

SCANNED



LEGISLATION ADVISORY COMMITTEE

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Chair
Local Government and Environment Committee
Parliament Buildings
P O Box 18 041
WELLINGTON 6160

Dear Sir/Madam

GAME ANIMAL COUNCIL BILL 2011 – 347/1

Introduction

1. The Legislation Advisory Committee was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. It has produced, and updates, Guidelines on the Process and Content of Legislation as appropriate benchmarks for legislation, which have been adopted by Cabinet.
2. The terms of reference of the LAC include:
 - 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;
 - 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.

Nature of the submission

Creation of a new public power

3. Clause 5 of Schedule 1 of the Bill confers a power on enforcement officers and honorary enforcement officers to prevent or stop offending. In particular, an officer may act in a way that is reasonable to prevent an offence that he or she believes on reasonable grounds is being or is about to be committed. An officer may also require a person who he or she believes on reasonable grounds is committing an offence or is about to do an act that would constitute an offence to stop committing the offence or doing the act. While “offence” is not defined here, it is likely that a court would read it down to mean offences under the Act, as opposed to any offending across the statute book.
4. Nevertheless, such a power is highly unusual. Normally, an enforcement regime will confer powers to detect offending and gather evidence, and if the offending is considered serious enough, a power to arrest a suspect. However, this does not usually include powers to intervene to prevent offending.
5. One exception to this is section 14 of the Search and Surveillance Act 2012. That power is subject to high threshold. Specifically, it enables constables to act to prevent offending or to respond to a risk to life or safety but only where:

“they have reasonable grounds to suspect either an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property; or

There is risk to the life or safety of any person that requires an emergency response.”
6. Similarly, the Search and Surveillance Act permits the exercise of search powers in situations where there are reasonable grounds to suspect an offence is about to be committed. However, under that Act search powers are either subject to prior judicial authorisation through a warrant process, with warrantless powers being limited to very serious offending and situations of urgency.
7. The exercise of such a power might entail significant interferences with individual rights and freedoms in situations where the criminal law is not yet engaged. It is somewhat unusual that this power is not confined to situations of urgency or limited to the most serious offending.

Creation of a new public body

8. The Bill would create the Game Animal Council. The Regulatory Impact Statement prepared by the Department of Conservation stated that the council would be a Crown Entity. However, the Bill does not amend the Crown Entity Act to apply its provisions to the Council (with the exception of section 10 of the Crown Entity Act, which relates to remuneration and reimbursement of

members of the Council). It is unclear why the Crown Entity Act has not been applied.

Criminal offences

9. The offences in the Bill are stated to be summary offences. The summary/indictable distinction was removed with the enactment of the Criminal Procedure Act 2011 and the Bill will need to be amended to reflect this.

Conclusion

10. Thank you for taking the time to consider the Committee's submission. 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