

Short-Form Supplementary Departmental Disclosure Statement

Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Bill, dated 26 November 2019, which can be found at this link:

<http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2019-201.pdf>

This supplementary disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

16 July 2020.

Significant Legislative Features

Offences, penalties and court jurisdictions

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| 1. Do the proposed amendments create, amend, or remove: | |
| (a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)? | NO |
| (b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)? | NO |
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Privacy issues

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| 2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information? | NO |
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Compulsory acquisition of private property

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| 3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property? | NO |
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Charges in the nature of a tax

| 4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax? | YES |
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| <p>The SOP inserts clause 19 to the Bill, which in turn inserts new sections 149A to 149E to the Act. The new sections establish a new Regulation-making power to impose a levy on specified CVoD providers (e.g. those named in Schedule 2 of the Bill).</p> <p>The new sections cover:</p> <ul style="list-style-type: none"> • new Section 149A provides that specified CVoD providers must pay to the Classification Office an annual levy prescribed by regulations made under the Act. The purpose of the levy is to fund the cost of the Classification Office's activities to support the purpose of Part 3A; • new Section 149B sets out requirements for levy regulations and an explanation of regulation-making powers in respect of levies. This section also provides that a levy imposed by regulations must be reasonable having regard to specified factors and that the Minister must be satisfied that reasonable steps have been taken to consult impacted providers, before recommending that regulations are made; • new Section 149C provides that a dispute between a specified CVoD provider and the Classification Office about the levy does not suspend the obligation of the provider to pay the levy; • new Section 149D provides that the Classification Office may suspend any approval of a specified CVoD provider's self-rating system under section 46FA, if that provider fails to pay the levy; and • new Section 149E outlines provisions around the status and recovery of fees and levies established under the Act. While the Bill will only establish a new Regulation-making power in respect of levies, there is a fee-making power already in the Act, and some existing fees are in place. These fees are generally transaction based and payable in advance of the transaction, so reliance on recovery through the Courts is unlikely. Notwithstanding these factors, new Section 149E will cover both fees and levies to ensure consistency and avoid any doubt as to what recovery powers are available. <p>Enabling the establishment of a levy is necessary because the Government has decided that 75 per cent of the Classification Office's annual CVoD-related costs should be cost-recovered from specified CVoD providers. Following an analysis of cost recovery options, the Minister of Internal Affairs has determined that a levy may be an appropriate mechanism to recover costs from CVoD providers.</p> <p>Safeguards will be put in place to ensure any levy is applied appropriately. This will include requiring the amount or rate of a levy, or the method of calculating or ascertaining the amount or rate of a levy, to be set in regulations. The Bill will also provide that a levy imposed under the Act must be reasonable, having regard to: (a) the costs of the Classification Office carrying out its activities in support of the purpose of Part 3A; and (b) the amount of any other relevant income of the Classification Office.</p> | |

Retrospective effect

| 5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively? | NO |
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Strict liability or reversal of the burden of proof for offences

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| 6. Do the proposed amendments: | |
| (a) create or amend a strict or absolute liability offence? | NO |
| (b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding? | NO |
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Civil or criminal immunity

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| 7. Do the proposed amendments create or amend a civil or criminal immunity for any person? | NO |
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Significant decision-making powers

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| 8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests? | No |
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Powers to make delegated legislation

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| 9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation? | NO |
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| 10. Do the proposed amendments create or amend any other powers to make delegated legislation? | YES |
| The proposed amendments will establish a new Regulation-making power to set a levy on specified CVoD providers (e.g. those named in Schedule 2 of the Bill). Further information on this is provided in the response to Question 4 above. | |

Any other unusual provisions or features

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| 11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment? | NO |
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