



LEGISLATION ADVISORY COMMITTEE

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The Chairperson
Finance and Expenditure Committee
Parliament Buildings
WELLINGTON

STUDENT LOAN SCHEME BILL 2010 198-1

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:
 - (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 was pleased to note that the substantial changes to the Student Loan Scheme legislation are being achieved by repealing and re-enacting the legislation as a whole, rather than by way of a bill amending the existing Act. We have on previous occasions noted that a complex amending bill can lead to a confusing and inaccessible Act. The new Student Loan Scheme Bill, having started again from scratch, is coherent and readable.
5. The LAC wishes to make only one submission. It relates to clause 63 which provides:

63. Prohibition on applications or declarations to maintain integrity of student loan scheme

The Commissioner may prohibit a borrower from making an application under **section 36** (application for unused repayment threshold to be allocated to secondary employment earnings) or a declaration under **section 49** (declaration by eligible borrowers for exemption from salary or wage deductions) if the Commissioner is satisfied that the borrower is using, or has used, either of those procedures in a manner that damages the integrity of the student loan scheme.

6. This clause enables the Commissioner to prohibit a borrower from exercising what is effectively a right to apply to the Commissioner.
7. The ground on which the Commissioner may exercise this power of prohibition is that the Commissioner is satisfied that the actions of the borrower would “damage the integrity of the student loan scheme”. This ground seems to the LAC to be so vague as to be meaningless. It effectively gives the Commission an unfettered discretion. Such discretions can lead to inconsistency and unfairness.
8. The LAC submits that the criteria for the exercise of this prohibitory power should be spelt out clearly and precisely in the legislation, so as to enable borrowers to know what they can and cannot do, and to provide guidance to the Commissioner to enable consistent decision-making.

Sir Geoffrey Palmer
Chair