



LEGISLATION ADVISORY COMMITTEE

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23 September 2010

Charles Chauvel MP
Chairperson
Regulations Review Committee
Parliament House
Wellington

Submission on the Legislation Bill

1. The Legislation Advisory Committee (“LAC”) reviews all government bills following their introduction to the House. The review process involves assessing whether a bill is consistent with the LAC’s *Guidelines on the Process and Content of Legislation* and, generally, whether a bill is consistent with the principles of legislation. The LAC is not concerned with matters of policy; rather, its focus is on whether a bill raises issues of a public law nature.
2. The LAC has considered the Legislation Bill (“Bill”), which makes significant reforms to New Zealand’s statute law and legislative drafting processes. As the Committee will be aware, the Bill largely implements recommendations of the Law Commission in its two reports on New Zealand statute law (NZLC R104 and R107).
3. The LAC is aware of some concerns that have been expressed about two aspects of the Bill – namely, the proposed extension of the power to make amendments to legislation in the course of reprinting; and the proposal for a programme of revision to the statute book which could result in statutes being re-enacted without the same level of parliamentary scrutiny that is accorded to normal Bills.
4. This submission addresses those concerns, and draws the Committee’s attention to the principles on which the reforms are based.

Part 2, Subpart 2: Reprints

5. Clauses 24 to 26 of the Bill expand the existing powers to make changes to the format of legislation and to alter punctuation, dates and numbering, under sections 17A to 17F of the Acts and Regulations Publication Act 1989. The Law Commission commented in NZLC R104 that these current powers are too narrow and that, as a result, reprints are harder to read and understand than they need to be.¹ The Commission reviewed equivalent powers in Australian and Canadian legislation, and recommended the adoption of some of the powers found there (for example, the replacement of gender-specific with gender-neutral language). Those changes have now found their way into clauses 25 and 26 of the Bill.
6. The LAC supports these changes, considers them to be well founded in legislative principle, and believes they will add considerably to the accessibility of the statute book. The changes build on the existing law in a measured way, drawing on international practice, but without undermining the principle that only Parliament can amend legislation in a manner which changes the effect of the law. That principle is reflected in all the Australian and Canadian legislation and is preserved in clause 24(2) of the Bill.
7. The LAC accordingly **recommends** that Part 2, Subpart 2 be enacted without amendment.
8. The power to make changes on reprint serves a different function from the powers of the Clerk of the House to make amendments to a bill, before it is submitted for Royal assent. The Clerk can make changes which are of a verbal or formal nature and correct clerical or typographical errors in any part of a bill (under Standing Order 307), or to reflect changes in the format of legislation since the Bill was introduced. Those procedures are unaffected by the current reforms. Any error that cannot be addressed without changing the effect of the Act requires amendment.²

Part 2, Subpart 3: Revision Bills

9. The Law Commission was strongly of the view that a systematic revision of the New Zealand statute book should be undertaken.³ The LAC agrees that the case is compelling, but is also mindful of the need for care to be taken in considering how a revision should be approved and given the status of law and, in connection with that, what powers the reviser should have.
10. The Law Commission recommended a phased approach to revision, with statutory powers for the Chief Parliamentary Counsel to alter the wording, order and placement of the provisions subject to revision, and for a revision bill, once certified, to be passed using a streamlined parliamentary procedure. The recommendations drew, again, on existing statutory revision models elsewhere in the Commonwealth.

¹ Para 6.36.

² See McGee, *Parliamentary Practice in New Zealand*, 3rd ed., p 391, 393.

³ NZLC R104, para 7.15.

11. The LAC is supportive of the approach to revision proposed in the Bill, including the powers of the Chief Parliamentary Counsel (clause 31), the certification procedure (clause 33), and the safeguards in clause 34 in respect of revisions that change the effect of the law. The LAC also agrees there should be a review of the need for, and effectiveness of, the new provisions after 6 years (clause 35).
12. The Bill does not contain any provisions about the procedure for parliamentary approval of revisions (see the Explanatory Note, page 3). However, the LAC considers there is a strong case for considering some sort of streamlined parliamentary procedure if the revision process is to work effectively. The LAC endorses the principles and purposes stated by the Commission in its proposed procedure:

It would ensure that consideration is given simply to the form of the revision bill and not its content; that the legislative process for revision is efficient and speedy; but also, importantly, that Parliament retains the right to have the final word and thus final control.⁴
13. A procedure for parliamentary consideration and approval should now be addressed by changes to Standing Orders. Although that responsibility would rest with the Standing Orders Committee, it seems to the LAC that the Regulations Review Committee has an important role in drawing attention to the need for this reform and encouraging the initiative to be pursued in the forthcoming review of Standing Orders.
14. The LAC accordingly **recommends** that the Committee, its report on the Bill, encourage the Standing Orders Committee to implement changes incorporating the procedural provisions and safeguards recommended in the Law Commission's R104.

A footnote on interests

15. The membership of the LAC includes several members of the Law Commission, the Chief Parliamentary Counsel, and the Deputy Chief Parliamentary Counsel. To avoid any perception of a conflict of interest, it is not appropriate for them to be associated with the views expressed in this submission. The LAC also resolved that the submission should be prepared and presented by a member who is in private practice.
16. I am available to appear before the Committee to present this submission.

Yours sincerely



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⁴ NZLC R104, para 7.70.