

Subordinate Legislation (Confirmation and Validation) Bill

Government Bill

As reported from the Regulations Review Committee

Commentary

Recommendation

The Regulations Review Committee has examined the Subordinate Legislation (Confirmation and Validation) Bill and recommends that it be passed with the amendments shown.

Conduct of the examination

The Subordinate Legislation (Confirmation and Validation) Bill was referred to the Regulations Review Committee on 10 September 2002 with an instruction to report to the House by 9 March 2003. We asked the six government departments responsible for administering the subordinate legislation to be confirmed and validated by the bill to explain why confirmation or validation is warranted.

Background

The purpose of the bill is to confirm and validate subordinate legislation made under various enactments. Clauses 4 to 11 confirm and validate certain subordinate legislation that will lapse unless confirmed or validated by an Act of Parliament. Clause 13 validates certain Fisheries (Cost Recovery Levies) Orders and clause 14 provides that clause 13 does not apply to certain legal proceedings. Clause 15 repeals the Subordinate Legislation (Confirmation and Validation) Act 1999.

Validation and confirmation is warranted

We are satisfied that validation and confirmation of the orders contained in clauses 4 to 11 is warranted after considering the responses we received from the Ministry of Agriculture and Forestry, the Ministry of Economic Development, the Ministry of Social Development, the Ministry of Transport, the New Zealand Customs Service, and the New Zealand Defence Force.

Inclusion of further customs orders

We recommend that clause 7 be amended by inserting two further customs orders, namely the Customs Export Prohibition Order 2002 (SR 2002/256) and the Customs Import Prohibition Order 2002 (SR 2002/255). We are satisfied this is warranted after considering the evidence we received from the New Zealand Customs Service.

Validation of fisheries orders

Most of us recommend that a number of amendments be made to Subpart 2 of the bill that relates to the validation of a number of fisheries levies orders. These are discussed below.

Inclusion and omission of orders

Most of us recommend that clause 13 be amended to insert the Fisheries (Cost Recovery Levies) Order (No 2) 1999 (SR 1999/411) and to omit the Fisheries (Cost Recovery Levies for Fisheries Services) Order 2002 (SR 2002/222). We are satisfied this is warranted after considering the evidence we received from the Ministry of Fisheries.

Narrowing the scope of the validations

Clause 13 of the bill provides that the prescribed orders are 'deemed to be, and to have always been, validly made'. This means that they are to be validated for all purposes and would be immune from legal challenge on any grounds. As the matters requiring validation relate only to three specific issues, most of us recommend that the scope of the validations be narrowed as set out in proposed new clauses 13(2) and (3). The specific issues relate to unders and overs, fees, charges and levies, and the calculation of levies under rule 9 of the Fisheries (Cost Recovery) Rules 2001.

Clarifying the intent of clause 14(1)

Clause 14(1) provides that certain legal proceedings are saved from the effect of the validations in clause 13. Most of us recommend that clause 14(1) be amended to clarify that a particular set of proceedings is covered, namely those involving Barine Developments Limited, the Minister of Fisheries and the Attorney General. We note that both Barine and the Ministry consider that clause 14(1) is intended to cover this particular set of proceedings.

Obligation to consider historical unders and overs when making next levy order

Two submitters, the Ministry and the New Zealand Seafood Industry Council, propose that the bill be amended to provide that the Minister of Fisheries must, when making the next levies order, have regard to the way in which levies were set in previous years (1994 to 2001). They state that the amendment should be included because it:

- reflects ongoing discussions between the industry and the Ministry to address historical issues related to the levy orders
- ensures there is no ambiguity about the continuing effect of section 265 of the Fisheries Act
- has the support of the Ministry of Fisheries and representatives from the fishing industry.

Most of us are supportive of this amendment. However, we are unable to recommend its insertion as the amendment is outside the scope of the bill for two reasons. First, a confirmation and validation bill is limited to confirming or validating regulations, and the amendment would require, in effect, a textual amendment to the Fisheries Act. Second, a confirmation and validation bill is retrospective in nature, and the amendment would place a future obligation on the Minister. Most of us recommend that the House consider this suggestion when it considers our report and then amend the relevant legislation. The purpose of this suggestion is so that historical unders and overs in respect of the years for which the validations apply are taken into account when the Minister next sets the levies.

The suggested wording is as follows:

“00 Under-recovery and over-recovery of costs

“The Minister of Fisheries must, in making the recommendation under section 265 of the Fisheries Act 1996 for the fishing year beginning 1 October 2003, have regard to the matters referred to in that section—

- “(a) for each of the financial years to which each of the orders specified in **section 13(4)** relates; and
- “(b) in relation to the period during which the transitional levies specified in the Second Schedule of the Fisheries Amendment Act 1994 were payable.”

While we are unable to insert this amendment, most of us recommend that proposed new clause 14A be inserted to clarify that the validations prescribed in clause 13 do not affect the Minister’s existing obligations under section 265 of the Fisheries Act.

Appendix

Approach to this examination

The Subordinate Legislation (Confirmation and Validation) Bill was referred to the Regulations Review Committee on 10 September 2002. The closing date for submissions was 2 October 2002. We received and considered 10 submissions, of which we heard four. Hearing of evidence took 2 hours and 10 minutes. Consideration took 1 hour and 16 minutes.

Committee membership

Richard Worth (Chairman)

Dianne Yates (Deputy Chairperson)

Russell Fairbrother

Stephen Franks

Dail Jones

David Parker

HV Ross Robertson

Hon Tony Ryall

**Subordinate Legislation
(Confirmation and Validation)**

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

Hon Dr Michael Cullen

Subordinate Legislation (Confirmation and Validation) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1	Title	
	This Act is the Subordinate Legislation (Confirmation and Validation) Act 2002.	
	Part 1	
	Preliminary provisions	5
2	Commencement	
	This Act comes into force on the day after the date on which it receives the Royal assent.	
3	Act binds the Crown	
	This Act binds the Crown.	10

Part 2 Confirmations and validations

Subpart 1—Formal confirmations and validations to prevent lapse

- Orders and regulations formally confirmed and validated* 5
- 4 Animal Products Act 1999**
The Animal Products (Fees, Charges, and Levies) Regulations 2002 (SR 2002/138) are confirmed.
- 5 Civil Aviation Act 1990**
The Civil Aviation (Safety) Levies Order 2002 (SR 2002/84) is confirmed. 10
- 6 Commodity Levies Act 1990 and Fisheries Act 1996**
The following orders are confirmed:
- (a) Commodity Levies (Vegetables) Order 2001 (SR 2001/332): 15
 - (b) Commodity Levies (Blackcurrants) Order 2001 (SR 2001/333):
 - (c) Commodity Levies (Fish) Order 2002 (SR 2002/50):
 - (d) Commodity Levies (Summerfruit) Order 2002 (SR 2002/244). 20
- 7 Customs and Excise Act 1996**
The following orders are confirmed:
- (a) Customs Import Prohibition (Trout) Order 2001 (SR 2001/329):
 - (b) Excise and Excise-Equivalent Duties (Tobacco Products Indexation) Amendment Order 2001 (SR 2001/330): 25
 - (c) Excise and Excise-Equivalent Duties (Alcoholic Beverages Indexation) Amendment Order 2002 (SR 2002/117): 30

New (unanimous)

- | | |
|-----|--|
| (d) | Customs Import Prohibition Order 2002 (SR 2002/255): |
| (e) | Customs Export Prohibition Order 2002 (SR 2002/256). |

- 8 New Zealand Superannuation Act 2001, Social Security Act 1964, and Social Welfare (Transitional Provisions) Act 1990** 5
The Social Security (Rates of Benefits and Allowances) Order 2002 (SR 2002/53) is validated and confirmed.
- 9 Road User Charges Act 1977** 10
The Road User Charges (Rates) Order 2002 (SR 2002/48) is confirmed.
- 10 Tariff Act 1988**
The following orders are validated and confirmed:
- (a) Tariff (Harmonised System) Amendment Order 2001 (SR 2001/389): 15
- (b) Tariff (Harmonised System) Amendment Order 2002 (SR 2002/83).
- 11 War Pensions Act 1954** 20
The War Pensions (Rates of Pensions and Allowances) Order 2002 (SR 2002/59) is validated and confirmed.

Effect of formal validations

- 12 Effect of formal validations** 25
The validations effected by **sections 8, 10, and 11** are for the purpose only of preventing the expiry of the enactments validated; and do not—
- (a) express an intention to give legislative force to the provisions of those enactments; or
- (b) apply to any reason for invalidating any of those enactments; or 30
- (c) override any presumption that would otherwise apply to any of those enactments.

Subpart 2—Validation of Fisheries (Cost Recovery
Levies) Orders**Struck out (unanimous)****13 Certain orders validated**

The following orders are deemed to be, and to have always been, validly made:

- | | | |
|-----|---|----|
| (a) | Fisheries (Cost Recovery Levies) Order 1995 (SR 1995/280): | 5 |
| (b) | Fisheries (Cost Recovery Levies) Order 1996 (SR 1996/267): | |
| (c) | Fisheries (Cost Recovery Levies) Order 1997 (SR 1997/189): | 10 |
| (d) | Fisheries (Cost Recovery Levies) Order 1998 (SR 1998/278): | |
| (e) | Fisheries (Cost Recovery Levies) Order 1999 (SR 1999/268): | 15 |
| (f) | Fisheries (Cost Recovery Levies) Order 2000 (SR 2000/178): | |
| (g) | Fisheries (Cost Recovery Levies) Order 2001 (SR 2001/281): | |
| (h) | Fisheries (Cost Recovery Levies for Fisheries Services) Order 2002 (SR 2002/222). | 20 |

New (unanimous)**13 Certain orders validated**

- | | | |
|------|---|----|
| (1) | This section applies in relation to an order specified in subsection (4) on and from the date on which the order was made. | |
| (2) | The orders specified in subsection (4) must be treated as if, before they were made, the Minister of Fisheries— | 25 |
| (a) | had complied with— | |
| (i) | section 263 of the Fisheries Act 1996 as originally enacted before the Fisheries Act 1996 Amendment Act 1999; and | 30 |
| (ii) | section 265 of the Fisheries Act 1996 as substituted by the Fisheries Act 1996 Amendment Act 1999; and | |

New (unanimous)

- (b) had taken into account any other fees, charges, or levies paid or payable under the Fisheries Act 1983 or the Fisheries Act 1996.
- (3) The order specified in **subsection (4)(h)** must be treated as if the levies in the order had been calculated in accordance with rule 9 of the Fisheries (Cost Recovery) Rules 2001 (SR 2001/229). 5
- (4) The orders are—
- (a) Fisheries (Cost Recovery Levies) Order 1995 (SR 1995/280):
 - (b) Fisheries (Cost Recovery Levies) Order 1996 (SR 1996/267): 10
 - (c) Fisheries (Cost Recovery Levies) Order 1997 (SR 1997/189):
 - (d) Fisheries (Cost Recovery Levies) Order 1998 (SR 1998/278): 15
 - (e) Fisheries (Cost Recovery Levies) Order 1999 (SR 1999/268):
 - (f) Fisheries (Cost Recovery Levies) Order (No 2) 1999 (SR 1999/411):
 - (g) Fisheries (Cost Recovery Levies) Order 2000 (SR 2000/178): 20
 - (h) Fisheries (Cost Recovery Levies) Order 2001 (SR 2001/281).

14 Section 13 not to apply to certain legal proceedings

Struck out (unanimous)

- (1) **Section 13** does not apply to the legal proceedings that expressly challenge the validity of 1 or more of the orders specified in **section 13**, if the proceedings were commenced before 2 September 2002. 25

New (unanimous)

- (1) **Section 13** does not apply to the following legal proceedings:

New (unanimous)

- (a) *Barine Developments Limited v Minister of Fisheries and Attorney-General* (Wellington High Court, CP 231/01); and
- (b) any other legal proceedings that expressly challenge the validity of 1 or more of the orders specified in **section 13(4)**, if the proceedings were commenced before 2 September 2002. 5

- (2) However, **section 13** does apply to legal proceedings referred to in **subsection (1)** to the extent that, on or after 2 September 2002, the proceedings are amended to challenge the validity of an order not expressly challenged in the proceedings before that date. 10

New (unanimous)

- 14A Section 13 does not limit section 265 of Fisheries Act 1996**
- Section 13** does not limit or affect section 265 of the Fisheries Act 1996 in relation to a previous financial year that is a year to which an order specified in **section 13(4)** relates. 15

**Part 3
Repeal**

- 15 Repeal** 20
- The Subordinate Legislation (Confirmation and Validation) Act 2001 (2001 No 99) is repealed.

Legislative history

2 September 2002	Introduction (Bill 1-1)
10 September 2002	First reading and referral to Regulations Review Committee
