

# **New Zealand's legislative response to the Canterbury earthquakes**

New Zealand Regulations Review Committee

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## Introduction

An earthquake in Canterbury on 4 September 2010 resulted in significant and widespread damage to homes, business premises, and infrastructure and necessitated an urgent legislative response to aid the recovery. The Canterbury Earthquake Response and Recovery Act 2010 (the 2010 Act) was Parliament's response to the event. It contained unusually wide regulation-making powers which enabled Orders in Council to grant exemptions from, or modify, or extend any provision of any enactment (with eight specified subject matter or statutory exceptions).<sup>1</sup>

Aftershocks have continued to occur in the region resulting in further damage, including to remedial works underway. One of these aftershocks, on 22 February 2011, resulted in further significant damage across the region.

Some of the orders made under the 2010 Act which had already expired or which were about to expire were extended. Then in April this year the 2010 Act was repealed and replaced with the Canterbury Earthquake Recovery Act 2011 (the 2011 Act).<sup>2</sup> This Act contains very similar regulation-making powers to those in the 2010 Act.<sup>3</sup>

Parliamentary scrutiny of the orders is provided by the Regulations Review Committee which is mandated by Standing Orders to scrutinise regulations on specified grounds. Following the enactment of the 2010 Act, the committee decided it would take particular care when considering these orders, given the extraordinary nature of the delegated power conferred. Two additional members, who are Canterbury-based members, have sat with the committee for the purpose of scrutinising these orders.<sup>4</sup>

This paper describes the committee's work to date with some focus on the recent 2011 Act and the Orders in Council regime now operating under it, to assist the rebuilding effort in Canterbury, from a parliamentary scrutiny perspective.

## Delegated powers in the Canterbury Earthquake Recovery Act 2011

The 2011 Act contains similar regulation-making powers to those in the 2010 Act. The current provision is section 71 of the 2011 Act which allows Orders in Council to be made on the recommendation of the relevant Minister, which are "**reasonably necessary or expedient**" for the **purposes** of the Act.

Section 71 provides Henry VIII powers to the executive to make orders to **modify** or **extend**, and **exemptions** may be granted to, the provisions of "**any enactment**". Any modification, extension or exemption in any order may be subject to conditions. The orders can have retrospective effect back to the date of the first earthquake on 4 September 2010.

The **purposes** of the Act which limit the exercise of the power are drafted in broad terms. These include:<sup>5</sup>

<sup>1</sup> Canterbury Earthquake Response and Recovery Act 2010 (now repealed) at: [http://www.legislation.govt.nz/act/public/2010/0114/latest/whole.html?search=ad\\_act\\_canterbury+earthquake\\_aa\\_ac%40arep\\_r&p=1#dml3233004](http://www.legislation.govt.nz/act/public/2010/0114/latest/whole.html?search=ad_act_canterbury+earthquake_aa_ac%40arep_r&p=1#dml3233004), s 6.

<sup>2</sup> Canterbury Earthquake Recovery Act 2011 at: [http://www.legislation.govt.nz/act/public/2011/0012/latest/whole.html?search=ts\\_act\\_canterbury\\_resel&p=1#dml3653522](http://www.legislation.govt.nz/act/public/2011/0012/latest/whole.html?search=ts_act_canterbury_resel&p=1#dml3653522).

<sup>3</sup> 2011 Act, s 71.

<sup>4</sup> Initially this resulted in four out of eight members of the committee (for the purpose of scrutinising these orders) being Canterbury-based members. However, as a result of recent changes to the permanent membership of the committee, the number of Canterbury-based members scrutinising these orders is now three out of eight.

<sup>5</sup> 2011 Act, s 3.

- ♦ to provide appropriate measures to ensure that greater Christchurch and the councils and their communities **respond to, and recover from, the impacts of the Canterbury earthquakes**:
- ♦ to enable **community participation** in the planning of the recovery of affected communities **without impeding a focused, timely, and expedited recovery**:
- ♦ to provide for the Minister and Canterbury Earthquake Recovery Authority to ensure that recovery:
- ♦ to enable a **focused, timely, and expedited recovery**:
- ♦ to enable information to be gathered about any land, structure, or infrastructure affected by the Canterbury earthquakes:
- ♦ to facilitate, co-ordinate, and direct the **planning, rebuilding, and recovery of affected communities**, including the **repair and rebuilding of land, infrastructure, and other property**:
- ♦ to restore the social, economic, cultural, and environmental well-being of greater Christchurch communities:
- ♦ to provide **adequate statutory power** for the purposes stated in the above paragraphs.

Section 71(5) also refers to **purposes** for which the orders may be made. These are to:

- ♦ enable the relaxation or suspension of provisions in enactments that—
  - ♦ may divert resources away from the effort to—
    - (i) efficiently respond to the damage caused by the Canterbury earthquakes:
    - (ii) minimise further damage; or
  - ♦ may not be reasonably capable of being complied with, or complied with fully, owing to the circumstances resulting from the Canterbury earthquakes.

The explanatory note to the 2010 bill summarised the purpose of the legislation as being to ensure that the Government has adequate statutory power to assist with the response to the Canterbury earthquake.<sup>6</sup> The explanatory note to the 2011 bill describes the bill as setting out appropriate measures to enable the Minister for Canterbury Earthquake Recovery and/or the Canterbury Earthquake Recovery Authority to facilitate and direct, if necessary, greater Christchurch and its communities to respond to, and recover from, the impacts of the Canterbury earthquakes.<sup>7</sup>

The explanatory note to the 2011 bill goes on to say that it is necessary to put in place stronger governance and leadership arrangements for the rebuilding and recovery of greater Christchurch from the cumulative effects of the 4 September 2010 and 22 February 2011 earthquakes. Factors taken into account include the scale of the post-earthquake rebuilding effort, recognising that the 22 February earthquake represents an incomparable natural disaster in New Zealand's history; and the need for timely and effective decision-making powers.

Under section 71(6) some express **limits** apply to the making of the orders. These limits include that orders cannot relate to the release of a person from custody or detention, or to the review of a person's detention by the courts, or to a restriction on keeping a person in custody or detention. Nor can the orders relate to specified legislation of constitutional significance.<sup>8</sup> Nor can the orders amend certain provisions in the 2011 Act. These are:

- ♦ section 3 containing the **purposes** of the Act

<sup>6</sup> See a full copy of the bill at:

[http://www.legislation.govt.nz/bill/government/2010/0215/latest/whole.html?search=ts\\_bill\\_canterbury+earthquake\\_noresel&p=1#d1m3233001](http://www.legislation.govt.nz/bill/government/2010/0215/latest/whole.html?search=ts_bill_canterbury+earthquake_noresel&p=1#d1m3233001).

<sup>7</sup> See a full copy of the bill at:

[http://www.legislation.govt.nz/bill/government/2011/0286/latest/whole.html?search=ts\\_bill\\_canterbury+earthquake\\_noresel&p=1#d1m3653504](http://www.legislation.govt.nz/bill/government/2011/0286/latest/whole.html?search=ts_bill_canterbury+earthquake_noresel&p=1#d1m3653504).

<sup>8</sup> 2011 Act, s 3, which provides that the Orders in Council cannot grant an exemption from or modify the Bill of Rights 1688, the Constitution Act 1986, the Electoral Act 1993, the Judicature Amendment Act 1972 (which provides a single procedure for judicial review of the exercise of statutory powers), and the New Zealand Bill of Rights Act 1990.

- ♦ section 6 relating to the **community forum** for input into decision making under the Act
- ♦ sections 71 to 76 relating to the making of **Orders in Council**
- ♦ section 93 relating to the **expiry of the Act** – 5 years after its commencement – and the **revocation of Orders in Council** made under the Act in force immediately before the date the Act expires

A new feature which was not contained in the 2010 Act is the establishment of the **Canterbury Earthquake Recovery Review Panel** which will provide advice to Ministers and review all draft Orders in Council.<sup>9</sup> The members of the Panel are: retired High Court Judge, Justice Hansen, former Prime Minister Rt Hon Jenny Shipley, Anake Goodall, a former chief executive of Te Rūnanga O Ngāi Tahu, and Murray Sherwin, the former chair of the Canterbury Earthquake Recovery Commission.

Ministers must take into account the purposes of the Act, and have regard to the recommendations of the Panel, when making a recommendation for an Order in Council under the 2011 Act.<sup>10</sup>

In summary, the 2011 Act provides the executive with wide Henry VIII powers to make rules for the recovery of Canterbury which differ from rules in existing primary legislation. The purposes of the Act are drafted in broad terms and these together with the specified exceptions provide the only express limits on the powers. The 2011 Act also provides for review of draft orders by the Canterbury Earthquake Recovery Review Panel and the Regulations Review Committee retains a role to examine these Orders in Council following their presentation to Parliament.<sup>11</sup>

### **Discussion: Henry VIII powers and public submissions on the 2011 Bill**

Henry VIII powers provide the executive with a power to override primary legislation by way of delegated legislation. The practical significance of Henry VIII clauses lies in the loss of the public scrutiny and accountability for policy decisions that would usually occur when primary legislation is made by Parliament. In other words, matters of policy can be determined by the executive without the effective scrutiny of Parliament.<sup>12</sup>

Members of the public and local councils who made submissions on the 2011 bill largely addressed policy issues which this paper is not concerned with.

Some submitters also commented on the Henry VIII powers in clause 71.

#### *Need for and scope of power*

Established principle is that Henry VIII powers are only justified in **exceptional circumstances**.<sup>13</sup>

Public submitters largely agreed that, given the scale of the damage in the Canterbury region, extraordinary powers for the Government were required for rebuilding.<sup>14</sup>

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<sup>9</sup> 2011 Act, ss 72 & 73.

<sup>10</sup> 2011 Act, s 74.

<sup>11</sup> The 2011 Act specifies in s 76 that the Regulations (Disallowance) Act 1989 applies to orders made under the Act. This brings the orders within the Standing Orders definition of instruments which are subject to scrutiny by the committee.

<sup>12</sup> Report of the Regulations Review Committee, *Inquiry into the Affirmative Resolution Procedure*, May 2007, AJHR, I.16I at p 4.

<sup>13</sup> Legislation Advisory Committee's *Guidelines on Process and Content of Legislation* at: [http://www.justice.govt.nz/lac/pubs/2001/legislative\\_guide\\_2000/guidelines.pdf](http://www.justice.govt.nz/lac/pubs/2001/legislative_guide_2000/guidelines.pdf) at paras 10.1.4 & 10.1.8; and Report of the Regulations Review Committee, *Inquiry into the Resource Management (Transitional) Regulations 1994 and the principles that should apply to the use of empowering provisions allowing regulations to override primary legislation during a transitional period*, 1995, AJHR, I.16C at pp 9-10. The Cabinet Manual also says that regulations should not, in general, contain provisions that purport to amend primary legislation at para 7.77.

However, one issue concerning the width of the powers under discussion is that these allow modification of any enactment, with some limited express exceptions. These exceptions do not include, for example, the Legislature Act 1908 (which grants privileges, powers and immunities to the House), the Magna Carta, the Habeas Corpus Act 2001, the Human Rights Act 1993, and the Official Information Act 1982.<sup>15</sup>

An alternative approach would have been to list the Acts it was considered likely to need modification by Order in Council to facilitate the recovery and rebuilding of Canterbury.

Some thought had been given to the statutes would be in this category as these were listed in the 2011 bill and are now contained in section 71(3) of the 2011 Act.<sup>16</sup> This exercise also took place with the knowledge of which Acts had required modification following the first earthquake in September 2010 six months earlier.

The New Zealand Law Society said that the wide Henry VIII powers in the 2011 bill are contrary to the rule of law and good legislative principles and are undesirable. The Society questioned whether the pragmatic solution of the Orders in Council regime could be justified where there is no longer an emergency situation. Another submitter said that the bill was not directed at an emergency situation but at rebuilding and it was therefore doubtful whether there remains the same urgency for law changes that justifies the powers being exercised without reference to Parliament.<sup>17</sup>

Alternatives to the Order in Council regime in the 2011 bill suggested by three public submitters were:

- ♦ for the orders to be subject to the affirmative resolution procedure, similar to the situation in the United Kingdom under section 27 of the British Civil Contingencies Act 2004 (UK)
- ♦ for urgent matters to be dealt with by the bill and for Parliament to dedicate House time for those matters to be dealt with by legislation as they arise.

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<sup>14</sup> See Report of the Local Government and Environment Committee, *Hearing of evidence on the Canterbury Earthquake Recovery Bill* at: [http://ourhouse.parliament.nz/NR/rdonlyres/C8FE5ACF-F9EA-4CE8-BFAE-242E83DDDE25/247972/DBSCH\\_SCR\\_5107\\_HearingofevidenceontheCanterburyEar.pdf](http://ourhouse.parliament.nz/NR/rdonlyres/C8FE5ACF-F9EA-4CE8-BFAE-242E83DDDE25/247972/DBSCH_SCR_5107_HearingofevidenceontheCanterburyEar.pdf).

<sup>15</sup> Evidence of David Bullock and Daniel Jackson.

<sup>16</sup> 2011 Act, s 71(3), which lists the following Acts:

- ♦ Building Act 2004
- ♦ Cadastral Survey Act 2002
- ♦ Civil Defence Emergency Management Act 2002
- ♦ Commerce Act 1986
- ♦ Earthquake Commission Act 1993
- ♦ Health Act 1956
- ♦ Health and Disability Services (Safety) Act 2001
- ♦ Historic Places Act 1993
- ♦ Land Transport Act 1998
- ♦ Land Transport Management Act 2003
- ♦ Local Government Act 1974
- ♦ Local Government Act 2002
- ♦ Local Government Official Information and Meetings Act 1987
- ♦ Local Government (Rating) Act 2002
- ♦ Public Works Act 1981
- ♦ Rating Valuations Act 1998
- ♦ Reserves Act 1977
- ♦ Resource Management Act 1991
- ♦ Road User Charges Act 1977
- ♦ Social Security Act 1964
- ♦ Soil Conservation and Rivers Control Act 1941
- ♦ Transport Act 1962
- ♦ Waste Minimisation Act 2008

<sup>17</sup> Evidence of Dean Knight, Senior Lecturer, Faculty of Law, Victoria University, Wellington and Associate, New Zealand Centre for Public Law.

Such measures may have provided greater transparency and accountability to Parliament in relation to the policy decisions being made regarding the recovery effort.

### *Limits or controls on the powers*

It is also established principle that even where Henry VIII powers are justified, they should be subject to **strict controls**.<sup>18</sup> One submitter said that the purpose provisions in the bill would not operate to constrain governmental action in any meaningful way because they are framed so widely and that these effectively negate any checks and balances that might be provided through judicial review.<sup>19</sup> The submitter said that these matters raised rule of law concerns.

A usual control on Henry VIII powers is a requirement for **consultation**. This control is not a pre-condition for orders made under the 2011 Act although a requirement for consultation has been included in some of these. One recent example is the Canterbury Earthquake (Resource Management Act Port of Lyttelton Recovery) Order 2011.<sup>20</sup> The order lists a number of bodies who the Lyttelton Port Company is required to consult with before applying for consent for reclamation works under a modified application process provided in the order.

Such a control is arguably particularly appropriate in a recovery and rebuilding situation in contrast to dealing with an emergency situation.

The establishment of the **Canterbury Earthquake Recovery Review Panel** to review draft orders provides some control on the exercise of the delegated powers. Although, the 2011 Act is silent on criteria the Panel is to use for reviewing the draft orders and one submitter was critical of the requirement for a Minister to only “have regard to” the recommendations of the Panel.<sup>21</sup>

A recent example of a change being made to an order as a result of a recommendation by the Panel was seen in the Canterbury Earthquake (Resource Management Act Port of Lyttelton Recovery) Order 2011. The Panel recommended that a further community organisation be included in the list of those bodies that needed to be consulted with before applying for consent for reclamation works under a modified application process provided by the order.<sup>22</sup> This was done.

### **Regulations Review Committee**

Parliamentary scrutiny of the orders by the **Regulations Review Committee** was preserved under the 2010 Act and is preserved by the 2011 Act. When assessing any delegated legislation the committee considers its provisions against the grounds set out in Standing Order 310(2).<sup>23</sup> The grounds the committee can effectively consider when scrutinising the orders are however limited.

For example, two Standing Order grounds the committee considers in its scrutiny work are whether delegated legislation is “in accordance with the general objects and intentions of the statute under which it is made” or “appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made”.<sup>24</sup> These grounds are not able to be employed except in extreme cases where legislation contains very broad purpose provisions such as in the 2010 and 2011 Acts.

<sup>18</sup> Committee’s 1995 report above at p 22.

<sup>19</sup> Dean Knight above.

<sup>20</sup> Canterbury Earthquake (Resource Management Act Port of Lyttelton Recovery) Order 2011 (SR 2011/148) at:

[http://www.legislation.govt.nz/regulation/public/2011/0148/latest/whole.html?search=ad\\_regulation\\_canterbury\\_2010-2011\\_ra\\_rcur\\_r&p=1#d1m3736201](http://www.legislation.govt.nz/regulation/public/2011/0148/latest/whole.html?search=ad_regulation_canterbury_2010-2011_ra_rcur_r&p=1#d1m3736201).

<sup>21</sup> Dean Knight above.

<sup>22</sup> The Panel’s report can be found at: <http://www.cera.govt.nz/about-cera/legislation>.

<sup>23</sup> The Standing Orders relevant to the committee’s jurisdiction are set out in full in the Appendix.

<sup>24</sup> SOs 310(2)(a) & (c).



Another Standing Order ground, whether delegated legislation “contains matter more appropriate for parliamentary enactment”, has been rendered redundant in effect.<sup>25</sup> It would seem nonsensical for the committee to raise this as an issue given the specific intention of the Orders in Council regime in both the 2010 and 2011 Act is to override this principle.

Two (out of nine) grounds left open to the committee to consider in relation to the orders are whether any order:<sup>26</sup>

- ♦ trespasses unduly on personal rights and liberties, or
- ♦ for any other reason concerning its form or purport, calls for elucidation.

As discussed below, the committee has taken a wide approach to the latter ground.

### **Types of Orders in Council made under the 2010 and 2011 Acts to date**

Orders made under the 2010 and 2011 Acts can usefully be grouped into three categories:<sup>27</sup>

- ♦ Emergency management.
- ♦ Rules relating to people’s incomes and personal and family affairs, including social security and other state entitlements, tax administration, and children’s attendance at school.
- ♦ Rules relating to the use of buildings and land, including historic places; infrastructure including roads; and use of public land, for example, to set up emergency housing and sort rubble.

### **Scrutiny process**

In 15 cases the committee has sought further information from the government agencies responsible for administering these orders, and, in order to act transparently, it has received responses to this correspondence as written evidence. This procedure has enabled this correspondence to be released publicly on an on-going basis as the committee thinks appropriate.<sup>28</sup>

The committee considered that particular care was needed when considering these orders given the extraordinary nature of the power conferred and, while avoiding comment on policy issues, it has taken a wide approach to its scrutiny role relying on Standing Order ground 310(2)(i).<sup>29</sup> Examples of information sought by the committee are: clarification of the on-the-ground issue being addressed by an order and whether the exercise of powers delegated to local authorities will be monitored.

Particular issues the committee has sought further information about include the relaxing of rules around dumping of hazardous substances and protection of historic buildings, removing rights of community involvement in local authority decision-making, new processes established for the assessment of dangerous buildings and some consequences that arise for building owners, and the steps being taken to communicate changes to social security rules to those in the Canterbury region.

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<sup>25</sup> SO 310(2)(f).

<sup>26</sup> SOs 310(2)(b) & (i).

<sup>27</sup> A full list of these orders with links to the content in each case can be found at: [http://www.legislation.govt.nz/regulation/results.aspx?search=ad\\_regulation\\_canterbury\\_2010-2011\\_ra\\_rcur\\_r&p=1](http://www.legislation.govt.nz/regulation/results.aspx?search=ad_regulation_canterbury_2010-2011_ra_rcur_r&p=1).

<sup>28</sup> Copies of all of the evidence the committee has received relating to each of the orders can be found on the New Zealand Parliament website: <http://www.parliament.nz/en-NZ/PB/SC/Documents/Evidence/Default.htm?search=1782826190>.

<sup>29</sup> That a regulation “for any other reason concerning its form or purport, calls for elucidation”.

## **Other delegated legislation made in response to the Canterbury earthquakes**

The committee has also considered delegated legislation made in response to the Canterbury earthquakes under powers in existing legislation. Examples of matters dealt with by these regulations and orders are social security, accident compensation, tax administration, and the setting up of the Canterbury Earthquake Recovery Authority.

Modifications to primary legislation made by these orders generally provided a public benefit. Examples are: extending due dates for certain tax returns for those affected by the earthquakes, deeming money received from insurance companies or the Earthquake Commission as not being income for the purpose of assessing entitlement to social security benefits, and exempting trucks involved in clearing rubble from maximum load requirements under transport legislation.

## **Explanatory notes to the orders**

In late 2010 the committee expressed concern to the Parliamentary Counsel Office (PCO) about the quality of the explanatory notes contained in the initial orders that were made under the 2010 Act.<sup>30</sup> The committee suggested that in the future explanatory notes should provide more detail so that they could be understood by people without significant knowledge of the legislation being modified or extended. PCO told us that the orders our concerns related to were drafted quickly, and focused on the details of the substantive changes they effected to the law; therefore, the information in the explanatory notes was “curtailed”.

PCO agreed that more detail in the explanatory notes would be desirable, and told us that it planned to explain the effect of any future orders made under the Act in its explanatory notes in more detail.

The committee was satisfied with this response. Some of the orders made after this correspondence did have improved explanatory information although others did not and we have had further correspondence with PCO about this. This correspondence will be discussed in a further interim report which will be released by the committee later this year before Parliament rises for the election.

## **Conclusion**

Both the 2010 and 2011 Acts provided the executive with wide Henry VIII regulation-making powers allowing it to make rules for the recovery of Canterbury which differ from rules in existing primary legislation. The current 2011 Act expires after five years and during the period until then these wide powers can be exercised in relation to any enactment, with a few express exceptions. Some of the orders themselves are now being made with expiry dates of 19 April 2016.

One constraint on the exercise of executive power is review of all draft orders by the Canterbury Earthquake Recovery Review Panel.

However, the usual parliamentary scrutiny of policy-making by the executive, including in areas of significant public interest, has been suspended for five years in relation to the rebuilding of Canterbury. Moreover, review by the courts and scrutiny by the Regulations Review Committee, of the Orders in Council, have been limited by the breadth of the purpose provisions now in the 2011 Act.

The justification for the 2011 Act, including the wide regulation-making powers, is said to be the need to take appropriate measures to facilitate, and if necessary direct, greater Christchurch and

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<sup>30</sup> As reported in the committee’s interim report in December 2010 on its work scrutinising these orders at: [http://www.parliament.nz/en-NZ/PB/SC/Documents/Reports/9/d/8/49DBSCH\\_SCR4941\\_1-Interim-report-on-the-Orders-in-Council-made-under.htm](http://www.parliament.nz/en-NZ/PB/SC/Documents/Reports/9/d/8/49DBSCH_SCR4941_1-Interim-report-on-the-Orders-in-Council-made-under.htm).



its communities to respond to, and recover from, the impacts of the Canterbury earthquakes. The scale of the rebuilding effort is a key factor said to underlie this imperative.

Another view is that a distinction needs to be made between legislation dealing with an emergency situation and legislation needed for rebuilding. A key factor underlying this view is the need to preserve parliamentary scrutiny of amendment to primary legislation in non-urgent situations.

These two views will need to be given further consideration in a more deliberative parliamentary process in coming years to see whether there is a better way of reconciling the practicalities of rebuilding with established principle.

## Appendix One

### Standing Orders relevant to the jurisdiction of New Zealand's Regulations Review Committee

The functions of the committee are listed in Standing Order 309:

#### **309 Functions of Regulations Review Committee**

- (1) The Regulations Review Committee examines all regulations.
- (2) A Minister may refer draft regulations to the committee for consideration and the committee may report on the draft regulations to the Minister.
- (3) In respect of a bill before another committee, the committee may consider—
  - (a) any regulation-making power,
  - (b) any provision that contains a delegated power to make instruments of a legislative character, and
  - (c) any matter relating to regulations,—
 and report on it to the committee that is considering the bill.
- (4) The committee may consider any matter relating to regulations and report on it to the House.
- (5) The committee investigates complaints about the operation of regulations, in accordance with Standing Order 311, and may report on the complaints to the House.

Standing Order 310(2) lists the grounds on which the committee can draw a regulation to the special attention of the House.

#### **310 Drawing attention to a regulation**

- (1) In examining a regulation, 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 regulation –
  - (a) is not in accordance with the general objects and intentions of the statute 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 statute 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 enabling statute:
  - (f) contains matter more appropriate for parliamentary enactment:
  - (g) is retrospective where this is not expressly authorised by the empowering statute:
  - (h) was not made in compliance with particular notice and consultation procedures prescribed by statute:
  - (i) for any other reason concerning its form or purport, calls for elucidation.

The committee's jurisdiction is limited by the definition of "regulation" in Standing Order 3. Regulation means a regulation within the meaning of the Regulations (Disallowance) Act 1989. The definition of regulations in section 2 of that Act is:

- (a) regulations, rules, or bylaws made under an Act by the Governor-General in Council or by a Minister of the Crown:

- (b) an Order in Council, Proclamation, notice, Warrant, or instrument, made under an enactment that varies or extends the scope or provisions of an enactment:
- (c) an Order in Council that brings into force, repeals, or suspends an enactment:
- (d) regulations, rules, or an instrument made under an Imperial Act or the Royal prerogative and having the force of law in New Zealand:
- (e) an instrument that is a regulation or that is required to be treated as a regulation for the purposes of the Regulations Act 1936 or Acts and Regulations Publication Act 1989 or this Act:
- (f) an instrument that revokes regulations, rules, bylaws, an Order in Council, a Proclamation, a notice, a Warrant, or an instrument, referred to in paragraphs (a) to (e).