



New Zealand House of Representatives
Te Whare Māngai o Aotearoa

Regulations Review Committee

Komiti Arotake Waeture

54th Parliament

May 2024

Activities of the Regulations Review Committee in 2023

Presented to the House of Representatives
by Hon David Parker, Chairperson

Contents

Recommendation.....	4
Purpose	4
Functions of the committee	4
Scrutiny of secondary legislation	5
Our scrutiny process.....	5
Unclear commencement date	5
Non-publication of secondary legislation.....	6
Failure to present secondary legislation to the House.....	6
Matters requiring elucidation.....	7
Examination of orders made under the COVID-19 Public Health Response Act 2020.....	8
Background	8
Our reports to the House about COVID-19 orders	8
Powers to make secondary legislation in bills	10
Scrutiny in 2023.....	10
Areas of concern	11
Broad, open-ended powers to make secondary legislation	11
Broad powers to create exemptions	12
Lack of clarity about classification of secondary legislation.....	13
Complaints.....	15
Complaint about a Specialist Optometrist Scope of Practice and associated Prescribed Qualification made under the Health Practitioners Competence Assurance Act 2003	16
Complaint about the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008	16
Complaint about the E-Scooters (Declaration not to be motor vehicles) Notice 2018	17
Complaint about the Consumer Information Standards (Origin of Food) Regulations 2021	18
Complaint about the Health Act (COVID-19 Alert Level 3) Order 2020	19
Complaint about Health and Safety at Work (Hazardous Substances) Regulations 2017	20
Complaint about the Animal Welfare (Care and Procedures) Regulations 2018	21
Inquiries and briefings.....	23
Inquiry into bylaws	23

Inquiry into COVID-19 Secondary Legislation.....	24
Briefing on best practice for publication of secondary legislation	25
Briefing on Animal Welfare Secondary Legislation	26
Briefing about orders made under section 70 of the Health Act 1956	27
Briefing to follow up on the complaint about the Education (Early Childhood Services) Amendment Regulations 2019	28
Briefing on Government responses to committee recommendations	28
Briefing on the Access to Subordinate Instruments Project (ASIP)	28
Briefing on regulations made under the Russia Sanctions Act 2022	28
Briefing on Standards Issued under the Financial Reporting Act 2013.....	29
Draft secondary legislation	30
Severe Weather Emergency Recovery Legislation Act 2023	30
Secondary Legislation Confirmation Bill (No 2)	31
Appendix A—Committee process.....	32
Appendix B—Standing Order 327(2).....	33

Activities of the Regulations Review Committee in 2023

Recommendation

The Regulations Review Committee recommends that the House take note of its report.

Purpose

By convention, the Regulations Review Committee produces a report on the activities that it has not reported on separately to the House of Representatives. This report covers the work of the Regulations Review Committees of the 53rd and 54th Parliaments from January 2023 to December 2023.

Functions of the committee

Standing Order 326 sets out the powers and functions of the Regulations Review Committee. It allows us to bring specified matters to the special attention of the House. In particular, we:

- scrutinise secondary legislation
- consider and report on draft regulations referred by Ministers
- examine proposed regulation-making powers in bills
- investigate complaints about the operation of regulations in accordance with the criteria set out in Standing Order 327(2)
- conduct inquiries and briefings about matters related to regulations.

We met 23 times between 15 February and 20 December 2023, and presented 18 reports during that period.

Scrutiny of secondary legislation

Standing Order 326(1) empowers us to examine all secondary legislation. When we examine secondary legislation, we consider whether it should be drawn to the special attention of the House on any of the grounds set out in Standing Order 327(2).¹

Our scrutiny process

Every quarter, we examine new secondary legislation made during that period under the following categories:

- secondary legislation drafted by the Parliamentary Counsel Office (PCO)
- secondary legislation not drafted by PCO.

In 2023, the committee scrutinised 686 instruments. We wrote 92 letters about issues with secondary legislation to Ministers, departments, agencies, and organisations. After receiving their responses, we decided whether issues needed to be followed up.

This section of our report does not include scrutiny of orders made in relation to COVID-19 orders. We discuss those orders separately in this report under the heading “Examination of orders made under the COVID-19 Public Health Response Act 2020”.

Our report expands on common issues encountered in our scrutiny. It is not an exhaustive discussion of all matters we considered during this period.

Unclear commencement date

During our quarterly scrutiny of secondary legislation, we sometimes come across secondary legislation that lacks a clear commencement date. The commencement of these instruments is often contingent on factors such as notification in the *Gazette* or the making of an Order in Council.

In our view, commencement provisions without set dates create uncertainty for the public about when the secondary legislation will come into force. We acknowledge that there are sometimes legitimate reasons not to use a fixed commencement date in secondary legislation.

When we come across an instrument that would commence by being notified in the *Gazette* or by Order in Council, we write to the maker of the instrument raising concerns about the commencement method. Typically, the maker will reply either giving their reasons for the commencement method specified in the instrument or agreeing to provide a fixed commencement date in future instruments. In 2023, the committee identified 70 pieces of secondary legislation with uncertainties related to the commencement date.

Below, we provide an example of this issue identified in secondary legislation.

Product Safety Standards (Multipurpose Ladders) Regulations 2023

The Product Safety Standards (Multipurpose Ladders) Regulations 2023 (the regulations), made on 13 March 2023 under section 29 of the Fair Trading Act 1986, replaced the Unsafe Goods (Multipurpose Ladders) Notice 2021, which expired on 5 April 2023. The regulations

¹ For a list of scrutiny grounds under Standing Order 327(2) see Appendix B.

adopt a new product safety standard for multipurpose ladders. The effect of the regulations is that a person must not supply, offer to supply, or advertise to supply multipurpose ladders unless the standard is complied with.

The new regulations only came into force on 13 April 2023, leaving a gap of eight days when there were no product safety standards that regulated the supply of multipurpose ladders.

When asked by the committee, the Minister of Commerce and Consumer Affairs stated that the gap arose mainly because of delays in approving the final regulations. He said that consideration was given to waiving the 28-day period that normally applies between making the regulations and their commencement. However, the risk that a trader would take advantage of the gap was considered low enough that the 28-day rule was retained.

Non-publication of secondary legislation

The Legislation Act 2019 provides for the publication requirements that apply to secondary legislation. Publishing secondary legislation is an important way to make laws publicly accessible. We also consider that it is important that revoked or replaced legislation is accessible.

When we discover secondary legislation that has not been properly published, we write to the maker of the instruments requesting that the instrument be published as soon as possible and asking for an explanation for the lack of publication.

In 2023, the committee identified 47 pieces of secondary legislation with publication issues. In most cases the makers responded by publishing the instruments on their websites. The following is an example.

Ministerial exemptions under section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

Section 157 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 provides the ability for the Minister to grant exemptions from the requirements of all or any of the provisions of the Act. Subsection (4) states that an exemption under this section is secondary legislation and is therefore subject to publication requirements set out by the Legislation Act.

During quarterly scrutiny of secondary legislation, it came to the committee's attention that none of the ministerial exemptions that were made in 2023 had been published on the Ministry of Justice website. The committee wrote to the Minister of Justice to recommend that any ministerial exemptions granted be published on the Ministry's website as soon as possible. The Minister accepted the committee's recommendation and indicated that the website had been updated following the committee's letter.

Failure to present secondary legislation to the House

Section 114 of the Legislation Act 2019 requires that all secondary legislation be presented to the House. The Regulations Review Committee of the 53rd Parliament resolved that instruments must be presented to the House within 16 sitting days of being created. Specific provisions of other Acts may have different time frames in which secondary legislation must be presented to the House.

Presentation brings secondary legislation to the House of Representatives' attention and can act as a safeguard. In 2023, the committee wrote to makers of secondary legislation about 37 instruments that had not been presented or had been presented late; of these, 35 were not drafted by the Parliamentary Counsel Office.

Matters requiring elucidation

Legislation should be accessible for those affected by it. If legislation is unclear about the obligations it imposes, it can create confusion and inconsistency. It can also cause constitutional concern about the lack of clarity regarding people's rights and obligations.

In 2023 we identified 14 instruments with matters requiring clarification. Examples of these matters include:

- duplication of clauses with the same effect
- incorrect reference to existing legislation
- incorrect definition of terms and expressions
- incorrect structure of provision.

Examination of orders made under the COVID-19 Public Health Response Act 2020

Background

Under a sessional order of the 53rd Parliament, the Regulations Review Committee was required to examine each COVID-19 order made under section 11 of the COVID-19 Public Health Response Act 2020 (the Act).² Section 16 of the Act provides for COVID-19 orders to be automatically revoked after 60 days or 10 sitting days, whichever is longer, unless the order is first approved by the House of Representatives.

Sections 9 and 11 of the Act give the Minister for COVID-19 Response broad powers to make orders. These orders may require people to do or not do things for the purpose of limiting the outbreak or spread of COVID-19. Among other things, orders made under these sections may be used to impose isolation, quarantine, and physical distancing requirements. They may also require premises to be closed and restrict entry into New Zealand ports.

Sections 11AA and 11AB of the Act authorised the Minister for Workplace Relations and Safety to make orders relating to specified work. This included, among other things, orders specifying work that may not be carried out by an affected worker unless they are vaccinated. It also required affected workers who carry out specified work to report for, and undergo, medical examination and testing for COVID-19.

Our reports to the House about COVID-19 orders

In 2023, with the easing of the COVID-19 pandemic in New Zealand and worldwide, the number of COVID-19 orders reduced greatly. Consequently, the number of COVID-19 orders examined by the Regulations Review Committee dropped substantially, to 3 in 2023, from 65 in 2022. The number of reports presented also reduced, from 27 in 2022 to 4 in 2023 (including one interim report).

Two of the three orders examined were revocation orders, which revoked prior COVID-19 orders no longer needed as the effects of the pandemic were starting to ease.

Below, we provide a short summary of the concerns identified in the third COVID-19 order. A more detailed analysis of each issue can be found in the previous committee's report to the House.

COVID-19 Public Health Response (Self-isolation Requirements) Amendment Order (No 2) 2022 (SL 2022/339)

This order, made on 15 December 2022, aimed to limit the spread of COVID-19 by establishing movement restrictions and self-isolation requirements for people who have COVID-19. In its interim report presented in February 2023, the previous committee expressed concern about a provision regarding the approved means of transport for people who had tested positive for COVID-19. It was particularly concerned about the inclusion of a provision stating that a person who had tested positive could travel "by private transport, by

² Sessional Orders of the 53rd Parliament; see section 5(1) of the COVID-19 Public Health Response Act 2020.

walking alone, or by any other means of transport” (clause 13(4)(a)(iii) of the order being amended). The committee considered that the order required elucidation, as the use of the terminal phrase “by any other means of transport” would seem to indicate that any form of transport was, ultimately, acceptable; therefore, the list of other approved methods of transport (private transport or walking alone) appeared redundant.

The committee wrote to the previous Minister of Health three times on this issue, as well as raising the matter in a hearing with the relevant ministry officials. The committee asked whether the methods of travel in clause 13(4) were intended to be ranked. If so, it recommended that this should be made explicit in the order. The committee noted that, if no ranking was intended, then clause 13(4) should be replaced with wording that made it clear that any method of travel was acceptable.

In response, the Minister told the committee that the order was intended to reflect the individual circumstances of each COVID-19 case and that “any other means of transport” was only meant to be an option when the other listed means were unavailable. The Minister said the order was meant to be read with the secondary legislation that it amended, which, according to the Minister, stated that other means of transport should only be used when it was not practicable to walk or take private transport. The Minister told the committee that she was satisfied that the order did not need to be revised. The committee considered that the Minister had still not adequately addressed its concerns; however, the committee decided not to take the matter further as, at that time, the COVID-19 regulations regime was being gradually wound down.

Powers to make secondary legislation in bills

Scrutinising powers to make secondary legislation (also referred to as regulation-making powers or empowering provisions) is an important function of the Regulations Review Committee. We examine regulation-making powers in bills while they are being examined by select committees to consider whether the proposed delegation of Parliament's law-making power is appropriate and clearly defined. Our consideration of regulation-making powers in bills is informed by such things as the Standing Orders and the principles of good legislative design.³ Examples of things we consider when examining regulation-making powers include:

- whether the focus of the regulation-making power would be better placed in primary legislation
- whether Henry VIII powers have been used appropriately⁴
- ensuring that the bill establishes appropriate safeguards for proposed regulation-making powers including parliamentary scrutiny, consultation requirements, and publication requirements.

Scrutiny in 2023

When we identify an issue in proposed primary legislation that would create powers to make secondary legislation, we write to the appropriate subject select committee. Subject select committees also write to us for advice on such issues. In 2023, we wrote to other committees 23 times raising concerns about regulation-making powers in bills they were considering.

We provided advice to the relevant subject select committees on the following bills between January and December 2023:

- Severe Weather Emergency Recovery Legislation Bill
- Fuel Industry (Improving Fuel Resilience) Amendment Bill
- Fuel Industry Amendment Bill
- Natural and Built Environment Bill
- Spatial Planning Bill
- Water Services Legislation Bill
- Water Services Economic Efficiency and Consumer Protection Bill
- Therapeutic Products Bill
- Corrections Amendment Bill
- Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Bill
- Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill
- Emergency Management Bill
- Grocery Industry Competition Bill
- Sustainable Biofuel Obligation Bill
- Resale Right for Visual Artists Bill

³ [Legislation Design and Advisory Committee, Legislation Guidelines: 2021 edition.](#)

⁴ A Henry VIII power is a piece of secondary legislation that can be used to override primary legislation.

- Child Support (Pass On) Acts Amendment Bill
- Integrity Sport and Recreation Bill
- Education and Training Amendment Bill (No 3)
- Taxation Principles Reporting Bill
- Māori Fisheries Amendment Bill
- Whakatōhea Claims Settlement Bill
- Land Transport Management (Regulation of Public Transport) Amendment Bill
- Residential Property Managers Bill
- Hauraki Gulf / Tīkapa Moana Marine Protection Bill.

Areas of concern

Some areas of concern we found in our scrutiny of regulation-making powers in bills in 2023 were:

- broad, open-ended powers to make secondary legislation
- broad powers to create exemptions
- lack of clarity about the classification of secondary legislation.

We discuss examples of each issue in this report, but we do not provide an exhaustive discussion of all the issues we encountered.

Broad, open-ended powers to make secondary legislation

Provisions conferring regulation-making powers should be clear and certain about the powers they are creating. This is to ensure that the secondary legislation is enacted as Parliament intended and does not create broad, open-ended powers or uncertainty.

During the reporting period, we wrote to other committees about our concerns with the way regulation-making powers were drafted in four of the bills we examined. We discuss an example from the reporting period below.

Resale Right for Visual Artists Bill

The bill's purpose was to establish an Artist Resale Royalty (ARR) scheme in New Zealand. This scheme would give a mandatory resale right to eligible visual artists. Eligible visual artists (or their successors) would be entitled to receive a royalty payment each time their qualifying artwork was sold on the secondary art market. The royalty payments would be collected and distributed by a non-governmental collection agency.

Clause 19 of the bill as introduced would have allowed a right holder to decline to receive a payment of all or part of a resale royalty. Despite this, the collection agency would still have to collect the resale royalty. If a royalty was declined, clause 19(2) would require the collection agency to manage the royalty "in the manner specified by the regulations".

As introduced, the bill provided no set parameters or specifications about what the funding could be used for or what could be included in these regulations. The previous Regulations Review Committee expressed concern to the Social Services and Community Committee about the broad power that this clause would give to the executive.

In its report to the House, the Social Services and Community Committee of the 53rd Parliament shared the committee's concern and recommended amendments to specify some parameters for the use of declined or unclaimed resale royalty. The amendments would require the collection agency to either:

- transfer the amount to the cultural fund⁵
- return the amount to the person who paid the resale royalty
- or use the amount to fund its activities related to the ARR scheme (if the person who paid the resale royalty cannot be found).

The Resale Right for Visual Artists Bill was enacted with these amendments.

Broad powers to create exemptions

Secondary legislation can be used to create exemptions from set requirements or fees for specified individuals or groups. The committee's general approach to the use of regulations to grant exemptions has been to follow safeguards recommended by the Legislation Design and Advisory Committee. These can be summarised as follows:

- The empowering Act should set out clear criteria for the granting of exemptions including, at least, a requirement that granting the exemption be consistent with the objectives of the empowering Act and, ideally, further guidance.
- When an exemption is granted, there should be a requirement to give reasons and to state them in the exemption instrument itself.
- Judicial review of the exercise of an exemption power should not be unreasonably restricted as it is an important safeguard.
- Empowering provisions should state that exemption instruments granted under them will expire within five years, and exemption instruments should contain sunset clauses to that effect.

In this reporting period we advised committees about eight bills where we considered that the power to create exemptions was too broad. We provide an example of this below.

Natural and Built Environment Bill

The bill was introduced on 15 November 2022. It proposed to provide a new framework for regulating both environmental planning and land-use planning. The purpose of the bill was to protect the health of the natural environment and to enable the use and development of the environment in a way that promotes the well-being of both present and future generations. The bill would provide a new resource management system, including a National Planning Framework (NPF), which would be created through secondary legislation.

Clause 858(1)(h) as introduced provided for regulations to be made to create exemptions from the requirements set out in clause 22, which restricted the discharge of contaminants. Clause 858(1)(h) did not require any consultation before an exemption could be made and

⁵ The cultural fund would be established and operated by the collection agency and would hold funds that could be used for the purpose of supporting the career sustainability of visual artists.

did not require the regulation to contain reasons for the exemption. There was also no framework around when an exemption would be appropriate.

Because the power in paragraph (h) was broad, the previous Regulations Review Committee recommended to the Environment Committee that it consider an amendment to provide safeguards. The Regulations Review Committee recommended including safeguards such as consultation, a requirement to provide reasons, and a framework for when an exemption may be appropriate.

The Environment Committee agreed and recommended:

- amending new subclause (1) to make it clear that regulations could only be made on the Minister's recommendation
- inserting new subclause (3A) to prevent regulations affecting the Environment Court from being made without prior consultation with the Chief Environment Court Judge
- inserting new subclause (4A) to require that the Minister be satisfied that affected persons had been consulted before recommending regulations under subclause (1)(h).

The Natural and Built Environment Bill was enacted with these amendments included.

Lack of clarity about classification of secondary legislation

The aim of the Secondary Legislation Act 2021 is to improve and support the law relating to the making of secondary legislation. Section 3 of the Act provides standard text to make secondary legislation more easily identifiable.⁶ This standard text is also included in bills containing powers to make secondary legislation. Inclusion of the standard text assists Parliament to scrutinise its delegated powers. Clarity of secondary legislation also ensures that the additional safeguards that apply to secondary legislation can be enforced.

Occasionally a regulation-making power contained in a bill is clearly legislative in effect but the standard text indicating that it is a power to make secondary legislation has not been included. This may be due to a drafting oversight or because the legislative effect of the power has not been identified.

In this reporting period, we advised committees about seven bills in which we considered there was a lack of clarity about the classification of secondary legislation. We provide an example below.

Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Bill

The bill proposed amending provisions of the Climate Change Response Act 2022 that relate to the Emissions Trading Scheme (ETS). The main amendments related to the industrial allocation of units and the penalty that would apply to small forestry participants if they failed to pay units by the due date.⁷

⁶ Section 3 of the Secondary Legislation Act 2021.

⁷ A unit represents one metric tonne of carbon dioxide equivalent. Mandatory participants in the New Zealand Emissions Trading Scheme must surrender one unit for each tonne of emissions they are responsible for. Industrial allocation refers to the provision of free emission units to businesses that undertake emissions-intensive and trade-exposed activities.

New section 161FA(6) provided for a new regulation-making power to prescribe modelling assumptions for the purpose of the market model. This new section did not expressly identify that regulations created under subsection 161FA(6) would be secondary legislation.

The Legislation Act 2019 requires any regulation-making powers that create secondary legislation to be clearly identified. The previous Regulations Review Committee wrote to the Environment Committee to recommend adding the following subsection into the regulation-making power:

“[Regulations] made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).”

The Environment Committee agreed and recommended that the bill be amended to include the above provision. The bill was enacted with the recommended amendment.

Complaints

Under Standing Order 328, any person or organisation may make a complaint to us about secondary legislation. The complaints process provides an important opportunity for people affected by the operation of specific regulations to raise their concerns with Parliament.

We assess complaints that we receive and decide whether to accept and investigate them. A decision to not investigate a complaint must be unanimous.

In our initial assessment, we determine whether a complaint meets the threshold for us to investigate. To meet the threshold, the person or organisation must do all of the following in their complaint:

- make their complaint in writing
- clearly indicate that it is a complaint
- describe the secondary legislation that they are complaining about
- either refer to, or make obvious, a ground in Standing Order 327(2) (see below) on which the complaint may be drawn to the attention of the House
- describe a rational link between the reasons for the complaint and the relevant Standing Order ground or grounds.

Our consideration of complaints is focused on the secondary legislation's compliance with the grounds stated in Standing Order 327(2).⁸ We refer to these grounds in the summary of complaints investigated below.

When we agree to investigate a complaint, we give the complainant and the agency responsible for making the regulation the opportunity to present written evidence. We may also schedule a hearing with the complainant. As relevant, we may consult other relevant agencies and invite them to provide information or evidence.

In 2023, we received two new complaints. We presented final reports to the House on six complaints and an interim report on one complaint.⁹ As of 31 December 2023, we were considering the following complaints:

- Complaint about the E-Scooters (Declaration not to be motor vehicle) Notice 2018
- Complaint about the Resource Management (National Environmental Standards for Freshwater) Regulations 2020
- Complaint about the Arms Amendment Regulations 2022
- Complaint about the Building Regulations 1992 (the Building Code)
- Complaint about the Climate Change (Forestry) Regulations 2023.

Below we provide a summary of the complaints on which we reported to the House in 2023.¹⁰

⁸ For a list of scrutiny grounds under Standing Order 327(2) see Appendix B.

⁹ This includes complaints that were received before 2023 but were concluded this year.

¹⁰ A more detailed report is available on each complaint on the [Parliament website](#).

Complaint about a Specialist Optometrist Scope of Practice and associated Prescribed Qualification made under the Health Practitioners Competence Assurance Act 2003

In July 2022, the committee of the 53rd Parliament received a complaint from the Royal Australian and New Zealand College of Ophthalmologists (RANZCO) about a Scope of Practice and an associated Prescribed Qualification created by the Optometrists and Dispensing Opticians Board (ODOB).

In May 2022, ODOB had approved a proposal to allow optometrists to perform minor laser eye surgery. The Scope of Practice and Prescribed Qualification subject to this complaint established the requirements under which optometrists would be allowed to perform the surgery.

RANZCO, the complainant, raised several concerns about the Prescribed Qualification and the Scope of Practice, maintaining that they constituted an unusual or unexpected use of power. It stated that patient safety would be compromised by allowing optometrists to perform the surgery. It suggested that the level of qualification required of optometrists was too low to provide a full understanding “as to the pros and cons of laser surgery as well as the full range of complications”.

RANZCO also maintained that optometrists would not be able to consider other treatment options impartially, because they would lack the knowledge of the full scope of procedures available to the patient. The complainant also raised SO327(2)(h), alleging a lack of consultation from ODOB and a lack of engagement with RANZCO’s submission opposing the proposal.

After receiving evidence from ODOB, the committee concluded that the instrument under consideration did not meet the threshold for being brought to the special attention of the House. In its report presented to the House on 10 May 2023, it stated that the expanded scope of practice did not constitute an unusual or unexpected use of powers. Although it was satisfied that consultation undertaken by ODOB met the statutory requirements, it recommended to ODOB that it consult more substantively with RANZCO on any future changes to optometrists’ scopes of practice that would affect ophthalmologists.¹¹

Complaint about the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008

In February 2019, the committee of the 52nd Parliament received a complaint from Vivienne Holm, a lawyer, about the Lawyers and Conveyancers (Lawyers: Practice Rules) Regulations 2008. The regulations required that the New Zealand Law Society establish and maintain a register of lawyers, with each lawyer’s contact details, including a work address and telephone number. The regulations stated that the register should be available online for inspection by the public.

¹¹ Complaint about a Specialist Optometrist Scope of Practice and associated Prescribed Qualification made under the Health Practitioners Competence Assurance Act 2003, Final report of the Regulations Review Committee, May 2023.

The complainant raised concerns that the regulations unduly trespassed on the rights and liberties of registered lawyers, on the ground stated in Standing Order 327(2)(b). She was concerned about publicly available information being used to compromise lawyers' personal safety. She cited her personal situation, explaining that her work addresses had been used to stalk and harass her.

The committee of the 52nd Parliament received evidence from the complainant. It also received evidence from the New Zealand Law Society and the Ministry of Justice, which supported a review of the regulations to address the matters raised by the complainant.

The committee of the 52nd Parliament agreed that the regulations were inconsistent with Standing Order 327(2)(b). Despite committing to amending the regulations in 2019, the Ministry of Justice did not amend the regulations until December 2022. In the meantime, the committee wrote several letters to the Ministry of Justice expressing its dissatisfaction with the delays in the process. The regulations came into force on 1 March 2023.

A new regulation now allows the New Zealand Law Society to prevent or restrict public access to information about a lawyer on the register of lawyers if it is likely to result in physical or mental harm to the lawyer or their relatives.¹²

Complaint about the E-Scooters (Declaration not to be motor vehicles) Notice 2018

In early 2019, the committee of the 52nd Parliament received three complaints about the E-Scooters (Declaration not to be motor vehicles) Notice 2018 from Barry Preddle, Jane Carrigan, and the Dunedin Pedestrian Action Network. The committee considered the complaints together.

The notice was made under section 168A(2) of the Land Transport Act 1998 on 18 September 2018. It declares that an electric scooter (e-scooter) is not a motor vehicle if it meets certain criteria. Most e-scooters meet these criteria.¹³ Declaring e-scooters not to be motor vehicles means that they do not have to be registered and licensed and that their operation is subject to a lower level of regulation.¹⁴

The complainants' main concerns were that:

- the process involved in declaring e-scooters to not be motor vehicles was rushed
- Waka Kotahi—New Zealand Transport Agency did not undertake the careful evaluation envisaged by the Act before it made the e-scooters notice
- the e-scooters notice posed a series of safety concerns, and thus was contrary to the purposes of the Act, which include promoting safe behaviour by road users and vehicle safety.

¹² Complaint about the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008, Final report of the Regulations Review Committee, May 2023.

¹³ These criteria are: two or three wheels not exceeding 355mm in diameter; one or more electric auxiliary propulsion motors; a combined maximum power not exceeding 300 watts.

¹⁴ Land Transport (Road User) Rules 2004.

The committee decided to investigate the complaint under Standing Order 327(2)(a), that the notice was not in accordance with the general objects and intentions of the enactment under which it was made.

Clause 11.1 of the Land Transport (Road User) Rules 2004 states that the driver of a wheeled recreational device, such as an e-scooter, must not operate that device on a footpath at a speed that constitutes a hazard to other footpath users. It is not specific as to the speed limit of e-scooters. The committee considered this inconsistent with the safety purposes of the Land Transport Act, noted above.

The committee heard from the Ministry of Transport on the *Accessible Streets* package, a regulatory package aimed at improving the accessibility and safety of footpaths for all users. This package would change rules under the Land Transport Act to manage the risks associated with new and emerging technologies that may operate on a footpath, including e-scooters.

In its first interim report presented in November 2021,¹⁵ the committee of the 53rd Parliament acknowledged that the COVID-19 pandemic had caused some delays to policy decisions on the *Accessible Streets* package. However, it noted its continuing concern about the time taken to make changes to the regulation of e-scooters and urged the Government to minimise any further delay. The committee also noted the view of the committee of the 52nd Parliament that regulating the use of e-scooters through the rules only was inconsistent with promoting safe road user behaviour and therefore may not be in accordance with the general objects and intentions of the empowering Act. The committee noted that its predecessor had encouraged the Minister to promote a regulatory system that was clearer and more easily enforceable.

In its second interim report, presented in May 2023,¹⁶ the committee indicated that it had written to the Minister of Transport several times since its first report and was concerned and disappointed about the time taken for decisions to be made on the *Accessible Streets* package. The committee recommended that the Government swiftly progress changes to the empowering provision, section 168A of the Land Transport Act.

The complaint remains under investigation by this committee.

Complaint about the Consumer Information Standards (Origin of Food) Regulations 2021

In September 2022, the committee of the 53rd Parliament received a complaint from New Zealand Pork, the statutory industry body representing New Zealand pig farmers, about the Consumer Information Standards (Origin of Food) Regulations 2021.

These regulations are consumer information standards made under section 27 of the Fair Trading Act 1986 (FTA). This section states that consumer information standards may

¹⁵ Complaint about the E-Scooters (Declaration not to be motor vehicles) Notice 2018, Interim report of the Regulations Review Committee, November 2021.

¹⁶ Complaint about the E-Scooters (Declaration not to be motor vehicles) Notice 2018, Second interim report of the Regulations Review Committee, June 2023.

require a manufacturer to disclose certain information about goods they manufacture, including the origin of the goods, and the form and way that information must be disclosed.

The complainant considered that the regulations did not provide consumers with accurate and reliable information about pork products. Specifically, it alleged that several regulations resulted in consumers being misled regarding the origin of certain pork meat products. It argued that regulation 8 meant that the origin of the meat in many pork products did not have to be identified on packaging or advertising. It was also concerned about regulation 10, which allows manufacturers to advertise that a product manufactured in New Zealand from meat produced overseas is “Made in New Zealand”, while indicating on the back in fine print the origin of the meat ingredient. Finally, the complainant alleged that regulations 14 and 15 did not help to provide useful information to consumers, as those regulations allowed manufacturers to provide lists of potential countries of origin on labels, rather than specifying one country of origin.

The previous committee did not agree with the complainant’s claim regarding regulations 8, 14, and 15. However, the committee agreed with the complainant regarding regulation 10 and the misleading nature of labelling products manufactured from meat originating overseas as “Made in New Zealand”. The committee considered that regulation 10 was indeed not aligned with the purposes of the FTA, as it was insufficiently rigorous and allowed for confusing practices.

The committee recommended that the Government consider amending regulation 10 to prevent potential misrepresentation of a product’s country of origin.¹⁷

In its response to the committee’s recommendation,¹⁸ the Government acknowledged the committee’s concern. It said it would work with the Commerce Commission, which is responsible for investigating breaches of the FTA, to address labelling practices that may confuse consumers.

Complaint about the Health Act (COVID-19 Alert Level 3) Order 2020

On 4 May 2020, the committee of the 52nd Parliament received a complaint from Dr Andrew Borrowdale about the Health Act (COVID-19 Alert Level 3) Order 2020. The committee resolved to investigate the complaint under the grounds of Standing Order 327(2)(a), (c), and (h).

The complainant requested that his complaint be put on hold while he pursued judicial review proceedings through the courts. The committee of the 53rd Parliament readopted this complaint and wrote to the complainant asking him whether, given the conclusion of his judicial review proceedings,¹⁹ he wished to continue with his complaint. Dr Borrowdale replied advising that he did not wish to proceed with his complaint. The committee

¹⁷ Complaint about the Consumer Information Standards (Origin of Food) Regulations 2021, Final report of the Regulations Review Committee, July 2023

¹⁸ The Government response is available on the [Parliament website](#).

¹⁹ The High Court upheld some aspects of Dr Borrowdale’s complaint but did not uphold others. A subsequent appeal by Dr Borrowdale was dismissed by the Court of Appeal.

acknowledged the complainant's role in ensuring that the response to the COVID-19 pandemic was legally sound and compliant with the rule of law.²⁰

Complaint about the Health and Safety at Work (Hazardous Substances) Regulations 2017

On 1 April 2020, the committee of the 52nd Parliament received a complaint from Dianne Stockdale and Alan Mountfort about the Health and Safety at Work (Hazardous Substances) Regulations 2017.

The regulations require compliance certificates to be issued for people, locations, plants, and equipment. They also provide for the regulation of compliance certifiers, including disciplinary arrangements and auditing requirements.²¹ WorkSafe, New Zealand's primary workplace health and safety regulator, is empowered by the regulations to authorise people to be compliance certifiers. The complainants are compliance certifiers authorised under the regulations.

The complainants raised issues with Part 6 of the regulations on the grounds of Standing Order 327(2)(a), (b), (c), and (d). The committee of the 53rd Parliament presented an interim report in September 2021, in which it concluded that the complaint did not relate to the grounds laid out in Standing Order 327(2)(a) and (b). It decided to investigate the complaint on the grounds of Standing Order 327(2)(c) and (d).²²

In relation to Standing Order 327(2)(c), the complainants were concerned that the ability for WorkSafe to appoint its own compliance certifiers (regulation 6.21) was incompatible with its role in regulating other certifiers. The committee found that WorkSafe had never employed its own compliance certifiers under this regulation. It also noted that there was limited evidence that the regulation was incompatible with WorkSafe's regulator role. The committee therefore decided not to bring this matter to the attention of the House.

Regarding Standing Order 327(2)(d), the complainants were concerned about the lack of a right to appeal a decision by WorkSafe to suspend a certifier during an investigation. The ability for WorkSafe to extend the suspension of a certifier while an investigation is ongoing gave further cause for concern to the complainants. The committee wrote to the Minister for Workplace Relations and Safety, who replied that a full review of the regulations was scheduled to begin in 2021.

Meanwhile, WorkSafe commissioned a barrister to conduct an independent review of its complaints process. Based on the recommendations of this review, WorkSafe has since adopted a new complaints process where a compliance certifier subject to an interim suspension can seek an internal independent review of that decision. The committee

²⁰ Complaint about the Health Act (COVID-19 Alert Level 3) Order 2020, Final report of the Regulations Review Committee, August 2023.

²¹ Health and Safety at Work (Hazardous Substances) Regulations 2017.

²² Complaint about Health and Safety at Work (Hazardous Substances) Regulations 2017, Interim report of the Regulations Review Committee, September 2021.

presented a final report about its consideration of the complaint and noted its satisfaction with the changes to these procedures.²³

Complaint about the Animal Welfare (Care and Procedures) Regulations 2018

In November 2021, the committee of the 53rd Parliament received a complaint from the Companion Animal Veterinarians Branch of the New Zealand Veterinary Association regarding the Animal Welfare (Care and Procedures) Regulations 2018. The complainant was concerned that the regulations did not allow vet nurses to perform sub-gingival scaling on companion animals.²⁴

The complainant believed the regulations did not meet the general objects and intentions of the Animal Welfare Act 1999²⁵ under Standing Order 327(2)(a) because they did not ensure that animal welfare was protected in light of current best practice. The complainant said that the failure to include sub-gingival scaling in the regulations increased veterinarians' workload. It considered that, combined with a shortage of vets in the industry, these regulations caused delays in treatment, which could lead to dental disease, pain, and discomfort for animals. The complainant stated that, prior to the making of the regulations, it was regular practice for sub-gingival scaling to be undertaken by vet nurses.

We heard from the Ministry for Primary Industries that the intent of the regulations was to ensure that procedures with the potential to cause significant pain or distress were carried out by an appropriate person. Sub-gingival procedures were explicitly included in the criteria for consideration of whether a procedure was a "significant surgical procedure" (section 16(b)(i) of the Act). Therefore, MPI considered that any regulation allowing non-veterinarians to carry out this procedure would need a strong justification.

MPI further stated that, when developing the regulations, it was aware that some veterinary nurses carried out the procedure under veterinary supervision. However, at the time, MPI could not develop a strong justification for including this practice because of issues with defining "veterinary supervision" and designing appropriate veterinary nurse qualifications.

The committee decided to uphold the complaint on the ground stated in Standing Order 327(2)(a), based on the following evidence of the complainant and other parties supporting them:

- There is no animal welfare issue regarding vet nurses undertaking this procedure under veterinarian supervision.
- It was regular practice for vet nurses to undertake this procedure before the regulations were made.
- Industry pressures mean that animals are not being treated because veterinarians do not have available time to perform these procedures themselves.

²³ Complaint about Health and Safety at Work (Hazardous Substances) Regulations 2017, Final report of the Regulations Review Committee, August 2023.

²⁴ Sub-gingival scaling is a procedure to remove plaque and tartar from teeth below the gum line. Contrary to scaling of the exposed tooth surface, scaling beneath the gum line can be painful, so it is usually carried out under general anaesthetic.

²⁵ The purpose of the Act can be found in Section 9 of the Animal Welfare Act 1999.

In the view of the committee, evidence from the complainants indicated that the regulations no longer upheld the objects and intentions of the empowering legislation, which were to do with the welfare of animals.

In August 2023, the committee heard from the Associate Minister of Agriculture that new regulations are being drafted. In its report to the House, the committee recommended to the Government that it issue new regulations in accordance with the suggestions of the complainant, and provide a timeline for their implementation.²⁶

²⁶ Complaint about the Animal Welfare (Care and Procedures) Regulations 2018, Final report of the Regulations Review Committee, September 2023.

Inquiries and briefings

Standing Order 326(4) empowers the Regulations Review Committee to consider any matters relating to secondary legislation. If, during our regular scrutiny work we come across any matters where we feel more in-depth or long-term scrutiny is required, we would open an inquiry into, or a briefing on, the matter.

Inquiry into bylaws

The Local Government Act 2002 (the Act) gives local authorities the power to make bylaws—a type of secondary legislation—that apply to their region or district. The Regulations Review Committee of the 53rd Parliament started an inquiry into bylaws in August 2022 after it was made aware of issues related to the development, accessibility, and enforcement of bylaws.

Local authorities may make bylaws to protect the public from nuisance, maintain public health and safety, and minimise the potential for offensive behaviour in public places. In making a bylaw, a local authority must follow a thorough process as set out in the Act. Before making bylaws, local authorities must meet the following requirements:

- determine that a bylaw is the most appropriate way of addressing a perceived problem
- determine that the proposed bylaw is an appropriate form of bylaw and is not inconsistent with the New Zealand Bill of Rights Act 1990
- consult on the proposed bylaw, usually using a special consultative procedure
- formally make the bylaw after that consultation (the governing body of a local authority cannot delegate its power to make a bylaw)
- publicly notify the bylaw to make it available for inspection.²⁷

The committee focused its inquiry on the enforcement of bylaws. Breaching bylaws, other than those relating to alcohol bans, is a criminal offence.²⁸ Regulations may also prescribe breaches of bylaws as infringement offences²⁹ on the recommendation of the Minister. However, this option is rarely used. The main reason is that designating a bylaw breach as an infringement offence is administratively difficult because it requires each specific bylaw breach to be listed in regulations.

The cost of enforcing some bylaws through ordinary criminal prosecution processes may be disproportionate to the nature of the offending and any harm caused. In other cases, breaches which cause significant harm may not be prosecuted. The committee thought there was a risk that bylaw breaches would be “ghost offences”—offences that are not being enforced. The committee recommended that the Government consider investigating why bylaw breaches are seldom designated as infringement offences.

The committee also considered that the Act’s requirement for a Minister to approve the use of an infringement regime for a bylaw breach does not fit with the principles of localism and

²⁷ Local Government Act 2002, sections 83, 155, 157, and schedule 7, clause 22.

²⁸ Local Government Act 2002, sections 239 and 239A.

²⁹ Infringement offences, also referred to as “on-the-spot fines”, are generally minor criminal offences relating to acts or omissions involving straightforward issues of fact. Infringement offences are not generally subject to court processes and instead are addressed by the issuance of an infringement notice, requiring the payment of an infringement fee.

subsidiarity. It stated that local authorities should not need to seek permission from central government to implement and enforce their own bylaws. During its inquiry, the committee examined easier options for bylaw offences to be designated as infringement offences. The committee considered that the amendment of the Act to designate bylaw breaches as infringement offences by type or class would lessen the administrative burden and assist local authorities. Such an amendment would clearly identify the required criteria for the type or class of offence to ensure that the elements of the proposed class of offence were suitable to be an infringement offence. The committee recommended that the Government consider this option.

The committee also considered an alternative approach in the event that the Government thought local authorities are not seeking designation of bylaw breaches as infringement offences because of administrative difficulty. The committee said that the responsible Minister could seek to simplify or streamline the process for a local authority to obtain designation. In its final report to the House, the committee recommended to the Government that it formally set out its expectations for how a Minister should consider an application for a bylaw breach to be designated as an infringement offence.³⁰

The Government's response was received in March 2024.³¹ It said that work is underway at the Department of Internal Affairs to investigate why bylaw breaches are seldom designated as infringement offences. The Government said it would receive further advice once this investigation is complete.

Inquiry into COVID-19 Secondary Legislation

Secondary legislation is used during periods of emergency to manage extraordinary circumstances. However, its use may adversely affect the rights and freedoms that people usually enjoy. It is important that there are safeguards to ensure that those rights are kept in balance with the other work that emergency laws need to do. During the legislative response to the COVID-19 pandemic, our work was one of these safeguards.

Since 2020, we have scrutinised all secondary legislation made in response to the outbreak of COVID-19 and have issued numerous reports recommending changes. Many of our recommendations were accepted by the Government and resulted in improvements to both the regulation-making powers in the COVID-19 Public Health Response Act 2020 (the Act) and the instruments made under that Act.

Following the Christchurch earthquakes, the Regulations Review Committee of the 51st Parliament reported on its scrutiny of secondary legislation and powers to make secondary legislation in response to emergency circumstances. In its final report in 2016, the committee made 11 recommendations to the Government about emergency legislation.

The committee of the 53rd Parliament initiated this inquiry to review whether the Regulations Review Committee's 2016 recommendations had been followed, as far as they are relevant to the COVID-19 pandemic, and to consider whether any of the recommendations needed to be updated.

³⁰ [Inquiry into bylaws](#), Regulations Review Committee, November 2023.

³¹ The Government response is available on the [Parliament website](#).

In its final report to the House presented in June 2023, the committee found that the Act had struck an appropriate balance between primary and secondary legislation. It was generally satisfied with the safeguards in place to make secondary legislation.³²

The committee also found that it is preferable to make use of an existing scrutiny body—the Regulations Review Committee—to review emergency secondary legislation, rather than develop a new external scrutiny body such as the Review Panel that operated in respect of the Canterbury earthquake orders.

The committee acknowledged that some of the COVID-19 secondary legislation was difficult to navigate and inaccessible. One of the principles of good legislative design is that the law itself must be clear enough to be understood by the target audience.

The committee recommended that a hybrid approach—combining existing and new legislation—be used in future emergencies, if possible. It also recommended that scrutiny of emergency legislation should occur at least once a term, to be consistent with parliamentary democracy.

In its response, the Government noted the general findings of the committee.³³ It defended the potential value of a review panel, noting that the functions of the Regulations Review Committee and a review panel are distinct. It stated that, unlike the committee, review panels provide input on policy matters and may be designed to fit the needs of the particular emergency. For instance, the Severe Weather Emergency Recovery Legislation Act 2023 provides for a review panel whose membership must be able to reflect local and Māori interests, knowledge, and perspectives. The Government considered that both types of review of draft emergency secondary legislation would be useful.

Briefing on best practice for publication of secondary legislation

Hundreds of pieces of secondary legislation are made each year by Ministers, government departments, and Crown entities. Our committee has the function of scrutinising all of them. During this work, we regularly encounter issues with the way regulation-makers are fulfilling the publication requirements for regulations that are set out in their respective empowering statutes.

When these issues arise, we often write to the makers of the regulations. We remind them of their obligations and recommend that the legislation be published correctly as soon as practicable. Despite these efforts, we repeatedly encounter the same issues—often from the same agencies and regulation-makers.

The previous committee opened this briefing in December 2022 to record its views about the best practice for publishing secondary legislation. The briefing aimed to consolidate the various requirements for publication of secondary legislation, and to clarify the committee's view on what should be done to fulfil those requirements.

³² [Inquiry into COVID-19 Secondary Legislation](#), Regulations Review Committee, June 2023.

³³ The Government response is available on the [Parliament website](#).

In its final report to the House presented in February 2023, the previous committee pointed out some of the most frequently overlooked requirements related to publication of secondary legislation, including that:

- The law should be publicly accessible.
- Most secondary legislation must be published on a website: either the legislation website for secondary legislation drafted by the Parliamentary Counsel Office, or the maker's website for other secondary legislation.
- The provision of Gazette links on a webpage does not constitute publication.
- Material incorporated by reference must be accessible.
- Amendments to secondary legislation must be clear, showing what the changes have been, when they have taken effect, and what the current law is.
- Secondary legislation must be presented to the House, to make sure that Parliament keeps oversight of the law-making powers it has delegated.³⁴

Briefing on Animal Welfare Secondary Legislation

This briefing was opened in September 2022 following a hearing with the New Zealand Animal Law Association (NZALA) about its report *Farmed Animal Welfare Law in New Zealand: Investigating the Gap between the Animal Welfare Act 1999 and its Delegated Legislation*.

Most secondary legislation relating to animal welfare is made under powers delegated by the Animal Welfare Act 1999 (the Act). The National Animal Welfare Advisory Committee (NAWAC) is a statutory advisory committee established under the Act. Its function is to advise the Minister of Agriculture on any matter relating to the welfare of animals in New Zealand. NAWAC provides advice to the Minister on legislation and codes of welfare relating to farmed, domestic, wild, and pest species.³⁵

Over time, the Regulations Review Committee has received a substantial number of complaints relating to both codes of welfare and regulations made under the Act. The main themes were:

- concerns about the nature of consultation undertaken in the making of regulations and codes of practice
- disagreements between complainants and NAWAC about the requirements of good practice and scientific knowledge in relation to the management of the animals.

During the course of the briefing, the committee wrote to the Associate Minister of Agriculture who had delegated authority for animal welfare issues. The Minister was

³⁴ Briefing on best practice for publication of secondary legislation, Regulations Review Committee, February 2023.

³⁵ Codes of welfare set out standards of care and conduct, over and above the minimum required to meet the obligations in the Act. They are included to encourage higher standards of animal welfare. Codes of welfare are not secondary legislation, but they have legal effect. They are not directly enforceable, but whether or not someone has met minimum standards can be used as evidence in a prosecution. A person who is charged with an offence against the Act can defend themselves by showing that they have met or exceeded the minimum standards set out in a code.

supportive of a review of the process for developing secondary legislation under the Act. She indicated that a review could take between 9 and 12 months depending on its scale and scope.

In its final report, the committee recommended that the Government should conduct a prompt and substantive review of the process for developing secondary legislation under the Act and whether all existing secondary legislation were consistent with the objects and intentions of the Act.³⁶ As of 31 December 2023, we were still awaiting a response from the Government.

Briefing about orders made under section 70 of the Health Act 1956

In August 2021, as part of our role in scrutinising secondary legislation made in response to the COVID-19 pandemic, the committee of the 53rd Parliament initiated a briefing about orders made under section 70 of the Health Act 1956. In the months preceding its decision to start this briefing, the committee had observed numerous issues with section 70 orders being created by medical officers of health.³⁷

In its interim report published in November 2021, the committee recommended that criteria for periods of isolation should be better specified, that all revoked and expired section 70 orders should be published on a government website, and that the Government should provide additional legislative drafting support to the Director-General of Health.

The Government provided a response in June 2023. The Government noted that, since February 2022, there had been a shift from the use of section 70 orders to the use of orders made under section 11 of the COVID-19 Public Health Response Act 2020.³⁸ This change was due to the COVID-19 response transitioning from an emergency response to a longer-term management approach. It meant that section 70 orders were a less appropriate instrument to support the response.

In its final report, the committee expressed its disappointment with the time taken by the Government to respond—over 350 working days, or close to six times the 60-day timeframe prescribed by Standing Order 256(1).³⁹

The committee was pleased that the Ministry of Health had agreed to implement its recommendations on any future orders made under section 70 of the Health Act 1956. It noted, however, that by the time the response to the interim report was presented, COVID-19 restrictions had been largely lifted.

³⁶ [Briefing on Animal Welfare Secondary Legislation](#), Regulations Review Committee, July 2023.

³⁷ Medical officers of health are suitably qualified and experienced medical practitioners, designated by the Director-General of Health.

³⁸ These orders were also examined by the Regulations Review Committee. See section of the report “Examination of orders made under the COVID-19 Public Health Response Act 2020” above.

³⁹ [Briefing about orders made under section 70 of the Health Act 1956](#), Regulations Review Committee, August 2023.

Briefing to follow up on the complaint about the Education (Early Childhood Services) Amendment Regulations 2019

The Regulations Review Committee of the 52nd Parliament opened this briefing to follow up on a complaint about the Education (Early Childhood Services) Amendment Regulations 2019.

The complainant raised concerns with the clarity of the regulations, which he said led to different interpretations of the requirements applying to early childhood education (ECE) centres. The committee agreed and wrote to the Minister of Education to recommend clarifying the amendment regulations. The Ministry of Education informed the committee of the 53rd Parliament that it would be conducting an early learning regulatory review which would include a review of the amendment regulations. The ministry provides regular updates to the committee on the progress of this review.

In its latest update received in January 2024, the ministry indicated that it continued its review through 2023, and made changes to the regulations to clarify certain provisions.⁴⁰ The ministry said it would provide a further update to the committee when the Government has made decisions on the early learning regulatory work programme.

Briefing on Government responses to committee recommendations

On 13 December 2023, we opened a briefing to monitor the Government's responses to our recommendations. In our reports to the House, our committee makes frequent recommendations to the Government, both on issues identified with specific pieces of secondary legislation, and on the overall process of making secondary legislation. We opened this briefing to be able to better monitor the Government's treatment of our recommendations. This briefing was still open as at the end of 2023.

Briefing on the Access to Subordinate Instruments Project

Parliament has delegated the power to make regulations to many agencies. They include government departments, Crown entities, and statutory bodies. Thousands of pieces of secondary legislation are currently in force. However, there is no single location where the public can access all secondary legislation.

The Access to Subordinate Instruments Project is a programme led by the Parliamentary Counsel Office (PCO) to make secondary legislation more accessible to the public. We continue to strongly support the work of PCO in trying to make legislation more accessible to the public. This briefing was still open as at the end of 2023.

Briefing on regulations made under the Russia Sanctions Act 2022

Following the Russian invasion of Ukraine in early 2022, the House passed the Russia Sanctions Act 2022. The Act allowed the Government to respond to the military actions of Russia by imposing sanctions under secondary legislation. This was the first time that the House had legislated for autonomous sanctions.

⁴⁰ More information on the early learning regulatory review is available on the [Ministry of Education website](#).

We initiated this briefing as an ongoing item of business to allow us to monitor sanctions against Russia as they were created. We considered 15 regulations related to Russia sanctions and wrote four letters to the Minister of Foreign Affairs. We closed this briefing in 2023. No final report was issued.

Briefing on Standards Issued under the Financial Reporting Act 2013

On 8 March 2023, the committee of the 53rd Parliament decided to open a briefing on four different accounting standards issued under the Financial Reporting Act 2013 (the FRA). This followed a request from the External Standards Board (the Board) to make a presentation to the committee in response to the committee's concerns raised in relation to these standards.

The committee was concerned about the use of the phrase "earlier application is permitted", which, it considered, allowed retrospective application of the standards. The committee said that the wording used contravened section 28(1) and (2)(b) of the FRA, which stated that standards commence to apply in relation to accounting periods specified in the standards, and that these must not be periods that have ended or that end before the standard takes effect.

The Board came back to the committee with an amended provision clarifying the accounting periods to which new standards may be applied under the empowering provisions in the FRA. In particular, the provision clearly states that a standard cannot be adopted for an accounting period that has ended, or that ends, before the standard takes effect. The committee was satisfied with the wording of the amended provision and closed this briefing without reporting to the House.

Draft secondary legislation

A Minister may refer draft secondary legislation to the Regulations Review Committee for consideration, and the committee may report on the draft secondary legislation to the Minister. The committee generally confines its consideration of draft secondary legislation to the matters raised in Standing Order 327(2). This initial scrutiny reduces the risk of issues being detected further down the line during the committee's quarterly scrutiny of secondary legislation.

Severe Weather Emergency Recovery Legislation Act 2023

The purpose of the Severe Weather Emergency Recovery Legislation Act 2023 (the Act) is to assist communities and local authorities to respond to, and recover from, the impacts of severe weather events. The Act was passed in the wake of Cyclone Gabrielle, which devastated parts of the North Island in February 2023.

Section 8 of the Act requires that any draft orders to be made under the Act must be provided to the Regulations Review Committee. The committee must provide its comments within three working days of receiving a draft order. Before recommending that an order be made, the relevant Minister must have had regard to any comments on the draft order.

In 2023, the committee examined the following draft orders:

- Severe Weather Emergency Recovery (Temporary Accommodation) Order 2023
- Severe Weather Emergency Recovery (Waste Minimisation) Order 2023
- Severe Weather Emergency Recovery (Waste Management) Order 2023
- Severe Weather Emergency Recovery (Land Transport Funding) Order 2023
- Severe Weather Emergency Recovery (Resource Management—Burning of Waste) Order 2023
- Severe Weather Emergency Recovery (Climate Change—Forestry) Order 2023
- Severe Weather Emergency Recovery (Climate Change—Forestry) Order (No 2) 2023
- Severe Weather Emergency Recovery (Local Government Act 2002—Long-term Plan) Order 2023
- Severe Weather Emergency Recovery (Resource Management—Streamlined Planning Process) Order 2023
- Severe Weather Emergency Recovery (Local Government) Amendment Order 2023
- Severe Weather Emergency Recovery (Resource Management—Time Extensions) Order 2023
- Severe Weather Emergency Recovery (Resource Management—Extension of Water Take Resource Consent) Order 2023
- Severe Weather Emergency Recovery (Local Government) Order 2023
- Severe Weather Emergency Recovery (Rating Valuations—Hastings District Council) Order 2023

Secondary Legislation Confirmation Bill (No 2)

The Secondary Legislation Confirmation Bill (No 2) was referred to the previous Regulations Review Committee on 18 July 2023. The purpose of this legislation is to confirm certain secondary legislation that would be revoked if not confirmed by an Act of Parliament by a specified date. In passing this bill, the House confirms the instruments set out in the bill, allowing them to continue in force. A secondary legislation confirmation bill is introduced to the House every year and must be passed before the end of the calendar year. This bill related to secondary legislation made between 1 July 2022 and 30 June 2023.

We presented our report on this bill to the House on 14 December 2023. The bill was enacted on 22 December 2023.

Appendix A—Committee process

Committee procedure

We met between 8 May and 22 May 2024 to consider this matter.

Committee members

Hon David Parker (Chairperson)
Ryan Hamilton
James Meager
Joseph Mooney
Hon Jenny Salesa

Former members

Hon Judith Collins
Steph Lewis
Hon Eugenie Sage
Toni Severin
Sam Uffindell
Vanushi Walters
Helen White

Appendix B—Standing Order 327(2)

327 Drawing attention to secondary legislation

- (1) In examining secondary legislation, the committee considers whether it ought to be drawn to the special attention of the House on one or more of the grounds set out in paragraph (2).
- (2) The grounds are, that the secondary legislation—
 - (a) is not in accordance with the general objects and intentions of the enactment under which it is made:
 - (b) trespasses unduly on personal rights and liberties:
 - (c) appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made:
 - (d) unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal:
 - (e) excludes the jurisdiction of the courts without explicit authorisation in the enactment under which it is made:
 - (f) contains matter more appropriate for parliamentary enactment:
 - (g) is retrospective where this is not expressly authorised by the enactment under which it is made:
 - (h) was not made in compliance with particular notice and consultation procedures prescribed by applicable enactments:
 - (i) for any other reason concerning its form or purport, calls for elucidation.