



LEGISLATION ADVISORY COMMITTEE

Annual Report 2011

December 2011

Report of the Legislation Advisory Committee to the Attorney-General
Hon Sir Grant Hammond, Chairperson

FOREWORD

For over a quarter of a century now the Legislation Advisory Committee has performed an important role in promoting legislative standards in New Zealand. The membership of the Committee is drawn from a wide range of senior and experienced persons within the legal community in New Zealand. As the successive Annual Reports demonstrate, each year the Committee brings about worthwhile improvements to the legislative process in New Zealand, and the form and implementation of particular pieces of legislation.

This year is no different. As this report evidences, the Committee helped effect improvements to a number of complex and important pieces of legislation such as the Canterbury Earthquake Recovery Bill, the Weathertight Homes Amendment Bill, the Biosecurity Law Reform Bill and the Alcohol Reform Bill.

I am particularly grateful to the members of the Committee from the private sector who necessarily have to take time away from their own practices to contribute to the Committee. Their work in this respect is in the best traditions of the legal profession.

The Committee has expressed concern about the number of Bills awaiting disposition in the Parliamentary process. It has endeavoured to work with senior government ministers and officials in an endeavour to find ways to address that matter, and looks forward to continuing to do so in 2012.

Hon Sir Grant Hammond KNZM
Chair
Legislation Advisory Committee

CONTENTS

Foreword 2

Contents 3

Introduction 4

Functions of the Legislation Advisory Committee 4

Membership 5

Meetings and Work 6

Scrutiny of and submissions on Bills introduced into parliament 6

Comments on matters not arising out of a Bill 19

Legislation Advisory Committee Guidelines 20

Acknowledgements 21

INTRODUCTION

1. The Legislation Advisory Committee (LAC) was established by the Minister of Justice in February 1986. The Law Commission was established at the same time and replaced the former law reform committees. It was considered desirable, however, that the work of one of those committees, the Public and Administrative Law Reform Committee, should continue. The LAC in effect succeeded that committee but with an enlarged role. The supervising Minister is now the Attorney-General.
2. The objective of the LAC is to promote good quality legislation. It does this principally through the publication of guidelines for lawyers and policy advisers engaged in designing, developing, and drafting legislation; through the scrutiny of Bills before Parliament; by providing advice and assistance in particular cases; and through education.
3. The LAC membership is drawn from experienced government and private sector lawyers, representatives of the senior judiciary, experienced law teachers, and senior economists. The members of the LAC bring considerable knowledge, skill, and experience to a wide range of issues related to legislation. The LAC receives valuable support from the Ministry of Justice, the Law Commission, and the Parliamentary Counsel Office.
4. The LAC is not concerned with the policy objectives of legislation. Its focus is more on good legislative practice and public law issues. It is able to provide guidance to those engaged in the challenging task of producing effective, principled, and clear legislation and also to identify problems with proposed legislation and suggest solutions.

FUNCTIONS OF THE LEGISLATION ADVISORY COMMITTEE

5. The different ways in which the LAC promotes legislative standards are contained in its Terms of Reference. These are to:
 - a. provide advice to departments on the development of legislative proposals and on drafting instructions to the Parliamentary Counsel Office;
 - b. report to the Attorney-General and the Legislation Committee of Cabinet on the public law aspects of legislative proposals that the Attorney General refers to it;
 - c. advise the Attorney-General on any other topics and matters in the field of public law that the Attorney-General from time to time refers to it;

- d. scrutinise and make submissions to the appropriate body or person on aspects of Bills introduced into Parliament that affect public law or raise public law issues; and
- e. help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the Legislation Advisory Committee Guidelines, and discouraging the promotion of unnecessary legislation.

MEMBERSHIP

6. In July 2011 the Attorney-General appointed a new committee. The current membership of the LAC is:

- Hon Sir Grant Hammond KNZM
- Rt Hon Sir Geoffrey Palmer SC
- Ms Brigid McArthur
- Mr Guy Beatson
- Professor Andrew Geddis
- Mr Campbell Walker
- Mr David Cochrane
- Ms Lisa Hansen
- Mr Jeremy Johnson
- Ms Anthea Williams
- Ms Megan Richards
- Mr Simon Mount
- Professor Paul Rishworth
- Ms Denese Henare
- Mr George Tanner QC
- Dr John Yeabsley
- Ms Cheryl Gwyn (Crown Law)
- Mr Ivan Kwok
- Mr Bill Moore (Parliamentary Counsel Office)
- Ms Lauren Perry (Ministry of Justice)
- Dr Mark Hickford (DPMC)

The following members left during 2011:

- Mr Graeme Buchanan
- Mr Robert Buchanan
- Professor John Burrows QC
- Mr Jack Hodder SC
- Dr Warren Young
- Mr David Noble (Parliamentary Counsel Office)

- Rt Hon Sir Ivor Richardson
- Hon Sir Bruce Robertson
- Ms Mary Scholtens QC

MEETINGS AND WORK

7. In 2011, the LAC met seven times. The Committee carried out the following categories of work:
 - a. provided advice to agencies on the development of legislative proposals;
 - b. scrutinised and prepared submissions on aspects of Bills introduced into Parliament;
 - c. prepared comments on matters not arising out of particular Bills; and
 - d. continued work on updating the Legislation Advisory Committee Guidelines on Process and Content of Legislation.

SCRUTINY OF AND SUBMISSIONS ON BILLS INTRODUCED INTO PARLIAMENT

8. The LAC reviews all new Government bills against the Legislation Advisory Committee Guidelines on Process and Content of Legislation, which incorporate accepted public law and constitutional principles. The Committee is not concerned with the policy content of bills but with good legislative practice.
9. The Law Commission assists the LAC by providing the Committee with reports that assess new bills against the Guidelines and alert the Committee to possible issues. The Law Commission agreed in 2005 to provide the equivalent of one ½ FTE policy and legal adviser, acting under the supervision of a Law Commissioner, to prepare these reports. Until July 2011 three Law Commissioners, in addition to the President, were members of the LAC and were largely responsible for preparing submissions to select committees.
10. In 2011 the LAC considered 42 bills and took the following actions:
 - presented 17 submissions to select committees
 - referred Law Commission reports on 2 bills to select committees
 - raised drafting issues on several bills.
11. In 2011 the LAC made submissions or wrote to select committees on the following 17 bills.

Bills passed

- Aquaculture Legislation Amendment Bill (No 3)
- Canterbury Earthquake Recovery Bill
- Crimes Amendment Bill (No 2)
- Education Amendment Bill (No 4)
- Freedom Camping Bill
- Sleepover Wages (Settlement) Bill
- Weathertight Homes Resolution Services (Finance Assistance Package) Amendment Bill

Bills in Parliament November 2011

- Alcohol Reform Bill (awaiting 2nd reading)
- Biosecurity Law Reform Bill (awaiting 2nd reading)
- Building Amendment Bill (No 3) (awaiting 2nd reading)
- Criminal Procedure (Reform and Modernisation) Bill (awaiting 2nd reading)
- Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill (not reported back from select committee)
- Legal Assistance (Sustainability) Amendment Bill (not reported back from select committee)
- National Animal Identification and Tracing Bill (2nd reading)
- Ngāti Pāhauwera Treaty Claims Settlement Bill (not reported back from select committee)
- Road User Charges Bill (awaiting 2nd reading)
- Regulatory Standards Bill (not reported back from select committee).

12. Issues relating to 6 other bills were discussed but no action was taken other than comments on drafting points. There were 18 bills where no issues arose.
13. Changes were made to a number of bills as a result of the LAC's involvement, both prior to introduction and at select committee stage. In comparison with previous years, suggestions from the LAC in 2011 probably resulted in fewer amendments than has sometimes been the case, but it can also be noted that election year 2011 saw a very crowded legislative programme under severe time pressures.
14. Actions taken by the Committee include the following examples:

BILLS PASSED (alphabetical list)

Aquaculture Legislation Amendment Bill (No 3)

15. This bill provides a new framework for processing aquaculture applications, requiring amendment to 4 acts including to a 2004 reform statute that had a similar purpose.
16. Given the vital interests involved for a wide range of lay and professional people, and that the Regulatory Impact Statement (RIS) estimated 5 years to work through local transition issues, the LAC suggested that an outline or diagram of the structure of the legislation and roles of the various agencies would be of assistance. This was not included.
17. The LAC made three other specific points:
 1. A new timeframe to lodge a judicial review of an aquaculture decision, within 15 working days after public notification, was introduced. The LAC considered this timeframe far too short to file a judicial review application, particularly when this is the only option for review, and suggested the three month timeframe should be retained for both filing a judicial review of an aquaculture decision and a gazetted allocation decision of the Minister of Conservation in relation to authorisations. The timeframe to lodge judicial review was amended to 30 days, and the 15 day timeframe for lodging review of a Minister's decision was removed.
 2. The existing right to appeal to the High Court against an aquaculture decision of the Chief Executive of Fisheries, (section 186I Fisheries Act 1983) is repealed by clause 37, with the effect that no appeal on the merits will be possible against a determination or reservation by the CE "that the aquaculture activities authorised by a coastal permit will not have an undue adverse effect on fishing". The LAC considered that the substantive impact of aquaculture decisions on the industry and the environment warrant a full appeal to the High Court, and suggested it would desirable for the general merits appeal against aquaculture determinations to be retained. This suggestion was not accepted.
 3. LAC suggested clarifying whether outstanding applications subject to the transition provisions will lose existing rights to merit appeals to the High Court, as they are likely to be disadvantaged by decisions made in the expectation that the appeal right exists. It was also suggested that the legislation clarify that appeals already filed by 1 July 2011 when the Act came into force would continue, assuming that to be the case. This was not done.

Canterbury Earthquake Recovery Bill

18. This bill repealed the Canterbury Earthquake Response and Recovery Act 2010. The LAC made a number of suggestions, in an urgent day turn-around, that resulted in amendments.
 1. The LAC suggested the definition of “CERA” in clause 4 should refer expressly to the Authority as a Public Service Department. The Authority “established by the State Sector (Canterbury Earthquake Recovery Authority) Order 2011” was added to the definition of CERA.
 2. The LAC suggested the Recovery Strategy set out in clause 11 seemed to be of sufficient importance to justify being made by the Governor-General by Order in Council, rather than the Minister. Clause 11(2) was amended to provide that the Governor-General may, by Order in Council on the recommendation of the Minister, approve a Recovery Strategy.
 3. The LAC suggested clause 29 should not override evidentiary privileges, such as the privilege against self-incrimination, in addition to the provision in clause 29(3) that nothing in the clause would override legal professional privilege. Clause 29(3) was amended to provide that clause 29 would not affect any privilege recognised in sections 54 to 64 of the Evidence Act 2004.
 4. The LAC suggested the hearing of disputes under clause 37 applied to all subclauses of clause 68 save for subclause 68(5). This was presumably to avoid the 10 day working day time limit for appeals to be brought applying to subclause 68(5). However, subclause 68(5) also provides that appeals must be brought in accordance with the rules of court. Therefore, it appears that the application of the rules of court have been excluded from disputes under clause 37. Clause 37 was amended to apply to all subclauses of clause 68, however subclause 37(3) was added to provide that “the requirement in section 68(5) that an appeal be brought within 10 working days after the decision appealed against is given does not apply to an appeal under subsection (2)”.
 5. The LAC suggested the requirement under clause 38(4) that an owner must give notice to the chief executive of his/her intention to carry out works within 5 days after the chief executive’s notice to the owner, would not give the owner enough time to do so. Clause 38(4) was amended so that the owner has 10 days to give notice to the chief executive and in the notice is must be stated whether or not the owner intends to carry out the works and, if so, specifying a time within which the works will be carried out.

19. Suggestions that did not result in any changes were that:
1. The provision in subclause 15(2) that a Recovery Strategy prevails if there is inconsistency between it and the RMA, was necessary in light of subclause 15(1) which provides that an RMA document or instrument cannot be interpreted in a way that is inconsistent with a Recovery Strategy. The same point applies in respect of clause 26(2) and (3).
 2. Clauses 31 and 32, which provide respectively for the Chief Executive commissioning reports and investigating matters, were not seen to be necessary given that the Chief Executive of a department of the Crown inherently has these powers.
 3. A proclamation under clause 54 taking land vests the land in the Crown free from all “mortgages, charges, claims, estates, or interests of whatever kind”. The position of a mortgagee or interest holder is not clear.
 4. The ground of expediency for the Governor-General by Order in Council to make provisions was questioned in light of clause 10, which requires the Minister and Chief Executive to act in accordance with the purposes of Act and to exercise powers, rights or privileges where he or she reasonably considers it necessary.
 5. Before making a recommendation under clause 73 for an Order in Council, the Minister has to take into account the purposes of the Act and the recommendations of the Canterbury Earthquake Recovery Review Panel. However, even if the Minister fails to take these into account, the recommendations will remain valid because of the provision in subclause 73(2) that recommendations of the Minister may not be reviewed in any court.
 6. Clause 74(5) means that Orders in Council have the same force as a statute. While it may not be intended, this may well have the effect of precluding challenge to the validity of regulations by way of judicial review.

Education Amendment Bill (No 4)

20. The bill amended the Education Act 1989 so as to strengthen the regulation of the tertiary education system, facilitate the expansion of international education in New Zealand and increase transparency and accountability in the tertiary education system. The LAC made a number of specific recommendations, some of which were adopted, as follows:
1. LAC thought the exemption in clause 274 of all trading activities of Education New Zealand from the Commerce Act was unnecessarily broad. It recommended that only trading activities specifically authorised should be exempt from the Commerce Act. Clause 274 was subsequently changed to

remove the blanket exemption of Education New Zealand from the Commerce Act and provide that specified actions or arrangements of Education New Zealand may be exempted from the application of that Act.

2. LAC raised concerns over all policies, criteria and rules under the previous sections 253 and 265 being carried over into rules under clause 253 of the bill as the bill plainly envisages that those existing policies, criteria and rules be replaced by new rules. Clause 40 (now section 44 in the enacted legislation) was changed so that all policies, criteria and rules under previous sections 253 and 265 would expire on 31 December 2012.
3. LAC thought the inspection power in clause 255A was too broad and that where inspectors or enforcement officers were given power to remove documents they should be required to account for those documents and return the originals unless this would prejudice the investigation. Clause 255A(2) was changed to include the requirements that the investigator must give the person in charge of the premises a list of all documents removed and return any documents that have been removed unless doing so would prejudice the investigation.
4. LAC was concerned that clause 255A gave an Inspector the unfettered right to question any employee of the establishment being inspected and require that person to provide statements in any form the Inspector required. The LAC said this power was too broad and should be changed to expressly state that it is subject to the privilege against self-incrimination. No change was made.
5. LAC thought that the authorisation of “any person” to exercise entry and inspection powers under clause 255A should be changed to require that any person authorised to exercise the powers be suitably trained and qualified in the exercise of such powers. No change was made.
6. LAC said that the offence of providing and advertising cheating services in clause 292E was drafted too broadly. It questioned the inclusion of “completing” an assignment might be unnecessary and confusing given the offence also included “providing or arranging the provision of an assignment”. The LAC was also concerned that clause 292E would catch non-commercial activities that may be unethical but would not warrant a criminal conviction and recommended that an additional element be introduced so that the offence is only committed where the offending services are of a commercial nature or where consideration is being provided for the service. No change was made.

Freedom Camping Bill

21. This bill provided for the regulation of freedom camping on local authority-controlled land and conservation land, including introduction of an infringement offence regime. The LAC made submissions on two aspects of the seizure regime these provisions put in place. No changes were made to the bill.
 1. LAC considered that, if the purpose of the bill was to prevent continuing offending, this would not necessarily be achieved and that the use of seizure powers as a deterrent would be inappropriate. Interference with property rights should be based on conviction or an infringement penalty, or at the very least made by court order. Ability to seek court review of the decision after the fact is inadequate.
 2. LAC considered that clause 39 providing immunity for enforcement officers from claims resulting from seizing or impounding could result in some property owners not being compensated if their property were damaged, although due care was not taken by the enforcement officers. Removal of liability on behalf of the enforcement officers could prevent either Crown or territorial authorities being vicariously liable.

Weathertight Homes Resolution Services (Finance Assistance Package) Amendment Bill

22. This bill facilitated the delivery of a financial assistance package to eligible owners of leaky homes. In summary, the Crown and participating territorial authorities that signed off work each provide 25% of agreed repair costs. The Crown also offers a limited Crown guarantee for loans to homeowners who meet the banks' lending criteria.
23. The LAC suggested three matters of concern, which were not accepted.
 1. The basic criteria for eligibility for the claimants to enter the scheme are left to Gazette notice. The LAC suggested the Bill could give greater guidance as to the criteria so that potential claimants could review the scheme as gazetted against the intentions of Parliament in creating it.
 2. Whether a home owner elects to enter the scheme will impact on the rights of third party builders or others to seek contribution from local authorities under current case law. The LAC suggested that the Committee might consider whether third parties ought to be able to claim a contribution from the territorial authority if its liability would actually amount to more than 25%, but taking into account the 25% the local authority may have paid.
 3. The Bill contains a broad Crown immunity clause that is not readily justified (and does not accord with the RIS). The default position under the Crown

Proceedings Act is that the Crown is vicariously liable for the torts of its servants.

BILLS IN PARLIAMENT NOVEMBER 2011 (alphabetical list)

Alcohol Reform Bill

24. This bill aims to reform more generally the law relating to the sale, supply, and consumption of alcohol. The LAC suggested implementing an overview provision outlining the various parts of the bill, which was not accepted.
25. In response to the comment that clauses 403, 405 and 406 breach the right of freedom from arbitrary arrest under section 22 of the Bill of Rights Act, all three sections were crossed out and replaced with new ones, resulting in the exclusion of “Powers of arrest, search and seizure in relation to bylaws prohibiting alcohol in public place”. The Attorney-General had reported that the requirement under clause 408 to answer questions about another person is a breach of the right to freedom of expression under section 14 of the Bill of Rights Act and the requirement to provide “the name and address and whereabouts of any other person connected in any way with the alleged offence” has now been omitted.
26. The LAC made a number of specific recommendations with mixed uptake.
 1. Lack of clarity about how clauses 37 and 38(2) work together led to a change to provide that 37(2)(1) overrides section 35(1) but is overridden by section 38.
 2. Inconsistency between clauses 120 and 123(1) led to the removal of clause 123(1) and the requirement to consider the amenity and good order of the locality.
 3. Clause 187(2) appeared to suggest that regulations made under this Act may override clause 187(1), and a change was made to clarify that 187(2) Subsection (1) is subject to this Act.
27. More minor suggestions that did not lead to change include the following points.
 1. Clauses 287 and 344 requirements for a licencing trust and community trust to have a seal was considered outdated by the LAC but no changes were made.
 2. Lack of clarity in clause 37 about when alcohol would be an appropriate “complement to goods of the kind sold on the premises” was not amended.
 3. Lack of clarity in relation to the purpose of new section 147(2) of the Local Government Act 2002 did not lead to change.

Biosecurity Law Reform Bill

28. This bill updates the Biosecurity Act to better deal with biosecurity challenges in a global environment, by more efficient risk management; clearer roles and responsibilities; improved collaboration; and ability to handle future change. It amends several Acts, and inserts many new provisions into the Biosecurity Act, including whole new parts.
29. The LAC suggested it would be highly desirable for there to be a new, up to date and accessible Biosecurity Act. Moreover, there should be an overview of the Biosecurity Act, given that it is a large statute. This was not accepted. Specific suggestions resulting in change are as follows.
 1. Under section 22AB, the bill makes the posting on the internet of import health standards an option in addition to making them available at head office, by using “or”. The LAC suggested it would be better both in this and similar sections to make it clear that publishing material on the internet is mandatory unless otherwise prevented by copyright issues. Section 22AB has been struck out.
 2. Under section 72(5)(d) and (e), a regional council is empowered to determine if a breach of a plan creates an offence. The LAC suggested it may be more appropriate to have a process where the designation of offences is done through regulation. Section 72(5)(d) has been struck out.
 3. Section 100U provides that the general compensation provision of the Act (section 162A) can be varied by agreement between the Director-General and industry groups of which an affected individual may or may not have been a member, or with which he or she may not have agreed (the effect of section 100V). It would then be possible for an agreement between a public official and a private sector group to override an Act of Parliament. The LAC suggested that such an important consequence should be done, at least through regulation, and even that is contrary to good law making principles. Section 100V has been struck out.
30. Suggestions that did not result in changes are as follows:
 4. The LAC suggested section 60 could have been better titled e.g. “relationship of rules and plan with bylaws”. The phrase “relationship of rules and plans with law” is not necessarily useful.
 5. Section 40(D) provides that the Director General must exercise natural justice in suspending the approval of a faculty operator, without further definition. The LAC suggested this was imprecise.
 6. The limitation in section 100U(3)(d) on the varying of compensation is phrased in the negative. The LAC suggested it would be better to phrase the

conditions under which such an agreement can be approved in positive terms.

7. Section 100U contains a privative clause of uncertain effect and target – “the exercise of a statutory power under this Act cannot be challenged on the ground that it was the result of a joint decision under the agreement.” The LAC suggested that thought should be given as to whether such a privative clause was really needed, and if it is, how it might be better drafted to reflect the policy behind it.
8. The LAC suggested that the database section 142A(5) and information sharing provision section 142I raise significant privacy and information sharing concerns. The LAC was concerned that section 142I completely ignores the protections provided by the Privacy Act, and the purposes for which the Director General can disclose any information are so broad that they were almost meaningless, and thus the power seemed unnecessary. The LAC suggested that if the clause was necessary the kind of information should be specified, the agencies to whom it can be disclosed should be clearly identified, and the purposes for which it can be disclosed should be precisely and clearly specified. The Committee also suggested that there should be a requirement that there be an annual report by the Solicitor-General on the operation of the provision.

Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill

31. The bill amends the Crown Pastoral Land Act 1998 by replacing the land-valuation basis for setting rents on pastoral leases with a property-earning-capacity basis. The LAC made a submission to the Primary Production Committee concerning the alternative dispute resolution system in the bill, which did not result in any change to the bill.
32. Clause 23F provides for the appointment of an expert determiner in the event that the Crown and lessee disagree over the base or carrying capacity. The expert determiner meets with the parties’ assessors for the purpose of reaching an agreement, and if this fails sets up and facilitates a resolution hearing, in which the expert assessor can make determination if agreement is unlikely to occur. The LAC considered that the impartial third party who has conducted a facilitative process should not proceed to determine the dispute.

National Animal Identification and Tracing Bill

33. This bill is intended to bring New Zealand's animal traceability systems up to date with its international trading partners and competitors so as to improve biosecurity management and establish the health status of New Zealand's livestock population. It will enable tracing of animals from birth to export or death and provide information on the current location and movement history of animals.

34. Specific suggestions from the LAC resulting in change are as follows.
1. The LAC suggested that the power to detain and search a person without warrant under clause 110 is not justified. Select Committee has recommended amendment to clause 110(1) (which becomes clause 55(1) of new Schedule 1A) so that a search warrant would be required in order to exercise the power to detain and search. This was accepted.
 2. The LAC suggested that clause 110 should specify the purpose of the search to be undertaken and that the constable should have reasonable grounds to believe the person is in possession of specified evidential material. This was accepted.
 3. The LAC suggested that clauses 45 and 46 are confusing, repetitive and lengthy and would be better grouped according to who makes the decision rather than by the type of information that is being applied for, and some rearrangements are recommended. This was accepted.
 4. The LAC suggested that the wide immunity from civil or criminal liability given to those involved in the governance and administration of the Bill goes too far. Amendment recommended to provide clause 152, which provides immunities, now no longer applies to the NAIT organisation. (However, other categories still have very wide immunities.)
 5. The LAC suggested that reference to a NAIT organisation becoming bankrupt or insolvent under the Insolvency Act 2006 is inaccurate as this Act does not apply to corporations, associations or companies. Reference to the Insolvency Act 2006 has been removed.
 6. The LAC suggested that the search and seizure clauses could be placed in a schedule to improve the structure of the Bill. This is now in new schedule 1A.
35. The LAC views which did not result in any changes are as follows:
1. The LAC suggested a different governance model with a public service entity to carry out many of the functions of the NAIT organisation, or at least some form of public entity with accountability such as producing an annual report and statement of intent, subject to the Public Audit Act 2001.
 2. The LAC suggested making an audit of levies publicly available and making it subject to the Auditor-General's mandate.
 3. The LAC suggested that the Official Information Act 1982 apply to the NAIT organisation.
 4. The LAC suggested that either the Minister apply the criteria under clause 8(3) before designating NAIT Limited as the NAIT organisation under clause

8(4), or (if that is impracticable) for there to be a minimum level of Crown shareholding or other form of Crown control before the company is able to exercise the functions and powers of the NAIT organisation.

5. The LAC suggested amendment to the inappropriate power in clause 106(b) for a NAIT enforcement officer to take possession and control of a vehicle that has been stopped if he or she has reasonable grounds to believe that it is necessary for road safety purposes. An enforcement officer under this Bill does not have jurisdiction to deal with road safety matters.
6. The LAC suggested amendment to the power to require any person to answer relevant questions, contained in clause 57(1), as it is too wide and in any case there is no specific offence to enforce this obligation to answer questions.
7. The LAC suggested the addition of an Overview, and notice requirements when a Minister is revoking the designation of a NAIT organisation.
8. The LAC suggested improving clarity about when a fee should be imposed and when a levy should be imposed.
9. The LAC suggested amendments to remove the inconsistency in the ways in which the penalties for offences are structured.

Ngāti Pāhauwera Treaty Claims Settlement Bill

36. This bill aims to give effect to the deed of settlement entered into by Ngāti Pāhauwera and the Crown to agree to a final settlement of Ngāti Pāhauwera's historical claims for breached of the Treaty of Waitangi. The LAC made a submission to the Māori Affairs Committee on one aspect of this bill.
37. Clause 58(1)(b) provides that a person may only extract hangi stones from the beds of the Mohaka and Te Hoe Rivers with the written consent of the Ngāti Pāhauwera Development Trust ("the Trust"). Clause 60(1) provides for the appointment of "tangata tiaki" by the Trust to promote compliance with clause 58(1)(b). The bill did not provide tangata tiaki with powers, instead providing that regulations could be made by Order in Council to prescribe such powers. The LAC was concerned that if tangata tiki were to have enforcement powers, particularly powers requiring people to provide information, this should be provided for in primary legislation rather than delegated legislation. Alternatively, the LAC submitted, the regulation-powers in clause 60(4) should be further specified.
38. The Select Committee reported the bill with a recommendation that clause 60A be inserted to specify in regulations the functions, duties and powers of tangata tiaki. It further recommended the amendment to clause 60 (20 to provide for the

appointment of tangata tiaki in accordance with the regulations made under proposed new clause 60A.

Regulatory Standards Bill

39. The aim of the bill is to improve the quality of regulation (including Acts of Parliament, statutory regulations, and tertiary legislation) in New Zealand. The bill provides a set of regulatory principles that all regulations should comply with and requires those proposing and creating regulations to certify the regulation is compatible with those principles. The bill also provides for a new declaratory role for the courts to monitor the certification process. The LAC did not support the bill and raised a number of issues with it in its submissions to the Commerce Committee.
40. The bill is awaiting report back, and there is a possibility that the Commerce Committee may seek submissions again. The LAC submission made the following points.
1. The bill would act in a similar manner to the Bill of Rights Act and to have two statues dealing with related and overriding rights made no sense and would confuse citizens. The LAC considered that any legislated statement of fundamental values and principles would need widespread support from the citizenry, after considerable consultation, as to what fundamental values it should include.
 2. The bill would distort the present constitutional order by undercutting ministerial responsibility, politicising chief executives through their role in the certification process, and thrusting the courts (rather than Parliament) into reviewing the reasonableness of all legislation. In doing so, the bill would bring the courts into areas of law-making that are not within their province by requiring them to adjudicate on choices made by democratically elected governments on complex social and economic issues and the allocation of resources to address them.
 3. The content of the proposed principles was highly problematic in attempting to define good law-making by reference to a set of simple principles and open ended language which may be too general and very difficult to apply in practice.
 4. The bill would require all legislation to come into compliance within ten years; a task the LAC considered to be unachievable given the size and scope of the present New Zealand statute book.
 5. The cost of implementing the bill would be considerable due to the whole new process layer that would be added to the legislation process and the increase in legal attacks on legislation likely to take place.

Road User Charges Bill

41. The bill aims to modernise and simplify the road user charges system by moving from a system based on actual gross weight of vehicles to one based on maximum permissible on-road weight of vehicles. The LAC made a submission to the Transport and Industrial Relations Committee on two matters.
1. The first matter concerned the exception in clause 68(2) to the Summary Proceedings Act 1957. Section 14 of the Act sets a limitation period of 6 months for laying information for a summary offence, while clause 68(2) provides that the limitation period for all offences in the bill is 2 years. The LAC was concerned there is not sufficient justification for an across-the-board extension to the limitation period. It was seen as unnecessary to include non-imprisonable offences in this extended limitation period given that the Criminal Procedure (Reform and Modernisation) Bill would already extend the current 6 month limitation period to 1 year for offences that are not imprisonable and attract a maximum fine of less than \$20,000. Clause 68(2) was amended by the Select Committee.

As reported back, the limitation period for specified offences (defined in clause 67B as offences punishable by a maximum fine of \$15,000 or more in the case of an individual and \$75,000 or more in the case of a body corporate) was increased to five years, while the limitation period for all other offences in the bill was reduced to a 1 year limitation period to align with the changes being proposed in the Criminal Procedure (Reform and Modernisation) Bill.

2. Clause 72 authorises the issue of search warrants under section 198 of the Summary Proceedings Act 1957 in relation to specified offences, notwithstanding that these offences are not punishable by imprisonment. The LAC considered that an across-the-board application of the search warrant power was not justified in light of the general rule that non-imprisonable offences do not justify the intrusiveness of a search power. The LAC suggested that thought be given to identifying the offences that would really require the power.

This recommendation did not result in any changes to the bill.

COMMENTS ON MATTERS NOT ARISING OUT OF A BILL

42. The Committee has become very concerned about the legislative backlog that has become evident in Parliament in recent years. The reasons for this are complex but include the advent of MMP and the serious financial and geophysical events which have confronted the country, as well as the increased complexity of Government. The Committee has made submissions on the review of Standing Orders, and from time to time other suggestions to the Attorney-General as to how this difficulty might be addressed.

LEGISLATION ADVISORY COMMITTEE GUIDELINES

Accessibility of Guidelines

43. The LAC Guidelines are a valuable resource for departmental legal teams and those working in government with a legal training. The Guidelines are crafted by legal experts, drafted for a legal audience and rigorously cover all possibilities. Ongoing updates keep pace with changes in legal thinking and practice.
44. However, the Guidelines are not very accessible for policy analysts responsible for developing advice. Policy analysts also guide lawyers and law drafters on the policy intent for legislation. While policy analysts can rely on departmental legal staff to advise them on the Guidelines, this could be made more effective by policy analysts understanding and using the Guidelines in policy design before it is translated into legislation.
45. As a result, during 2011 the Committee commissioned a trial of simplified Guidelines written for policy analysts. Sample simplified Guidelines were prepared for some chapters and tested with a limited number of policy analysts and departmental legal advisers. They were also discussed by the Committee. Overall, the feedback on the sample was generally positive.
46. Some Committee members were concerned that simplified guidelines might supersede the full Guidelines. Many considered this risk was outweighed by the advantages of more in the policy community using the Guidelines in policy formulation, and the potential for better input from legal staff when then this occurred.
47. The Committee is now working on the project in two directions:
 - Supported by the Parliamentary Counsel Office, a simplified “index” of the Guidelines is being prepared. A first draft had been completed by the end of 2011.
 - A small amount of funding is being sought from Government departments to write further simplified Chapters of the Guidelines. This will build on the index that is being drafted.
48. The simplified Guidelines will add another dimension to the Committee’s educational work, currently delivered through annual seminars and engagement with departments.

ACKNOWLEDGEMENTS

49. The Committee would like to acknowledge the following contributions:
- a. The Ministry of Justice for its support to the role of Secretary to the Committee;
 - b. The Law Commission for reviewing and providing reports on all bills considered by the LAC;
 - c. The Crown Law Office for reviewing and providing reports on bills considered by the LAC that originated with Law Commission reports;
 - d. The Parliamentary Counsel Office for following up the Committee's concerns and technical comments with drafters and officials.

Hon Sir Grant Hammond KNZM
Chair