



LEGISLATION ADVISORY COMMITTEE

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19 December 2013

Mr Cam Calder MP
Chair
Education and Science Committee
Parliament Buildings
P O Box 18 041
WELLINGTON 6160

Dear Mr Calder

Industry Training and Apprenticeships Amendment Bill 151-1

1. This submission is made by the Legislation Advisory Committee (LAC).
2. The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced, and updates the *Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation* (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
3. The terms of reference of the LAC include to:
 - (a) scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
 - (b) 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 LAC Guidelines, and discouraging the promotion of unnecessary legislation.
4. The LAC considered the Industry Training and Apprenticeships Amendment Bill at its meeting on 4 December 2013.

Delegated legislative power

5. The LAC wishes to draw the Committee's attention to two matters relating to the delegated legislative power under which the Minister may issue an apprenticeship training code.
6. First, this agency regulation making power raises the issue of whether provisions that give Ministers or agencies the ability to set up codes ought to specify the level of consultation that is required before the Minister approves them. Clause 17 of the Bill inserts a new Part 2A into the (renamed) Industry Training and Apprenticeship Act 1992. New section 13F provides that the Minister may issue by Gazette notice an apprenticeship training code to set guidelines for employers, apprentices, and others involved in carrying out apprenticeship training. New section 13F largely re-enacts sections from the Modern Apprenticeship Training Act 2000 but leaves open the question of what consultation must be undertaken before a code is issued by the Minister. In contrast the equivalent section of the Modern Apprenticeship Training Act 2000 provides that the Minister may consult any person or organisation that the Minister considered appropriate. The new provisions may potentially require broader consultation than the current one, but this is not clear. The LAC considers that it would be preferable for the Bill to clarify the Minister's consultation obligations.
7. The second issue is that the status and enforceability of any code issued by the Minister under new section 13F is a bit ambiguous. New section 13H (which re-enacts section 7 of the Modern Apprenticeship Training Act 2000) provides that mediation personnel, the Employment Relations Authority and the Employment Court "must take into account every applicable element of any apprenticeship code" when exercising any power or performing any function under the Employment Relations Act. However, new section 13F describes the apprenticeship training code as setting guidelines, consistent with the Act, as to the responsibilities of apprentices, their employers, and those providing training activities.
8. New section 13I specified that any code issued by the Minister is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House under section 41 of that Act. This would suggest that, although the code is called guidelines, it may well set binding standards. Any instrument, such as a code, is normally declared to be a disallowable instrument because it will have significant legislative effect. If the code is intended to be simply a statement of good practice, then it would not need to be a disallowable instrument. LAC considers that it would be better for the Bill to be clearer as to the status of any code that may be issued.

9. The Committee does not wish to be heard on this submission.

Yours sincerely

A handwritten signature in black ink that reads "Grant Hammond". The signature is written in a cursive style with a large initial 'G'.

Hon Sir Grant Hammond
Chair