue concerned.

Any incompatibility with these principles is justified if it is reasonable and can be demonstrably justified in a free and democratic society.

### **Does the Declaration of Incompatibility made by the courts affect the status of legislation?**

The courts do not have any power to make injunctive or compensatory orders. Once a Declaration of Incompatibility has been made, the Government may decide to address the inconsistency. There is no requirement for the Government to undertake any action in response to the Declaration.

### **Does the bill commit the Government to pay compensation for taking property?**

The principles contained in the bill are aspirational, they are not compulsory. Legislation should be consistent with the principles. Parliament retains sovereignty and is able to depart from any of the principles. Ministers should, however, be transparent about any departures, certifying and justifying any departures when they introduce the legislation/regulation.

### **Have any similar bills been introduced in other countries?**

Many of the principles are included in legislation and constitutions elsewhere in the world, but the introduction of this bill would be a world first.

### **What legislation/regulation is covered by the bill?**

The bill covers all legislation and regulations other than those made by local government.

### **Will the certification be made public?**

All certification will be publicly available before the legislation/regulation is introduced.

**What can I do if I believe that principles have been breached and Ministers have not been transparent about it?**

You can apply to the courts for a Declaration of Incompatibility and, if the Taskforce's recommendations are accepted, you will be able to ask the Regulations Review Committee to consider whether the principles have been breached. You will be liable for the costs associated with this, but the government can be ordered to pay costs if the case is found in your favour.

**Aside from the Bill, what other recommendations did the Taskforce make?**

- Legislation made before the enactment of the Regulatory Responsibility Act (RRA) is not subject to the provisions concerning the Declaration of Incompatibility and interpretation for a period of 10 years.
- Standing Orders of the House of Representatives are amended to require each select committee to address the compatibility of any bill with the principles of responsible regulation in its report back to the House. During this process, members of the public would be encouraged to submit on the compatibility of the bill with the principles.
- The Government establish a permanent group responsible for reviewing both the body of legislation, and specific proposed or existing legislation, against the principles of responsible regulation and the guidelines issued.
- Extend the jurisdiction of the Regulations Review Committee to enable it to consider submissions that any proposed or existing legislation departs from the principles set out in the RRA.



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