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Biosecurity Law Reform Bill

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:
 - (a) to 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) to 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 apologizes that this submission is late. For a variety of reasons, the LAC was first able to consider the Bill at its meeting on Friday 25 March, and considered that although its submission would be substantially late, the Bill raised a number of significant issues which the LAC wanted to bring to the attention of the meeting.

Accessibility of Law

- 5 The Bill makes extensive amendments to the Biosecurity Act. It inserts many new sections including whole new Parts. The current Act is over 190 pages long. So is Part 1 of the Bill which amends it. The current Act is nearly 30 years old. It has been amended many times: many sections have been replaced, amended, or repealed. It would be highly desirable for there to be a new, up to date, and accessible Biosecurity Act. It is an important statute. It is used by central and local government and it affects many businesses and individuals. It ought to be one of the most accessible. After its amendment by the Bill it will be one of the least accessible.
- 6 The LAC understands the reluctance to risk opening up existing provisions to debate. However, Parliament has an obligation to make the law accessible to users. It is easily possible to incorporate the amendments made by the Bill into a new Act. It can be done on the strict understanding that provisions of the current Act that are not affected by the Bill remain unchanged. Some extra work is involved, but the result will reflect well on Parliament.
- 7 It would also be of considerable assistance to users if there were an overview of the Biosecurity Act. The Bill could provide for this. Overviews are common features of particularly large and complex statutes. They can assist readers to get their bearings and to know what to expect as they read an Act.
- 8 The Bill appears to make the posting on the internet of import health standards an option in addition to making them available at head office , by using “or” , s22 AB. It would be better in both this section and other similar sections to make it clear that publishing material on the internet is mandatory unless otherwise prevented by copyright issues.
- 9 The relationships between the plans to be issued under the Bill and the pre-existing law is a key element of the way in which the plans will work. There are a number of provisions that state different elements of those relationships (ss 60, 68, 86 etc). The policy behind those provisions is not clear and needs to be more clearly explained and expressed in the statute. The use of the phrase “relationship of rules and plans with law” is not necessarily useful, s60 could have been better titled for instance “relationship of rules and plan with bylaws”?

Need to specify requirements of natural justice

- 10 S 40D(6) provides that the Director General must exercise natural justice in suspending the approval of a facility operator, without further definition. This is also imprecise. The LAC guidelines state it is better to expressly set out the procedural protections that are intended.

Regional Council offence making power

- 11 A regional council is empowered to determine if a breach of a plan creates an offence, s 72(5)(d) and (e). It may be more appropriate to have a process where the designation of offences is done through regulation, see the pecuniary penalty regime in this Bill (s 154 G (p)) so as to provide an added discipline on Regional Council decision making.

Part 5A Government/Industry Agreement for Readiness and Response

- 12 Section 100U provides that the general compensation provision of the Act (s162 A) 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 s100V). It would then be possible for an agreement between a public official and a private sector group to override an Act of Parliament. It is submitted that such an important consequence should be done, at least through regulation, and even that is contrary to good law making principles. Moreover, the limitation in s100U(3)(d) on the varying of compensation is phrased in the negative, it would be better to phrase the conditions under which such an agreement can be approved in positive terms.
- 13 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 is not certain that the clause is either needed or desirable. Thought should be given as to whether such a privative clause is really needed, and if it is how it might be better drafted to reflect the policy behind it.

Privacy and information sharing concerns

- 14 The database s142A(5) and information sharing provision s142I raise significant privacy and information sharing concerns. Section 142I completely ignores the protections provided by the Privacy Act. The Director General can disclose any information, wherever he or she got it from and can disclose it to any agency. The purposes for which he can disclose it are so broad as to be almost meaningless: “protection of the environment”; “the achievement of the purpose of this Act.” The LAC is not clear why such a power is necessary. But if it is, then it submits that the kind of information should be clearly 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. There should be a requirement that there be an annual report by the Solicitor-General on the operation of the provision.

Conclusion

15 The Committee does not wish to be heard in support of the submission but Representatives of the LAC would be happy to elaborate on the points made if the Committee wishes.

Yours sincerely



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Legislation Advisory Committee