

ACTIVITIES OF THE LEGISLATION ADVISORY COMMITTEE DURING 2005

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Report of the Legislation Advisory Committee to the Attorney-General

Sir Geoffrey Palmer, Chairperson
December 2005

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LEGISLATION ADVISORY COMMITTEE

Sir Geoffrey Palmer, Chairperson	
Mr Guy Beatson, Counsellor (Economic) New Zealand High Commission	Mr Grant Liddell, Crown Counsel Mr Jeff Orr, Chief Legal Counsel, Ministry of Justice
Mr Graeme Buchanan, Deputy Secretary, Legal, Department of Labour	Sir Ivor Richardson, Former President of the Court of Appeal
Hon Justice Robertson, Judge of the Court of Appeal	Ms Mary Scholtens QC, Wellington Barrister

Professor John Burrows, Canterbury University	Mr George Tanner QC, Chief Parliamentary Counsel
Professor John Farrar, Dean of Law, Waikato University	Dr John Yeabsley, Senior Fellow, NZ Institute of Economic Research
Mr Andrew Geddis, Senior Lecturer, Otago University	Dr Warren Young, Acting President of the Law Commission
Mr Jack Hodder, Partner, Chapman Tripp	Mr Ivan Kwok, Treasury Solicitor

Secretary: Joanna Mason, Ministry of Justice, P O Box 180, Wellington
Email: joanna.mason@justice.govt.nz

13 December 2005

The Hon David Parker
Attorney-General
Parliament Buildings
Wellington

Dear Attorney-General

I am pleased to provide you with the annual report of the Legislation Advisory Committee for the period 1 January 2005 to 31 December 2005.

Yours sincerely

Sir Geoffrey Palmer
Chair
Legislation Advisory Committee

INTRODUCTION

Purpose of this report

1. This is a report to the Attorney-General (the Minister responsible for the Legislation Advisory Committee) on the work completed by the Legislation Advisory Committee in the period from 1st January 2005 to 31 December 2005. This report:

- a. Advises you on the membership and work structure of the Legislation Advisory Committee; and
- b. Summarises the work done by the Legislation Advisory Committee this year.

Functions of the committee

2. The terms of reference of the Legislation Advisory Committee are as follows:

- a. To provide advice to departments on the development of legislative proposals and on drafting instructions to the Parliamentary Counsel Office;

- b. To report to the Minister of Justice and the Legislation Committee of Cabinet on the public law aspects of legislative proposals that the Minister or that committee refers to it;
- c. To advise the Minister of Justice on any other topics and matters in the field of public law that the Minister from time to time refers to it;
- d. To 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;
- e. 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;
- f. To monitor the content of new legislation for compliance with the Official Information Act 1982 and the purposes and principles of that Act; and
- g. To advise the Clerk of the House on any question referred to it by the Clerk of the House under section 9 of the Citizens Initiated Referenda Act 1993.

3. The Legislation Advisory Committee met 9 times in 2005.

Focus of the Legislation Advisory Committee

4. In 2005 the Legislation Advisory Committee focussed on:

- a. Advising agencies on the development of legislative proposals;
- b. Scrutinising and making submissions on aspects of bills introduced into parliament;
- c. Reviewing the Legislation Advisory Committee Guidelines on process and content of legislation; and
- d. Promoting and educating departments on the Legislation Advisory Committee Guidelines.

MEMBERSHIP AND MEETINGS

5. The membership of the Legislation Advisory Committee as at 1 December 2005 was as follows:

Sir Geoffrey Palmer (Chair)

Mr Guy Beatson

Mr Graeme Buchanan

Professor John Burrows

Professor John Farrar

Mr Andrew Geddis

Mr Jack Hodder

Mr Ivan Kwok Mr Grant Liddell

Mr Jeff Orr

Sir Ivor Richardson

Hon Justice Robertson

Ms Mary Scholtens

Mr George Tanner

Dr John Yeabsley

Dr Warren Young

6. Dr Warren Young (Acting President of the Law Commission) and Mr Jeff Orr joined the Legislation Advisory Committee this year. Mr Jeff Orr replaced Mr Andrew Bridgman as the representative on the

Legislation Advisory Committee from the Ministry of Justice. Associate Professor Janet McLean and Professor Julie Maxton both resigned from the Legislation Advisory Committee this year.

7. In 2005 the Legislation Advisory Committee met nine times. The meetings were held on the following days:

4 February
4 March
15 April
27 May
8 July
12 August
16 September
28 October
2 December

WORK STRUCTURE

8. It was decided that the Legislation Advisory Committee should operate through subcommittees. The subcommittees will put up proposals to the Legislation Advisory Committee before advancing significant pieces of work.

9. The following five subcommittees have been established:

a. Guidelines Subcommittee - chaired by Professor John Burrows. This subcommittee deals with the Legislation Advisory Committee Guidelines.

b. Education and Monitoring Subcommittee - chaired by Dr Warren Young. This Committee devises and implements programmes of education centred round the guidelines and practical issues relating to dealing with subcommittees and the whole house.

c. Subcommittee on the Legislative Process - chaired by Sir Geoffrey Palmer. The role of this subcommittee is to investigate ways to change the legislative process in such a way that non-controversial law reform measures receive more attention from the House of Representatives than they do at present.

d. Subcommittee on Delegated Legislation - chaired by Grant Liddell. This subcommittee interests itself in the subject of delegated legislation and the safeguards against it.

e. Subcommittee on General Assistance - chaired by George Tanner. This subcommittee:

i. deals with departments or agencies which request help with particular legislative proposals and provides some input and feedback to them.

ii. deals with any requests from the Legislation Committee of Cabinet or Ministers.

iii. superintends the writing of any submissions to Select Committees.

WORK LOAD

10. This year the Legislation Advisory Committee carried out the following 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. Reviewed the Legislation Advisory Committee Guidelines on Process and Content of Legislation; and

d. Promotional and educational activities relating to the guidelines.

ADVICE TO AGENCIES ON THE DEVELOPMENT OF LEGISLATIVE PROPOSALS

11. The LAC has provided advice on the following matters:

- a. Incorporating the World Anti-Doping Code into New Zealand Law;
- b. The Trans-Tasman court proceedings and regulatory enforcement;
- c. The legislative amendments of the Accident Compensation Legislation for newly self employed;
- d. The Ministry of Economic Development's Revised Guidelines on Regulatory Impact and Business Compliance Cost Statements; and
- e. Material incorporated by reference.

Incorporating the World Anti-Doping Code into New Zealand Law

12. Sports and Recreation New Zealand came to the Legislation Advisory Committee for some guidance on how to incorporate the World Anti-Doping Code into New Zealand Law.

13. The Legislation Advisory Committee proposed that the New Zealand Sports Drug Act 1994 should be replaced with a short piece of legislation that established:

- a. The New Zealand Sports Drug Agency as a Crown Entity;
- b. That the agency has the power to require actions to be taken by athletes and others; and
- c. A tribunal.

14. The Parliamentary Counsel Office and Sports and Recreation New Zealand are currently considering the Legislation Advisory Committee's proposal.

Trans-Tasman Court Proceedings and Regulatory Enforcement

15. A Trans-Tasman Working Group has been established to consider the potential for greater co-operation in civil court proceedings and regulatory enforcement. The Trans-Tasman Working Group sought a submission from the Legislation Advisory Committee.

16. The Legislation Advisory Committee indicated that it did not want to engage in the policy issues and would not be making a submission but was interested in how the proposals would be implemented.

17. The Legislation Advisory Committee recommended that the Trans-Tasman Working Group consider using the Trans Tasman Mutual Recognition Act 1997 for the implementation of their proposals on Trans-Tasman Court Proceedings and Regulatory Enforcement.

The Legislative Amendments of the Accident Compensation Legislation for newly self employed

18. Doug Tennent, a lecturer at Waikato University provided the Legislation Advisory Committee with information on problems with the new amendments to the Accident Compensation Legislation. A particular concern is the fact that the new amendments do not apply retrospectively to persons who became newly self employed between 1999 and the date the new amendments came into force.

19. The Legislation Advisory Committee decided that this was not a matter to which it should respond since the issues were primarily policy issues and not within the Legislation Advisory Committee's terms

of reference. However the Legislation Advisory Committee recommended some alternative avenues Mr Tennent could explore such as raising the issues with the Department of Labour, the Ombudsmen or the Human Rights Commission.

The Ministry of Economic Development's revised guidelines on Regulatory Impact and Business Compliance Cost Statements

20. Officials from the Ministry of Economic Development talked to the Legislation Advisory Committee about their review of the guidelines for Regulatory Impact and Business Compliance Cost Statements. The Legislation Advisory Committee provided some feedback on the Ministry of Economic Development's draft guidelines.

Material Incorporated by Reference

21. Richard Worth, the Chairman of the Regulations Review Committee asked the Legislation Advisory Committee to comment on the new issues that have arisen in relation to material incorporated by reference.

22. The Legislation Advisory Committee had previously provided the Attorney-General with a set of principles in relation to material incorporated by reference and some corresponding draft model clauses. The Building Act 2004 contained all these model clauses and incorporated some building standards by reference. The government does not own the copyright to the building standards. Therefore a conflict has arisen between the interest in ensuring public access to the law and protecting the commercial interests of persons who hold copyright in material that is being incorporated into the law.

23. The Legislation Advisory Committee thought that the problem had been dealt with in the best possible way. The Legislation Advisory Committee recommended that submissions to Cabinet in relation to legislation that proposed the incorporation of material by reference would address issues about the availability of the material itself, in particular:

- a. would it be able to be freely accessed on the Internet?
- b. would there be copyright issues? and
- c. what other access arrangements would there be if there were barriers to access of this kind?

SCRUTINY AND SUBMISSIONS ON ASPECTS OF BILLS INTRODUCED INTO PARLIAMENT

24. The Law Commission provided the Legislation Advisory Committee with the equivalent of a half time researcher. The Law Commission researchers, under the supervision of a Commissioner, vet bills introduced into parliament and provide the Legislation Advisory Committee with a report on each bill vetted to alert the Legislation Advisory Committee to any likely issues. The Legislation Advisory Committee then decides whether or not to make a submission on the Bills they identify.

25. In the scrutiny of bills the Legislation Advisory Committee is not concerned with drafting style or issues relating to the Treaty of Waitangi or privacy.

26. The Legislation Advisory Committee scrutinised and made a submission to the relevant department on the following Bills:

- a. Immigration Advisers Licensing Bill. Amongst other things, the Legislation Advisory Committee recommended that the Bill should be included in the general review of the immigration legislation and therefore the Bill should wait until the review had been completed.

b. Climate Change Response Amendment Bill. The Legislation Advisory Committee invited the people responsible for this Bill to talk to the Legislation Advisory Committee.

c. Oaths Modernisation Bill. Amongst other things, the Legislation Advisory Committee recommended that the entire Oaths and Declarations Act 1957 be rewritten in plain English.

d. New Zealand Council of Law Reporting Amendment Bill. The Legislation Advisory Committee questioned whether the Amendment Bill and the original Act itself was necessary and recommended that the original Act be repealed.

27. The Legislation Advisory Committee wrote to the Hon Judith Tizard, the Minister responsible for the Geographical Indications (Wine & Spirits) Registration Bill. The Legislation Advisory Committee questioned whether the legislation was necessary and if so the best way to achieve the policy objective. The chairperson met with the Minister and her officials and was persuaded that the course adopted by the Minister was justified.

28. The Legislation Advisory Committee referred the Law Commission's vetting of the Energy Safety Review Bill to the relevant drafters at the Parliamentary Counsel Office.

29. The Legislation Advisory Committee scrutinised but did not consider it necessary to make a submission on the following Bills:

- a. Crimes (Intimate Covert Filming) Amendment Bill; and
- b. Judicature Amendment Bill (No 3).

REVIEW OF THE LEGISLATION ADVISORY COMMITTEE GUIDELINES ON PROCESS AND CONTENT OF LEGISLATION

Questionnaire

30. The Guidelines subcommittee conducted a questionnaire to get input on the Legislation Advisory Committee Guidelines on Process and Content of Legislation from agencies that are involved in the formation of legislation.

31. The questionnaires were sent to 45 agencies. More than 50% of the organisations approached responded to the questionnaire. Almost all respondents say they use the Guidelines, although a few admit not all their staff are familiar with them. About half said they wished the Guidelines were easier to use and that the 2-volume format was not ideal.

32. The responses indicated that there was very strong support for:

- Seminars to instruct organisations about the Guidelines.
- The retention of a hard-copy, as well as a web-based, version.

33. The following suggestions were made:

- There was some further support for the suggestion that the Guidelines be in some way linked to the process-oriented Cabinet Manual and Step-by-Step Guide (although there is still only a small number of organisations advocating this).
- There needs to be some attention given to the Legislation Advisory Committee website. As an example, the checklist will not print out without resetting the margins.
- It is too easy for an organisation to tick all items in the checklist without being called to account for

failure to comply. Could some mechanism be devised for following up and detecting non-compliance?

- The Legislation Advisory Committee should publish regular reports of its activities, and copies of its submissions on bills should be made readily available.
- Most thought there should be more advertising of the Guidelines. It was noted that they were not easy to find on the internet, and several respondents said there should be links from the Ministry of Justice, and other websites.

Redraft of chapters

34. A number of the chapters of the Guidelines are currently being revised by the Parliamentary Counsel Office and the Ministry of Justice. These chapters are on the following topics:

- a. Crown entities;
- b. Primary and delegated legislation;
- c. Transitional and savings provisions; and
- d. Post introduction stages of Bills.

35. The Ministry of Justice is drafting a section relating to infringement fees to be included in the Guidelines. The Ministry of Justice is also redrafting Part 6 of chapter 13 relating to broad statutory provisions requiring the decision maker to act in accordance with the principles of natural justice. The Privacy Commissioner is doing a redraft of the chapter on personal information, with special emphasis on information matching and public register privacy.

36. The Parliamentary Counsel Office is investigating the possibility of including a chapter in the Guidelines on the approach to Alternative Dispute Resolution in statutes.

37. It is proposed that once there are a number of agreed amendments, cabinet approval should be sought.

Accessibility of Guidelines

38. As requested by a number of respondents to the questionnaire, Professor Burrows has compiled an index for the Guidelines.

39. The full text of the LAC Guidelines ie the 2001 edition and 2003 supplement combined, is available in electronic format on the Legislation Advisory Committee website.

PROMOTION AND EDUCATIONAL ACTIVITIES RELATING TO THE GUIDELINES

40. The Legislation Advisory Committee held seminars on 15 September and a repeat on 17 November. The first seminar was chaired by Dr Mark Prebble and Sir Geoffrey Palmer chaired the second. The seminars were aimed at policy advisors, their managers and departmental legal advisors who are involved in policy making and legislative processes.

41. The seminars involved the following presentations:

- a. Why Good Legislation Matters - The View from the Bench by Hon Justice John McGrath;
- b. Developing Policy/Preparing Legislation - an Overview by Ivan Kwok and Graeme Buchanan;
- c. How to Use the Legislation Advisory Committee Guidelines by Professor John Burrows; and
- d. Some Do's and Don'ts in the Preparation of Legislative Drafting Instructions by Departments and

Agencies by Geoff Lawn.

42. The seminars ended with a panel discussion. This involved Sir Geoffrey Palmer, Terence Arnold, George Tanner, Belinda Clark and Professor John Burrows.

43. Over 400 people attended the seminars. The majority of attendees that filled out the evaluation form indicated that they found the seminars useful.

OTHER

Bill Sewell Prize

44. The winners of the 2004 Bill Sewell prize were Anthony Trenwith of the University of Auckland and Ashlar Colebrook of Victoria University.

45. Due to the small number of entries for this award this year, the Bill Sewell prize will not be awarded this year.