



LEGISLATION ADVISORY COMMITTEE

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Chair
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Crown Pastoral Land (Rent for Pastoral Leases) 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 considered the Bill at its meeting on 25 February 2011. The LAC is concerned about an aspect of the alternative dispute resolution system in the Bill.

5. If the Crown and lessee disagree over the base or current carrying capacity, there is provision for the appointment of an expert determiner. The parties' assessors meet with that expert determiner at the land for the purpose of reaching an agreement. The expert determiner is present at that meeting; he or she may provide guidance to the assessors in the assessors' efforts to agree. If they fail to reach agreement, the expert determiner is to set up a resolution hearing. At the resolution hearing, the expert determiner is to facilitate agreement and, if agreement is unlikely, make the determination.
6. This process raises an issue under the LAC guidelines. The expert determiner is involved in both the facilitative/mediation stages of the process and the final resolution stage. The guidelines indicate that it is undesirable in such a hybrid process to have the same party involved at both stages. The impartial third party who has conducted a facilitative process must not proceed to determine the dispute (see LAC guidelines at [18.2.3]). In the LAC's view it would be preferable that the person conducting the determination stage be different from the one involved at the facilitative/mediation stage.
7. This is the basic principle inherent in judicial settlement conferences in the High Court. A judge may, before or during a hearing, convene a settlement conference of the parties, but cannot preside or continue to preside at the hearing unless the parties agree and the judge is satisfied that there are no circumstances that would make it inappropriate for the judge to do so (see r 7.79 High Court Rules).
8. Thank you for consideration of this submission. The Committee does not wish to be heard in support of it.

Yours sincerely

George Tanner QC
Acting Chair
Legislation Advisory Committee