

14 December 2009

The Chair
Transport and Industrial Relations Committee
Parliament Buildings
P O Box 18041
Wellington 6160

**INJURY PREVENTION, REHABILITATION AND COMPENSATION
AMENDMENT 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.

Clause 11 of the Bill

- 4 Clause 11 of the Bill relates to ACC entitlements for imprisoned offenders who have suffered a personal injury in the commission of the offence. At present, section 122 of the Injury Prevention, Rehabilitation and Compensation Act 2001 allows ACC to apply to the District Court to deny entitlements wholly or in part to previously imprisoned offenders who suffered personal injury in the course of committing the offence for which they were imprisoned, where it would be

“repugnant to justice” for the claimant to receive the entitlements. The existing section 122 lists 8 criteria to guide the District Court as to what might make it “repugnant to justice” for an offender to be provided with ACC entitlements.

- 5 Clause 11 of the Bill effectively reverses this process by substituting new sections 122 and 122A.
- 6 New section 122(1) establishes a blanket rule that ACC must not provide any entitlements to a claimant if he or she suffers a personal injury in the course of committing an offence punishable by 2 years or more imprisonment and is imprisoned for committing the offence. Subsections 122(2) and (3) clarify that while ACC remains liable to provide the claimant with treatment, entitlement to surgery is restricted.
- 7 Under proposed section 122A(1), the Minister can exempt a claimant from section 122(1) if he or she is satisfied that there are exceptional circumstances relating to the claimant.
- 8 The LAC is concerned that no guidance is given as to when the Minister should consider whether to exercise the discretion in section 122A, or what factors, other than “exceptional circumstances relating the claimant” should be taken into account when doing so. Further, while the provision is to be called upon to aid certain claimants, claimants themselves are barred from applying an exemption (s 122A(2)). No indication is given as to the process that should be followed should claimants (or any other person) wish the Minister to exercise the discretion. Further, the proposed provisions are silent about review of the exercise of the discretion.
- 9 The LAC guidelines state that it is important to clearly establish a process and guidelines by which a public power, such as the one in proposed s 122, is to be exercised. The exact requirements for exercising a public power will be affected by the existence or not of rights of appeal.
- 10 The guidelines also state that it is generally desirable for legislation to provide a right of appeal against the decisions of officials, tribunals and other bodies that affect important rights, interests, or legitimate expectations of citizens. While the guidelines note that the value of having an appeal right must be balanced against factors such as cost and delay, they conclude that it will usually be appropriate to respond to such concerns by limiting the scope of any right of appeal, rather than denying it altogether.
- 11 The LAC suggests that the provision would be improved by the inclusion of criteria guiding the exercise of the Minister’s discretion and by a process for its exercise and review.

12 The LAC does not seek to be heard on this submission.

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Member: Legislation Advisory Committee