



LEGISLATION ADVISORY COMMITTEE

PO Box 180
Wellington
6401

Phone 04 494 9785

Fax 04 494 9859

www.justice.govt.nz/lac

Email Thomas.Parry@justice.govt.nz

3 May 2011

Chair
Transport and Industrial Relations Committee
Parliament Buildings
P O Box 18 041
Wellington 6160

Road User Charges 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.

- 4 The LAC apologises that this submission is late and thanks the Committee for its consideration of the issues it raises.

Criminal Offences – Limitation Period

- 5 The Bill proposes a number of new offences. Clause 68(2) provides that, despite section 14 of the Summary Proceedings Act 1957, an information for an offence against the Act may be laid up to 2 years after the matter giving rise to the information arose. This constitutes an exception to the 6 month limitation period on summary offences that is contained in section 14 of the Summary Proceedings Act.

- 6 The LAC guidelines state:

“The standard period of limitation for offences that may only be dealt with summarily is, in the absence of specific provision to the contrary, 6 months from the date of the offence (section 14 of the Summary Proceedings Act 1957). This long standing rule first appeared in section 5 of the Justices of the Peace Act 1866, and in all subsequent New Zealand legislation on the topic. It reflects the understanding that matters punishable on summary conviction are less serious and less significant than matters that can be tried on indictment. Because of this it is, in general, unreasonable and inappropriate to allow the investigation of these offences to extend beyond a period of 6 months from the date of the offence.”

- 7 The guidelines do, however, recognise that offences that cause or involve risk of harm to health or safety, or which involve fraud or other dishonest behaviour that may be difficult to detect may justify an extended limitation period. Some of the offences in the Bill may cover fraudulent or dishonest behaviour (for example, clauses 13-15, 41-44 and 60(4).

- 8 However, a number of the proposed offences are aimed at a failure to comply with requirements imposed by the Bill (for example, clauses 8-10, 12, 21-22, 59 and 61). There is also an offence relating to disclosure of information acquired through inspection of records or a search (clause 73). These offences do not appear to involve either a risk to health or safety, or behaviour that may be difficult to detect. It is therefore unclear why an extension of the limitation period is justified.

- 9 Furthermore, the Criminal Procedure (Reform and Modernisation) Bill will extend the current 6 month limitation period in the Summary Proceedings Act. Most of the offences in the Road User Charges Bill are not imprisonable and attract a maximum fine of less than \$20,000. Under the changes in the Criminal Procedure (Reform and Modernisation) Bill these offences will be subject to a 12 month limitation period. The remaining offences in the Road User Charges Bill (clauses 41-2, 59 and 73) are subject to a maximum fine that exceeds \$20,000 and therefore will under the Criminal Procedure (Reform and Modernisation) Bill be subject to a five year limitation period.

- 10 In view of these proposed extensions to the current limitation period, the justifications for an across-the-board extension for all offences in the Road User Charges Act are even less clear.

Power of Search and Entry

- 11 Clause 72 of the Bill authorises the issue of search warrants under section 198 of the Summary Proceedings Act 1957 in relation to certain offences (namely those punishable by a maximum fine of \$15,000 or more in the case of an individual and \$75,000 or more in the case of a body corporate) under the Bill notwithstanding that these offences are not punishable by imprisonment. This constitutes an exception to the general rule that non-imprisonable offences do not justify the intrusiveness of a search power.
- 12 Obtaining evidence in relation to some of the offences to which the search warrant power would attach might be problematic in the absence of a search power. For example the provision of false or misleading information to a RUC collector under clause 41 and the production of false records or information in breach of clause 60 may require a coercive power in order to obtain the evidential material necessary to pursue a prosecution. However, evidence of many other offences (for example, operation of a vehicle on a public road with the RUC licence obscured under clause 25 or a failure to produce business records in contravention of clause 61) will usually be readily available without any need for an intrusive search power.
- 13 Accordingly, an across-the-board application of the search warrant power does not appear to be justified and the LAC considers that thought should be given to which of the offences will really require the power.
- 14 The LAC does not wish to be heard in support of the submission.

Yours sincerely



George Tanner QC
Acting Chair
Legislation Advisory Committee