



LEGISLATION ADVISORY COMMITTEE

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Chair
Commerce Select Committee
Parliament Buildings
WELLINGTON

Auditor Regulation and External Reporting Bill

Introduction

- 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 bill had its First reading on 23 September 2010. The closing date for submissions is 10 November 2010. The Committee considered the Bill at a recent meeting.
- 5 The Committee does not wish to be heard in support of its submission. It has two points to make.

- 6 The Bill establishes a new regime for the regulation of auditors of issuers. Parts 1 to 3 provide for the licensing and registration of auditors and for the accreditation by the Financial Markets Authority (**FMA**) of licensing bodies. Part 4 makes extensive changes to the Financial Reporting Act 1993.
- 7 The LAC is concerned with two aspects of the Bill. The first relates to the offence provision in new section 15A of the Financial Reporting Act (clause 87). The second relates to the accessibility of standards that will be issued by the External Reporting Board (**ERB**) under new Part 3 of the Financial Reporting Act (substituted by clause 88).

New section 15A offence

- 8 The Committee raises concerns whether it is appropriate and necessary to extend the criminal law to auditors when they may in fact be already subject to professional disciplinary proceedings and civil liability for negligence for the same behaviour. Clause 87 of the Bill makes it an offence subject to a maximum fine of \$30,000 for an auditor to fail to comply with applicable auditing and assurance standards. To make auditors subject to both the criminal law and professional discipline may be somewhat excessive. Such is not the case in most other professions.

Accessibility of standards issued by External Review Board

- 9 Accessibility of the law is an important principle. This is particularly the case for delegated legislation. Accepting principles recommended by the Regulations Review Select Committee the Cabinet has decided that even “deemed regulations” should be published in the Statutory Regulations series unless there is good reason for separate publication. Separate publication may be justified if the regulations contain technical matters relevant to a particular group and the benefits of separate publication outweigh the costs of separate publication or the regulations implement detailed provisions of international agreements or standards (Legislation Advisory Committee Guidelines p.216).
- 10 Under the Bill, by virtue of clause 28, notices issued by the FMA on licensing and accreditation matters are regulations for the purpose of the Regulations (Disallowance) Act, but not for the purposes of the Acts and Regulations Publication Act. The FMA is required to publish the notices on its internet site and make them available for inspection and purchase. The LAC sees no difficulties with this. It is, however, concerned that the same principle does not apply to standards issued by the External Reporting Board.
- 11 Under the new Part 3, the functions of the ERB will include issuing financial reporting standards, auditing and assurance standards, and professional and ethical standards; collectively called specified standards in the Bill.
- 12 The Bill extends to specified standards the current position in the Financial Reporting Act (new s32) in regard to accounting standards. They are subject to disallowance, but are not regulations for the purposes of the Acts and Regulations Publication Act.

- 13 The Act currently provides for public notice of the approval of standards in the *Gazette* and other publications the Accounting Standards Review Board considers appropriate. Similarly, the ERB will be required to give notice of specified standards in the *Gazette* and in other publications. The notice must identify the relevant standard, but the standard does not have to be incorporated in the notice (new s31).
- 14 Although the specified standards contain highly technical and complex matters relevant to accountants and auditors rather than obligations that are of general application, they are important documents and there is a public interest in ensuring that they are available for scrutiny by interested people. As noted above, failure by an auditor to comply with the auditing and assurance standards will be an offence. The Committee is of the view that there should be a specific statutory obligation to ensure the accessibility of these specified standards. There should be a requirement to make them available via the internet and for inspection or purchase as is the case with notices published by the FMA under clause 28.

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Chair
Legislation Advisory Committee