

New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill

Government Bill

As reported from the Privileges Committee

Commentary

Recommendation

The Privileges Committee has examined the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

The Supreme Court's 2018 judgment in *Attorney-General v Taylor* confirmed that senior courts have the power to issue declarations that legislation is inconsistent with the New Zealand Bill of Rights Act 1990. This bill seeks to create a statutory mechanism for bringing declarations of inconsistency to the attention of the House of Representatives, with the aim of facilitating consideration of the judiciary's declarations by the legislative and executive branches of government.

The bill as introduced would create only a mechanical requirement for the Attorney-General to report a declaration to Parliament. We recommend below a package consisting of amendments to the bill and new parliamentary rules, to provide a stronger framework for considering and responding to declarations of inconsistency and the issues they raise. This is consistent with the approach envisaged in the bill's explanatory note regarding the use of both legislation and parliamentary rules. Our proposal includes a process for a select committee to consider and report on a declaration within four months, a statutory requirement for the Government to respond to a declaration within six months, and debate in the House on the declaration, the select committee's report, and the Government's response.

Declarations of inconsistency can also be made by the Human Rights Review Tribunal under the Human Rights Act 1993. The bill as introduced seeks to create consistency between the Human Rights Act and the Bill of Rights Act. We have maintained

that approach, and recommend that the same provisions be inserted into both Acts regarding the notification of Parliament and requiring a Government response. The parliamentary process we recommend would apply both to declarations made under the Human Rights Act as well as those made in respect of the Bill of Rights Act.

Declarations of inconsistency do not affect the fundamental principle of Parliament's legislative supremacy, as recognised in section 4 of the Bill of Rights Act. This bill and our recommended amendments similarly would not alter that principle. A declaration of inconsistency is, however, of high public and constitutional significance. It is an unambiguous statement from a senior court or tribunal that the law of New Zealand infringes upon people's protected rights in a manner that cannot be demonstrably justified. Given that the Bill of Rights Act requires courts to give legislation a rights-consistent interpretation if one is available, such declarations will not be made lightly.

It is vital that the branches of government responsible for making laws and administering them—the legislative and executive branches, respectively—are both seen by the public to, and do in fact, consider such declarations properly. Our package of recommendations seeks to achieve this by providing a clear framework for dialogue between the branches of government. We believe it would represent a significant development in New Zealand's constitutional architecture relating to fundamental rights, and hope that it will promote genuine engagement with rights issues.

It is worth noting that we are not proposing that either the legislative or executive branches be required by law to respond to a declaration of inconsistency in any particular way. In the spirit of dialogue and our constitutional arrangements, that is properly a matter for each branch to determine on its own.

Question of privilege on declarations of inconsistency with the NZ Bill of Rights Act 1990

On 27 February 2018, the Speaker referred a question of privilege to the Privileges Committee concerning declarations of inconsistency. We have considered the matters raised by the question of privilege in the course of considering the bill. This report serves as our final report on that question of privilege.

Proposed amendments

We discuss below our proposed amendments to the bill, and then explain our proposed parliamentary rules (set out in Appendix 1), and the process for their adoption. We do not discuss minor or technical amendments.

Attorney-General to notify Parliament

The bill as introduced states that the Attorney-General must present a report to Parliament bringing the declaration to the attention of the House. We recommend a change to new section 7A of the Bill of Rights Act and in new section 92WA of the Human Rights Act to clarify that the Attorney-General must notify, rather than report to, Parliament. We see the Attorney-General's role here as being to bring the declaration into the House's consideration, rather than reporting substantively on the declaration.

Requirement for Government to respond

We recommend that the bill be amended to require the Government to respond to declarations of inconsistency. This requirement would be contained in new section 7B of the Bill of Rights Act and new section 92WB of the Human Rights Act.

The intent of this requirement is to ensure that declarations and the issues they raise are given due consideration by the executive branch, and are responded to publicly. The Government administers the legislation to which a declaration relates, and in practice has primary responsibility for initiating proposals for legislative change. It also has the resources and expertise of the public service at its disposal to develop a policy response to the issues raised by a declaration. The response may require executive action, as well as legislation. It is thus appropriate that the Government be required to respond.

The Government would be required to address the findings of the judicial branch publicly by presenting its response to the House. This reflects the fact that the Government would be in dialogue with the judicial branch, but is accountable to Parliament—and the wider public—for its administration of the law and its policy response to the declaration. It is Parliament's constitutional role to be informed of the judicial branch's view and the Government's response to it, as matters of significant public interest, and to scrutinise that response.

As discussed in more detail below, under our proposed parliamentary rules the Government's response would trigger a debate in the House. This would provide an opportunity for the House to debate the declaration, the select committee report on the declaration, and the Government's response to the declaration.

We recommend that the Government's response be presented by the Minister responsible for the legislation to which a declaration relates. The Minister is responsible for the administration of the legislation and any Government proposals to change it.

We note that the Human Rights Act currently requires the Government to respond to declarations of inconsistency made under the Act. The bill as introduced would remove that. Our recommended amendment would see the current requirement replaced with the same requirement we propose for inclusion in the Bill of Rights Act.

Six-month deadline and ability to vary it

We recommend requiring that the Government's response be presented to the House within six months of a declaration being brought to the attention of the House. We also recommend including a means of varying the deadline, in subsection (2) of proposed new sections 7B of the Bill of Rights Act and 92WB of the Human Rights Act.

Six months may be a tight timeframe for responding to declarations involving complex issues. Some issues may require extensive policy work to address, or may benefit from the consideration of significant empirical evidence beyond what was available to the court or tribunal that made the declaration. In such cases extending the time available for the Government to prepare its response may allow a higher quality

response. However, we believe it is important that the statutory requirement to respond contains a default deadline by which the response is expected. Together with an ability to vary the deadline, this would strike a balance between catering for varying levels of complexity in the issues raised by declarations and clear legislative intent to guide the Government's preparation of a response.

It may also be desirable to extend the deadline for the Government's response to allow more time for select committee consideration of a declaration. As discussed in detail below, we propose a four-month deadline for a select committee's consideration of a declaration. This is intentionally sequenced to enable the select committee to report to the House two months before the Government presents its response. That way, the Government could take account of the views expressed during the select committee stage and the committee's conclusions. We also recommend below that it be possible to alter the select committee's deadline. If a select committee's deadline is extended, it may be desirable to extend the Government's deadline too.

The deadline is not intended to drive consideration of the issues arising from a declaration to a premature conclusion. The quality of the Government's response is important to the integrity of the process we are recommending. We encourage Governments to balance the need to produce a suitable response with the requirement to respond within a reasonable time.

Our recommended amendments would enable the deadline to be extended or shortened, as required. We note that a Government could also present its response before the six-month deadline.

House empowered to alter Government's deadline

We propose that the House of Representatives be empowered to vary the deadline for the Government's response by making a resolution specifying a new deadline. The House is the recipient of the Government's response and the Government is accountable to the House for it, so it is appropriate that the House approve any request to alter the deadline. It would also ensure that the onus is on the Government to justify the proposed deadline to the House. The normal method for obtaining a resolution of the House would be for a Minister to lodge a notice of motion, and for it to be debated and agreed by the House.

We also propose that the House be authorised to delegate this power. We recommend a corresponding rule below for this power to be delegated to the Business Committee. This committee is chaired by the Speaker of the House, has representation from every party in Parliament, and makes decisions based on unanimity or near-unanimity. This would provide a more streamlined way for adjustments to be made when there is broad agreement and would be consistent with the Business Committee's existing role of facilitating the work of the House.

Proposed parliamentary process and rules

The commentary below covers the parliamentary process and rules we recommend, which are set out in Appendix 1.

We carefully considered whether any part of the parliamentary process should be specified in statute. We concluded that it should not.

The House has exclusive cognisance over how its proceedings are conducted. This exclusive right to control its own operations is one of the House's privileges. Together with the associated privilege of free speech, it is fundamental to parliamentary independence and the continuous balancing of New Zealand's constitutional arrangements. Effectively this privilege limits the ability of the other branches of government to review or determine the House's affairs. While there is no constitutional barrier to prevent Parliament from legislating for parliamentary proceedings, doing so would amount to an abrogation of this privilege, and we do not consider it necessary or desirable to do so here.

We note that the Green Party member would have preferred the referral to the select committee to be contained in the statute.

The main arguments in favour of legislating for the House's consideration of declarations of inconsistency related to the symbolic value of doing so, the general accessibility of legislation, and the perceived certainty it would provide. We believe our recommended parliamentary process and rules, together with the process for adopting them alongside the bill, achieve the same aims without impinging on the House's privileges.

The House's proceedings are regulated by its permanent rules, the Standing Orders. They are appropriately regarded as constitutional rules for the exercise of significant public power. There is a long-standing and closely-observed convention that they are not altered without broad consensus among the parties in Parliament. We have similarly been mindful of the need for, and value of, political consensus in our consideration of this bill. The process we are recommending concerns the conduct of the political responses to a legal determination made by the judiciary regarding protected rights. It is crucial to its long-term success that it continues to enjoy the broad support that our package of recommendations does.

We recommend that our proposed parliamentary rules be adopted through a sessional order (that is, a form of rules that have effect for the current term of Parliament) and be included in the Standing Orders following the next triennial review of Standing Orders. This review invariably results in amendments being made to the House's permanent rules—based on broad consensus—shortly before the dissolution of Parliament ahead of a general election. We note that the regular review of the Standing Orders will also provide opportunities to adjust the House's procedures for considering declarations of inconsistency in response to experience, without relying on the Government to initiate legislative proposals.

We outline the process for adopting these rules as sessional orders after the commentary on them.

Overview of proposed parliamentary process

The parliamentary process we recommend would involve:

- a declaration of inconsistency being referred to a select committee allocated by the Clerk of the House
- select committee consideration of and reporting on the declaration within four months
- debate in the House on the declaration, the select committee report, and the Government's response to the declaration, upon presentation of the latter.

The aim of this process is to ensure that declarations of inconsistency are given active consideration by the House. It would also ensure that the House discharges its constitutional functions of representation and scrutiny in respect of declarations.

Purpose clause and definitions

Rule 1 would set out the purpose of the rules as providing for the House's procedures in association with the amendments made by the Act that would result from this bill.

Rule 2 would define the terms "declaration of inconsistency", "Government's response to a declaration of inconsistency", and "notice", linking these to the relevant proposed new sections of the Bill of Rights Act and Human Rights Act.

Rule 3 would specify that a notice that is presented by the Attorney-General, bringing a declaration of inconsistency to the attention of the House, is published under the authority of the House. This would ensure that the Attorney-General's notice is published as a parliamentary paper (including, in practice, on the Parliament website), ensuring it is made publicly available and entered into Parliament's permanent record.

Select committee referral

Rule 4 would cover referral to a select committee. It would make clear that the item of business for the select committee's consideration is the declaration of inconsistency itself, not the Attorney-General's notice.

Rule 4 would provide that the declaration is allocated by the Clerk of the House to the most appropriate select committee. This wording mirrors the provision for allocating reports of the Attorney-General under section 7 of the Bill of Rights Act to select committees, in Standing Order 269(5).

Although in most instances the referral would be to the relevant subject committee, on occasion it may be desirable for the referral to initially be to the Privileges Committee. We note that committees can meet jointly under the Standing Orders and this may sometimes be appropriate for considering declarations of inconsistency.

Select committee consideration

Rule 5(1) would outline that the select committee considers the declaration and reports to the House on it.

We have not recommended a prescriptive approach to the select committee's consideration. The House does not tend to instruct its select committees how to go about the work referred to them. This would be particularly counter-productive for a new category of business. The committee's process is likely to depend on a range of factors,

including the nature of the declaration, the scope of the inconsistencies raised, the complexity of the relevant material, and the level of public interest. However, the proposed timeframe of four months for the committee to do its work is intended to provide an opportunity for public input. The ability for the public to participate in select committee proceedings is one of the strengths of the select committee process and an important expression of Parliament's representative function.

We also expect that committees would give careful consideration to the appointment of appropriate advisers. This could include the relevant government department and an independent adviser.

Rule 5(2) would set out that the committee may make recommendations to address the declaration, and any other recommendations it sees fit.

We have purposely proposed a broad mandate for the select committee. The committee's recommendations to address the declaration may set out policy options for the Government to consider; a preferred policy option; a legislative response that is more rights-regarding without altering the underlying policy; or even a recommended process for the Government to develop any of the former. In addition, consideration of a declaration may lead the committee to make findings that do not directly relate to addressing the specific inconsistency identified in the declaration. Rule 5(2)(b) would cover the latter.

It would be good practice for a committee considering a declaration of inconsistency to determine terms of reference for its consideration. Whether this should occur after an initial briefing from advisers would be for the committee to determine, depending on the nature of the declaration and the expertise and knowledge of the committee's members regarding the issues raised.

Select committee reporting

Rule 6 would specify that the select committee must report within four months, unless the Business Committee determines a different deadline. The Business Committee can already vary select committee reporting deadlines under the Standing Orders, but we recommend including provision for this in rule 6 to improve the accessibility of the rules. We would expect a select committee seeking an extension to consult the Minister responsible for presenting the Government's response, as an extension for the committee might necessitate an extension to the Government's deadline too. This is similar to the practice for seeking extensions to the reporting dates for bills.

Rule 7 would provide that the committee's report is debated together with the declaration of inconsistency, under proposed rule 10. It would also specify that the requirement in Standing Orders for the Government to respond to recommendations in select committee reports on certain types of business within 60 working days would not apply to reports on declarations of inconsistency. Given that the Government would be required under our proposed amendments to present a response to the declaration within 6 months, and the select committee's report would be subject to debate in the House, it would be unnecessary for the Government also to lodge a formal written response to the select committee's recommendations. Requiring a response to the

committee's recommendations could also pre-empt the Government's response to the declaration itself, if there were to be more than 60 working days between the time the committee reports and when the Government presents its response.

Government's response and debate in the House

Rule 8 would specify that the Business Committee could vary the deadline for the Government's response, on behalf of the House, as the House would be empowered to do under subsection (2) of our proposed new sections 7B of the Bill of Rights Act and 92WB of the Human Rights Act. As noted above, the Business Committee is chaired by the Speaker of the House, has representation from every party in Parliament, and makes decisions based on unanimity or near-unanimity. This would provide a more streamlined way for adjustments to be made when there is broad agreement.

Rule 9 would specify that the Government's response is published under the authority of the House. As for rule 3 above, this would ensure that the Government's response is published as a parliamentary paper (including, in practice, on the Parliament website), ensuring it is made publicly available and entered into Parliament's permanent record.

Rule 10(1) would outline the nature of the debate in the House. It is intended that the debate would focus on the declaration itself, but would also include the committee's report and the Government response.

Rule 10(2) would set out the structure of the debate. We propose that the responsible Minister would move a motion that the House take note of the declaration. We do not see it as the House's role to accept or reject the declaration, but to debate it, to scrutinise the Government's response, and, subsequently, to consider any resulting legislation. The debate would be expected to be relatively interactive, with a mix of substantive speeches, setting out different perspectives, and questions posed to the Minister in charge about the Government's intentions. The model for this is the procedure that has recently developed for the consideration of ministerial statements.

Rule 10(3) would require that the debate be held within six sitting days after the date on which the Government's response is presented, unless the Business Committee determines a different date. This would give members an opportunity to digest the Government's response and allow the Government to arrange its House business appropriately, while ensuring the debate takes place promptly. The rule would also provide that the Government could not simply discharge or postpone the order of the day by direction of the Minister or through a non-debatable motion.

Process for adoption of parliamentary rules

We recommend that the proposed rules for declarations of inconsistency be adopted through a sessional order, for the current term of Parliament. We have written to the Leader of the House proposing that he lodge a notice of motion containing the proposed rules, so they could be debated alongside the bill's third reading. This would, of course, be subject to the subsequent stages of the legislative process, and any further amendments to the bill that need to be reflected in the rules. The notice of motion

would provide for the rules to take effect on the day on which the bill came into force. We also recommend that the procedure for declarations of inconsistency subsequently be incorporated permanently in the House's rules when the next review of the Standing Orders takes place.

Appendix 1

Proposed parliamentary rules for considering declarations of inconsistency

DECLARATIONS OF INCONSISTENCY

1 Purpose

The purpose of these rules is to provide for the House's procedures in association with the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act 2021.

2 Definitions

For the purposes of these rules,—

declaration of inconsistency means a declaration—

- (a) made by a court, and in respect of which **section 7A(1)** of the New Zealand Bill of Rights Act 1990 applies, or
- (b) made under section 92J of the Human Rights Act 1993, and in respect of which **section 92WA(1)** of that Act applies

Government's response to a declaration of inconsistency means a report advising of the Government's response to a declaration, which a Minister must present under—

- (a) **section 7B** of the New Zealand Bill of Rights Act 1990, or
- (b) **section 92WB** of the Human Rights Act 1993

notice means a notice that is presented by the Attorney-General in accordance with—

- (a) **section 7A(2)** of the New Zealand Bill of Rights Act 1993, or
- (b) **section 92WA(2)** of the Human Rights Act 1993.

3 Notice of declaration of inconsistency

A notice that is presented by the Attorney-General, bringing a declaration of inconsistency to the attention of the House, is published under the authority of the House.

4 Referral of declaration of inconsistency to select committee

- (1) When the Attorney-General presents a notice, the declaration of inconsistency that the notice brings to the attention of the House stands referred to a select committee for consideration.
- (2) The declaration of inconsistency is allocated by the Clerk to the most appropriate select committee.

5 Select committee consideration of declaration of inconsistency

- (1) A select committee to which a declaration of inconsistency is referred considers the declaration and reports to the House.
- (2) In its report on the declaration of inconsistency, the committee may—
 - (a) make any recommendations to address the declaration; and
 - (b) include any other recommendations as the committee sees fit.

6 Time for report on declaration of inconsistency

- (1) The select committee considering a declaration of inconsistency must finally report to the House on it before the time for report set out in **paragraph (2)**.
- (2) The time for report is four months after the date on which the Attorney-General presented the notice relating to the declaration of inconsistency, unless the Business Committee determines a different time for report.

7 Select committee report on declaration of inconsistency

- (1) A select committee report on a declaration of inconsistency is set down as a members' order of the day under Standing Order 254(4), but is taken together with the debate on the declaration of inconsistency that is held under rule 10.
- (2) **Paragraph (1)** applies despite Standing Orders 72 and 74(4).
- (3) Standing Order 256(2) applies to a committee's report on a declaration of inconsistency (no Government response is required under that Standing Order).

8 Variation of deadline for Government's response to a declaration of inconsistency

The Business Committee may, for any reason, vary the usual six month deadline for the Government's response to a declaration of inconsistency by determining a different deadline (*see* **section 7B(2)(b)** of the New Zealand Bill of Rights Act 1990 or **section 92WB(2)(b)** of the Human Rights Act 1993, as applicable).

9 Government's response to a declaration of inconsistency

- (1) The Government's response to a declaration of inconsistency is published under the authority of the House.
- (2) When the Government's response to a declaration of inconsistency is presented, a debate on that declaration of inconsistency is set down as a Government order of the day under **rule 10**.

10 Debate on declaration of inconsistency

- (1) The debate on a declaration of inconsistency is the debate on—
 - (a) the declaration of inconsistency itself, and
 - (b) the select committee's report on the declaration of inconsistency, and

-
- (c) the Government's response to the declaration of inconsistency.
 - (2) During the debate on a declaration of inconsistency,—
 - (a) a Minister moves a motion to take note of the declaration, and
 - (b) during their speeches, members may ask questions to the Minister, and the Minister may reply, in the same manner as comments and questions on a ministerial statement.
 - (3) The debate on a declaration of inconsistency must be held no more than six sitting days after the date on which the Government's response to the declaration of inconsistency is presented, unless the Business Committee determines otherwise.
 - (4) Standing Order 74(1)(a) and (b) and (2) does not apply to the order of the day for the debate on a declaration of inconsistency.

Appendix 2

Committee process

The New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill was referred to the Privileges Committee of the 52nd Parliament on 27 May 2020. It was reinstated on 26 November 2020 in the 53rd Parliament.

The closing date for submissions on the bill was 11 August 2020. The committee received and considered 43 submissions from interested groups and individuals. We heard oral evidence from 10 submitters at hearings in Wellington.

We appointed Professor Janet McLean QC as our independent specialist adviser. We received advice on the bill from the Ministry of Justice, Professor McLean QC, and the Office of the Clerk. The Parliamentary Counsel Office assisted with legal drafting.

We consulted the Standing Orders Committee on the parliamentary process and possible rules for considering declarations of inconsistency.

The Question of privilege on declarations of inconsistency with the NZ Bill of Rights Act 1990 was referred to the Privileges Committee of the 52nd Parliament by the Speaker on 27 February 2018. It was reinstated on 26 November 2020 in the 53rd Parliament.

We did not call for evidence or appoint advisers for the question of privilege.

Committee membership

Hon David Parker (Chairperson)

Chris Bishop (until 31 August 2021)

Matt Doocey

Golriz Ghahraman

Hon Chris Hipkins

David Seymour

Dr Duncan Webb

Hon Poto Williams

Hon Michael Woodhouse (from 31 August 2021)

**New Zealand Bill of Rights
(Declarations of Inconsistency) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kris Faafoi

New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill

Government Bill

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Required actions after declarations of inconsistency

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<u>92WB</u>	<u>Responsible Minister to report to Parliament</u> <u>Government's response to declaration</u>	<u>4</u>

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act **2020**.
- 2 Commencement** 5
This Act comes into force on the day after the date of Royal assent.

Part 1

Amendment to New Zealand Bill of Rights Act 1990

- 3 Amendment to New Zealand Bill of Rights Act 1990**
This Part amends the New Zealand Bill of Rights Act 1990. 10
- 4 New sections 7A and 7B and cross-heading inserted (~~Attorney-General to report to Parliament declaration of inconsistency~~)**
After section 7, insert:

<i>Required actions after declarations of inconsistency</i>	
7A Attorney-General to report to <u>notify</u> Parliament of declaration of inconsistency	15
(1) This section applies if a declaration made by a senior court that an enactment is inconsistent with this Bill of Rights (and not made under section 92J of the Human Rights Act 1993) becomes final because—	
(a) no appeals, or applications for leave to appeal, against the making of the declaration are lodged in the period for lodging them; or	20
(b) all lodged appeals, or applications for leave to appeal, against the making of the declaration are withdrawn or dismissed.	
(2) The Attorney-General must present to the House of Representatives, not later than the sixth sitting day of the House of Representatives after the declaration becomes final, a report <u>notice</u> bringing the declaration to the attention of the House of Representatives.	25
7B <u>Responsible Minister to report to Parliament Government's response to declaration</u>	
(1) If a notice is presented under section 7A of a declaration that an enactment is inconsistent, the Minister responsible for the administration of the enactment <u>must present to the House of Representatives, before the deadline, a report advising of the Government's response to the declaration.</u>	30
(2) <u>The deadline is the end of 6 months starting on the date on which the notice is presented, or any earlier or later time—</u>	35

- (a) specified by a resolution of the House of Representatives; or
- (b) otherwise determined by or on behalf of the House of Representatives, in accordance with its rules and practice.

Part 2 Amendments to Human Rights Act 1993

5

5 Amendments to Human Rights Act 1993

This Part amends the Human Rights Act 1993.

6 Section 92K amended (Effect of declaration)

- (1) Before section 92K(1), insert:

Effect on enactment, or act, omission, policy, or activity, concerned

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- (2) Replace section 92K(2) and (3) with:

Attorney-General to report to Parliament declaration of inconsistency

- (2) **Subsection (3)** applies if a declaration made under section 92J (by the Tribunal, or by a senior court on an appeal against a decision of the Tribunal) becomes final because—

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- (a) no appeals, or applications for leave to appeal, against the making of the declaration are lodged in the period for lodging them; or
- (b) all lodged appeals, or applications for leave to appeal, against the making of the declaration are withdrawn or dismissed.

- (3) The Attorney-General must present to the House of Representatives, not later than the sixth sitting day of the House of Representatives after the declaration becomes final, a report bringing the declaration to the attention of the House of Representatives.

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Required actions after declarations of inconsistency

- (2) **Sections 92WA and 92WB** provide for required actions after a declaration of inconsistency is made under section 92J (by the Tribunal, or by a senior court on an appeal against a decision of the Tribunal).

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7 New sections 92WA and 92WB and cross-heading inserted

After section 92W, insert:

Required actions after declarations of inconsistency

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92WA Attorney-General to notify Parliament of declaration of inconsistency

- (1) This section applies if a declaration made under section 92J (by the Tribunal, or by a senior court on an appeal against a decision of the Tribunal) becomes final because—

- (a) no appeals, or applications for leave to appeal, against the making of the declaration are lodged in the period for lodging them; or
- (b) all lodged appeals, or applications for leave to appeal, against the making of the declaration are withdrawn or dismissed.
- (2) The Attorney-General must present to the House of Representatives, not later than the sixth sitting day of the House of Representatives after the declaration becomes final, a notice bringing the declaration to the attention of the House of Representatives. 5
- 92WB Responsible Minister to report to Parliament**
- Government's response to declaration** 10
- (1) If a notice is presented under **section 92WA** of a declaration that an enactment is inconsistent, the Minister responsible for the administration of the enactment must present to the House of Representatives, before the deadline, a report advising of the Government's response to the declaration.
- (2) The deadline is the end of 6 months starting on the date on which the notice is presented, or any earlier or later time— 15
- (a) specified by a resolution of the House of Representatives; or
- (b) otherwise determined by or on behalf of the House of Representatives, in accordance with its rules and practice.

Legislative history

18 March 2020
27 May 2020

Introduction (Bill 230–1)
First reading and referral to Privileges Committee