APPENDIX TO THE JOURNALS

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House of Representatives

OF

NEW ZEALAND

2011–2014

VOL. 12

I—REPORTS AND PROCEEDINGS OF SELECT COMMITTEES

IN THE REIGN OF HER MAJESTY
QUEEN ELIZABETH THE SECOND

Being the Fiftieth
Parliament of New Zealand

0110–3407

WELLINGTON, NEW ZEALAND
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Reports of select committees on the 2012/13 financial reviews of Government departments, Offices of Parliament, and reports on non-departmental appropriations (I.20B)

Reports of select committees on the 2012/13 financial reviews of Crown entities, public organisations, and State enterprises (I.21B)
Introduction

This volume contains select committee reports presented to the House in 2013.

The reports not included in this volume are:
reports listed in these pages but marked with an asterisk

Select committee reports on Estimates and financial reviews are printed in separate compendia. Refer to the list of these reports presented in the year covered by this volume at the end of the contents section.

A bill number containing the suffix “-2”, for example (17-2), following the bill title, indicates that the committee’s report on the bill included a reprinted bill containing recommended amendments. Copies of these bills can be purchased from Bennetts Government Bookshops and/or downloaded from www.parliament.nz.

Reports listed in the contents page with an asterisk have been previously printed separately under the title and shoulder number, for example (I.17A) given in the list of contents. Copies of these reports can be purchased from Bennetts Government Bookshops and/or downloaded from www.parliament.nz.
Recommended sitting programme for 2014

Report of the Business Committee

Rt Hon David Carter
Chairperson
Recommended sitting programme for 2014

**Recommendation**

Under Standing Order 79 the Business Committee must recommend to the House a programme of sittings for each calendar year. This report therefore recommends to the House a sitting programme for 2014.

**Recommended sitting programme**

January 28, 29, and 30;
February 11, 12, 13, 18, 19, and 20;
March 4, 5, 6, 11, 12, 13, 18, 19, and 20;
April 8, 9, 10, 15, 16, and 17;
May 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, and 29;
June 17, 18, 19, 24, 25, and 26;
July 1, 2, 3, 22, 23, 24, 29, 30, and 31;
August 12, 13, 14, 19, 20, 21, 26, 27, and 28;
September 9, 10, 11, 16, 17, 18, 23, 24, and 25;
October 14, 15, 16, 21, 22, and 23;
November 4, 5, 6, 11, 12, 13, 18, 19, and 20;
December 2, 3, 4, 9, 10, and 11.
Appendix

Committee procedure
The Business Committee met on Tuesday, 19 November 2013 to consider a sitting programme for recommendation to the House.

Committee members
Rt Hon David Carter (Chairperson)
Hon John Banks
Hon Gerry Brownlee
Hon Peter Dunne
Te Ururoa Flavell
Hone Harawira
Gareth Hughes
Sue Moroney
Grant Robertson
Barbara Stewart
Hon Anne Tolley
Louise Upston
Crown Minerals (Permitting and Crown Land) Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Crown Minerals (Permitting and Crown Land) Bill and recommends that it be passed with the amendments shown.

Introduction

- the efficient allocation of rights to prospect, explore for, and mine Crown-owned minerals
- the management and regulation of the exercise of those rights
- a fair financial return to the Crown for its minerals.

The amendments we propose to the bill have the aims of encouraging the development of Crown-owned minerals so that they contribute more to New Zealand’s economic development; streamlining and simplifying the permitting regime where appropriate, making
it better able to deal with future developments; and improving the
coordination of regulatory agencies to contribute to stringent health
and safety and environmental standards in exploration and production.

Our commentary covers the key amendments that we recommend to
the bill. It does not cover the large number of minor or technical
amendments proposed to improve workability, clarity, and legal ef-
posed change to the purpose statement reflects the central importance of health and safety in all activities under Crown minerals permits. The majority of us recommend retaining the promotional element of the purpose statement, as New Zealand competes internationally for investment in exploration and mining of petroleum (oil and gas) and minerals, and this sends a strong signal to potential investors.

**Interpretation**

In clause 8 (section 2) the majority of us recommend introducing a definition of “underground gas storage facility”, and amending the definitions of “mining” and “mining operations” to include a reference to injection of gas into a reservoir for storage and extraction. Including underground gas storage activities in the framework of the Crown minerals regime would ensure that regulatory and royalty provisions were applied appropriately.

We recommend that clause 9 insert new section 2A to clarify the meaning of “appropriate Minister”. We recommend that clause 9 also amend new sections 2B and 2D, and insert new section 2C to clarify the way Tier 1 and Tier 2 permits are determined. The bill as introduced would result in all mineral mining permits being classified as Tier 1 permits for at least 5 years, even where it was clear that they would remain below the thresholds set in new Schedule 5. We recommend that the Minister be required to estimate exploration expenditure, annual royalties, or annual production as appropriate over a 5-year permit period to determine whether permits should be Tier 1 or Tier 2.

**Minerals programmes**

A minerals programme explains how the principal Act will be applied to the particular mineral to which the programme pertains. We recommend amending clause 15 (inserting new section 14) to make it clear that the programmes could set out how the Minister or the chief executive would exercise any specified powers or discretions provided by the Act. The amendment also allows for minerals programmes to provide information to help interested parties understand the legislation and how the Minister and the chief executive would interpret and apply specific provisions in the Act and the regulations.
We recommend, on the advice of the Regulations Review Committee, amending clause 15 to replace “policies” with “practices”. This would ensure that matters of principle and policy more appropriate for parliamentary enactment could not be included in deemed regulations.

We further recommend requiring in clause 15 (new section 14) that minerals programmes set out how the Crown would have regard to the principles of the Treaty of Waitangi in accordance with section 4 of the principal Act. Section 4 requires all persons exercising functions and powers under the Act to have regard to the principles of the Treaty of Waitangi. Specifying how the Minister and chief executive should apply this provision in practice would provide clarity.

We believe minerals programmes are an appropriate vehicle for setting out detailed expectations regarding iwi engagement reports and consultation on permit decisions. This would allow more flexibility as to the kind of engagement, depending on the activity envisaged under each permit, and the preferences of the iwi and hapū concerned.

**Permits**

**Minister’s discretion to grant permits**

We recommend that clause 16 replace section 25 to state that the Minister is not obliged to grant a permit, or may impose permit conditions as he or she sees fit (subject to the overarching obligation to comply with the Act).

**Health and safety**

We believe these amendments would help to ensure that health and safety is considered throughout the permitting process, by securing collaboration among regulators and making compliance with health and safety legislation a requirement under the principal Act.

We recommend amending clause 18 (inserting new section 29A) to require that the Minister must be satisfied that an applicant for a permit is likely to comply with the work programme for the permit; and to require the Minister to seek the views of the Health and Safety Regulator (as newly defined in clause 8) before granting a Tier 1 permit for exploration or mining. We recommend a further amendment to ensure that an applicant’s record of compliance with its obligations
in relation to reporting and the payment of fees and royalties is considered before a permit is issued.

In order to strengthen the health and safety provisions in the bill, we recommend amending clause 21 (which inserts new section 33(1)(a)) to make compliance with health and safety legislation a requirement for any permit holder, and therefore grounds for enforcement action under the principal Act.

We recommend an amendment to clause 21 to insert new section 33AA to ensure that permit holders may not commence activities under the principal Act before the Health and Safety Regulator had given any required approval or consent under the Health and Safety in Employment Act 1992 or regulations made under that Act.

We also recommend amending clause 21 to insert new section 33AAB, to require the Health and Safety Regulator to notify the chief executive if a permit holder has been issued a prohibition notice or had enforcement action taken against them under the Health and Safety in Employment Act 1992 or regulations made under that Act.

In clause 21 (inserting new section 33B), we recommend inserting new subsection (1A), to add a requirement that the chief executive invite relevant regulatory agencies to attend annual review meetings; and new subsection (3) to clarify that the permit holder would have to consent to anyone else attending such meetings.

**Permit management**

We believe that the recommended changes to permit management would result in fewer, clearer obligations and less non-compliance, as expectations would be clearer and the scope for dispute much reduced. A minerals programme would set out more detail about certain aspects of permit management, such as circumstances in which revocation would be contemplated.

Clause 15B (inserting new section 23) would allow the Minister to declare a moratorium on the granting of specified kinds of permits in respect of specified land to serve the purpose of the bill. We recommend clarifying this section so that rights to subsequent permits would not be affected by this provision. We believe that without such a limitation, the provision would risk undermining investors’ certainty about the stability of the regulatory regime.
We recommend deleting clause 19, which seeks to amend section 30(7) and 30(8). This would ensure that current permit holders and licence-holders continued to hold exclusive rights to undertake activities under a permit unless the permit provided otherwise, or the permit holder gave written consent to the granting of another permit. Deleting clause 19 would also prevent a minerals programme removing exclusivity retrospectively.

We recommend amending clause 22 (inserting new section 35A) to limit the duration of an appraisal extension. We recommend a maximum extension of 4 years, extendable for a further 4 years if the Minister considers this necessary to complete an appraisal work programme.

We recommend amending clause 22 (inserting new sections 35B and 35C) to remove the specification of the matters the Minister must take into account when requiring relinquishment of a prospecting or exploration permit, as we believe that such considerations are more appropriately set out in the minerals programme for the mineral to which the permit relates.

In clause 24 (section 36) we recommend an amendment to clarify that subsection (3) relates to extensions of the duration of the permit.

We also recommend amending the deadline by which an application must be made in section 36(4B), while still retaining the Minister’s discretion to consider an application for a change to a permit where there are compelling reasons for the lateness of the application. We also recommend providing for existing permit holders to retain their rights to extensions of duration, as it was not the intention to remove such rights.

The majority of us recommend amending clause 26 (section 39) to extend the period for permit holders to appeal against revocation from 20 to 40 working days, which we believe to be a more reasonable time for permit holders to remove the grounds for revocation or make their case for the permit not to be revoked.

Clause 28 (new section 41) in the bill as introduced requires a permit participant to obtain the Minister’s consent to any agreement that gives effect to the transfer of a participant’s interest. We recommend amending this section so that the consent sought is to the transfer itself, rather than the making of the agreement.
The majority of us recommend amending clause 28 (new section 41A) so that any request by the Minister for information regarding a change of control of permit participants would have to be made within 3 months of receiving notification of the change of control and a statement of financial capability. The majority of us recommend also that revocation proceedings under section 41A be required to occur within 6 months of receiving the notice and statement of financial capability from the permit holder. We believe these changes are desirable to provide certainty for permit holders.

The majority of us recommend further amending clause 28 (new section 41B) to require the Minister’s consent to a dealing (as defined in new section 41B(4)) if it relates to a Tier 1 permit. We also recommend clarifying section 41B(4) so that dealings include any agreement related to the sale or proceeds of production.

We also recommend amending clause 28 (new section 41C) to remove the requirement for the Minister to re-consider the work programme of a permit as part of the process of consenting to a change of operator. The intent is for the Minister to consider the new operator’s capability to deliver the existing work programme and comply with other obligations, not to revisit the programme itself. We further recommend removing section 41D(4)(b) from clause 28, as it is inappropriate for the remaining obligations of a former permit holder to be subject to an agreement with a third party. We believe these changes would increase certainty for permit holders and investors.

In order to make “good industry practice” an integral part of the provisions for the approval of work programmes, we recommend inserting clause 28B (section 43) to replace the words “exploration or mining” with “industry”.

We recommend amending clause 40 (section 92) to make it clear that permits are personal property for the purposes of the Personal Property Securities Act 1999.

**Auditing**

For clarity, we recommend amending clause 44 (new section 99D) to explicitly include in this provision the calculation of mineral reserves by a permit holder undertaking mining activities. The majority of us also recommend providing in this section that a permit holder may be required to pay auditor’s costs only if the auditor finds material fail-
ures in calculation, payment, or the keeping or providing of records. The majority of us believe it is unreasonable to expect a permit holder to bear these costs otherwise.

Transitional provisions
We recommend inserting Schedule 1A to insert new Schedule 1 into the principal Act. New Schedule 1 sets out the transitional provisions for amendments made to the principal Act by this bill that were previously in clause 51. It also sets out the transitional provisions relating to existing privileges. Part 2 of the principal Act, which currently sets out transitional provisions for existing privileges, would be repealed. Encompassing transitional provisions in a schedule is in keeping with new drafting practice guidelines, and ensures that such provisions are clearly visible in enacted legislation.

We recommend that clause 2 of Schedule 1 allow an existing permit holder until 5 December 2013 to notify the identity of the permit operator. We believe this would allow existing operations to develop workable commercial arrangements.

The majority of us recommend amending clause 7 to provide for an existing petroleum exploration permit to be extended to the new maximum duration of 15 years (plus any further extension under an appraisal extension), where this is necessary to complete exploration activities.

The majority of us recommend that clause 13 be amended so that for existing privileges the operator would not need to be a holder of the existing privilege. We believe that this would preserve the policy that all operations have a designated operator, while avoiding potential adverse impacts on some existing operations resulting from the need for the operator to be a permit participant.

We recommend amending clause 14 so that activities under existing privileges that required approval or consent from the Health and Safety Regulator could not be carried out until that approval had been given.

The majority of us recommend inserting clause 21 so that previous notices of land reserved for possible allocation by public tender could be treated as if they were made under new section 23.
Unit development schemes
We recommend amending clause 28D (section 46) to allow the Minister to suspend or reduce production from one or more wells during the preparation of a unit development scheme, following consultation, to avoid wasting the resource.

The existence of a power to suspend or reduce production from a field would provide a strong incentive for the parties to co-operate to draw up a unit development scheme as quickly as possible. The use of the unit development provisions has been rare to date, but they may become much more important as development proliferates, particularly as technological and economic change encourages deeper plays that cross into existing permits for shallower fields.

We recommend also amending this section to provide for costs incurred by the Minister in determining a unit development scheme to be recovered from the permit holders.

Access to land
The majority of us recommend amending clause 31 (section 61) to provide for the land-holding Minister to remain solely responsible for land access decisions on activities on Crown land, with the exception that the Minister of Energy and Resources would be jointly responsible with the land-holding Minister for Tier 1 exploration and mining applications. The majority of us believe this would ensure that the Minister of Energy and Resource’s involvement was confined to projects with the potential to generate a significant economic return or that are high risk. The majority of us recommend also providing for the Minister of Energy and Resources to be a joint decision-maker for significant variations to major access arrangements.

The majority of us recommend a further amendment to this section providing for direct net economic benefits to be taken into account when deciding on access arrangements for mining on conservation land. This evaluation would account for the direct effects of mining on other activities such as tourism.

Clause 32 (new section 61C) relates to public notification of applications for access arrangements involving significant mining activities where the Minister of Conservation has responsibility for the land in question. We recommend amending this section to provide for the Minister of Conservation to be responsible for determining whether
the proposed mining activities are “significant” under section 61C, and therefore whether the application for access should be publicly notified. We expect that further detail would be provided on how the Minister of Conservation would determine significance case by case, probably in the Department of Conservation’s Standard Operating Procedures.

For clarity, we also recommend limiting “any other matters” in section 61C(2)(d) to matters relevant to achieving the purpose of the Act.

We also recommend inserting section 61C(3)(c) to require the Minister (or Ministers, if the decision is to be made with the Minister of Energy and Resources) to have regard to the Director-General of Conservation’s recommendation and summary of objections and comments received on the application.

**Registers and records**

We recommend amending clause 38 (section 90) to remove any unintended implication that information supplied under this section cannot be used by the Minister or the chief executive after the information is available to others. We also recommend deleting the reference to a “hard copy” document to allow the regulations to prescribe that documents can be provided electronically.

We recommend that this section apply only to partial surrender and relinquishment of permits, so that permit holders would not need to re-submit reports previously provided.

We also recommend clarifying that in the event that a permit was surrendered in the process of amalgamating permits, information relating to land included in the new area of the retained (amalgamated) permit would not be released.

Further, we recommend extending the time when data collected by a petroleum company under a petroleum prospecting permit must be made publicly available until the later of 5 years or the closure of competitive allocation of exploration permits over the area, with a backstop requirement of 15 years in case a public tender is not held. These amendments would improve incentives to undertake prospecting, especially in remote areas.

In clause 38 (new section 90A) we recommend including a reference to information provided under sections 61, 61B, 61C, 90, and 99E,
to ensure that information disclosed under these sections would not be unduly shared.

We recommend that clause 38 insert new section 90G to allow regulatory agencies to provide information for the purposes of the Act.

**Miscellaneous amendments**

**Ability of enforcement officers to obtain warrants**

We recommend amending clause 44 (new section 99C) so that enforcement officers would retain the ability to apply for search warrants, which this section as introduced would have unintentionally removed.

**Timeframe for objections**

We recommend amending clause 44 to extend the time allowed by new section 99J for objections to be made by permit holders to royalty assessments by the chief executive and for consideration of objections, from 20 to 40 working days.

**Appeals process**

We recommend amending clause 44 to provide more detail in new section 99K about the appeal process for assessments of royalty returns or permit-holder liability, as we believe the provisions as drafted are insufficient. We recommend requiring appeals to be made within 20 days of the determination of the chief executive, allowing the District Court to determine the royalty assessment, and allowing the chief executive or the permit holder to appeal the District Court’s decision to the High Court within 20 working days if the amount of the royalty is $2,000 or more, or if the appeal relates to a point of law.

We also recommend amending clause 44 to insert new section 99L, which sets out the status of a default or amended assessment during the objection and appeal process, and when money must be paid as a result of decisions made during that process.

**Penalties**

We recommend amending clause 46 (section 101) to increase the amounts of penalties for offences against the Act. We believe that
the increase in penalties proposed in the bill as introduced is too low to effectively discourage non-compliance.

Incorporation of material in regulations
We recommend that clause 49 insert new sections 105B and 105C to allow, and set out the process for, incorporating material (for example, a classification system) by reference into regulations. These new sections mirror equivalent provisions in the Legislation Act 2012 (with the exception of any incorporated financial reporting standards made under the Financial Reporting Act 1993. The latest version of these standards will apply, and their incorporation does not require consultation, as public consultation on the standards has already occurred under the Financial Reporting Act).

Amendments to other Acts
Conservation Act 1987
We recommend inserting clause 56A to amend section 8 of the Conservation Act 1987 to remove the ability of the Minister of Conservation to create nature and scientific reserves by Gazette notice. This is consistent with changes the bill would make in Part 4 to the Reserves Act 1977, so that nature and scientific reserves would instead be created by the Governor-General by Order in Council. Classification decisions by Order in Council would allow consideration by Cabinet of the mineral potential of areas before they were classified and automatically included in Schedule 4 of the Crown Minerals Act. The Minister of Conservation would continue to be responsible for the classification of areas of public conservation land that would not result in automatic inclusion in Schedule 4.

Continental Shelf Act 1964
Clause 60 would amend section 5 of the Continental Shelf Act 1964 to remove the ability to apply for a licence under the Continental Shelf Act. We recommend inserting a new subsection (10) in this section to allow the holder of a current prospecting licence to apply for a subsequent exploration or mining permit under the Crown Minerals Act, to bring such licence holders under the new regime.
Reserves Act 1977
We recommend amending clause 68, which would amend section 24 of the Reserves Act 1977, so that changes of classification or revocation of nature and scientific reserves would be made by the Governor-General by Order in Council rather than by the Minister of Conservation by Gazette notice.
This is consistent with changes to the initial classification of reserves in clauses 66 and 67 (section 16 and new section 16A of the Reserves Act) to allow consideration by Cabinet of the mineral potential of areas before they are classified and automatically included in Schedule 4 of the Crown Minerals Act.

New Zealand Labour Party minority view
Labour supports aspects of the Crown Minerals (Permitting and Crown Land) Bill including
• the move to enshrine Schedule 4 of the Crown Minerals Act 1991 and automatic inclusion of certain areas into Schedule 4
• the introduction of a two-tier system for permit management with all complex, higher-return petroleum and minerals operations being classified as Tier 1 and therefore subject to a more stringent permitting process and a high-level pre-vetting of applicants
• improved coordination between the Crown minerals permitting regime and health and safety and environmental regulatory functions for Tier 1 activities (although we do not think this should be necessarily limited to Tier 1 applications)
• integrating health and safety into the permitting process to ensure consistency and collaboration amongst regulators to ensure health and safety is considered right throughout the permitting process as a general condition of permits
• simplifying the process for revocation of permits
• increasing the penalties for offences under the Act.
We also agree with the Government that bipartisan support for this legislation would provide certainty for all parties engaging in the permitting process. To this end we welcomed the approach of the former Minister of Energy and Resources to work with the Labour party to try and find a compromise on
areas of disagreement, and supported the bill at first reading as a gesture of good faith that outstanding issues would be addressed at select committee. Unfortunately, despite robust debate at committee we were unable to get agreement from Government members in the key areas outlined below, and as such will not be supporting the bill any further.

**Minister of Conservation to share decision-making powers with Minister of Energy and Resources on access for mining on the conservation estate**

While the Crown Minerals Act governs access to minerals, access to the land which is to be mined requires negotiation between the mining company and the landowner to obtain their consent (excluding oil and gas exploration). This is usually a private landowner, except in the case of applications for mining on land within the conservation estate. In this instance the “landowner” is the Minister of Conservation on behalf of all New Zealanders.

This bill removes the sole decision-making power from the Minister of Conservation and introduces a shared decision-making role with the Minister of Energy and Resources. This is a fundamental undermining of the role and powers of the Minister of Conservation and represents a significant shift in the guardianship and protection of Crown conservation land. It cuts right across the deliberate separation of powers between the Minister of Energy and Resources who, under this bill, is responsible for “promoting” mining activities and the Minister of Conservation, who grants access to the conservation estate. We agree with the concerns raised by the Parliamentary Commissioner for the Environment who stated, “The Minister of Conservation will remain accountable for the conservation estate but is not in control.”

We are concerned that far from streamlining processes as the bill claims to do, it will result in costly and time-consuming legal challenges by judicial review, as the Minister of Energy and Resources’ ability to remain objective will be difficult given the role the Minister is currently playing in actively promoting an expansion of petroleum and minerals exploration in New Zealand. We believe this leaves the Crown extremely vulnerable to challenges on the basis of pre-determination of decision.
We are also concerned that there is no mechanism in the bill to deal with a situation where the two Ministers cannot come to an agreement.

Labour believes the Minister of Conservation should have sole decision-making power on access for mining on the conservation estate.

**Introduction of an “economic benefit” test**

All commercial activities on the Department of Conservation estate require the granting of a concession, currently from the Minister of Conservation. Under the Conservation Act 1987 a concession can only be granted if the proposed activity is not “contrary to the provisions of this Act or the purposes for which the land concerned is held”.

The bill introduces a new “economic benefit” test when determining whether or not to grant an access arrangement on conservation land under the Crown Minerals Act. We do not agree with this change, as it compromises the management of the conservation estate by suggesting that even if an activity is not compatible with the objectives and purposes of the Conservation Act, the activity could still go ahead.

This new test also only applies to mining activities, and we question why one sector is being given such a privileged status over other commercial activities that occur on the conservation estate such as tourism ventures, which must pass the test set out above in the Conservation Act. When considering applications for access under the Crown Minerals Act the Minister only need “have regard” for a number of matters when coming to a decision. This is a far weaker test and we have yet to be given any rationale as to why this should be the case.

While the bill has been amended so that only the direct net economic benefits be taken into account, we do not believe this addresses the underlying issue, which is that while it is relatively simple to quantify the economic value of a mineral resource, it is extremely difficult to quantify the concurrent loss of value or environmental impact of the activity on conservation land. As such, we believe the test should be removed.
Purpose clause

The bill introduces a new purpose clause for the Crown Minerals Act which states: “The purpose of this Act is to promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand...”.

We do not believe the purpose should be to “promote”, but rather to “manage”, “facilitate”, or “regulate” mining activities. Given the new powers being granted to the Minister of Energy and Resources to allow access for mining activities on conservation land, it is particularly important that the purpose of this Act not create a direct conflict of interest for the Minister by legislating his or her role as one of “promoting” mining activities with no regard to the effect on the conservation estate.

Furthermore we believe the purpose clause should contain references to health and safety, sustainability, and environmental principles.

Definition of “significant” for access applications to be notified

We remain concerned that where an access application is deemed to be “significant” by the Minister of Conservation and therefore notified under the Conservation Act, the definition of “significant” remains unclear.

Green Party minority view

The Green Party is unable to support this bill. We do see merit in the Supplementary Order Paper on health and safety and support all efforts to protect workers, but otherwise we have major concerns about a number of fundamental issues.

Purpose

The purpose of the bill is to promote and facilitate one industry at the expense of others. The purpose lacks balance and leadership, and although full of minor detail which appears innocuous, it has some embedded drivers which will weaken a range of other core legislation, such as the Conservation Act. The stated focus of the purpose clauses is “efficient allocation” and a fair return to the Crown, but the overall purpose is to fast-track minerals and petroleum development within a weak context of other values and rights. This is completely
contrary to the widely expressed public opposition to mining on conservation land, which forced a Government back-down in 2010. The issue of royalties and a fair return to the Crown is not addressed in the bill, but will be dealt with via regulations. The unresolved question of tangata whenua ownership of minerals is not addressed.

**The role of the Minister**

Consistent with the purpose clause and equally unacceptable are the sections of the bill relating to the role of the Minister of Energy and Resources as a facilitator rather than a regulator of the industry. This role definition is made even more problematic by the changes to the decision-making process.

**Joint decision-making**

Ministerial joint decision-making is a major political shift away from the power of the Minister of Conservation over conservation land to a privileging of the economic imperative. As the Parliamentary Commissioner for the Environment has said, “It cuts across the fundamental separation of functions and powers whereby the Minister of Energy and Resources grants permits for minerals and the Minister of Conservation grants access to the conservation estate. The Minister of Conservation will remain accountable for the conservation estate but not in control. His or her core role as guardian of the conservation estate will be undermined”.

The suggested compromise that joint decision-making will only apply to “significant” applications—i.e. with the potential to generate a significant economic return, and are high risk—completely fails to address the wide public concern about the conservation estate being open to mining. The Minister of Conservation will be weakened on these core issues of public concern.

In terms of the provision for public notification where the Conservation Minister deems a proposal significant, this is inadequate, as all mining activity on conservation land should be publicly notified.

**Orders in Council**

The classification of conservation land and waters will now be in the hands of Cabinet instead of the Minister of Conservation. Cabinet will have the power to remove land from national parks, re-
serves, wildlife sanctuaries, and scientific reserves. This gives unprecedented control to the higher ranks of Cabinet over the Minister of Conservation.

Although Schedule 4 land is ostensibly protected, the additions to this schedule will have to be via Order in Council. Again, this gives Cabinet control over the conservation estate and potentially blocks or limits critical additions to Schedule 4.

**Net economic benefit**

Clause 31(6) proposes to add economic benefit to matters requiring consideration when making decisions on access agreements to Crown lands for mining. The committee sought more clarity around this phrase, which has been explained as relating to direct costs. The Green Party remains concerned that without full cost-benefit accounting principles and a recognition of the long-term economic cost of a mining activity, this clause will facilitate mining at the expense of conservation values. This quantification of cultural, community, and environmental values is currently limited and the net economic benefit clause can be used to privilege the mining industry.

**Length of permits**

The Green Party opposes any increase in the length of exploration permits as they are granted often with non-public input and no accountability to the local community. And we don’t see any justification in the bill for lengthening the permits except for the convenience of the mining companies. These clauses also protect existing rights of some older prospecting licences for extended periods.

**Te Tiriti o Waitangi issues**

Apart from the generic Te Tiriti o Waitangi clause in the existing Act, the bill offers little to tangata whenua in terms of improved statutory engagement. It invents a new process of iwi engagement reporting which is toothless and lacks any robust requirements. A number of iwi groups pointed this out to the committee but no meaningful changes have eventuated. Annual reporting to the Ministry of Business, Innovation and Employment of alleged robust consultation with iwi and hapū with no proper definition, rules, or mandatory frame-
work is tokenism. Verbal assurances that the miners are keen to do better have no legal status and no credibility.

**Two-tier system**
The Green Party has no disagreement with the distinction in the bill between hobby miners and the corporate industry, providing the workers in both tiers have the same level of protection. We are concerned that Tier 2 workers will not be guaranteed the same level of health and safety.

**Conclusion**
There are a number of other small issues in the bill which privilege the industry and reinforce the approach in the purpose that the minerals and petroleum industry must be supported, encouraged, and given access to our conservation and marine environments.

Many submitters raised issues about the ministerial powers and conservation designations, which showed that public objection to miners having access to the conservation estate is very much a public concern and that the Government attempt to mine national parks, etc., has not been forgotten. These concerns have not been recognised or incorporated during the committee process.

Therefore the Green Party is adamant that the bill is fundamentally problematic and inappropriate as a legal instrument. Facilitating and privileging mining access to the conservation estate and ignoring Te Tiriti o Waitangi issues and public opinion is not acceptable in the 21st century.
Appendix

Committee process
The Crown Minerals (Permitting and Crown Land) Bill was referred to the committee on 26 September 2012. The closing date for submissions was 25 January 2013. We received and considered 551 submissions from interested groups and individuals. We heard 44 submissions.

We received advice from the Ministry of Business, Innovation and Employment, and the Department of Conservation. The Regulations Review Committee reported to the committee on the powers contained in clause 15.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Dr Jian Yang

Catherine Delahunty replaced Mojo Mathers for this item of business. Moana Mackey and Hon Ruth Dyson replaced Labour Party members throughout consideration of the bill.
Commerce (Cartels and Other Matters) Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Commerce (Cartels and Other Matters) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The Commerce (Cartels and Other Matters) Amendment Bill would amend the Commerce Act 1986 to allow pro-competitive collaboration between firms, while also deterring anti-competitive hard-core cartel conduct.

In relation to cartels, the bill would
• clarify the scope of prohibited behaviour
• introduce new exemptions, including exemptions for collaborative activities and vertical supply arrangements
• introduce criminal sanctions for hard-core cartel behaviour.

The bill also proposes a number of other amendments to the Act, for purposes including
• clarifying the scope of the jurisdiction of the legislation
Following the release of a report by the Productivity Commission on its inquiry into international freight transport services, the Minister of Commerce requested on 3 September 2012 that we consider the transitioning of international shipping and international civil aviation to competition regimes governed by the Commerce Act. We called for and received further submissions on this issue and have recommended amendments accordingly.

Our commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments proposed to improve workability, clarity, and legal efficacy.

**Jurisdiction**

Clause 5 as introduced is modelled on section 7 of the Crimes Act 1961. It would extend the jurisdiction of the legislation to acts committed outside New Zealand where an act or omission related to an offence that occurred in New Zealand.

We recommend amending clause 5 to remove the reference to “events necessary to the completion of any offence”. We believe this jurisdiction would be too broad, as many acts that occur overseas can affect markets in New Zealand.

We also recommend amending clause 5 by inserting a new provision to clarify the relationship between the jurisdictional provisions in section 4 of the Commerce Act and the attribution provisions in section 90. We believe this would make it clear that if the conduct of a person in New Zealand is attributed to an overseas person by virtue of section 90, the conduct of the overseas person is to be treated as occurring in New Zealand.

**Clearance regime**

The regime set out in the bill as introduced would allow companies to apply to the Commerce Commission to test whether a proposed collaboration would raise competition issues. This would allow com-
panies to manage the risk that a proposed collaborative arrangement might be prohibited.

**Transitional arrangement relating to price fixing**
For existing arrangements entered into before the enactment of the bill, rather than extending the clearance regime we recommend amending clause 7 (inserting new section 30C) to include a transitional arrangement whereby there would be no proceedings against such existing arrangements for 9 months from the commencement date. For that period, the existing section 30 provision relating to price fixing provisions would apply to these agreements as though section 30 had not been repealed. We believe that a reasonable transition period would allow parties to existing arrangements to review their arrangements and adjust their affairs as necessary.

**Assessment of contract or arrangement for cartel provisions**
We recommend amending clause 12 (new section 65A) to make it clear that the commission, not the applicant, would assess a contract, arrangement, or understanding for cartel provisions. Under the bill as introduced, the commission might not be able to consider whether there were any other cartel provisions that raise concerns other than those identified by the applicant. We also recommend limiting the scope of the clearance to that which is necessary to give businesses certainty to undertake their collaborative activity. We recommend that the commission be required to assess the contract, arrangement, or understanding in question, rather than the collaborative activity.

**Revocation of a clearance**
We also recommend amending clause 12 (inserting new section 65D) to allow the commission to revoke a clearance after a material change of circumstances. Clearance provides substantial benefit in that it confers continuing immunity from prosecution. We believe this immunity should not be unlimited, as this could result in substantial damage to competition in the long term. Before revoking a clearance after a material change of circumstances, the commission should be required to show that the change was in fact material, and to substantiate the reasons for its decision. Parties with an interest in the arrangement would be given a reasonable opportunity to make sub-
missions to the commission regarding the revocation of clearance. Parties would still be allowed to apply for authorisation for arrangements that are in the public interest.

**Authorisations for restrictive trade practices**

The authorisation regime would allow parties to apply to the Commerce Commission for authorisation of an arrangement. Unlike a clearance, which would confirm that a transaction did not contravene the Act, authorisation would exempt conduct from the relevant prohibitions in the Act on the basis that there was an overriding benefit to the public. In other words, it would permit a transaction that lessened competition but gave rise to such efficiencies that it could be justified.

We recommend inserting new clause 10A to move new subsection (3A) from new section 65C to section 60. Moving this provision would clarify that the commission could consult any person who could assist it in determining the application.

We also recommend inserting new clause 10B (amending section 61) to provide for an authorisation decision period of 120 working days, to give parties more certainty about timeframes.

**Bid rigging**

For simplicity and clarity, we recommend deleting references to bid rigging from the bill (clauses 7 and 18). We believe that defining bid rigging as an additional and overlapping category would create uncertainty, and that prohibiting the other categories of cartel conduct (price fixing, restricting output, and market allocating) would adequately prevent anti-competitive bidding practices.

We recommend a consequential amendment to clause 7 to delete the disclosure requirement in new section 30A(5)(b), which we consider unnecessary.

**Exemption for maximum resale prices**

We recommend amending clause 7 (section 32) to provide an explicit exemption from the prohibition on cartel conduct for suppliers stipulating maximum resale prices. We believe that maximum resale prices are pro-competitive, and that this amendment would ensure
New Zealand’s approach to this issue is consistent with that of Australia.

**Acquisitions outside New Zealand that affect competition in New Zealand**

When applying the Commerce Act to conduct outside New Zealand, we believe it is important to ensure that the courts can grant effective relief and enforce judgments against overseas parties, particularly when overseas acquisitions affect a market in New Zealand.

**Application of the regime**

Clause 8 (inserting new section 47A) provides for the commission to seek a declaration where an overseas person acquires a controlling interest in a New Zealand body corporate. We recommend amending clause 8 to make it clear that it would apply only if the acquisition occurred outside New Zealand. We recommend an amendment to specify that the controlling interest could be acquired either by acquiring shares or by acquiring the business assets of the New Zealand body corporate.

**Controlling interest test**

We recommend amending the controlling interest test in clause 8 (new section 47A(4)) to reduce the threshold of votes, issued shares, or dividend entitlement from 50% to 20%. The bill as introduced would allow the Commerce Commission to apply for a declaration where an overseas person acquired a controlling interest in a New Zealand company, with the controlling interest threshold set at 50%. The 50% threshold sets a higher threshold for intervention than the test that would be applied if the merger were between two domestic entities. A 20% threshold would be consistent with that in the Takeovers Code.

**Lay members of High Court in certain cases**

We recommend inserting new clause 13A to allow lay members of the court to be appointed to assist the court in civil proceedings in relation to section 30 as well as section 27. Sections 27 and 30 are
often pleaded in the alternate, so we believe it makes sense to allow lay members input in relation to both sections.

**Criminal offence: honest belief defence**

Clause 18 would insert new section 82B, which sets out criminal sanctions for cartel behaviour. We believe that criminal sanctions should be reserved for conduct that is truly culpable. A person should have intended to engage in the conduct in question, or at the very least have been reckless as to its consequences, to attract such sanctions.

For this reason we recommend amending the honest belief defence in clause 18 (new section 82B(2)) so that it would apply only to a defendant involved in a collaborative activity exercising the defence that they honestly believed that the cartel provision of the contract was reasonably necessary for the purpose of the collaborative activity.

We believe the defence proposed in the bill as introduced is too broad, applying to exemptions for vertical supply contracts, joint buying, and promotion agreements. No exercise of judgment is required in these situations, so no honest belief defence could apply. The term “reasonably necessary” requires the exercise of judgment in which a person could make an honest mistake. We believe that the understanding of the phrase “reasonably necessary” will continue to be developed through case law and Commerce Commission guidelines and practice.

**Penalties**

We recommend inserting new clause 13B (inserting new section 79B(3)) to provide for the stay of pecuniary penalty proceedings if criminal proceedings are commenced in respect of the same or similar conduct. Other statutes contain equivalent provisions regarding civil and criminal responses to the same conduct.

We also recommend amending clause 15 (substituting new section 80A) so that a person could not be indemnified in respect of criminal and civil liability.
International shipping
We recommend inserting new clauses 23A and 23B to repeal the separate competition regime established under the Shipping Act 1987 and to allow international shipping to be covered by the Commerce Act. We recommend amending clause 2(2) to provide for a two-year transitional period for provisions relating to amendments to the Shipping Act. We also propose inserting new clause 23C to provide for further transitional arrangements for these changes.
We do not believe there is good reason for treating international shipping differently from other sectors regulated by the Commerce Act. We consider that the carriage of goods by sea between places in New Zealand and places outside New Zealand should be subject to the generic competition regime under the Commerce Act.

Civil aviation
Competition in international air services is currently regulated by Part 9 of the Civil Aviation Act 1990 and the Commerce Act. A review of the Civil Aviation Act is in progress, and will provide an opportunity for a policy process to consider passenger-specific impacts and other concerns about the implications of changing the competition regime for international air services. We recommend that a transition to a Commerce Act regime be considered in the wider review of the Civil Aviation Act.

Franchise arrangements
We encourage the Commerce Commission to develop specific guidelines for its application of the provisions of the bill to various franchise systems. This would provide more certainty as to whether the collaborative activity exemption might be applied to particular franchise arrangements.
Appendix

Committee process
The Commerce (Cartels and Other Matters) Amendment Bill was referred to the committee on 24 July 2012. The closing date for submissions was 6 September 2012. The committee presented an interim report on the bill on 28 September 2012. The closing date for submissions on the changes to shipping and civil aviation was 18 October 2012. We received and considered 41 submissions and supplementary submissions from interested groups and individuals. We heard 16 submissions.

We received advice from the Ministry of Business, Innovation and Employment and the Ministry of Transport.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Dr Jian Yang
2011/12 financial review of the Broadcasting Commission

Report of the Commerce Committee

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The Commerce Committee has conducted the financial review of the 2011/12 performance and current operations of the Broadcasting Commission and recommends that the House take note of its report.

Introduction

The Broadcasting Commission, which operates under the name NZ On Air, was established under the Broadcasting Act 1989 as a broadcasting funding agency. It invests in local television, radio, music, and other media content to extend the choices available to New Zealand audiences. NZ On Air’s stated mission is “to champion local content through skilful investment in quality New Zealand broadcasting”. It seeks to make sure that local content is innovative, visible, and valued by diverse New Zealand audiences.

NZ On Air is governed by a board of six members appointed by the Minister of Broadcasting. Miriam Dean is the new chair, following the stepping down of Neil Walter in February 2012, and Jane Wrightson is the chief executive.

In 2011/12 the commission’s total revenue was $133.396 million and its total expenditure was $136.737 million, resulting in a net deficit of $3.341 million.

Content

Documentary strategy

We asked about the response to NZ On Air’s discussion document on documentaries, and heard that it is still working through the submissions. The large number of pro forma responses indicates an interest in the matter, but lacks demographic detail.

We asked about the main themes of the feedback. NZ On Air said that most of it concerned the inflexibility of funding requirements, and reflected the growing popularity of factual “reality” programmes rather than classic documentaries. Online audiences remain small, and online delivery disadvantages rural viewers with limited broadband coverage. NZ On Air has isolated the issues it believes it can address, many of which concern viewers feeling they have no input into decisions.

NZ On Air is embarking on more audience research in 2013 and hopes to conclude this project by 2014.

Pacific and Asian content strategies

We asked for an update on the implementation of the strategy for Pacific content, which NZ On Air launched late in 2012, after considerable work, and consultation with the community. It lists all the content available specifically for Pacific audiences in New Zealand, with the overall aim of providing diverse and accessible content. It plans to consult Pacific broadcasters later in 2013 to seek economies of scale in this area.

We asked about NZ On Air’s progress with acquiring content for the Asian audience in New Zealand. After consulting the Asia New Zealand Foundation, it had decided that a
pan-Asian strategy would be too difficult to formulate because of the range of cultures and languages in the community. It has a series called *Neighbourhood*, which covers various different cultures and ethnicities and beliefs in particular localities. An Asian strategy is more likely to be an aspect of the digital strategy, which is going to target special-interest audiences that are not well served by mainstream media. In the first year of the Digital Media Fund, Pacific audiences were targeted. The 2013 strategy is not yet decided, but may well address the Asian audience.

**Making Tracks**

Making Tracks is a scheme, now in its second year, providing contestable funding for recording artists. An independent panel decides applications on the basis of the quality of the music and its likely appeal to a particular audience. We heard that an operational review of this new approach had tested the funding system. It resulted in recommendations to tighten eligibility criteria and improve the application processes.

We asked whether the content of Making Tracks was local, and heard that the artists are New Zealanders, and most tracks are recorded here.

**Trends**

We asked about current trends in local content production. NZ On Air said that it will shortly be issuing a local content report. In general, trends are static, with the exception of an increase in hours of sporting coverage, because of the Rugby World Cup and the Olympics.

**Funding decisions**

We asked NZ On Air about the process for deciding what will receive funding, and were told that it has recently changed. Previously, staff analysed the applications and made recommendations to the board, which scrutinised every funding decision in detail, almost always reaching the same conclusion. Now the board only reviews applications exceeding a certain cost, those on which the staff cannot agree, and those with sensitive or controversial aspects.

We asked about the criteria for allocating funds. We were told that four categories of audience are specified in the Broadcasting Act 1989: drama, documentary, children’s, and special interest. NZ On Air examines the applications to see if they will fill any gaps in current programming, whether they are innovative, the amount of support from the broadcaster, and the general quality of the idea. It balances its television funding by budgeting 50 percent for prime-time programming and 50 percent for special-interest programmes, which are mainly scheduled off-peak. It tries to support local content where possible, but also assesses the likely audience size.

NZ On Air made the point that it funds programmes, not production companies, meaning that what is ultimately screened is its prime consideration. A programme proposal will be considered on its merits, which includes the composition of the team involved in making it, so that New Zealand maintains control of the production. NZ On Air believes some cultural reasons for investing in public funding are just as important as commercial reasons. It will consider funding programmes that follow an international format, such as *New Zealand’s Got Talent*, because the content is local. It requires a broadcaster to have committed to a programme for it to be publicly funded.
We heard that the contribution the broadcaster must make, which NZ On Air reduced in 2009, has been restored to its previous level. The reduction was in response to a fall in advertising revenue in the global financial crisis.

When asked about their attitude towards ownership changes at television production houses that see New Zealand production control passed into overseas ownership, NZ On Air replied that it funds programmes, not production companies, meaning onscreen matters are NZ On Air’s prime consideration. They told us that funded content is made by New Zealand production personnel. International trade agreements mean NZ On Air cannot have a view on company ownership with regards to country of origin. However, for risk assurance purposes, NZ On Air will only contract with New Zealand-registered television companies.

When asked whether NZ On Air believes purchasing international formats such as New Zealand’s Got Talent was effectively promoting New Zealand culture, they said yes, and that those programmes were made by New Zealanders, for New Zealanders, and feature New Zealand performers. They claimed that whether a format was devised here is a peripheral matter.

Reasons for deficit

We asked what lay behind the organisation’s $3.3 million deficit. NZ On Air told us that it was largely because of expenditure in the previous year which could not be recognised in that year, and so was carried forward into the year in review. We heard that, having done its half-yearly accounts, it was on track for the 2012/13 financial year.

Technology

Digital switchover

NZ On Air refreshed its five-year-old digital strategy last year after reviewing the activities funded from the former Digital Content Partnership Fund. For content designed solely for online or mobile access, it has created a Digital Media Fund, the only such content fund in New Zealand. The fund consists of a million dollars for substantial projects, and $400,000 for smaller projects. The goal of the strategy is to ensure that diverse New Zealand content is available on multiple channels. Every programme for which a funding application has been made is expected to screen on at least two channels, both broadcast and online. Digital media will be funded specifically for online and mobile audiences; however NZ On Air is taking a cautious approach, because the logic of applying public funding to this audience is not yet entirely clear.

We asked whether the digital switchover would result in a fragmentation of online and broadcast technologies; NZ On Air said it deals with content, and the technology used to view it is largely irrelevant. The switchover is an opportunity for it to ensure that publicly funded content is seen in as many places as possible, which is where NZ On Air’s interest lies.

We asked about the relative cost of producing programmes for digital and mainstream media, and heard that it depends on the method by which the content is made. For example, user-generated content has almost no cost, whereas a “webisode” series incurs costs nearly as high as analogue filming. There are some savings to be made, but it is not necessarily a cheaper option.
NZ On Screen

We asked for an update on NZ On Screen, which is an online archive of New Zealand television and film that NZ On Air describes as an integral part of its digital strategy. NZ On Air told us that at this stage it is not possible to predict what the online viewing figures will be in three to five years’ time, so it is trying to understand and predict the future of online content. It released an online rights discussion paper in June 2012, and will talk this through with the industry later this year. The paper discusses the conflict between having freely available material online and the rights of intellectual property owners. It expects there to be answers somewhere in the middle, but believes it will take more discussion to arrive at them.

We also heard that online viewing makes measuring audiences easier; however a combination of online and mainstream broadcasting may prove difficult to monitor. The ratings will be monitored over the year.

Board of directors

Make-up of the board

We asked if the board had heard from the Broadcasting Minister about the potential reappointment of one board member, and the expiration of the term of another. NZ On Air said that there was a brief discussion with the Minister about maintaining the right balance of skills, but any decision about appointments is entirely for the Minister. It believes the board has a good range of skills and is professional and hard-working.

Conflicts of interest

We were pleased to hear that preventing conflicts of interest was a high priority for the board, and that it has a robust procedure. It has a conflicts register, and every board and staff member understands that it is important to disclose not only any real conflict but also any possible perceived conflict.

Co-location and collaboration

NZ On Air and the New Zealand Broadcasting Standards Authority, who currently share accommodation, will move to the same premises as the New Zealand Film Commission in mid-2013. NZ On Air has a long-standing shared services arrangement with the authority which it extended in 2011/12 to the provision of accounting services. It believes that the move will enhance its capabilities, foster interaction between staff, make joint projects easier, and reduce costs by sharing services. A joint documentary strategy has already resulted from discussions between staff. We commended NZ On Air on this co-location, and hope that it proves beneficial.

We also heard about other project collaborations in which NZ On Air is involved. There is now a four-agency collaboration with the NZ Music Commission, Te Mangai Paho and Creative NZ to ensure that their contemporary music funding policies are aligned. The commission co-funds projects with Te Mangai Paho and assists it with music funding assessments; it has also launched a new documentary fund in partnership with the NZ Film Commission.
Appendix A

Approach to this financial review
We met on 18 April and 16 May 2013 to consider the financial review of the Broadcasting Commission. We heard evidence from the Broadcasting Commission and received advice from the Office of the Auditor-General.

Committee Members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Jian Yang

Evidence and advice received
Office of the Auditor-General, Briefing on the Broadcasting Commission, dated 18 April 2013.
Broadcasting Commission, Responses to written questions, received 25 January, 22 April and 1 May 2013.
Appendix B

Corrected transcript

2011/12 financial review of the Broadcasting Commission

Commerce Committee

18 April 2013

Members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Carol Beaumont
Hon Clayton Cosgrove
Iain Lees-Galloway
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Jian Yang

Witnesses
Miriam Dean, Chair
Jane Wrightson, Chief Executive Officer
Alan Shaw, Chief Financial Officer

Young Good morning and welcome.
Dean Good morning.
Young I’m glad you’re here. I believe it’s your first time.
Dean It is indeed.
Young If you would like to introduce your team, we’ll go around the table as well and do the same.
Dean Thank you, Mr Chair. [Introductions] So good morning.
Young Good morning. I’m Jonathan Young, the chair, and we’ll go around the different members. [Introductions] Great. Look, if you’d like to give us a brief presentation and then we’ll come to questions. Thank you very much.
Dean Thank you, and I will keep it short, because I know there are time constraints. I think on behalf of the board and management I’m pleased to say that New Zealand On Air really has delivered on its 2011-12 goals. Can I just briefly mention a few of the highlights, and it will only take a few minutes. Despite financial constraints we have funded a wide range of local
TV content. It’s ranged from documentary, whether it be First Crossings; to drama, Nothing Trivial; comedy, 7 Days; Māori, The Prophets; children’s, Kapa Haka Kids; entertainment, New Zealand’s Got Talent—a broad spectrum of programmes. The Platinum Fund has continued to deliver, we think, outstanding documentaries and dramas. You may or may not have seen the award-winning Siege or the wonderful theatrical Māori plays Atamira.

Making Tracks—and I think last time you spoke a little bit about that—has actually really delivered. It’s been a success. The music is now much more diverse, and what was particularly, you know, welcoming is that in the year in review we had 10 million streams of our Making Tracks songs on YouTube alone. I mean, that’s a great reach.

Regional TV stations received funding for some good local news programmes, so you’ve got Chatroom in the Hawke’s Bay, CTV in Christchurch, Today at Seven in Auckland. We funded 13 Access Radio stations. We support the national Pacific radio stations and, of course, also Wellington’s Samoa Capital Radio. Very pleased to see that Radio New Zealand National continued to be our No. 1 station—most popular with listeners. Radio New Zealand Concert had a smaller but engaged audience.

We launched two new digital funds, which we think are really exciting—Kickstart and Ignite—and we focused that first round on funding Pacific content, so really looking forward to seeing some really neat Pacific content out there quite soon.

Collaboration was at the forefront. We’re very conscious of the need to deliver under the Better Public Services programme, so just a couple of things: we’ve launched a joint documentary fund with the New Zealand Film Commission. We are about to co-locate with the New Zealand Film Commission and Broadcasting Standards Authority, so you’ll have all the media agencies under one roof. We’re working with Te Māngai Pāho, Creative New Zealand, and the New Zealand Music Commission around music. We partnered with Amplifier to launch the wonderful new music discovery website. I don’t know if any of you have had time to even just take a minute to go in there, but it’s a great site, and we’ve already had in the 8 months 1 million page views, so people are flocking to it. And we are, through New Zealand On Screen’s expertise, collaborating with National Library and others on our audio culture project, which will be a showcase of New Zealand’s contemporary music. So we do think we’ve been doing a lot in the collaboration space.

We’ve reviewed a number of our policies to improve performance. We’ve revised digital documentary, which is still ongoing, revised Māori strategy, and we’ve launched a new Pacific strategy, which is particularly exciting. We’ve continued funding captioning for the deaf and audio description for the vision impaired—very important.

And all of that, dare I say, we have been able to do by keeping our administration costs as low as 2.5 percent. So we are pretty lean and mean, and 100 percent of our projects do get broadcast on multiple platforms.
So that’s all I really wanted to say about the year in review. Going forward, just to say, like with all public entities, we know we are under financial constraints, and we will simply strive to do even better under those constraints—I suppose, to put it simply, to do more with less, so that’s our strategy for the year ahead. So thank you.

Young: I thank you very much, and, yes, we do want to express our congratulations for a good year of work, and well done on that. Coming to some questions, let me just lead off regarding the performance reviews that you have done and are under way in terms of, I think, a discussion document out regarding, you mentioned, documentaries.

Dean: Yes.

Young: What sort of response have you had from that process, and how has it informed you for your strategy ahead?

Dean: Perhaps if I make just a general comment and then I’ll let Jane speak to the more operational aspects. I think the important point is that the industry are pleased just to have us engaging with them. We are going out and seeking their views, whether it’s on documentary, online—So a good response that we are looking at these things. Everybody has different views. I’ve learnt that very quickly with this industry. So we’ve been getting some good submissions back and we’re working through them. But I think, Jane, you’re probably in a better position to speak to the sort of operational aspects.

Wrightson: Thank you. We launched the documentary strategy after we had been thinking around this issue for some time. We periodically look at our genre work and see if we’re getting the right outcomes. We’re slightly concerned about the potential narrowing of the range of documentary, so we initiated this review to try and understand the situation and see what, if anything, could be done. As we note in our review, there’s always been competing tensions around the genre, and they’re largely between the prime-time scheduling requirements, which significantly shape the type and style of funded documentary, but also, of course, some stories benefit in being told in a more thoughtful or discursive way.

So we had a good range of response from the industry and a large number of responses from the public. Those responses were a kind of pro forma, most of them, so it made us understand that there was a significant interest out there, but what we don’t know is how wide and the range of people. So we are undertaking some additional research now. We’ll be launching a project in the field sometime in the next couple of weeks to understand the views of New Zealanders per se, and then we will have a set of meetings with the industry to talk about the results and how we might go forward.

Cosgrove: Could I ask you, in terms of the work, have you done any work and, in detail, what would that be, in respect of developing new funding policies for the digital switchover, given there is, you know, potentially, at least in the short term, a fragmentation between the technologies?
Wrightson Yes, we have. The thing to remember is that New Zealand On Air is in the content business, so we are, in effect, platform agnostic. We go where the audiences are. The audiovisual content we make is designed now to be screened and heard on multiple platforms. So DSO we see as an opportunity but not something that will radically shake our business. We quite understand it’s an issue for some broadcasters, but the point for us is that publicly funded audiovisual content is seen in as many places as possible, and the DSO will simply help that. The introduction of an electronic programme guide, for instance, when people switch over to FreeView, automatically will change people’s lives, as those of us who have Sky already know.

Cosgrove My question was about new production funding policies, given the potential fragmentation. Have you developed—

Wrightson Again, we don’t need to do that. Our funding policies are based on content, and the content is platform agnostic.

Cosgrove May I ask you, in terms of your board make-up, has the board had any communication with the Minister in respect of potential reappointment or otherwise of Mr McElrea, and, if so, what is that communication?

Dean At the moment the question of Mr McElrea’s reappointment and, indeed, Caren Rangi’s, because her term has come up or is about to come up—

Cosgrove When do they expire?

Dean —is presently with the Minister, so I can’t comment further.

Cosgrove So has the board had any communication to the Minister in respect of recommendations about those individuals?

Dean No.

Cosgrove Has the Minister communicated anything to the board in respect of those two individuals?

Dean Just trying to think.

Wrightson Not to the board.

Dean No, not to the board.

Cosgrove Well, to anyone in the organisation—youself, executives?

Dean Only a brief discussion I’ve had with the Minister some time ago, and that’s why I was just trying to recall, just generally about board make-up, what’s the sort of skill set we need around the board table. And that was particularly in the context of Mr Wicksteed’s appointment, which was made a couple of months ago.

Cosgrove So in those discussions have you—because, quite rightly, you presumably would have discussions about the skill set, as you say, and the make-up of the board—have you made, expressed any preference in respect of Mr McElrea?

Dean No.
Cosgrove Have you been asked what your opinion is in terms of the maintenance, reappointment, or otherwise of the board?

Dean We had, again, a general discussion about the board, but, no, at the end of the day, the question of appointments is, obviously, for the Minister. I know about the process and I’ll work with whoever the Minister appoints.

Cosgrove So the Minister hasn’t put it to you and said: “Look, do you think you have enough skills? Do you think Mr McElrea and the other individual you have up whose term is about expire should be reappointed?” The Minister hasn’t ventured an opinion at all? He’s just left that as a completely open, undisputed question?

Dean It has been a general discussion simply about those appointments coming up. We had to deal with Mr Wicksteed’s appointment, so that’s really been the focus to date. The question of the other reappointments is with the Minister.

Cosgrove And has the Minister indicated a time line for a decision?

Dean No, I can’t indicate a time line. It is with the Minister.

Cosgrove So the term has expired, hasn’t it? Was it 31 December last year?

Dean Yes. Mr McElrea’s has expired. Ms Rangi’s expires very shortly.

Cosgrove I’m not familiar with your particular appointment process, but in the ordinary course of business, is it likely that the board members are advised or the board is advised of reappointments prior to the expiry of a term? Is that normal process, or can some time lapse between expiry and, perhaps, reappointment?

Dean Well, I suspect the practice varies. I can only comment—

Cosgrove Sure.

Dean —from my own experience, Mr Cosgrove, but certainly in relation to, you know, Mr Wicksteed, at the point at which the Minister, the ministry, you know, going through the usual process, had identified particular people, then of course I was consulted and had some input into his appointment. It simply hasn’t got to that stage with Mr McElrea’s appointment.

Cosgrove And assuming, perhaps, that Mr McElrea isn’t reappointed, what skill gap does that leave, and what skill gap would you be looking to fill to replace that individual?

Dean I think it is important we do have some broadcaster skills on the board, but also producer. I mean, what I’d really like to see, as with all boards, a good mix of skills. So at the moment we have radio, have someone from music—

Cosgrove Sorry. Forgive me. I was just speaking in respect of Mr McElrea.

Young Well, I think it’s a good general question. We’d like to hear the answer. Thank you.

Dean Yeah, because you need to see it in entirety. So, you know, what I’m looking for is a board that can offer me some independent, because we’ve got to avoid conflicts, of course, experience around music, around radio,
production—Nicole Hoey’s come off the board; it would be good at some stage to see if we can get someone with production experience on the board—broadcast, so that we really sort of cover the full gamut.

Cosgrove  In terms of two issues—one, what skills did Mr McElrea bring to the board, in your view—specific skills?

Dean    Well, I can only comment on my—

Cosgrove Maybe your staff can. They’ve been around—

Dean    Yeah, well, perhaps if I lead off first. I can only comment on the year that I’ve been chair, and I think my chairmanship does reach its first-year anniversary in a few days. I find it a very good board. It’s a really hard-working board. It is a good mix of skills around the board. All board members, in my view, have acted absolutely professionally, appropriately. I enjoy working with them all.

Cosgrove And you’ve said in your answer to the previous question that it is important to avoid conflicts—presumably conflicts of interests in other things. Is that a high priority for the board?

Dean    Oh, it is, and particularly for me as chair. I’ve always had an interest in probity. I think some of the other boards I’ve served on, I’ve particularly had a role around the probity conflict area—inevitably, when you’re a lawyer. But I can say that I looked at the conflict procedures when I assumed the chair, I was absolutely satisfied they were robust. We have a good conflicts register. Every board member and staff understands that it is important to disclose not only any real conflict but even any possible perceived conflict. Now, sometimes the perceived conflict is so thin that, actually, the board will say: “That’s not a conflict, and we would not want to exempt you from that process.” And I perhaps could just give one good example of that where Caren Rangi because of her Pacific origins had a little interview slot on Tagata Pasifika—great. She raised that as a potential conflict. Could she be involved in the Pacific content strategy? My view was absolutely, because that would be silly to actually exclude you. On other occasions—let me talk about a personal one. I had to recuse myself from the Secret Lives of Dancers when that funding application came up, because I am a trustee of the Royal New Zealand Ballet board. So I assure you, we are all very cognisant of our conflict procedures, and under my chairmanship the procedures are obeyed vigorously.

Young  Well, it’s good to hear that, madam chair, because, I mean, we did cover all of these particular subjects the member’s raised quite extensively last time with the previous chair, and it’s good to hear that you have a very good grasp and understanding of all the issues that we faced at our last financial review.

Cosgrove Thank you. You indicated that your staff might because—and I endorse the chair’s view. I congratulate you on your very high standard of policing of conflicts of interest. You indicated that your staff might, given their longevity prior to you, might be able to indicate what skill set Mr McElrea brought and therefore what skill set you would be looking to replace.
Wrightson: I’m feeling extremely long on the longevity front these days, I have to say.

Cosgrove: No disrespect.

Wrightson: Mr McElrea’s a former Television New Zealand executive, as am I. There are many of us about.

Cosgrove: And that’s his skill base?

Wrightson: Correct.

Cosgrove: No more detail than that?

Wrightson: I don’t know the grounds for his appointment, but he has extensive television experience.

Cosgrove: Be a short CV. Thank you.

Lotu-Iiga: Thank you for appearing before us, and I think your annual report actually sets out quite clearly, you know, the depth and breadth of your operations. I just want to congratulate you, I think, you know, for the job that you do. It’s not an easy job, but certainly you do it very well.

Can I turn to the financial performance, if we can, and I know Mr Shaw might be able to help us out with a couple of these questions. Obviously, your operational expenditure is, as a percentage of total revenue, is reasonably low. I think you obviously run a lean, mean organisation, but you’ve still got a net deficit for the year under review of $3.3 million. Can you sort of talk through that? And then I want to get to the sort of committed/uncommitted in terms of your retained earnings.

Dean: Alan can certainly speak to that.

Lotu-Iiga: Sure. And I know you’ve budgeted for a loss, but it’s greater than the budgeted loss.

Shaw: Yes indeed. The primary reason for the deficit being in excess of that budgeted was primarily due to the expenditure in the prior year, which was unable to be recognised in that year and was carried forward into the following year. So on the cash expenditure and decisions against budget, we were pretty much in line with the year, so that’s effectively a technical accounting adjustment.

Lotu-Iiga: OK. In terms of going forward, then, you know, if it was a technical adjustment, so the reserves—well, you call it equity—has gone down from, I think, $8.4 million down to $5 million. Going forward, if we had another year like the past year, I suppose, you know, you’d be bringing that equity down to, I wouldn’t say critical levels but, I mean, how do you view the sort of progress going forward? If you could give us an update about where you’re at this financial year, that would be really good.

Shaw: Well, in terms of this financial year, I think we’re very much on target in accordance with our SOI budgets. You’ll note that the equity figure is actually split between committed and uncommitted equity. The uncommitted equity is, in effect, the true equity, the balance, that we would have. The committed equity is the part of that number that is the technical...
accounting adjustment, so we’ve spent the money but we haven’t quite yet
raised the liability.

Lotu-Iiga OK. So at this point have you got your 6-month accounts done for this
financial year? I mean, are you on track? You’re saying you’re on track?

Shaw We are on track, yes.

Lotu-Iiga OK.

Beaumont Thank you very much for the presentation. I’m interested in knowing what
the current trends are in local content production. I understand this is the
normal time for you to be producing your local content survey, and are
there trends—things like growth in repeats or shrinkage in first-run local
content? So could you give us a bit of a sense of that?

Dean Should I just lead in? We are presently working on our next local content
report, and Jane’s best to address the detail.

Wrightson We’re hoping it’s going to be released in the next couple of weeks. The
trends are, as you would expect in this financial environment, they’re
relatively flat. There’s an increase in sporting hours because of the Rugby
World Cup and the Olympics. Most other underlying trends are static. That
reflects, in effect, the static investment environment for production.

Beaumont Sorry, just a supp on that. So the issue of repeats—what’s the trend there?

Wrightson I can’t recall repeats off the top of my head, but as far as I remember most
of the trends are relatively consistent. They’re certainly not horrendously
up, but neither are they dropping.

Bakshi A lot of changes have been seen in recent times that people are more and
more going on the internet to watch the content. So what strategy do you
have, and what sort of progress has been made in the past year? And can
you please update us on NZ On Screen—what sort of response is there on
that website?

Dean Should I lead off, and then again I’ll ask Jane particularly to talk to New
Zealand On Screen. I mean, generally, the board is very conscious that the
world is changing. You know, digital is coming. But I think it would be fair
to say all of us in that space are still not sure what it will look like in 3 or 5
years. Just how much will people be watching online as opposed to
television? So what are we doing? We are certainly trying to understand the
space. We’re going to actually meet up with the New Zealand Film
Commission in a couple of months and we thought together have a bit of a
blue skies session—you know, what will it look like? We have already
revised our digital strategy; we’re putting money into digital online, so we’ve
actually got programmes that are being produced for online. We’ve
launched our two new digital funds. So we are doing a lot in that space, but
Jane can particularly talk to how New Zealand On Screen fits into all of
that as well.

Wrightson Just going back to the digital strategy, we’re the only agency that has a
digital strategy for content, and we’ve had one now for 4 years. We
refreshed it last year after we reviewed the activities funded out of the
former Digital Content Partnership Fund. The overriding goal of the strategy is to ensure that diverse New Zealand content is discovered and enjoyed by audiences on multiple channels. So what that means is for every funding application, we have said we expect it to screen on at least two channels, broadcast and online, somehow and somewhere. We’ll be funding digital media specifically for online and mobile audiences but treading very carefully in this space, because the logic to apply public funding in this space is not entirely clear, so it’s still an experimental space where we move carefully. And we are looking hard to try and increase options for content discovery.

The most recent piece of work we’ve done is the release of an online rights discussion paper, which we’ll be talking through with the industry later this year. Obviously, that paper will cause some discussion, because it’s talking about, in effect, the crux between the desire from a public funding perspective to have funded material available online wherever they want to find it and the rights of intellectual property owners. There will be answers somewhere in the middle, but it will take more discussion.

Bakshi Continuing on the strategy as this digital media is coming in, there’s another change in New Zealand’s demographic. A lot of Asians have migrated over to New Zealand, and we have got a strategy where Māori and Pacific Islanders are particularly targeted, which is very good, and we appreciate that. But I haven’t seen anything which you have got any programme which is targeted towards the Asian viewers of New Zealand.

Wrightson Yes, that’s right. We, as you know, funded Asia Downunder for many years, and we decided after—

Bakshi Which was stopped a couple of years ago.

Wrightson Correct. We decided after talking with the Asia New Zealand Foundation in particular that it was quite difficult to think about a pan-Asian strategy because of the range of cultures and languages within those communities. So we do it in one of two ways. We have a series now called Neighbourhood, which looks at a range of different cultures and ethnicities and beliefs within neighbourhoods. It’s actually lovely, and I encourage you to watch it on a Sunday morning.

Whether we go as far as developing an Asian strategy I am not so sure. If we do, it’s more likely to be contained within, I think, the digital strategy at some stage. So the digital strategy, we decided, for funding purposes—the Digital Media Fund—is probably going to be targeted towards special interest audiences, we think, largely because those audiences are not well served by mainstream media. And the first year we did the Digital Media Fund we concentrated on Pacific audiences. We haven’t yet locked down what we’ll be doing for 2013, but it’s entirely feasible that we could address the Asian audience as part of that strategy.

Dean I think it’s something we could look at.

Bakshi Is it cheaper to produce the programmes for the digital media, or cost-wise are they the same, or cheaper?
Wrightson  Not necessarily. It depends. You can go almost no cost when you’re thinking about the kind of production quality of user-generated content—just waving around a Sony Handycam—or if you’re making, say, a webisode series of drama or comedy, it can cost almost as much as mainstream. So there are some cost savings, but it depends on the type.

Lotu-Iiga  Yeah, just a quick supp. You mentioned the Pacific strategy. Can you just give us an update about how that’s being implemented and some of the sort of key highlights if you can?

Wrightson  Yes. We were really pleased to launch that late last year. It was after some considerable work on our part and consultation with the community. The strategy for a start actually, for the first time, has listed all the available content for Pacific audiences in New Zealand, which is, you know, more than we thought. The overall strategy is aiming that there should be diverse content available for Pacific audiences and that it should be accessible. We think in the current constrained funding environment that there’s considerable room to move in looking at the range of current audiovisual content and somehow bringing it together in ways that different Pacific audiences can find it. And those are the discussions we’ll continue with. We’re going to have a fono later this year and talk it through with Pacific broadcasters again and see if we can start getting some economies of scale in some of our work in particular.

Lotu-Iiga  That’s good. Thank you.

Yang  OK. Looking at the top 30 funded programmes last year, I can see that you are funding quite a wide range of programmes, as you say in your report—an extensive and eclectic range of New Zealand On Air - supported programmes. So my question is what are the criteria for you to allocate funds? And I understand the amount of audience is one of those important criteria. What are the other criteria?

Dean  Perhaps Jane can—

Wrightson  So the focus for us is on the audiences specified in the Broadcasting Act. So they fall into four rough categories: drama, documentary, children’s, and special interest. Within that we look at what the broadcasters can support themselves and what are gaps, if you like, in the scheduled offerings. Then we will look at a range of applications, which are received on a contestable basis. And the criteria around that is the skill base of the people who are proposing to make it; the quality of the support from the broadcaster—if they really want it, meaning will they promote it, will they support it, will they invest in it—the quality of the idea itself, obviously. If it’s not a very good idea, we probably won’t fund it. And general things like, is it similar to something that we’ve done before? Because if it is, we’ll probably go back to one of our innovation values and go: “Probably not that one. We’ve got some newer ideas we can test.”

Yang  Now, of course you have your strategies for future development. What are your priorities at this stage for funding?
Wrightson Trying to keep as much local content supported as we can in a very difficult financial environment, so that will involve a little bit of tweaking and rebalancing, I think. But it’s not simple, and it will be, I think, relatively minor. In other words, if we were going to take a really big thing, we would get out of drama, because it’s really expensive, but we can’t and we won’t and don’t want to—a, because it’s statutory; and, b, because it’s a really important genre and a way to tell different stories to New Zealanders.

Yang So local content is an important part of your funding, right? Now you have—I’m looking at a press release from last month—24 projects. You’re going to fund 24 projects out of 134 applications. Are these songs written by New Zealanders, or it doesn’t matter whether they are New Zealand songs, or overseas songs?

Wrightson This is Making Tracks. That’s a fully contestable process, and unlike the television portfolio, there’s no kind of gateway here. So we have a list of 20 or so criteria they need to jump over before they can get into the pool, if you like. And then an independent panel selects the decisions on the basis of whether or not they are considered a good song—in other words, a good piece of music—and whether they are likely to appeal to a particular audience. So the artist may well be domiciled overseas, or may be here, but they will be a New Zealander. They are mostly recorded here.

Yang OK. Is this a new model or a new approach to funding, or allocating funds to new projects?

Wrightson Making Tracks is. Making Tracks is in its second year now.

Yang OK, so you are going to do a review on this?

Wrightson We did an operational review last year. The introduction of Making Tracks was a very big project for us, because it changed everything we did. All right? Every step of the process had to be looked at and re-worked out, including building a new applications website. So we’ve checked that in the last 12 months to make sure that the applications process is working. We’ll look at the outcomes of Making Tracks probably next year, I think. It’s a bit early at the moment.

Lees-Galloway Thanks, Mr Chair. I understand in the last few years—possibly about 2009, you might be able to correct me—you reduced the contribution the broadcaster had to make to production costs, and that was to offset reduction in advertising revenue during the recession. That’s correct? I’m getting some nods. I just thought I’d clarify that’s correct—you did do that?

Wrightson Shall I answer that? It’s before your time.

Dean Yes, absolutely.

Wrightson Yes, we agreed to reduce the licence fees a year or two after the GFC, because both broadcasters—and it was a joint approach that we’ve never had before—were indicating that their financial position was badly affected, and their ability to invest in local content was threatened. We agreed to do that in year 1. They came to us for a second year, and we agreed to it again.
but at an increased level, if you like. In year 3, we have agreed that it will go back to where it was. So we are now back to situation normal.

Lees-Galloway So year 1 was 2009 was it?

Wrightson Something like that, yes. 2009-10, 2010-11.

Lees-Galloway So 2009-10, 2010-11, 2012-13 you’re back to the original.

Wrightson 2012-13 I think we went back to the original.

Lees-Galloway And what’s the ratio?

Wrightson Of funding versus investment?

Lees-Galloway Of taxpayer versus broadcaster funding.

Wrightson It depends on the genre. The individual contributions from broadcasters are commercially sensitive, but we do summarise them at the end of our annual report. So it’s a bit 70:30, 80:20, 60:40. But in some areas that are more popular and more able to attract bigger audiences, we’ll ask for a different proportion.

Lees-Galloway And just to be absolutely clear, the reduction has come to an end, and you are back to a pre-2009 situation?

Wrightson Correct.

Lees-Galloway OK, thank you.

Beaumont One of the things I’m interested in is whether you are concerned at all about large foreign companies using small local production companies as a mechanism to get more secure funding from yourselves. Is that something you are worried about?

Wrightson No, because it is not our experience. For a start, we can’t discriminate with foreign companies, because of the GATS agreement. Our experience is that New Zealand-owned companies, born and raised by New Zealanders, are sometimes sold to offshore companies. We don’t mind who owns companies. What we care about is the individual production. We will only contract with New Zealand-registered companies.

Beaumont OK, can I ask another question, Mr Chair? So I understand also that when you are funding—and it sort of follows from the last question—that those funding decisions you called investments or described as investments—we are wondering how well the taxpayers did out of their investment in The GC? How did that look, as an investment?

Wrightson As an investment, it was fine. It was sold into Australia and we got a share of the returns, as we would normally do.

Beaumont Right. So that was successful?

Wrightson We don’t make investment decisions on sales criteria. They’re, if you like, cherry on the cake. We’re a cultural agency, so our first job is to serve New Zealand audiences. What we do do, to put the taxpayer perspective into it, is say that if you then sell the programme, or the rights or anything to do
with it, we look it as kind of a retrospective subsidy, if you like. So if you make some money, we want a piece of it back, thank you very much.

Beaumont Right. Thank you.

Genter Thanks. I wanted to come back to some questions that Jian was asking about funding criteria. I was just really curious about how important total audience size is when you are determining whether or not you are going to fund content for television.

Wrightson It’s one of several criteria. If it’s a prime-time project, we are interested in how many New Zealanders watch it. If it’s a special interest project or a niche project, what we’re more interested in is having indications from the particular community it serves that they value that content.

Genter What would be the breakdown in percentages of content that you’re funding?

Wrightson In television we aim for 50:50, prime time, off-peak—or, if you like, prime-time/special interest.

Genter And how is that going to change with the move to more content being viewed digitally and possibly greater audience fragmentation, when you’re making decisions about funding content? Will there be a difference? Will you be looking more at other measures of success—for example, meeting the needs of a particular segment of the market, rather than total eyeballs?

Wrightson For sure, it’s more likely to advantage special interest content I think, because the more eyeballs or ears we can prove have listened to or watched and enjoyed that content, the stronger the funding case is.

Genter So you’re saying that even if there is greater fragmentation, if some of that niche content is able to reach more of that particular audience online, then it’s more likely to get funding, because there’ll be—But how will you measure that?

Wrightson Well, measuring online is a bit easier than using the rating system. Again, we will be looking at our performance measures over the next 12 months anyway, because you’re absolutely right—it’s getting more complicated. And the rating system—the Nielsen ratings system—is only really good for prime-time mainstream broadcasting. It’s not as good for off-peak, because the sample size is too small. So the more data we can collect on online and social media and other use, the better it is.

Young Right. Just while Julie Anne mentioned that word “fragmentation”, I’m thinking—and she talked about co-location, which is, I guess, the opposite, with the BSA and Film Commission. Can you talk a little bit about how, in terms of working in the same location, that’s going to enhance your capabilities?

Dean I think what we’re hoping is that just simply by being in the same premises, that just allows much greater interchange just between our staff on a daily, weekly basis, etc. That, I think, just provides a climate for perhaps brainstorming, debating ideas, and that’s how we came up with the joint doco strategy, which was just some film—it was actually the directors of
the Film, Commission and NZ On Air, some staff trying to kick around ideas—what could we do, what can we put together? So I hope that there’ll be more of that.

From an economic perspective, obviously, once we’ve settled in, we will look at whether there’s more that we can do in terms of sharing services and reducing costs. We already do share one communication person part-time. So I think the advantage we see is that we both still remain singularly focused on what we need to do—nimble, remain lean and mean—but work together where we can, whether it be to generate some great ideas for the industry or simply reduce costs, which frees up funds for other content. Jane, you might like to comment from an operational perspective, but I think that’s about it.

Wrightson Yeah, I think the ability to cross-fertilise on a more regular basis is probably the benefit. The thing about being a small agency is that it’s fantastic being lean and mean, but sometimes we need to get out more. And this will help.

Young Fantastic. Well done to that move.

Mitchell Thank you very much for the presentation today. I just want to support the chair’s comments. You guys are doing a wonderful job at getting New Zealand content out there for us all to enjoy. But, of course, I’m sure that you are always confronted with the age-old problem that everyone wants to have their content, and there’s only so much money to go around. Could you just talk a little bit to the process of how you actually make the decision around what is going to get funded? And is that decision spread across the board, and the CEO, and a group of people, or is the decision made by one person, in terms of what’s going to get funded?

Dean Well, perhaps I’ll start. One of the changes that was made following my chairmanship was to review our governance structure. When I came in to the board, my first package of meetings was 2,500 pages, and I was told that was light. Indeed, it was light, because by the second meeting I had 3,500 pages. And I actually challenge any director that can read each and every word of 3,500 pages. So I drilled down into what was happening, and what had become apparent to me is that although our fantastic staff were getting in the applications, doing all the analysis, giving us the recommendations, the board none the less was spending all its time going through each and every funding decision, even though, 99 times out of 100, they agreed with management. My belief is that governance is about governance, not managing. It’s about setting the strategy. It’s about monitoring performance and risk. Personally, I also think it’s about inspiring and really trying to inspire management to think about doing things differently, etc.

I give you that background because against that background I did raise with the board whether the time had come to perhaps change the governance structure. We discussed with staff. I got an expert governance person in, because I thought we could benefit from some expert advice. How are other funding agencies doing this? What that has led to now is a changed process. So we now have a delegation model where below x amounts—and Jane can talk to these, but, for example, music it’s $300,000, television it’s
$1 million—the staff will deal with it. They will make the decision. Unless there’s any particular reason, because of sensitivity, controversy, or they are simply divided amongst themselves whether or not to fund it, then it will come to us. We then get the decisions that do really involve the big chunks of money, or, as I said, there are other particular reasons why we should. So that’s really the more general terms the process we go through. Jane, I don’t know if you want to elaborate on, particularly at the management level, the mechanics of the process. Would that be helpful?

Young: Yeah, that’d be good.

Wrightson: The 3,500 pages per board meeting was a cunning strategy by staff. We were sprung. So now we’re working really hard.

Dean: With small print as well, dare I say.

Wrightson: So with delegated decisions we do it through a three-tier process with an initial discussion, then a meeting of the affected staff to see where they want to go and what their views are, and then it will come to a senior managers meeting, who will say yea or nay. It goes up to the board when we can’t agree amongst ourselves, in essence, because that’s a sensible time to call in different opinions. Obviously, if one of us has a conflict of interest, or if there is any other aspect to the production where we think that the views of the board will be beneficial before the decision was made. And thus far it’s working very well.

Dean: And our board papers are now down to 500 pages. So I’m working on it.

Mitchell: Yeah, well, I think it just leads into Sam’s comment that you’re obviously a very good lean, mean machine and you really are working on your processes, so that you continue to operate like that, so well done.

Wrightson: And we don’t use paper any more. We’re fully digital on the board paper front, too, so there you go—saving trees.

Young: Sounds great.

Yang: Small question—I’m just curious about the Chinese community and applications from the Chinese community, because we do have quite well-developed media in Chinese. We have a TV, we have a radio, we have, of course, many newspapers. Now, in terms of TV, you may be aware of this, World TV. Have they applied for any particular funding or never had any—?

Wrightson: No, they’re a pay television service and we don’t fund pay television. Our first thing is that all our funded content must be freely available to access.

Yang: OK, that’s fine. They have CTV 8. Yeah, but of course, that’s not a particular programme, just the news.

Dean: I might just add we are, again, constantly with the view to just looking at should we be doing things differently. We are, in the next year, going to review our channel policy and just have a look at it.

Yang: Also, they have radio, the Chinese Voice.
Wrightson We fund Chinese programmes through the various access stations. We don’t fund a Chinese radio station per se, that’s correct. We’ve got very little capacity to take on new ongoing services, shall we say, in this financial climate.

Yang I see.

Beaumont Just trying to follow through the thing about ownership—I understand what you said before, but is there a potential for loss of taxpayer funds to foreign production companies? For example, South Pacific Pictures are now fully overseas owned by a global company, and are reported to have paid their owners a $3 million dividend, which potentially could have been used to fund local content. Is that a trend that you have any concerns about at all?

Wrightson No, because we fund productions, not companies, so within each production budget we will allow an overhead charge for any company, whoever owns it, whether it’s a person running out of their front room or whether it’s owned by a foreign organisation, and we keep an eye on those overhead charges. We have a maximum, anyway, and a sliding scale, if you like, for the size of the production. So that’s the only, if you like, profit they can take out of a production budget. I can tell you, that’s the first thing to go if the production starts to go over budget. We hardly ever give additional money when productions get into trouble, and they do, because it’s a risky business, and that’s the first in line that we say: “Take that out. Put it back into the budget.”

Beaumont Just a quick sup—is that a trend, that ownership of production companies, is it increasingly leaving New Zealand hands?

Wrightson We’re a very small market, so, no, but I think a strategic issue for any production business is scale, so I think to survive in a small market and a difficult international environment, you either have to be very small or quite big and well connected. It’s the people in the middle who will have a strategic issue, I think.

Lotu-Iiga Just coming back to the financials, given we’re in a financial review—you’ve obviously said you’re working on the expenses and your operational expenditures down there, you want to deliver service, so that expenditure is almost accounted for. Let’s go to the revenue side. You’ve basically got some baseline revenue from the Crown. Then you’ve got other revenue. I just want to explore other revenue. If you come down to—just going through your report—you’ve got interest income. Just breaking down other revenue. So that’s sort of come down by a couple of hundred thousand dollars. Sorry, that’s note 3 of your annual report. I suppose it’s asking: is that coming down? What has it done over time? Is that a possible source of extra revenue for you? Interest has come down slightly, and then there’s other income, which is negligible. Could you just talk through where you see other revenue as a potential source of—I mean, I know it’s from sales of—
Wrightson It’s from sales of programmes, largely, and we have a minority stake in those sales, for investments over $200,000. I don’t see that changing much. I think we’ve averaged, from sales income, around half a million to a million dollars a year, and, again, as I said, to Ms Beaumont, that’s a kind of claw-back, if you like, for programmes that have been sold. Interest is purely market driven, and I think that will be as it is. We are a Crown-funded agency, so the majority of our money comes from the Crown.

Lotu-Iiga OK, so you don’t see this other revenue growing or diminishing over time?

Wrightson No.

Young Any further questions? I think we’re happy.

Dean Thank you.

Wrightson That’s always good news.

Young Thank you for appearing, and all the very best for your operations in the year ahead. Thank you.

**conclusion of evidence**

Report of the Commerce Committee

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Recommendation


Introduction

We have considered these four petitions together, as they deal with similar subject matter, namely the closure of post offices and Kiwibank outlets.

Petition 2008/128 of Deborah Harcus on behalf of the Eden Terrace Business Association, requests

that the House of Representatives note that 444 people have signed a petition requesting that Eden Terrace keeps its Post Office and Kiwi Bank, and that the House support this request.

Petition 2008/132 of Genevieve McClean on behalf of the Save the Grey Lynn Post Office Working Group, requests

that the House of Representatives note that 2,560 people have signed a petition opposing the closure of the Grey Lynn Post Office and Kiwi Bank, and that the House support their request.

Petition 2008/136 of Andrea Deeth requests

that the House of Representatives note that 1,225 people have signed a petition opposing the closure of the Green Bay Post Office and Kiwi Bank, and that the House support their request.

Petition 2008/137 of Duncan Macdonald requests

that the House of Representatives note that 2,111 people have signed a petition opposing the closure of the Avondale Post Office and Kiwi Bank, and that the House support their request.
Evidence from the petitioners

Deborah Harcus’ petition was submitted on behalf of the Eden Terrace Business Association, which represents businesses on the Auckland central city fringe. Ms Harcus expressed particular concern about a lack of consultation of businesses and the community by New Zealand Post. She said that the haste of the closure prevented the community from taking action to turn around the profitability of the banking and postal services offered by the Symonds Street PostShop and Kiwibank facility. She also pointed out that the population of the area the shop was serving has grown significantly and is marked for further expansion, with high-rise development and plans for a station on the central rail loop. The petitioner asked for New Zealand Post’s growth analysis figures to be reviewed and made public.

She argued that changes such as that proposed for Symonds Street would affect the viability of small businesses, and sought an assurance that an appropriate level of service would be provided to communities by state enterprises such as New Zealand Post. She was concerned by an apparent failure by New Zealand Post to look at alternative options for meeting the community’s needs, apart from planning and introducing internet-related solutions, and considered that New Zealand Post was not fulfilling its social responsibility obligations.

Genevieve McClean is spokesperson for the Save the Grey Lynn Post Office Working Group and her petition was submitted on behalf of the Grey Lynn community, the Grey Lynn Business Association, and the Grey Lynn 2030 Transition Community. She submitted that the closure of the Grey Lynn Post Office showed bad faith by New Zealand Post in the lack of consultation with the community and apparent lack of concern for any adverse effect on it of the closure; that social responsibility was being avoided in favour of profit; and that there was a lack of transparency about financial issues.

She noted also that a number of groups in the community would be directly penalised by the change, particularly the elderly, those who did not have cars or internet access, and those who were not rich in time or money.

The Green Bay Ratepayers and Residents Association submitted in relation to Andrea Deeth’s petition that there had been no public announcement of closures to Kiwibank branches in the Green Bay area. Local residents said that they liked using Kiwibank because the branch had been convenient and they preferred to support local businesses.

We twice wrote inviting Duncan Macdonald to make a submission on his petition but we did not receive a response.

Evidence from New Zealand Post Group

New Zealand Post gave an assurance in its submission that it was committed to providing New Zealanders with an efficient and sustainable PostShop and Kiwibank store network. It submitted, however, that the network needed to match changes in the behaviour of customers and trends in society if it was to operate as an efficient, profitable, sustainable state enterprise.
New Zealand Post maintained that customer numbers and total transactions at the Grey Lynn, Symonds Street (Eden Terrace), and Avondale PostShop Kiwibank stores were very low and insufficient to make full-service PostShops viable. After closing them, it had established PostCentres, which provided postal, courier and Post Office Box lobby services in a pharmacy across the road from the former Grey Lynn PostShop, and in a stationer’s in the vicinity of the Avondale PostShop. A post box lobby was retained in Symonds Street.

In the case of the Green Bay PostShop Kiwibank store, New Zealand Post undertook a trial from May 2011 to March 2012, which demonstrated a low level of banking transactions at the Green Bay PostShop Kiwibank store. As a result, banking services were not restored to the store. New Zealand Post found that Kiwibank lost only five banking customers in the area as a result of removing the banking service.

New Zealand Post also advised us that in all these instances alternative full-service PostShop Kiwibank facilities were available to customers. Five were within two to three kilometres of the former Grey Lynn store, five within 2.9 kilometres of the former Symonds Street store, and two within 2.5 kilometres of the former Green Bay store. Avondale customers could use a PostShop Kiwibank store at Lynn Mall, which was well-served by public transport.

In addition to these face-to-face facilities, New Zealand Post offered an increasing range of online services. Although these services did not meet the needs or preferences of all their customers, we noted that two thirds of Kiwibank’s 750,000 customers are now registered to do their banking on line, and bill paying on line is also an increasing trend.

We asked New Zealand Post to write to the petitioners with further information about its PostShop Kiwibank franchise network. It wrote to petitioners on 27 September 2012 explaining how its franchise network operates, how it is managed, and how to obtain further information.

Conclusion

We recognise the inevitable disruption when a community facility providing the sorts of services traditionally provided by post offices and banks is closed, and we appreciate the concern that this has caused to those who signed the petitions.

We note, however, that New Zealand Post is facing challenges, mainly from rapidly developing technology which is reducing usage of its postal and banking businesses. It needs to be aware of customers’ changing habits if it is to remain viable, and will need to adapt as customers’ needs change. We have also heard from New Zealand Post that changes in customers’ behaviour in recent years mean that the company is now making a loss on its store network. We feel it is reasonable to expect a company under such circumstances to consider making changes.

Considering the particular closures raised by these petitions, we are of the view that they were not undertaken lightly, and that in each instance they responded to indications that the facilities were serving a decreasing customer base. We would be very concerned if the communities affected were left without alternative services within a relatively convenient radius. In these cases, however, we feel that reasonable access to postal and banking services is still available, even for customers who are unable or reluctant to use technology.
We appreciate the time taken by New Zealand Post to provide oral and written briefings to the committee, and their sending further information to petitioners as requested.
Appendix

Committee procedure
The committee met on 14 July, 11 August, and 8 and 15 September 2011; 16 and 30 August and 5 December 2012; and 28 February and 16 May 2013. We received evidence from Deborah Harcus, Genevieve McClean, Andrea Deeth, and New Zealand Post Limited.

Committee members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Dr Jian Yang
Financial Reporting Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Financial Reporting Bill and recommends that it be passed with the amendments shown.

Introduction

The intention of the bill is to rationalise financial reporting obligations by

• aligning such obligations with the goal of financial reporting, which is to provide information to external users who need an entity’s financial statements but cannot demand them

• standardising the interface between the Financial Reporting Act and other Acts by setting out core definitions and pro-
visions with broad application to reporting entities in a new Financial Reporting Act

- making the language of financial reporting consistent in all the pertinent Acts.

Our commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments proposed to improve workability, clarity, and legal efficacy.

Supplementary Order Paper 93

Supplementary Order Paper 93 was intended to take into account changes made by the Financial Markets Conduct Bill, but the bill has not yet been passed. We recommend that the changes recommended on this Supplementary Order Paper be incorporated at a later stage.

Registered charities and other not-for-profit entities

We recommend amending clause 45 to increase the threshold at which a not-for-profit entity must prepare financial statements on an accrual rather than cash basis from $40,000 to $125,000. We believe that $40,000 is too low, as many smaller charities above this threshold do not have the capacity to prepare accrual-based financial statements.

As the threshold in clause 45 might not be reviewed for up to 8 years before being increased in accordance with movements in the Consumers Price Index, we believe that $125,000 is an appropriate figure. Changing the amount from $40,000 to $125,000 of total operating payments would increase the percentage of registered charities eligible for cash reporting from about 55% to 75%.

We also recommend inserting new clause 77A (amending section 46 of the Charities Act) to require the terms and conditions of financial reporting for charitable organisations in relation to each group registration to take into account the needs of the users of financial statements and the purpose of the Charities Act. We believe that this change would make it clear that the financial reporting conditions for the entities covered by group registrations should fit the information needs of those who would use the relevant financial statements.
Provisions from the Financial Reporting Act 1993

We recommend inserting new subsections (2) to (4) into clause 44, which defines “large” entities. The subsections would restore an exemption from the Financial Reporting Act that was omitted from the bill as introduced. The provision (originally section 10A of the Financial Reporting Act) would exempt inactive companies from the requirement to prepare financial statements. The amendment to clause 44 would define an inactive entity as “not large”, and therefore not automatically required to prepare financial statements.

We also recommend amending clause 86 (to insert new sections 207JA–JD into the Companies Act), which would restore a power to grant exemptions (originally section 35B of the Financial Reporting Act). The new provisions would empower the Registrar of Companies to grant exemptions to overseas companies that are not “‘FMC reporting entities” (to be defined under the Financial Markets Conduct Bill, yet to be enacted), subject to any conditions the Registrar may consider appropriate. We believe these changes would help the Registrar to address situations where compliance with New Zealand law was unduly onerous for an overseas company.

Reporting deadlines

We recommend amending the bill throughout to remove references to intermediate deadlines for preparation and lodgement or registration of financial statements, setting instead a single deadline. We believe this would allow reporting entities more flexibility to allocate time between preparation, audit, and lodgement of statements.

At present, the reporting deadlines across the statute base are varied and inconsistent. The bill as introduced proposes to bring forward the deadline for issuers and other FMC reporting entities to lodge audited financial statements from 6 to 4 months after balance date. We are aware of concern from submitters about reducing the time allowed, but believe that timely reporting makes the financial reports more useful. If entities were to face demonstrable practical difficulties with meeting the four-month deadline, the Financial Markets Authority could make exemptions under clause 528 of the Financial Markets Conduct Bill, once it is enacted.

We also recommend, for entities that are not FMC reporting entities, amending clause 86 (inserting sections 201 and 202 into the Com-
panies Act) to require companies that are not FMC reporting entities to discharge their obligations to prepare financial statements within 5 months of balance date, rather than the 3 months required under the bill as introduced. We believe that this is sufficient time for such entities to meet reporting obligations. We recommend a further amendment to this clause (amending new section 207E of the Companies Act) to provide a similar change for overseas companies and other companies with significant overseas ownership.

We recommend reversing most other proposed changes to deadlines in Part 4 and Schedules 1 and 2 of the bill, restoring the deadlines that currently appear in the applicable Acts, or replacing with 5 months existing deadlines that are too short, too long, or unspecified.

**Meaning of large and specified not-for-profit entity**

We recommend, on the advice of the Regulations Review Committee, amending clauses 43 and 47, to make it clear that the Minister’s discretion to recommend changes to the dollar amounts included in the meaning of “large” and “specified not-for-profit” entity relates to changes in the Consumers Price Index.

**Financial statements for New Zealand business of overseas companies and groups**

We recommend amending clause 86 (inserting section 204 into the Companies Act) to limit the requirement for an overseas company or group to prepare financial statements for its New Zealand business. We believe the requirement should apply only if the New Zealand business is large (according to the test in clause 44).

**Audit exemption for large entities lodging group statements**

We recommend amending clause 86 (inserting new section 206(2) into the Companies Act) to exempt a large company from being automatically subject to an audit requirement if it is a wholly-owned subsidiary of a company that has complied with a requirement to lodge or register group financial statements with the Registrar of Companies. This would remove the audit requirement for subsidiaries whose financial performance, financial position, and cash flows had been
Commentary

Financial Reporting Bill

incorporated into consolidated financial statements that had already been lodged.

Shareholders requesting copies of financial statements
We recommend amending clause 86 to insert new section 207EA into the Companies Act, which would give shareholders of companies that are not reporting entities the right to obtain any financial statements prepared for tax purposes. We believe that this would protect the interests of minority shareholders, particularly those who do not participate in the management of the company.

Members of friendly societies voting not to prepare statements
We recommend amending clause 106 (inserting new section 64 into the Friendly Societies and Credit Unions Act) to require a vote to not prepare financial statements for a registered friendly society or branch to be made by a majority of its members, rather than a majority of the members participating in a vote. We consider that otherwise there is a risk that an opt-out motion could be agreed to at a poorly attended meeting, contrary to the wishes of the majority.

Allowing limited partnerships to opt in
We recommend amending clause 145 (inserting new section 75EA into the Limited Partnerships Act) to allow the partners of limited partnerships that are not large to choose to prepare and distribute financial statements and undertake an audit. The bill as introduced does not provide this option.

Accounting records
We recommend amending clauses 148 and 153 to insert requirements for large partnerships and operators of retirement villages to keep proper accounting records.
Appendix

Committee process
The Financial Reporting Bill was referred to the committee on 28 November 2012. The closing date for submissions was 18 January 2013. We received and considered 44 submissions from interested groups and individuals. We heard 16 submissions.

We received advice from the Ministry of Business, Innovation and Employment and the Inland Revenue Department. The Regulations Review Committee reported to the committee on the powers contained in clauses 16 and 48.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Dr Jian Yang
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Financial Markets Authority

Recommendation

The Commerce Committee has conducted the financial review of the 2011/12 performance and current operations of the Financial Markets Authority and recommends that the House take note of its report.

Introduction

The Financial Markets Authority was established on 1 May 2011 as New Zealand’s financial conduct regulatory body under the Financial Markets Authority Act 2011. It replaced the Securities Commission and took over some roles from the former Ministry of Economic Development. It regulates the application of securities, financial reporting, and company law in the financial services and securities markets. It seeks “to promote and facilitate the development of fair, efficient and transparent financial markets”. This is the first time it has undergone a financial review.

The authority has a board of nine members and three associate members appointed by the Governor-General on the recommendation of the Minister of Commerce. Sean Hughes is the chief executive and Simon Allen is the chair.

For 2011/12, the authority had $27.62 million in income, and its expenditure was $25.54 million, resulting in a surplus of $2.08 million.

Culture and staffing

The authority’s staff turnover in its first two years has been high, but it does not expect it to remain so. We asked if this was related to its work profile differing from the former Securities Commission. The authority agreed that new functions and powers meant it had to recruit accordingly. Existing staff, however, were consulted on the design of the new operating model soon after the authority’s inception.

The authority said it has learned lessons from the global financial crisis and strives to maintain a balance between upholding the law and maintaining the trust of the market. There has been a move away from concentrating on the letter of securities law, towards taking market developments and conduct into account. Staff take into account the market and the products available, so they can be confident and flexible in their decisions within the law.

Policy input

The authority said that it reviews proposed legislation that directly affects its area of operation, and also contributes to regulatory and legislative change by providing advice or by making submissions on legislative proposals. For example, it advised the Ministry of Business, Innovation and Employment on the Financial Markets Conduct Bill, rather than submitting on it, since it would be the regulator of the legislation. It also contributes in its role as co-chair of the Council of Financial Regulators.
Litigation

We asked the authority how it manages its budget for litigation, the need for which is hard to predict. The authority acknowledged that it has recently been fortunate that litigation has been staggered, so the $2-million annual budget has been adequate; if it were unable to fund important strategic litigation, it would approach the Government with its concerns.

The authority said it considers the public interest when contemplating litigation, and is unlikely to pursue any more of the historic cases it inherited. So far it has not had to use its powers under section 34 of the Financial Markets Authority Act, which allow it to take action on behalf of investors.

Monitoring the market

We asked how the authority monitors the market for irresponsible conduct. It said it relies on receiving information from a wide variety of sources, as it does not have the resources to monitor conduct proactively. A decision as to the significance of intelligence is made quickly, and within three days it is assigned to a team for further inquiries. Investigation can be conducted remotely online, or via visits to participants in the market.

Christchurch

The authority says in its 2012 annual report that it plans to assist consumers and market participants particularly in Christchurch, with the aim of facilitating the local market, and we asked it to elaborate.

The Christchurch financial market remains large. The authority said that because of insurance payouts as a result of the earthquake there are more potential investors than usual, and it wants to ensure they are adequately protected. It has taken steps to protect vulnerable investors against predatory behaviour, while ensuring the market is healthy and sustains innovation and capital-raising. It has been consulting authorities in Christchurch, including the Canterbury Earthquake Recovery Authority, on possible measures, and will continue to do so.

Many financial advisers in Christchurch lost their records or systems at a time when regulatory requirements were changing. The authority has recognised the resulting difficulties, and extended the deadline for applications to become authorised advisers.

Compliance costs

We asked the authority how it manages compliance costs and whether it works with other regulators to reduce such costs and prevent duplication of work. It told us that the necessary tightening of New Zealand’s financial markets regulations made an increase in compliance costs inevitable. It always tries to maintain a balance between a well-regulated market and a regulatory scheme that is not too onerous for legitimate businesses. It can provide examples where good cooperation between agencies and countries, particularly Australia, has reduced compliance costs.

Complaints

Trends

We asked the authority to explain why, when complaints about most kinds of adviser had been trending down since April 2012, complaints against the category “other financial advisers” had increased significantly in the same time period. It explained that it received multiple complaints about the same situations, which can appear anomalous. It is confident
the incidence of these complaints would have normalised by the time our examination took place.

We asked the authority about the response times to complaints recorded in the 2012 annual report, and heard that 94 percent of responses are being acknowledged within two working days of receipt. One hundred percent acknowledgement has not been reached because of filtering for spurious complaints.

**Cooperation with other regulators**

As there is no single regulator for all financial products, the authority does not expect the general public to know to which agency it should send its particular complaint. The authority has memoranda of understanding with the Commerce Commission, the Serious Fraud Office and the Reserve Bank, with regular meetings at several operational levels. Informally, there is frequent interaction between the agencies, and a culture of sharing information helps to ensure a complaint will get to the correct agency.

**Challenges**

We heard that the prioritisation of complaints represents a particular challenge for the authority. Factors that influence the priority a matter will receive include the amount of money involved, the prospect of its recovery, and the number of vulnerable consumers affected.

We also asked about vexatious complaints. The authority said that it receives some malicious complaints, and has trained its staff to deal with them. Unfortunately staff are occasionally abused, and the authority endeavours to support them and makes counselling available.
Appendix A

Approach to this financial review
We met on 9 May and 30 May 2013 to consider the financial review of the Financial Markets Authority. We heard evidence from the Financial Markets Authority and received advice from the Office of the Auditor-General.

Committee Members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Jian Yang

Evidence and advice received
Office of the Auditor-General, Briefing on the Financial Markets Authority, dated 9 May 2013

Financial Markets Authority, Stakeholders Report (Roadmap for markets regulation), received 8 February 2013

Financial Markets Authority, responses to written questions 1–124, received 8 February and 24 May 2013.
Young Welcome to the Commerce Committee. I believe it’s the first time you’ve come for your financial report. Congratulations on, I think, 2 years now in operation. What we’ll do this morning is open it to you to give us a brief presentation. Five to 7 minutes is our usual standard, then the committee will ask questions, and we’re with you until 9am. Thank you very much, Mr Allen.

Allen Good morning, Mr Chairman and members of the committee—thank you for that. We won’t take longer than that, in terms of a brief presentation at the start. This is our first appearance before the select committee since our establishment on 1 May 2011. I am pleased to briefly report on the financial review and what has been an intense period of activity.

FMA was established with a mandate to promote efficient and transparent financial markets. It has greater powers than its predecessors and has taken a proactive approach towards delivering on its goals. There has been a significant change in the regulatory landscape. In response to the global financial crisis, finance company failures in New Zealand, and the Government’s review of New Zealand’s financial services regulatory framework.

FMA’s creation was fast-tracked following the Government’s acceptance of the capital market’s development task force recommendations on building confidence and participation in New Zealand’s financial markets. FMA has responsibility for performing functions under 23 pieces of legislation. The Financial Markets Authority Act also requires it to act independently in performing these statutory functions. These functions include keeping the
law under review and providing advice to the Government on financial markets legislation. As the new single conduct regulator, it has been critical to implement structure and processes to fulfil our statutory responsibilities. Board and management have focused resources strategically to build operational capacity to deliver the outcomes sought.

FMA’s first-year achievements include the design and implementation of the new management structure; creation of a governance framework, delegations, and policy; establishing new licensing regulatory policy and markets supervision structures; engaging with the market and issuing guidance, while also actively taking compliance and enforcement actions where necessary.

Given the consolidation of functions, new powers, and expectations of FMA, it has been necessary to make some major changes to our operation and our regulatory approach from predecessor agencies. The costs and impacts on staff have been carefully managed. FMA’s transitional funding has been progressively used to build the necessary infrastructure as required. Notably, FMA has moved all our Wellington staff into one location on a single floor, and also opened an office in Auckland. These moves have enabled greater collaboration internally along with proximity and engagement with the market itself.

In its first 12 months of operation, FMA reported an audited surplus of just over $2 million. This will be applied to future years’ operating budgets, and assist with the implementation costs associated with the upcoming Financial Markets Conduct Bill. FMA took heart from the auditor’s report for our first period of operation from 1 May 2011 to 30 June 2012. This was a pleasing result, particularly our progress in establishing an effective management control system and systems of internal control. These elements are essential for effective operations and provide Parliament with assurance on the sound use of FMA’s resources to achieve its outcomes.

FMA has addressed all of the issues raised in its interim audit and also simplified its statement of intent for the next 3-year period, in line with the Audit New Zealand recommendations. In FMA’s first year, it has sought to initiate a culture change in both market conduct and how the regulator engages. There has been an overwhelming favourable response to raising standards and our proactive market consultation and guidance. Participants have welcomed this approach and the opportunity to discuss our expectations and our regulatory policy. By making significant progress on the legacy finance company cases, FMA has put an emphasis on its preventative top-of-the-cliff work, having encouraged compliance over enforcement. Results show market participants are better informed about their obligations and we believe that investors have better disclosure information so they can make more informed decisions.

Stakeholder research conducted in July last year found that 83 percent of participants increased their awareness of FMA over the year, while 73 percent believed we had performed well in helping to lift levels of competency and compliance. The board and I consider that FMA has made
substantial progress towards building confidence in our financial markets. The first 2 formative years have focused on defining the new role of FMA as the single financial market's conduct regulator, and introducing new licensing and supervision responsibilities.

Significant milestones in FMA’s first year have included authorisation and monitoring of financial advisers and qualifying financial entities; introducing a new licensing regime for securities trustees and statutory supervisors; establishing a framework for auditor-accredited bodies and licensing overseas auditors; NZX market supervision and reporting; and market consultation and guidance, covering areas such as auditors, anti-money laundering, financial information disclosure, financial adviser standards, KiwiSaver performance fees and sales; and effective disclosure.

FMA is visible now and accessible. We are actively monitoring our regulated populations and market activity. Where necessary, FMA is acting to ensure the law and good standards of conduct are maintained. FMA is working with issuers so that offer documents are clear, concise, and effective to assisting investors understand risks and returns. We are committed to encouraging capital market development and growing New Zealand’s financial markets so that they work efficiently in the allocation of capital into productive companies and provide greater opportunity for investment.

I have kept my opening comments brief, and together with the chief executive, Sean Hughes, I am pleased to take questions regarding our financial review. Thank you.

Young Thanks very much, gentlemen. As I said, congratulations on now being in place for the last 2 years. It sounds like you’ve done a tremendous amount of work in terms of establishing the structure and the scope of the FMA.

You talked about the culture change. How would you differentiate the culture of this former securities commission and FMA now? And in terms of your, I guess, strategy going forward, how far down the track are you in terms of you being very happy where you want to end up, in terms of the culture of FMA? I guess I’m talking also about engagement with the market players etc.

Hughes Thank you, Mr Chairman. My assessment is that culture is an ever evolving exercise and it is difficult to put a line in the sand and say you’ve achieved the desired culture. But if you look at the lessons that can be learned from the global financial crisis from any regulator, it is important to strike a balance between having that level of respect and authority in the market to police the perimeter and to enforce the law, while at the same time being open and engaging with market participants so that they feel comfortable coming to you and raising issues with you.

What we’ve sought to do with the board is to create what I would term a high-performing professional services - type culture, where we have staff who are both familiar with the products and the features of the markets that they regulate, that we operate to the higher standards of integrity and professionalism in our dealings with the market, and that we are able to
respond and be flexible and proactive in administering the laws that we have. Necessarily that means that you need a mix of skills, and if there is one point in contrast from predecessor regimes that I would point to, it is that we’ve moved away from a very technical black letter approach to the enforcement of securities laws to one that is much more appreciative of market developments and market conduct.

Young

So this topic of work is very much an important part of your thinking and working. I notice also that in your setup phase, you’ve had a reasonably high turnover of staff, probably more than you’ll have in the time to come. Is that because you’ve been readjusting the work profile of FMA compared with the Securities Commission?

Hughes

That certainly is part of the answer, Mr Chairman, bearing in mind that by law we inherited all of the Securities Commission and former MED staff on inception on 1 May. Necessarily we moved very quickly to a consultation process with staff in terms of designing the new operating model. We did have new functions and new powers that we had to put in place that have not been part of the framework of the Securities Commission or those MED regulatory functions that we inherited. I agree entirely with you, Mr Chairman, that the rate of turnover would not be expected to be as high as it was in that first period. That said, we do want to encourage staff to come to FMA for a period of time to develop their expertise and bring in market expertise into the organisation, and it would not be my expectation that staff stay indefinitely. In fact, having a presence in Auckland has created an opportunity for professional services and financial services market practitioners to actually have a career in Auckland as opposed to Wellington—to only Wellington.

Mitchell

Just on that point, too, is that although any organisation likes to keep turnover reasonably low, but in actual fact in your case, a little bit of turnover would actually be a good thing, because not only do you get the benefit of a fresh set of eyes coming in, but also when they back out to market, they have the experience that they have managed to develop having been in the FMA. So there could actually be some positive spinoff in terms of compliance, even though members leaving and going back into the private sector and the market.

Allen

That’s right. I’d like just to add that the three-way conjunction of the changing of the law, the change of our focus to be market focused and outward focused, which also involved having an Auckland office, meant that you had a lot of need for change. So it goes to the first two questions of both culture and staff.

Curran

Happy birthday, second birthday. You are now entering the terrible twos. I would just like to congratulate you and thank you for the work you have done over the last couple of years, particularly around taking a harder line on pursuing litigation against directors of failed finance companies, while at the same time being open and engaging and getting out there and talking to companies. The emphasis on financial literacy also is very important both for the public and for companies themselves, directors of companies, to be
able to communicate better with the public. Before I finish my statement, I would just like to, I suppose, record my ongoing unease and I was never quite satisfied that the bill that was passed here through this committee would absolutely address what I saw as one of the major issues in those failed finance companies and the impact that they had on our communities in the way that celebrity endorsements were being used to, I guess, con the public. We grappled very hard in this committee to come up with ways to ensure that that didn’t happen again. You know, it is a tough one, because it is not really—it is a tough one to deal with. That was identified by almost every submitter that came before us representing investors that had been affected as being a real issue for them.

The question I have for you is around your role, as you stated as, I guess, reviewing laws that are coming up and their impact on the financial markets and the advice that you’re providing to Government. I wouldn’t mind some comment from you on the work that you have actually been doing around that, or are doing, and what sorts of laws you are looking at. What are the parameters for legislation that you are looking at? Is it like most laws that, you know, are being tabled in Parliament, or is it only laws that would come through the Commerce Committee particularly? There is a piece of legislation that went through the House last night, the Telecommunications (Interception and Security) Bill, which updates and modernises 2004 legislation, of which I particularly have concerns about the ability for surveillance authorities to impact on the design, operation, and future business of network operators in New Zealand, telecommunications companies. I wondered whether that would fall within your purview.

Hughes: Well, thank you for those opening remarks, as well. We appreciate the sentiments. As to the question you’ve asked, certainly regulatory or legislative change that directly impacts on our mandate I would believe we are front and centre in the sense of providing advice and input to the drafting and assisting officials with giving policy advice to Government. That has certainly been the case in relation to assisting the ministry on the parameters and detail for the financial markets conduct bill. There will be other areas, for instance, where through our co-chairing of the Council of Financial Regulators with the Reserve Bank that we contribute to broader economic policy or strengthening financial stability regulatory reforms where we think that is good for “New Zealand Inc.” So we certainly contribute time to that. In the justice sector, where we have a role to play as a law enforcer, we would certainly contribute to broad-based, multi-agency submissions on law reform. It does, however, depend in a practical sense on how much notice we get of proposed reforms and our capacity to respond. You might be aware from our responses to the formal questions from this committee that we don’t employ policy advisers within FMA. What I expect of my staff is that they have an open eye and a keen interest in the broader regulatory framework pertaining to all of our roles, and that we contribute as best we can. But the further out from the centre of our regulatory mandate that the reform goes, the more difficult it might be for us to find the resources and the time to contribute.
So how do you provide that advice? Would you make a submission on a bill, or is there some provision for you to provide advice before a bill is developed? How does that work?

In the case of the Financial Markets Conduct Bill, we were advising the ministry on provisions and assisting them in terms of the practical implications.

So it’s a responsive role, or is it a proactive role?

It’s a proactive role.

In that particular case we were invited to consider a role, either as an external submitter or as an adviser to the ministry, and we chose the latter because we felt that that was more appropriate given we were going to be the regulator of that legislation.

So, sorry, what I’m trying to get to is do you, off your own bat, decide that a piece of legislation requires comment?

Yes, we do. Occasionally we get invited to submit, but it’s probably more likely that we will, off our own bat, submit. So, for instance, we have made a formal submission to the Reserve Bank’s revision of its regulatory mandates around non-bank deposit takers or monetary policy. So that’s a situation where we chose, off our own bat, to make that submission.

Also congratulations. I think, you know, having been on this committee, and we passed various pieces of legislation that created you but also some of the legislation on financial service providers and securities trustees—I think, certainly what I’ve seen, I’ve read, and I’ve heard from market participants, you guys are doing a very good job, so congratulations.

Obviously there’s room for improvement. Can I just move into, I think, an issue where the organisation that preceded you—one of the criticisms was around enforcement, and Claire’s mentioned the way you’ve gone after finance company players. I think it’s been commendable. When you look at the other regulator in the markets—the Commerce Commission, we’ve reviewed them year on year. Some of the issues around—you have, obviously, budgets around litigation, and you don’t know from year to year how that’s going to go. How are you managing that type of risk? I think it’s, what, half a million dollars in deficit for that particular output? How are you going about managing that type of risk? Because we’ve seen with the Commerce Commission, it can blow out from year to year and then it can come under again.

Well, thank you for your comments as to managing the operating exposure in relation to litigation and investigation. That’s certainly something that the board and I monitor very carefully. We have been fortunate in the scheduling of litigation as it goes through the various phases and into court that they have not all happened at once, but that’s really more an accident of timing than being good planning by us, because, of course, like any party to litigation, we’re subject to court deadlines. We have an appropriation for litigation funding of $2 million. My understanding is that is, at best, an
estimated number and that if, in any given year, we were to find ourselves in
a position where we could not fund important strategic litigation, then we
would have the opportunity to approach Government and raise that
concern.

It’s a little difficult to answer your question because the situation hasn’t yet
arisen. But what we do do in the application of our enforcement policy,
which we published in October of last year, is consider not only the
significance for the financial markets of the litigation that we take, but also
the public interest: are we actually applying our resources in the most
efficient way? I estimate by the middle of this year we will have made our
decision on the remaining finance company cases that we inherited. It is
likely—and I want to be very, very clear about this—that we will not take
action on all of the remainder of the cases that we inherited. The prospects
of recovery, the value of pursuing some of those cases, are foremost in our
mind in applying those resources.

Lotu-Iiga I suppose part of enforcement is detection, surveillance, and—can you just
talk through how—I mean, I know you’ve got a prioritisation of inquiries,
investigation—you’ve got that framework. I mean, obviously you’re
working with market participants as they go through various processes and
raise some capital. But in terms of that surveillance side, can you just talk
through how that goes operationally from your perspective?

Hughes Well, first of all, we receive information through a variety of sources, and as
you rightly say, some of that comes through market participants. For
instance, the case that we took last year involving Perpetual and Torchlight
where we recovered over $20 million for investors was specifically a tip-off
from a market participant and we greatly value that sort of intelligence that
enables us to do our job more quickly.

In the last year we received 4,738 complaints and inquiries, so necessarily
there has to be a filtering process by which we look at that information and
decide what’s significant and what’s important. And, you know, calling out
the elephant in the room, once we got information about Mr Ross we were
able to respond within a matter of days, once we got the information. Now,
in terms of the surveillance approach, we have a triage team that looks at
that information, and within a matter of 2 or 3 days, determines which of
the various regulatory teams within FMA needs to take more detailed
inquiries. Those inquiries could be desk-based, where we would go online
and look at the information or the threat that’s being referred to. If there
isn’t sufficient information through what I’d call remote desk-based
surveillance, then that may require us to take a physical visit to talk to others
who are in that market to try and get some information as to whether it’s
significant.

Lotu-Iiga One of the issues during that legislation was right of action, and I know
there’s a high threshold level. How have you used it and can you just—I
know it’s only been 2 years, but it’s just good to hear feedback on what we
put forward in legislation had been used and how effective it was.
Hughes: So I think you’re referring to the section 34 of the Financial Markets Authority Act. Thus far, we have not actually taken a case under section 34. I think, during the submission and consultation process for the FMA bill, a number of concerns were raised that FMA would exceed its powers and would bring all sorts of actions. Well, history shows us that has not been the case. It does have a high threshold in terms of the public interest. At the end of the day, what we have to decide is: are we going to apply public resources to stand in the shoes of private litigants to seek to recover compensation? Now, we have, at the end of the day in terms of those finance companies, really only a handful of matters where there’s a realistic prospect of a sizeable recovery of funds. And the particular case to create a section 34 opportunity hasn’t actually landed on our desk yet.

Young: Just following on from Mr Lotu-Iiga’s question, you mentioned about Ross Asset Management and I think some of the investors, prior to your time, were concerned that the commencement of when things started to wrong was a couple of decades ago. So when you police the perimeters, and I like that term you used, do you have enough tools or resources to actually ascertain financial health or behaviour of some of these organisations out there? Or is it just a matter of you waiting for an investor to contact you in order to, perhaps, step into the situation earlier rather than later? Like I said before, this has certainly happened a long time prior to FMA’s commencement.

Hughes: I do not believe, Mr Chairman, that it’s a one-size-fits-all response to that question. The reality is we get information from consumers, from competitors, from other market participants, from politicians, who raise concerns with us about activities or entities that they believe are operating outside the law. For instance, we have a particular view on promoters of bullion or foreign exchange operations operating offshore and coming into New Zealand. Now, there is a suite of legislative solutions to that, such as the enhancements to the Financial Services Providers Act, and under the Financial Markets Conduct Bill our call-in powers, once that bill becomes law, will enable us to reach out and bring those sorts of operations under our remit. But simply because it operates outside the perimeter—I mean, we’re not going to go pointing the finger of blame at other regulators and say that’s not our job. If we see something that concerns us, we will call it out. I believe it’s our role to use our powers to the fullest extent that we can and, if need be, be bold in the use of those powers.

Young: Good to hear that.

Yang: On page 7 under “Outlook”, you say basically, specifically, that you will be looking at—one of them is: “Assist both consumers and market participants throughout the construction of Christchurch to ensure a confident, healthy marketplace.” I’m just wondering whether you can elaborate on this. I think it would be good for us to understand this but also understand the whole picture of what you are doing in terms of regulating the market and also supervising the market.
Allen

Well, so just the background to that, for example, you talked about perimeter but also risk identification. We as an organisation identified that there was going to be a lot of cash floating around Christchurch as a result of pay-outs and whatever, so we identified it as something that we might need to make an intervention on. That is the history behind why it was one of the focuses. Sean can talk about what we did.

Hughes

Dr Yang, I don’t know whether you’ve seen that we published in February of this year a book called FMA’s Compliance Focus for 2013, where we also identified the rebuild of Christchurch as one of our five key priorities for this year. Some examples of work that we’ve done in Christchurch in assisting with the rebuild is, firstly, along with Government, the extension of the period of time for financial advisers to apply to become authorised financial advisers immediately after the earthquake. We think it was an important step to take to ensure that participants who are affected by the loss of their records or their systems had additional time to meet the new regulatory requirements.

We have recently indicated to fundraisers in relation to property syndicates that the exemption from the disclosure laws which currently apply to them will cease, and that will be something that will come through alongside the Financial Markets Conduct Bill, whereby property syndicates, of which there have been quite a few in Christchurch, will now come under the same fundraising regime as everybody else. We think that is an appropriate step to take. So, as my chairman mentioned, it is a question of having the right balance in terms of making sure that the laws and regulations operate in a way to stamp out inappropriate or predatory behaviour of vulnerable consumers, particularly in Christchurch, while at the same time as not preventing innovation or good capital-raising opportunities. So we have, for instance, had a number of meetings with CERA, and with other authorities in Christchurch to see what it is that we can do to assist the market to recover. And we will continue to do so.

Yang

Can you let us know that scale of the market? We are looking at how much, for example, operating in the construction of Christchurch? I mean, that the financial market there, or the capital—we have Government investment and also private investment there.

Allen

We do have some idea, but obviously pre earthquake it was a huge city for New Zealand—the second-biggest city—but the conduits for money are such that a lot of it is managed on behalf of people or managed directly by people. The particular difference when you’ve had so much damage and you’ve got insurance pay-outs is that people suddenly have money that they were never going to have in their hands. So that was the unique change in terms of risk in that area. Does that answer the question, though? The scale is big.

Yang

I just want to have an assessment of how big the market is in terms of reconstruction of Christchurch.

Allen

It’s not something we’ve studied.
Yang It is hard to tell, yeah.

Allen There have been numbers published elsewhere, by the Government, I think.

Bakshi One of the major roles you have is to regulate the financial market and always, when you regulate, it can still increase the compliance cost. So I would like to know how you regulate that, because one of the priorities of this Government is to reduce the compliance cost. So do you have anything in mind, or do you coordinate with other regulators so that there is no duplication of the work and there is less compliance cost?

Hughes Thank you for that question. I think it is inevitable if you think about where New Zealand has been in terms of its regulatory journey where we had, by all accounts, a relatively light-touch approach to financial markets regulation in the past, and the addition of new regulatory requirements such as the Financial Advisers Act, the Securities Trustees and Statutory Supervisors Act, the auditors oversight Act, and now the Financial Markets Conduct Bill, it is inevitable that compliance costs will increase. The question is have they increased or will they increase to a level that makes the business of carrying on a financial services business uncompetitive. That is something that is very much at the forefront of our minds in making sure that the burden of regulation is not so cumbersome that it prevents people from operating legitimate businesses. But I think we have to recognise that there is a necessary acceptance that New Zealand financial markets were not adequately regulated in the past, and they do require additional laws and strengthening, and that is the process that we're going through now.

Can I, though, point out that there are opportunities whereby costs can be reduced, and I'll point, for instance, to the mutual recognition of securities offerings regime that operates between here and Australia. As a result of each of the two countries recognising each other's disclosure regimes, issuers in each country who wish to raise capital in the other country do not need to create new disclosure documents when raising capital. As a result of that, compliance costs for fundraising on either side of the Tasman have reduced significantly over time, as has the speed to market. So, yes, we can point to examples when in fact through good cooperation between agencies or between countries we can reduce costs. But I cannot sit here and say that the cost of compliance will reduce in the short term, because the effect of the regulatory packages that have gone through over the past couple of years inevitably will increase costs.

Young I've just got a couple of questions, and then we'll come back to Sam Lotu-Iiga as well. On page 18 of your annual report, there is a very interesting graph here that shows the complaints by sphere trending down and after a fairly volatile, I guess, picture just prior to, say, 12 April, but we see that the line of other financial advisers shot up. Can you just talk around that graph and give us a little bit—I know there are some comments there that give us a description, but perhaps you can add to that.

Hughes My recollection of that spike, Mr Chairman, is that it relates to a large number of complaints involving either unregulated entities such as the
bullion or offshore foreign exchange operators that I mentioned before, who would come under the term of 'under financial service providers', or situations where, for instance, in that period leading up to April we had a large number of complaints involving the Perpetual-Torchlight matter that I mentioned before.

Lotu-Iiga Can you say that again?

Hughes The Perpetual-Torchlight—

Young There is actually quite a number of complaints around just a couple of situations.

Hughes Yes. That can produce a spike that might seem to be peculiar, and, of course, what you don’t have in this annual report is the period up to today, so, in fact, that number I am confident is normalised.

Young Just going back also to the previous graph, where you report 94 percent of complaints, tips, and referrals acknowledged within 2 working days; 94 percent of those who were responded to received a substantive response within 28 days. Is there—for example, when you might receive a complaint—it’s 94 percent. Is there an element of filtering to make sure that they are not vexatious or nonsensical complaints, but we do endeavour to respond to every complaint, even if it is not something that is within our mandate.

Lotu-Iiga Just on that, can I ask a quick supplementary. As you know, we’re progressing the credit finance legislation. Do you get complaints about unregulated or loan shark-type finance companies? It seems to me that you deal with a whole spectrum of lenders within this legislative framework. I suppose the question is do you get those types of complaints? And do you then pass it on to the Commerce Commission, given they are the regulator, so to speak?

Hughes Yes. We do not expect the public to be able to discern which of the various regulatory or Government bodies handle any particular complaint involving financial markets. We don’t have a single regulator for all financial products. So if we do receive complaints that relate to another agency’s mandate, we pass them to us and I should also say that the Commerce Commission is very good at passing complaints to us—as with the Serious Fraud Office and with the Reserve Bank, as well. So I think the standard of information
sharing and cooperation between the agencies has vastly improved since the time that we’ve been in operation.

Lotu-Iiga  How does that coordination work? Are there regular meetings? We had this in Social Services yesterday, with the DHBs not talking to the different social services organisations. Is it something that you focus on?

Hughes  At a formal level in our first few years of operation we have aimed to establish memoranda of understanding with our co-regulators across the financial markets, which we have done. And those memoranda often involve tiered meetings at different operational levels. At a purely staff level, there is frequent interaction between my staff, with the Serious Fraud Office, and with the Commerce Commission, and also with the Reserve Bank. That is not to say that there won’t be occasions where there might be a delay or there might be some uncertainty about who deals with a particular matter, but we do have an open culture around sharing information so that there is no finger pointing or dropping the ball.

Yang  Just to follow up on that, what are the major challenges and difficulties for you in investigating or trying to deal with complaints?

Hughes  That is a very good question. The challenge, of course, is prioritisation of resources and identifying the immediacy with which we need to respond. Every complainant feels that their matter is of the highest priority and requires immediate resourcing. And, of course, we have to make the decision. We are paid to make decisions. My sense is that the sorts of things that will prioritise our interest in a matter are large sums of money that are at risk, the prospect that funds can be recovered quickly because they are either available or are not locked away in trusts, and also the presence of a large number of vulnerable consumers will also be the sort of motivation for us to take action.

Mitchell  Yeah, this just sort of leads into that a little bit. What is your experience, or have you had any experience, in terms of vexatious complaints or information being brought to the authority with an obvious view of trying to use the authority as a tool to create harm against a competitor? If you do get information like that, how do you deal with it?

Hughes  I think like any public authority, there are occasions when you receive correspondence from individuals who may have other motives to pursue. The important thing that our staff are trained to do is treat those correspondents with respect and with professionalism. Unfortunately, I have to say that there are occasions when my staff are subject to abuse, and quite inappropriate correspondence and behaviour, and we counsel them and we provide them with all the support we can. There are a number of instances where we are seen as the funder of private litigation, or funder of private disputes, and we are very much alive to that. If we think that a complainant has their own resources and their own ability to take action, we will generally decline to do so.

Young  Well, gentlemen, thank you very much for appearing before the Commerce Committee. All the very best for your year ahead. Thank you very much.
Allen     Thank you.
Hughes    Thank you very much.

conclusion of evidence
2011/12 financial review of Radio New Zealand Limited

Report of the Commerce Committee

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Radio New Zealand Limited

Recommendation

The Commerce Committee has conducted the financial review of the 2011/12 performance and current operations of Radio New Zealand Limited and recommends that the House take note of its report.

Introduction

Radio New Zealand Limited is a Crown entity company established under the Radio New Zealand Act 1995, and is New Zealand’s only independent, commercial-free public-service broadcaster. Peter Cavanagh is the chief executive and editor-in-chief and Richard Griffin is the chair of the board of governors. Radio New Zealand’s shareholding Ministers are the Minister of Finance and the Minister responsible for Radio New Zealand. It also has a responsibility to the Minister of Broadcasting on broadcasting matters. Radio New Zealand is headed by a board of seven directors appointed under statutory provisions and responsible to the Ministers.

For 2011/12 its total revenue was $39.341 million and total expenditure was $39.176 million, resulting in a before-tax surplus of $165,000.

Doing more with less

Radio New Zealand has not received an increase in funding for five years, and told the committee that it had not formally asked for one in the year under review. Radio New Zealand has initiated a project, “Doing more with less”, which aims to improve the efficiency of its operations. It told us that the first phase of the project, which is now complete, was to develop on-demand online broadcasting. Another phase, which will start in the next six months, is to provide thematic access to programming online, so that consumers can access matters of interest to them without needing to know the specific details of the programme on which it aired. Content will also be analysed by geographic region, including Pacific countries. Online viewing and downloading grows exponentially every year.

CoStar

We heard that technical staff approached senior management with a proposal to buy the source code for CoStar, Radio New Zealand’s digital production system, which was becoming obsolete. The technical staff updated the system, so it will now not need to be replaced for five years or longer.

Radio New Zealand acquired the source code for $100,000, while a total replacement of the system would have cost seven to eight million dollars. It no longer needs to buy software licences or sound cards, and saved on depreciation costs, which saves hundreds of thousands per annum. The operational expenditure saved will be used to make programmes.
**Funding and finance**

We commended Radio New Zealand on maintaining its operations under tight fiscal conditions.

We noted that Radio New Zealand had not incurred any capital expenditure for some years, deferring projects worth up to nine million dollars, and asked about the resultant risks. We were assured that no expenditure critical to operations had been deferred; no programmes have been cancelled or cut back and no staff have been made redundant as a result of funding constraints. Savings have been made in areas that do not affect output, such as procurement, and have offset any increase in costs. Radio New Zealand received additional revenue of $240,000 from co-siting, transmission, and other sundry income, which was a permanent increase in revenue; and it is also engaging in consultancy work, transmission solutions in the South Pacific, lease of technical equipment, and other similar work. Radio New Zealand is satisfied that it maintains a good balance between expenditure and revenue.

**Morale and staffing**

We asked about the effect of funding constraints and vacancies on staff. Radio New Zealand said that it does not have a policy of attrition, although every vacant position is thoroughly assessed to ensure it is still required; and current vacancies are being recruited for and will eventually be filled. It has made a commitment to its staff that there will be no redundancies in this financial year. The increase in online activity has increased workloads, but we heard that this reflects the changing nature of broadcasting rather than financial pressure. Staff morale was said to be excellent, with a high level of job satisfaction, on the basis of the board's recent talks with a range of staff.

The current chief executive will step down towards the end of 2013. We congratulated Mr Cavanagh on his 10 years with the organisation, and asked when we could expect to hear about the appointment of a replacement. We also asked, “Is commercial acuity a key requirement of the chief executive role?” The chair of Radio New Zealand said it was not, and they will be looking for the best possible candidate for the position.

**Special interest programmes**

**Ethnic programming**

Given that Chinese and Indian audiences are increasing in New Zealand, we asked about plans to increase programming for these groups. Radio New Zealand said it tries to ensure all interests are provided for, and has an Asian affairs correspondent, and a network of commentators around the world that it can call on for information. While it is not possible to cater comprehensively for all audiences within the limits of live air schedules, online content on specialist websites is a possible solution.

**Youth programmes**

In its 2011/12 annual report, Radio New Zealand states that it plans to target younger audiences with online services, and we asked for an update on progress. It said that doing so was difficult, as the radio audience is largely in an older demographic, hence the decision to provide the service online. It plans to broadcast high-quality, useful information, aimed at helping young New Zealanders to make good choices. Radio New Zealand says the service is progressing well; three staff have been recruited, and it hopes the service will be live by the end of 2013.
Parliamentary coverage

We asked about Radio New Zealand’s bid to operate Parliament TV, and specifically whether it includes plans for content to be broadcast when the House is not sitting. Radio New Zealand said the bid includes some suggestions for such content, but that it would not seek to make a profit from broadcasting in non-sitting periods. It declined to discuss further details as the bid is still active but confirmed it had the full support of the chief executive.
Appendix A

Approach to this financial review
We met on 16 and 30 May and 6 June 2013 to consider the financial review of Radio New Zealand. We heard evidence from Radio New Zealand and received advice from the Office of the Auditor-General.

Committee Members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Jian Yang

Evidence and advice received
Office of the Auditor-General, Briefing on Radio New Zealand, dated 16 May 2013
Radio New Zealand, Business Continuity Management: 01, Policies and Guidelines; 02, Incident Management Framework; 03, Business Continuity Plan
Radio New Zealand, Crown Ownership Monitoring Unit Reports, Q1, Q2, Q3 and Q4
Radio New Zealand, responses to written questions 1–125.
Corrected transcript of hearing of evidence  16 May 2013

Members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Clare Curran
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Rajen Prasad
Holly Walker
Dr Jian Yang

Witnesses
Richard Griffin, Chairperson
Peter Cavanagh, Chief Executive
Ken Law

Young Welcome, gentlemen—Mr Griffin, Mr Cavanagh, and Mr Law. It’s good to have you back to the Commerce Committee, and can I start by just saying congratulations on the awards that Radio New Zealand has achieved, particularly the international award—that needs to be acknowledged for the good work you’re doing.

If we could ask you to give us a presentation and then we’ll come to questions—thank you, sir.

Griffin Thank you very much. Obviously, on my right is our chief executive and editor in chief, Peter Cavanagh, whom you’ve met before; on my left is Ken Law, deputy chief executive, and, of course, chief financial officer. Thanks for your time. I know it’s a big day in the parliamentary calendar today, so we’ll be as brief as possible.

From a financial point of view, it’s something of a red letter day for us too. This is the first time we’ve reported to this select committee in a circumstance where after almost 18 years and the end of Radio New Zealand, which was next door here as an institutional building, became a pile of rubble and moved to a new building on The Terrace. This is the first time in 18 years that we can report to you that we are far and away the most popular radio broadcaster in the country. It’s been a long road, but due to these men and the staff that they look after, Radio New Zealand is now the No. 1 station in the country, and will, I think, continue to be for a long time. That is not just radio broadcasting as we know it traditionally; it is on
multi levels. I think a great deal of credit is owed to management and staff for that exercise.

As you know, we’re reviewing today a financial statement that covered 2011-12. I hope we’ve answered all the questions adequately, to the satisfaction of all the members around the table. Supplementary questions, of course, you’re entitled to ask any you like. But I think from another point of view, just to bring you up to date, there’s been in the last year a substantial increase in our listenership, as I say, and, more importantly, quite a lot of developments, including the transition of the radio archives, Sound Archives, into the Film Archive. It was a transition that went very smoothly, and, in the spirit of—as far as we were concerned—a Government that decided it would like a national archives, we felt we should be first to move, and we were very pleased to do so.

There’s been, as I say, on all sorts of levels, huge technical advances. We’re also about to launch a new website, which I think you’ll find will be competitive with any on the market at the moment, in both technical senses and digital senses. We’re very, very pleased with the sort of advances we’ve made. On that basis we’re open to questions not just about the review, obviously, but about whatever you feel is of interest over the last 12 months. The fact that I probably can’t answer some of the technical questions, you’ll understand I’ll leave entirely to the people alongside me, who know a great deal more about it than I do.

As I say, I wanted to be as brief as possible, knowing that from a financial point of view, anyway, there’s probably more interest elsewhere than in this room today.

Young

Oh, we do have our hour with you, and your reporting here is very important to us. We’re not about to rush off and do other business.

Griffin

OK. Great. Well, it’s very important to us, too, and, as I say, we appreciate the advantage of being able to talk to you directly, and, as I say, also today this is the first time we feel we can report to you that despite the fact that we’ve had no advance on our budget for the last 5 years, these people have managed, not just because of fiscal discipline but because of creative intelligence, to make the company operate as well as it’s ever operated, in my opinion, over the last 18 years.

Young

Good news. Well, just following up on that, and then we’ll come to other questions, if I can just start off. You’ve talked about that creative intelligence, of course, which is the, I guess, DNA of Radio New Zealand anyway.

Griffin

Thank you. I’d like to believe that, and I’m sure it’s true.

Young

Yeah, I am sure it is. I am absolutely intrigued with what the chief executive, Mr Cavanagh, has written—doing more with less—and how you have transitioned from, I guess, your aging digital production system. You’ve purchased the code. You’ve developed some process to actually improve your productivity around that. Can you just give us some detail and background on all of that project in particular.
Cavanagh Thank you, chairman. Yes, I’m happy to do that. I might divide it into two sections. I might deal with that project specifically first, and then the broader issue of how we do more with less generally, which we are increasingly doing at Radio New Zealand.

That particular project—I think a lot of credit must go to some of the very highly skilled technical staff who came to senior management with a proposal. We have a digital production system called CoStar. It was a system that was purchased a number of years ago out of Europe. It was rapidly reaching the end of its useful working life, and we were confronted with the issue of needing to have a wholesale replacement of that digital production system in the relatively immediate future at a very significant cost, possibly in the order of 7 million or 8 million dollars. You can imagine the pressure that that would bring to an organisation of our size and with our budget.

Our technical staff came to senior management with a proposal to say that it might be possible for us to purchase from the original supplier the source code for that system, and then allow our own staff, who, as I say, are highly skilled in this area, to use that source code to redevelop the system and to try to extend its useful working life for us. We did that. We were able to negotiate a very good rate to buy that source code. I think it cost us around $100,000. It was a lot of money at the time. It was an entrepreneurial move, in the sense that there were no guarantees around that expenditure that it would deliver any dividends back to us, but I have to say it’s been an extraordinary success. Our staff have been able to work with that source code, redevelop the system, to a certain extent futureproof that system, because it was no longer being supported by the manufacturer, and we now are looking at a prospect where we won’t need to consider replacing that digital production system for perhaps 5 years or more, so pushing that very extensive capital investment well into the future.

That’s the greater long-term value of that. In the short term, what it means is that we no longer need to buy software licences for that system because we own the system. So by saving on the software licences, we have already saved probably a couple of hundred thousand dollars in operating costs.

And just in relatively recent weeks, there’s been a further breakthrough with that code that will allow us to save an extraordinary amount of money on what we call sound cards. They’re the recording devices that go with that system. Our expectation is that we may save several hundred thousand dollars in sound cards over the next few years, as well, all as a result of that one project, which we think has been incredibly successful.

Young Well, that is a hugely successful story. It’s great to hear that innovation that you’ve been able to bring through there.

Cavanagh Well, I think that is a great tribute to the talent of the staff who work on it. I should mention one by name, Mark Hayhurst, who has been leading that project, who I think has done an extraordinary job.
In terms of the broader issue of how we do more with less, this has been our focus really over—certainly over—the period of the last 5 years where our funding has been frozen, but even in the period before that, because our funding has always been quite limited. The first phase of that project was to move from being purely a linear on-air broadcaster, where we broadcast our content and you either could hear it or you couldn’t hear it. To hear it you had to be physically within New Zealand, you had to be within reach of a transmitter, you had to be listening to the radio at the time, otherwise that content was lost to you. We moved quite rapidly into online broadcasting, to the point where today virtually all of the content over which we own the rights, which is virtually all of our spoken word content, is now available on demand at any time, indefinitely into the future. It is an archive that is growing rapidly year to year, and you can listen to it on virtually any device anywhere in the world. So you never need to miss any Radio New Zealand content ever again. So that’s in a single move an exponential growth in the value of the content that we produce.

We’re moving into a third phase of the project in probably the next 6 months or so, where we are looking to extract the greatest possible value from every piece of content we do produce. We will be launching some new websites, which will curate content of specific interests from right across the Radio New Zealand schedule, across all of our services, and putting them in places where people who are interested in that particular content can find it without needing to know when it went to air, which programme it was in. So we’ll be launching special interest sites that will deal with things like science and technology, arts and culture, health, Māori affairs, Pacific issues. We’ll be launching special sites for each of our regions, so if you’re interested in content from any region in New Zealand, you can go to the Hawke’s Bay page and get any content that Radio New Zealand has broadcast relevant to that region. We’re also going to introduce Pacific country pages, attached to our Radio New Zealand International site, where you can go to the Tongan page or Samoan page and you can get all the content that has been broadcast not only by Radio New Zealand International but by Radio New Zealand itself—all on those sites.

So this is part of that continuing plan to not (inaudible)—because we know with our limitations in funding we don’t have the opportunity to go and generate a huge volume of additional content. But we can certainly extract a great deal of value out of the content we already produce, and provide greater value to the New Zealand taxpayer.

Young

I listen to your programmes every day of the week through my iPad. I don’t use my radio any more except as an alarm.

Curran

Actually, I just wanted to wave it at you because it is a great innovation, the app, and I have listened—I used it when I was in the States last year, and it was amazing to be there and to hear the quality of the voice coming through. It’s fantastic. The only criticism I would have of it, and I’m interested to know if this is happening to other people, is that it cuts off. It cuts out after a certain amount of time, and then you’ve got to stick it back
on again. So there’s some sort of glitch, but I don’t think it’s just my iPhone.

Cavanagh Can I respond to that one? Are you mobile at the time you’re using it?

Curran Sometimes not. So you’ve got to walk around with it to keep it going, is that the answer?

Cavanagh No, no, no. We’re not aware of any bugs in the iPhone application itself, but we certainly have had reports—and I’ve experienced this myself, listening, when I’ve been out walking. But as you move you move from one reception area to another, and sometimes when you change reception areas it cuts out and then will cut back in again.

Curran Oh, well, that’s the telcos, so we’ll have to sort them out.

Cavanagh That’s not a glitch in our app. I am aware that there certainly was a limited bug in our Android version of the application, which we launched earlier this year, to much success. One particular type of Samsung phone was not conducive with that app, and we’ve done quite a bit of work to improve it. As far as I’m aware, that was to do with live streaming rather than on demand. As far as I’m aware, that’s been resolved.

Curran So, yes, absolutely. I’ve got three areas of questioning, and I hope I am able to get to all of them. Thanks to both of you for your presentation. Your ambitions, particularly in the online environment, are admirable and exciting. My concern is that will you be able to deliver on them, given the current funding constraints? Mr Griffin, as you said, there’s been no increase in your budget for 5 years, and it’s my understanding that there was a determination around those funding restrictions that it would be reviewed in 2013. It’s now 2013. Are you expecting an increase in your budget this year?

Griffin Not this afternoon—no, I’m not. I think, to put it in context, not only has the budget been managed admirably over that 5 years but there’s been no recourse to a line of credit, there’s been no diminishing of the programmes and content that go to air, and the staff remains at similar levels to what they were 5 years ago. So in a sense the creative management of that, I think, deserves enormous credit. But I don’t expect anything this afternoon.

Curran Have you asked for an increase?

Griffin Not formally, no.

Curran Not formally?

Griffin No.

Curran But what you’re saying is that the message very strongly to you is that there’s no increase.

Griffin I find that the shareholding Ministers are very open to discussion, but, despite that, no one’s signing a cheque, and I didn’t expect them to.

Young We also note that your shareholding Ministers haven’t asked for a dividend for the last number of years—
Griffin Quite so.

Young —but just in the context of actually some pretty major developments you’ve actually done within your fiscal restraints, you’d have to say that, you know, Radio New Zealand has produced an outstanding result, in terms of, as you say, the app platform and also the digital platform that you’re operating in, as well. So, I mean, just acknowledging that.

Griffin Thank you. Well, it’s been managing a deficit budget now for 5 years, and they’ve done it with remarkable discipline and extraordinary focus.

Walker Thank you. I think Radio New Zealand is really to be commended in how it has managed its finances in this very constraining time. But you have mentioned that because of the innovation you’re able to do with the software, you have been able to push out a significant capital expenditure for a number of years. I’m assuming there are probably other items of capital expenditure that have been pushed out, and I’m interested in what those are and the risk down the pipeline if your budget stays frozen. What are the risks to Radio New Zealand of pushing out that capital expenditure and maintenance?

Griffin Well, obviously, maintenance issues are a considerable concern, but I’m sure Ken or Peter will address those more specifically than I can.

Cavanagh Yes, I can pick that question up. I can say that there are no critical capital expenditure items that have been pushed out at all. We very, very carefully manage our capital expenditure. One of the ways that we’ve managed our declining budget in real terms has been to slow up on capital expenditure, but always in a considered way so that we’re not taking any operational risk to the organisation in doing that. But what we might do is, in the past and in an ideal world, you might have programmed replacement, for example, of capital expenditure. We now assess every item of capital expenditure before we make the decision to replace it. If we feel that we can extend the useful working life of that gear by another 12 months, then we’ll postpone that decision for 12 months. But there are no critical items of capital expenditure that we don’t spend, certainly not in terms of any of the infrastructure—our broadcasting infrastructure, the transmission infrastructure. They are just proceeding as normal.

Curran With respect, Mr Cavanagh, we have information that says that Radio New Zealand has deferred up to $9 million of capital expenditure. So where is that capital expenditure and what’s the difference between deferral and just putting things off, not bothering, whatever? And what risk analysis has been done? Presumably you have a risk analysis on the deferral of capital expenditure, and a priority list of what’s most important. If you’re not doing that, what’s the impact of that?

Cavanagh Well, I suppose the short answer is we’re not deferring anything that is a high priority. So you’re quite right. An organisation like ours has a very extensive capital expenditure programme. The items that are being deferred are those at the lowest priority, so they’re not critical to the organisation. That figure of $9 million obviously is inflated by the project we talked about.
earlier that’s pushing back maybe $7 million or $8 million worth of capital expenditure into the future. But there has been no deferral of any capital expenditure that is critical to the running of the business. It defers from year to year. So we may have programmed to spend that money in 2013; we may actually spend it in 2014 or 2015.

Curran Can you give me—

Young Is this carrying on your previous line, or is this a new line of questioning?

Curran Well, I’m continuing on this line because I haven’t finished on this particular issue.

Young Well, we’ve got other members. We’ll come back to you, but if you’re continuing a line of questioning, carry on.

Curran And as this is the Opposition’s opportunity to grill—

Young No, I’m sorry; it’s everybody’s opportunity. Away you go, and then we’ll come to the others.

Curran Thank you very much. Do you have a list of programmes that have been affected, squeezed, or cut as a result of funding constraints?

Griffin Content and programming has not been affected, largely, as I say, because of remarkable creative efforts but within the organisation.

Curran So are you telling me that there has been no programmes that Radio New Zealand has decided not to run as a result of funding constraints?

Griffin No, there hasn’t. I’m sure Peter will endorse that.

Cavanagh We’re talking now about editorial content. No, there have been no programmes that have been discontinued. There have been no redundancies in the organisation. The focus has been throughout, since the budget freeze has been in place, to, wherever possible, achieve our savings in areas that are not directly programme related. So the savings we’ve achieved over the past 5 years have been behind-the-scenes savings in terms of the infrastructure, how we do the business, driving better deals with our suppliers, savings in rent and power, rights fees, licence fees.

Griffin There may have been instances, Clare, when people, for instance, put up a case to travel somewhere, to cover specific issues, and management look at it and decide literally case by case whether they should go ahead with that or otherwise. Certainly, there have been in the past, I’m sure, occasions where they’ve said “No, this is not merited on the basis of the case you’ve put up or the dollars involved.” But, apart from that, I think you’d be striking stony ground.

Curran What about international content, such as content from the BBC?

Cavanagh We have had a contract with the BBC World Service certainly in the decade or so that I’ve been there, which has always been in place and hasn’t been affected.

Curran So it’s not affected?
Cavanagh Not affected. But a number of years ago we had a second contract with BBC World, which we discontinued, but that was about 8 years ago.

Lotu-Iiga Thank you for your presentation this morning, and congratulations on—as most of us are aware, your quality is maintained whilst operating under quite constrained budgetary circumstances. I mean, I look at how you’re operating your expenses and I see, for example, that insurance has doubled. We know that the Christchurch earthquakes had an impact around that. In terms of insurance—and then there’s an impairment on property, plant, and equipment in your operating expenses. I mean, those have had an impact—over half a million dollars. That’s not insignificant. What are the sort of risks there that you could identify that maybe have had an impact on your business? But, you know, you have run a surplus, so congratulations on that.

Griffin Well, Ken keeps us au fait with that on a regular basis, and I’ll leave him to—

Lotu-Iiga Yes, sure. Do you want to just comment?

Law Certainly, insurance costs and a number of other costs have increased substantially, but Peter touched on a number of other areas where we have made significant savings. We have been able to apply those savings to offset the effects of inflation and unforeseen cost increases. As Peter mentioned, rents have gone down substantially. We’ve made major savings in licences, some IT support, and the like.

Lotu-Iiga On the revenue side—I asked this question a couple of years ago—you’ve been coming in every year, certainly for the last 5 years I’ve been here—I see that your other co-siting transmission, that’s gone up a quarter of a million dollars. Is that something that may be permanent, or are you looking at it?

Law Yes, we’d like to—well, we do think it will be permanent, particularly in some new areas where we’ve engaged in consultancy work, transmission solutions in the South Pacific, lease of technical equipment, and consulting and similar work to other communications companies within New Zealand. There has been a growth.

Lotu-Iiga So overall you’re satisfied that you’re managing the—

Law Very much so.

Lotu-Iiga —both the expenditure side and maximising your revenue.

Law It all balances.

Mitchell Like my colleague Sam, I just want to congratulate you on a great result this year. And did you say the guy’s name was Mark Hayhurst?

Cavanagh Mark Hayhurst.

Mitchell Could you pass on from me personally thanks for the fantastic work that he’s done around innovation, because the thing that I find amazing is that, you know, we are in tough times and businesses do face challenges. You obviously face challenge as Radio New Zealand, but you’ve actually driven
out some pretty amazing innovation in terms of being able to fix this, is it the CoStar system?

Cavanagh: CoStar.

Mitchell: And you’re probably a shining example, actually, to other businesses around the country of what actually can be achieved in tough times. I’m just wondering, because there’s obviously been significant savings on the front end, is there going to be savings, continued savings, in the years to come in terms of software licences and things like that, with the work that you’ve done around CoStar, and are those savings going to free up capital for you to be able to invest in other areas of the business sort of downstream?

Cavanagh: Well, most of those ongoing savings would free up the pressure on our operational budgets, rather than the capital, so the software licences will free up operational expenditure, which can then be used for programme-making activities, and the same for things like replacement of sound cards, which are consumable items within the digital production system. So, again, while they are not adding to the capital pool, they are certainly taking some of the pressure off the day-to-day operational costs.

Mitchell: And just in terms of costs—you may not be able to give me a number—what sort of savings do you anticipate sort of making, and for how long, with, for example, savings on software licensing and things like that, just in relation to that one project that you’ve taken a real innovation approach to?

Cavanagh: I might ask my colleague if he can recall the number.

Law: Well, the latest saving identified, as Peter mentioned, just a matter of a week or two ago, is related to sound cards. That’s of the order of $250,000 to $300,000. On licences, I’m not so sure of the figure there, but I would guess at around about $100,000 per annum. But also, by putting off the capital expenditure of around about up to $7 million, we have avoided a very significant depreciation charge running through into the P&L. You would depreciate a system like that maybe for 8, maximum 10, years at $600,000 per annum. So it’s a bonus for us. It’s a huge bonus for our company.

Bakshi: First of all, I would like to join my colleagues and congratulate you on your wonderful performance. I would like to touch on the cultural part. I understand you have started in-house production of Māori news. I would like to know has it affected the quality of the programme? Have you made any savings on it? So what sort of response are you getting on it? The second part of my question is I know you can’t cater to every ethnicity, but, after Māori and Pacific Islanders, Chinese and Indians are the biggest populations in New Zealand, so are you planning to do any programmes for them?

Griffin: On the No. 1 issue, I think the programme—dare I say, I suppose it’s a subjective view, but I think—the Māori programme has improved extraordinarily over the last 18 months. On the issue of ethnicity and providing for them, I think Peter’s better qualified to talk than I am, but I know that as an organisation the folk who are directly involved do bend over backwards ensuring that they can as much as possible cater to the
hugely diverse interests that our mandate requires. I suppose that does, if anything, cast a light on the mandate itself and the responsibility Radio New Zealand has that virtually every other broadcaster in New Zealand doesn’t have to feel any obligation to, nor does have any responsibility to. We in every sense are mandated to educate, to innovate, and to entertain. In every sense we try to cover that huge spectrum as well as possible but, understandably, there will be some ethnic groups that feel they are not being catered to to the degree that they should. However, I’m sure Peter has a point of view that is well beyond my comprehension.

Cavanagh Yeah, you’re quite right. It is a growing and very important demographic group within the New Zealand society, and one that, arguably, we don’t currently adequately cater for. We do have an Asian affairs correspondent, for example, specifically to look into the issues so that we can bring them to the broadest possible audience. I would hope that the approach that we are taking, which I mentioned earlier, in terms of specialist websites might be one possible solution for us, because, obviously live on-air schedules are quite limited. By definition, online content is far more flexible. I think you’d probably be surprised—I may well be surprised, myself—if we knew the extent of content we already produce and broadcast that is relevant to the New Zealand Asian community across the totality of our programming, because none of us can listen to Radio New Zealand 24 hours a day, as much as we would all like to. So the opportunity to take that content from right across the entire schedule and put it in one place on a website as a service to the New Zealand Asian community is one possible solution to the limitations of the live schedule.

Bakshi Supp to that, have you done any survey of the ethnic background of people—how much audience you have from ethnic backgrounds in a survey that can identify that?

Cavanagh No specific audience research, although when we do our normal audience research to gather our normal audience numbers, we do record ethnicity as part of that survey. The overall sample sizes wouldn’t make that a particularly reliable measure once you got down into smaller groups, and we haven’t had the resources to do any specific market research.

Walker I just want to ask about the impact of the financial constraints on your staff. I note that you have nine unfilled vacancies, or had recently. And I wonder do you have a policy of not filling positions when people leave, either formally or informally? My understanding is that staff have perhaps picked up a number of other responsibilities during this period of fiscal constraint, where they may be doing more than just reporting, for example, but also producing and doing the editing and so on themselves. Is there any concern about stress levels amongst staff, workload issues, and things like that, and retention?

Griffin From a broad perspective, I take your point. And, personally, and I know the board as a whole are concerned that the implication of deficit budgeting over a period of time obviously is going to have an impact on the staff. I think it says a great deal about—and I hate to sound like a cracked record—
the management and the staff. Not only has there been no obvious decrease in morale across those 5 years but, more importantly, management have not found it necessary to have a sinking-lid policy as far as staff is concerned. The nine positions that you suggest are, in fact, being advertised; it is not as if there is a vacuum being created. Those positions will eventually be filled.

Walker How do you measure morale?

Griffin Morale is excellent. I say that advisedly because we have recently talked to a whole range of staff, and what I can say without any question is they love their work. And I know it is clichéd too, but they are there because they love the business. They are certainly not there because they get well paid. They are not well paid compared with other branches of the Public Service. Nevertheless, they are generally happy with their circumstance. They are not complaining about their salaries, and they love their work. And, as I say, I haven’t consulted Peter about this, but that is my impression.

Cavanagh Could I just add, just to reinforce, there is definitely no policy in place not to fill vacancies. There is a very strict policy in place that says that before any vacancy is filled, we do go through an exercise of assessing that vacancy, because I have an undertaking that I’ve given to my staff that there won’t be any redundancies, certainly in the current financial year. It is a process I go through each year when I talk to staff and union representatives, and I have an undertaking that there will be no redundancies in the current financial year. However, when there is a vacancy, we certainly go through the rigorous exercise of assessing that vacancy to decide whether this is a role that we absolutely must fill. And roles are only filled, only advertised, once I as chief executive have signed off on that. I am pleased to say that I can’t recall an occasion when I haven’t signed off on a vacancy, so there is certainly no policy in that. We have a full staff, and our expectation is that that will continue to be the case in the next 12 months, as well.

In terms of the workload issues for staff, undoubtedly staff are doing more. I would say that that is more a product of the evolution of our business than it is the financial constraints. I think that everyone in media is working harder and being asked to do more. I think that is the nature of the evolution that is taking place. I have spent quite a bit of time here this morning talking about our online broadcasting activities. That requires some additional activity on behalf of our staff. Now it is quite common that our journalists, who once would do a radio interview, record that interview, process it, write a script, will now also take a photograph for the website. That is quite a standard operation for broadcasters these days. As we move into these curated sites, there will be a requirement for producers and reporters to start to tag their content, so that we can go through that curation and collation exercise. I think that would be a relatively minor additional task, but that is the nature of the evolution of our business, I think.

Walker And do you formally survey for morale?

Cavanagh No, we haven’t done in recent years, no.
Griffin But the board has informally in recent days.
Curran Could I ask what is happening to Radio New Zealand’s bid to operate Parliament TV?
Griffin We’ve submitted a bid to the parliamentary Office of the Clerk.
Curran What plans do you have to provide other non-commercial or commercial—non-commercial or commercial—television services in the downtime when Parliament isn’t sitting?
Griffin We don’t have any plans at all until we hear from the Office of the Clerk as to whether our initial bid is of any interest to the Office of the Clerk.
Curran Well, I’m sorry, Mr Griffin, but your proposal presumably contains plans for either commercial or non-commercial—
Griffin It doesn’t contain any commercial suggestions, whatsoever. It does contain some suggestions that might interest the Parliament in terms of downtime—for instance, and I leave it to your imagination, we have suggested in the past that perhaps you would be interested in streaming select committees. Perhaps you would be interested in streaming the press conferences of the Prime Minister and, dare I say, the Leader of the Opposition.
Curran What I am interested in is whether Radio New Zealand would hope to make some sort of profit from filling the unused airtime on Parliament TV. Is there any intention—
Griffin We don’t have any plans to make any profit from the downtime of the Parliament TV channel.
Curran So there is no plans, nothing in train—
Griffin There is no plan. Obviously, we are not doing it—We are not bidding for this or tendering for this on the basis of—
Curran What is the point of the bid?
Griffin It’s one with Kordia, as you are probably aware, when there’s a channel.
Curran I said “What is the point of the bid?”.
Walker What does Radio New Zealand get out of it?
Griffin We already, as you know, run the audio. We feel that it is appropriate that we also have some control over the channel, the distribution of it. We are not doing it for nothing. Kordia makes money out of it. We intend to make money out of it.
Curran So what cooperation are you getting from Kordia in mounting—
Griffin Full cooperation.
Curran Full cooperation. So have you sought access to digital TV spectrum from other spectrum owners such as TVNZ, MediaWorks, or SKY?
Griffin We have also talked to Freeview.
Curran And what has the response been?
Griffin You’ll be aware of that when you see the full and, I am sure, transparent bid we have for tender we have put to the Clerk’s Office, if the Clerk’s Office decides to make it available to you. I don’t feel under these circumstances that it is appropriate that we discuss the specifics of a tender that is already before the Office of the Clerk.

Curran I’ve just got one more question in this area. Is it correct that you could only access Kordia-owned spectrum and transmission services used for Parliament TV on commercial terms?

Mitchell I raise a point of order, Mr Chairman. I think the chair has just made it clear—and I entirely agree with him—that at the moment the proposal is in front of the Clerk’s Office, and, actually, probably the details of it shouldn’t be discussed until they have at least been informed whether or not their proposal is accepted.

Curran Responding to the point of order, Mr Chairman. This is a financial review of—

Griffin It is a financial review of the year 2011-12.

Young That’s right.

Curran It’s a critical issue for going forward.

Young Mr Griffin has made his comment, and, in the context of that, if your next question is asking for sensitive commercial information, Mr Griffin has the prerogative to once again take his position.

Griffin Sorry, Clare, but that is the position we take.

Curran Well, I’ll ask the question and—

Young Ask the question and then Mr Griffin can respond.

Curran Is it correct that you could only access Kordia-owned spectrum and transmission services used for Parliament TV on commercial terms, with no dispensation reflecting your status as a non-commercial broadcaster?

Griffin That will be very clear once the Office of the Clerk has decided whether in fact our tender will go ahead.

Curran So is it the Office of the Clerk that can influence that decision?

Griffin I’m sure it is the Parliament as a whole, in the end, through the Speaker’s office but, as I say, I’m not prepared to go into details of a tender that is presently before the Office.

Curran OK, I accept that. Does your bid have the support of the chief executive?

Griffin Absolutely. The chief executive was responsible for putting it together.

Lotu-Iiga Just again—going back to the year in review and your chief executive’s report—my colleague has referred to how you are expanding to different types of audiences, and congratulations on the work that you do on the Pacific. I know the feedback from people I talk to in the Pacific is, you know, it’s a valuable resource. Congratulations on that.
You mention here in your report on page 3 about reaching new audiences, and another sort of audience that you want to capture is an online youth radio service designed to, you know, provide relevant high-quality Public Service broadcasting for that younger generation. Then you say, later on, that you’ve got these new online services and these will be expected to launch early in the new year. How is that going since the report has been written? How is progress being made in that particular area, because, you know, it is, I think, a really critical area going forward?

Cavanagh It’s a project that we’re very excited about. Radio New Zealand has been very enthusiastic about providing a quality Public Service broadcasting service for younger New Zealanders certainly for the entire time that I’ve been chief executive. We had hoped at one stage that there might have been a youth radio network, a full 24/7 network, where we could provide that service, but clearly that’s not a practical option in the current environment. We do acknowledge that there’s a limit to how far we can stretch our existing services to cater for New Zealanders of all age groups. All the figures will show you that our audience—a very significant audience of over half a million New Zealanders a week—do skew to the older end of the demographic spread. So it’s not easy for our radio services to provide a service that is targeted to younger New Zealanders, which is why we have adopted the pragmatic approach of saying “Well, we can’t do it on air but we can do it online.” We are cognisant of the very limited resources that we are currently able to apply to the project. So we intend to start in a very modest way by providing a targeted online service, which will, rather than the full service of a 24/7-type radio station, deal with—it will be issues based. So we will pick off issues that we think are of most importance, that could provide the greatest value to younger New Zealanders, particularly major issues that affect big decisions that they have to take in their lives at a time when they perhaps don’t have full access to trusted, reliable information that would help them make those decisions.

So we will prioritise the subject matter we deal with. Probably initially we’ll pick those off one a month. We’ll produce good-quality core content around those issues. We’ll engage with and collaborate with other like-minded organisations—it could be community access radio; it could be student radio, journalism courses, iwi radio stations—and we will invite our audience to provide user-generated content as well, telling their own stories around those subjects and issues.

That is progressing well. We’ve recently recruited three staff, new staff, to head up that project. We’ll also be seconding staff from within the organisation to that team, probably on a rotational basis, so that they are integrated within the organisation and have access to the skills and experience of our other staff. The team leader is in place and I think the two additional staff members start next week. So I would hope to see that service up and running before the end of the year.

Lotu-Liga Great. Well done.
Yang  Like my colleagues, I would like to congratulate you on what you have achieved. First, I have a comment, which is related to Kanwal’s question about ethnic content. I agree with Kanwal that it is important that we pay attention to the growing ethnic communities, particularly communities from Asia. I understand you have always paid attention to the Pasifika region and Māori, but we have a growing number of people from Asia. I’m quite impressed, looking at the indicators, at New Zealand’s awareness of ethnic and cultural diversity. I can see the improvement over the past couple of years, so I congratulate you on that.

Also, what I’m thinking is that we have in some ethnic groups, like the Chinese community, a quite developed media. We have radio, TV, and a large number of newspapers. These media can play a very important role in informing the community members. But on the other hand, we need to let the mainstream society know what is happening in the community, the Chinese community or the Indian community. Therefore, I think Radio New Zealand can play a very important role in trying to introduce or to somehow inform the mainstream society of what’s happening in these ethnic groups or ethnic communities. This is just my suggestion or comment. I think you can play a very important role of bridging—a bridge role there.

My question is about this. I am also very impressed that one of your priorities is to make sure New Zealanders are better informed about New Zealand and its place in the world. I think it is particularly important. The reason I am saying that is because my background is about international relations. I am an international relations scholar originally. So I think it’s important because, looking at what is changing in the world is that Asia is becoming more and more important to us. Over 40 percent of exports go to Asia. My question here is if you decide that it is important for us to inform New Zealanders of our place in the world, you must have your own understanding. Do you have advisers there about the content you are going to present? That is, how do we inform New Zealanders where is our place in the world? So you must understand this first, all right? So do you have any particular advisers or panels to inform you on this kind of stuff?

Cavanagh  No, we don’t use advisory panels, but, obviously, the vast bulk of our staff are highly experienced journalists, producers, and researchers, who can research the material that we broadcast. Our approach, unlike some other global Public Service broadcasters who have the resources to have correspondents around the world to provide that input back to domestic audiences—because we don’t have those resources, our approach has always been to have an as broad as possible range of highly skilled commentators around the world that we can touch base with on a regular basis, and find out what the major issues are in those parts of the world. I think that works very successfully. So we certainly have a number of correspondents scattered throughout Asia that we can speak to on a regular basis about the major issues in that part of the world.

I think, you know, if I say it immodestly, Radio New Zealand does a very good job of providing New Zealanders with quality coverage of
international events at a time, perhaps, when other media organisations are shrinking their international news coverage. I think it is something of an irony that at a time when the world itself is getting smaller and smaller, and what happens anywhere in the world can affect someone on the other side of that world, it becomes more important that we do understand how the world operates. Mainstream media is covering it less and less; we are trying to cover it more and provide a good service.

If I could also pick up on your earlier point, there is, obviously, a difference in reflecting what’s happening with, for example, the Asian community within New Zealand, and that’s a challenge that we need to address.

Yang One quick question—your website visits. You had 14.3 million visits last year. I was wondering whether you can see the growth compared with last year and the previous year.

Cavanagh Yes, the website traffic goes up every year. It’s growing exponentially, as is the downloading of audio material—audio on demand, podcasting of our audio content—growing exponentially each year.

Curran I’ll keep it brief. I’d just like to say to you, Mr Cavanagh, thank you for your 10 years or more than 10 years of service to Radio New Zealand. I understand you are leaving.

Cavanagh At the end of this year.

Curran Can I ask when are we to hear of an announcement for a new chief executive, and—I’ll wrap this into one question—is commercial acuity a key requirement of the new chief executive, and does this signal a move towards a more commercial focus for Radio New Zealand?

Griffin Thank you, Clare. No, it’s not a significant proportion of the exercise at all. We are looking for the best possible man, dare I say—

Curran Or woman.

Griffin —in the image of Peter Cavanagh to replace him at the end of this year.

Curran I’m sorry—

Griffin Or woman.

Curran —I don’t actually think that you answered my direct question, which was “Is commercial acuity a key requirement of the new chief executive role?”.

Griffin Specifically, no.

Curran OK. Thank you.

Young I’ve got a question. Mr Griffin, you’ve talked about the budget constraint—I think you called it a deficit budget. If there weren’t that constraint that you’ve had over the last 4 or 5 years, do you think that the innovative work you did around the digital platform would have occurred, or was it the constraint and because of the pending costs coming out that you thought again how can you address this issue?

Griffin I take your point, Mr Chair, and it’s a very valid argument—necessity being the mother of invention. It’s a philosophic point. I’m amazed at the sort of
work that has gone in for the limited amount of finance involved—
dedicated people, particularly dedicated individuals, in that area. I’d imagine
that more money doesn’t necessarily dictate that it would be a more
successful exercise. I know there are more creative things that could be
done if there was more money in the kitty, but at this stage there is not, and
we have to live with reality rather than live within a world where there is an
unlimited supply of money. We’re not making *Iron Man*; we’re making good
radio, and good radio essentially depends on creative individuals looking for
creative ways of doing things, and transmitting those to a public that seem
to absorb them with enormous enthusiasm.

Young Any further questions from committee members? Well, I want to thank you
very much, gentlemen. Mr Cavanagh, all the very best. Mr Griffin and Mr
Law, thank you for your presentation today. I think we could probably all
say that we’ve been impressed with your performance this last financial
period, and we wish you all the very best for your next.

Griffin Thank you very much indeed for your courtesy. It’s always good to see you.
Thanks very much.

*conclusion of evidence*
Gambling (Gambling Harm Reduction) Amendment Bill

Member’s Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Gambling (Gambling Harm Reduction) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Gambling Act 2003 in order to reduce harm to communities and families caused by gambling. It aims to ensure that the proceeds of gambling are distributed back into the community from which they came, and to give communities greater control over gambling and gambling operations.

Our commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments proposed to improve workability, clarity, and legal efficacy.

Content and conditions of licences
Clause 6(1) of the bill as introduced would make it a condition of class 4 operators’ licences that at least 80% of all funds derived from
gambling are distributed back into the same territorial authority district in which they were raised. Clause 6(2) would allow the Secretary for Internal Affairs to impose licence conditions requiring the use of devices designed to permit responsible gambling, such as pre-commitment cards and player tracking devices.

**Distribution of funds**

We recommend deleting clause 6(1) and replacing it with new clause 18, which proposes amendments to the regulation-making powers in section 114 of the Gambling Act relating to the application or distribution of the net proceeds of class 4 gambling. The amendments would allow the making of regulations to prescribe requirements for the distribution of net proceeds taking into account the geographical area where the proceeds were generated.

We support the principle of returning net proceeds to the area where the gambling took place, as long as national or regional organisations are not disadvantaged. Requiring all class 4 societies to distribute their net proceeds to locally-defined areas would also create other complications; for example, gaming machines are not evenly spread across electoral districts, and restricting distributions as the bill prescribes would result in little or no proceeds being distributed in some areas.

As introduced, the bill does not take account of gaming machines being used by people from outside the area. It would also allow societies to appeal licence conditions to the Gambling Commission, so that a licence condition requiring local distribution might be removed anyway.

The regulation-making power we propose would offer a flexible approach to regulations and help prevent such anomalies. National and regional organisations provide benefits to the community defined more widely. The regulation-making process would require consultation with the sector and others likely to be substantially affected by the change. We believe this would mitigate any potential adverse effects.

**Criminal liability**

We recommend deleting as no longer necessary clause 9, which requires the local distribution or application of at least 80% of the net
proceeds of gambling. New clause 18 would allow regulations to be made imposing such requirements. Failure to comply with the regulations would affect licence applications and renewals.

**Harm minimisation technology**

We recommend inserting new clause 19 to replace clause 6(2). Where clause 6(2) proposed directly imposing conditions on licences, requiring the use of pre-commitment, player tracking, or other harm minimisation devices in class 4 gaming machines, we recommend an amendment to the regulations relating to gaming machines in class 4 venues (section 314 of the Gambling Act) to allow regulations to do the same. We believe that regulations would allow a more robust and flexible response to changing technology. Currently there is no requirement for gaming machine operators in New Zealand to use pre-commitment, player tracking, or other devices designed to minimise gambling-related harm. In addition, no specific research on pre-commitment or player tracking for class 4 gambling has yet been undertaken in New Zealand. While we support the use of technology to help minimise gambling harm, we believe it would be premature to mandate specific approaches. Because research continues to become available, and technologies continue to improve and change, we believe that a regulation-making power rather than prescribing specific measures is the right approach.

The bill as introduced requires the use of pre-commitment and player tracking devices only as a licence condition. As noted in our comments on new clause 18, the risk with this approach is that this condition could be removed on appeal to the Gambling Commission.

**Proposed territorial authority requirements**

We recommend inserting new clauses 16 and 17 to replace clauses 7 and 8, as we consider that the proposed requirements do not improve upon the current requirements.

Clauses 7 and 8 would require territorial authorities to review class 4 policies every 3 years and provide consents on an on-going basis, which we consider would be unduly expensive for venues and territorial authorities.

As introduced, clauses 7 and 8 would allow territorial authorities to include policies that reduce or prohibit venues, taking into account
public sentiment. It would be difficult to decide on a principled basis, for example, which venues should cease to operate, and the bill offers no guidance on criteria for making these decisions.

We believe the amendments we propose in clauses 16 and 17 would create certainty for venue operators and allow them to make investment decisions with confidence. Clause 16 would allow territorial authorities to include relocation policies in their class 4 venue policies, which would set out if and when new venues could be granted consent in place of existing venues. Clause 17 would require territorial authorities, at the next review of their class 4 venue policies, to consider whether or not to include a relocation policy. When developing a relocation policy, territorial authorities would have to consider the social effects of gambling in high-deprivation communities.

Responsibility for distributing funds
We recommend deleting clause 10, as we do not consider territorial authorities should be responsible for distributing the proceeds of gambling. It is outside the core function of local government and would create a conflict of interest because territorial authorities can themselves apply for grants.

Relocation of venues
We recommend inserting, by new clause 13, new section 97A into the Gambling Act to preserve the rights attaching to previous venues when a licence is transferred to new premises. The new venue would be permitted to operate the same number of gaming machines as was permitted at the old venue. This would apply only if the territorial authority had given consent for the new venue in accordance with its relocation policy.

Venues that were licensed before 17 October 2001 have maintained the right to operate more than nine machines, which is the current legislative limit. A venue currently loses this right if it moves premises, as the licence is attached to the physical venue. This discourages venues from moving to a more suitable location.

New clause 12 provides that no compensation is payable by the Crown or territorial authorities for any loss arising from the enactment of amendments made by clause 17.
Racing clubs
We recommend deleting clause 5, which would remove racing as an “authorised purpose” for class 4 gambling. In *New Zealand Racing Industry Board v The Attorney General*, the High Court found that racing clubs have a non-commercial purpose. They are non-profit organisations, which provide facilities to community groups at low or no cost, and in this way they are similar to other sports clubs. We consider the removal of funding would have an adverse effect on communities and racing-related economic activity.

Commencement date
We recommend replacing “1 July 2011” in clause 3 with “the day after the date on which the bill receives the Royal assent”.

New Zealand Labour Party view
The Labour Party reserved its position.

Green Party of Aotearoa New Zealand minority view
*Gambling (Gambling Harm Reduction) Amendment Bill*
The original bill set out to:
- Give councils and communities the power to cut the number of pokie machines in their area or eliminate them altogether.
- Ensure that at least 80% of the distributable funds be returned to the area where the gambling took place.
- Replace the trusts that currently distribute the funds from gambling with more accountable organisations set up by local authorities.
- Remove horse racing from the list of charitable purposes which may receive gambling proceeds.
- Introduce harm-minimisation mechanisms like player-tracking and mandatory pre-commit cards to put controls on the amount of time and money lost by gamblers.

It is the Green Party’s view that the bill as it will be reported back to the House does not achieve any of the aims listed above and in one part will restrict the right for councils wanting to reduce the number of pokies through their own transfer policies.
The select committee’s decision to amend the original Act by inserting a new clause 97A to enable councils to be able to encourage venue operators to relocate their gambling machines from one site to another cuts across some council’s desires to use relocation as a method to also reduce machine numbers, which was the policy of the former Auckland City Council. We see this as regressive and contrary to the original purposes of the bill.

The Green Party is also concerned that the provisions to ensure the allocation of funds in the areas where the gambling took place will not become an enforceable piece of law. The recommendation that this provision be contained in new regulations in the Act effectively leaves this decision up to the government of the day and the gambling sector.

We have the same concerns around the provisions in the bill around actual harm minimisation through player-tracking and pre-commit cards and other harm minimisation technology because the select committee suggests that these also be added to the regulations rather than being prescribed in the Act itself.

We are also disappointed that the provisions to prevent gambling funds being utilised by the racing industry, including being used as stake money, will be dropped from the bill along with provisions requiring venues to have their licenses reviewed three-yearly.
Appendix

Committee process
The Gambling (Gambling Harm Reduction) Amendment Bill was referred to the committee on 9 May 2012. The closing date for submissions was 21 June 2012. We received and considered 4,944 submissions and many supplementary submissions from interested groups and individuals. We received 29,438 form submissions. We heard 159 submissions, which included holding hearings in Wellington, Christchurch, and Auckland. We received advice from the Department of Internal Affairs and the Ministry of Health.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Dr Jian Yang
Hon Trevor Mallard, Hon Ruth Dyson and Moana Mackey replaced Clare Curran and Denise Roche replaced Mojo Mathers for this item of business.
Copyright (Parallel Importing of Films) Amendment Bill

133—1

Report of the Commerce Committee

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Copyright (Parallel Importing of Films) Amendment Bill

Recommendation
The Commerce Committee has examined the Copyright (Parallel Importing of Films) Amendment Bill and recommends by majority that it be passed without amendment.

Background
The Copyright (Parallel Importing of Films) Amendment Bill seeks to amend the Copyright Act 1994 in order to reinstate a ban on the parallel importation of films for commercial purposes for a period after their release in cinemas. The current ban on parallel importation within 9 months following the release date is due to expire on 31 October 2013. The bill seeks to extend the ban in a modified form, shortening the period in which parallel importation is forbidden to 5 months from the film’s release date. The new ban would expire on 31 October 2016.

The proposal to shorten the ban reflects the fact that the gap between international and New Zealand film release dates has narrowed since the ban was first imposed. We believe that 5 months is sufficient to protect cinema screenings from competition from parallel imports.

Proposed ban
The extension of the ban for another 3 years would allow the cinema industry time to complete its conversion to digital exhibition technology. We consider that the trend away from 35mm film production will force cinemas to adopt digital technology eventually. We consider it imperative that cinemas invest in digital conversion in preparation for this inevitable change, and strongly encourage the members of the New Zealand industry to do so before 31 October 2016, as the extension of the ban would be temporary only.

We note that this issue has been through the legislative process three times. We acknowledge that the current ban allows cinemas flexibility in scheduling films, particularly for school holiday audiences, creating better financial viability which enables more movies to be available at times when wanted by consumers. However, we expect cinemas to use the next 3 years to develop an effective business model for managing their screening schedules to achieve this same result as it is a time consuming process to achieve this through legislation.

As consumer viewing technology develops, we also expect this will force cinemas to develop new revenue streams to meet consumers’ expectations, rather than rely on past business models.

Labour Party minority view
The Labour Party is prepared to support the measures proposed in this bill to reinstate a ban on the parallel importation of films for commercial purposes. However, we believe this is the last chance for the New Zealand cinema industry to transition to a) digital exhibition technology and b) revise its business model.
We believe that the shortening of the ban from 9 months to 5 months within a limited timeframe is a strong signal to the industry that it must change. The Labour Party does not support a further extension of the ban. We also believe that 3 years to adapt is too long and support the ban expiring on 31 December 2015.

We consider that in a modern, connected society New Zealanders should be able to access media in the same time frame as others in different countries. We think that the lack of legal methods to consume entertainment media is driving piracy in New Zealand. We are also concerned that many families have limited ability to afford the cost of cinema tickets and therefore have less choices.

The ban on parallel imports of films was initiated a decade ago and its purpose should have been fulfilled by now.

Cinemas have a protected status preventing other domestic businesses from competing in supplying films to the public through other mediums. The losers are the film retailers who have been since 2003 prevented for 9 months from the date of first release from importing legitimate films from overseas. But ultimately it is the consumers (the public) who are unable to exercise choice during the period of the ban.

The Labour Party’s qualified support for the 5-month ban on parallel imports of film rests on the impact on provincial and rural cinemas that have less capacity to show multiple high grossing movies simultaneously and less flexibility and ability to cut costs to remain competitive. We note that evidence shows that the cinema exhibition industry continues to develop in New Zealand. The Labour Party does not support measures that could result in a loss of facilities for New Zealand’s smaller communities.

However, we also believe that the movie industry generally has over-inflated the risks to itself and that consumers should have easier access to content and more competitive and innovative services.

We are concerned that restricting trade on parallel imported films and delaying cinema release dates has the effect of mostly maximising profits for cinemas and is not of net benefit to consumers. We think that cinemas need to improve their services to compete with DVDs, other distributors and home video services. We agree with the submitters who argued that consumers will benefit from an increase in competition.

The Labour Party is concerned that if the public cannot legally obtain material in a timely manner through DVDs, subscription TV or online streaming, then they become sceptical of copyright law and use illicit channels.

We note that the international online streaming company Netflix has highlighted infrastructure barriers to its entry into the New Zealand market. Those barriers include our internet capacity, data caps and the existence of uncompetitive licensing deals between pay TV providers and retail service providers.

If the public cannot legally obtain current material, they often become sceptical of copyright law as a whole. If there are no suitable legal options then people will be more likely to use illicit channels.

New Zealand’s copyright laws were meant to be reviewed this year, 5 years after the Copyright (New Technologies) Amendment Act in 2008. The government has decided not to go ahead with this review.
We believe that a review of the entire market, including parallel importing and access to digital content needs to happen as soon as possible.

The Labour Party does not believe today’s Copyright Act provides the right framework to see New Zealand’s information economy thrive. This framework does not handle convergence well. Its adaptations to the internet are half-hearted. The Act needs to be fundamentally reviewed and made fit for the internet era.

It is increasingly recognised internationally that businesses that create content for the public need to change, in the form of more open, contestable, and effective global markets in digital content and a setting in which enforcement of copyright becomes effective once more.

In government, the Labour Party has pledged to undertake a full review of the Copyright Act, with the aim of introducing a new Copyright Bill within 18 months that updates and extends the framework for digital copyright in New Zealand.

In the meantime, we expect that the New Zealand cinema industry will make the transition to digital technology and revise its business model to align it with consumer behaviours in the digital environment.

**Green Party minority view**

The Green Party abstained on this bill at first reading because of concerns about the rushed process, and because we wanted to hear the arguments for and against the extension of the ban at select committee. Following the select committee process, the Green Party has decided to oppose this bill.

There seems to be no justification for the special treatment of one industry granted by yet another extension of this temporary ban. Even if the regional theatres complete their transition to digital technology in the next 3 years, many of the issues raised in submissions, such as having a window to screen films before they are widely available, will remain. We are therefore not confident that Parliament will not be faced with another temporary extension in 3 years’ time.

We were also persuaded by arguments that the bill stifles cultural participation, and encourages illegal file sharing in the absence of legal alternatives.
Appendix

Committee procedure
The Copyright (Parallel Importing of Films) Amendment Bill was referred to the committee on 2 July 2013. The closing date for submissions was 25 July 2013. The committee received and considered 10 submissions from interested groups and individuals. We heard four submissions.

We received advice from the Ministry of Business, Innovation, and Employment.

Committee members
Jonathan Young (chairperson)
Kanwaljit Singh Bakshi
Dr David Clark
Hon Clayton Cosgrove
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Dr Jian Yang

Holly Walker replaced Mojo Mathers for this item of business.
New Zealand International Convention Centre Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the New Zealand International Convention Centre Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The bill seeks to give effect to parts of the New Zealand International Convention Centre and Licensing Agreement (NZICC Agreement) entered into by the Crown and SKYCITY Entertainment Group Limited on 5 July 2013. The Agreement aims to benefit New Zealanders economically by bringing about the construction of an international convention centre to improve New Zealand’s capability to host large-scale international conferences.

The NZICC Agreement provides for SKYCITY to design, construct, and operate a convention centre with the capability to host up to 3,500 delegates, at a cost of $402 million. In return for this investment SKYCITY would receive a number of regulatory concessions relating to gambling law, which would apply at the Auckland casino site until 30 June 2048.
Our commentary covers the main amendments we recommend to the bill and a petition.

**Petition 2011/73 of Denise Roche and 1,302 others**

The petition from Denise Roche requests

That the House of Representatives reject the Government’s proposal to permit an increase in pokie machines and other opportunities for gambling at SkyCity Auckland casino in return for SkyCity building an international convention centre and request an inquiry into the social and economic harm caused by problem gambling, and note that 6,832 people have supported this request online.

We considered this petition alongside the bill. Our commentary covers the issues we considered relating to the international convention centre. We have no other matters to bring to the attention of the House relating to this petition.

**Harm minimisation measures**

We recommend inserting new subparagraph 3(2)(a)(iii) in the purpose section of the bill, to make it explicit that the NZICC Agreement requires SKYCITY to implement certain harm minimisation and anti-money-laundering mechanisms as a pre-condition of regulatory concessions. We believe this would provide appropriate statutory recognition of the harm minimisation measures.

Although gambling-related harm has been recognised as a salient issue, the bill as introduced makes no reference to the harm minimisation measures required in the NZICC Agreement as a condition of regulatory concessions.

The measures are set out in section 6 of the NZICC Agreement. They include a voluntary pre-commitment system, doubling the number of host responsibility staff at the casino, and use of a predictive model to analyse data to determine which players are at risk from gambling harm.

We consider that prescribing specific harm minimisation measures in legislation is inappropriate, as advances in harm minimisation technology are expected over the 35-year term of the NZICC agreement. The Gambling Commission undertakes a two-yearly review of SKYCITY’S host responsibility programme. We consider that this is the
appropriate regulatory mechanism for prescribing and enforcing particular harm minimisation measures at the Auckland casino.

**Purpose of the bill**

We recommend amending the title of the clause to “purpose and outline”, and adding a new subclause 3(3), to make it clear that subclause 3(2) would not have legal effect.

Subclause 3(2) in the bill as introduced is intended only to describe what the NZICC Agreement does in broad terms. This is distinct from the specific purpose of the bill, which is to give effect to those parts of the Agreement that require legislation: the regulatory concessions, and protection of the NZICC name. The bill also seeks to ensure that the restrictive covenants and agreed remedies for breaches of the Agreement are enforceable.

**Reference to gambling law**

We recommend the reference to the Gambling Act 2003 in subclause 8(1) be replaced with “gambling law”, for consistency throughout the bill.

**Inclusion of licences**

We recommend that references to licences be removed from the definition of “gambling law” in clause 4 of the bill, as we consider it unnecessary and possibly misleading. As introduced, clause 4 defines gambling law as the Gambling Act 2003 and any regulation, rule, standard, notice, or licence made, granted, or continued under the Act.

Licences are subject to frequent change. Subclause 6(3) provides for the gambling law to prevail if its application would be more favourable to SKYCITY than the regulatory concessions. If licences were included in the definition of gambling law, this might be incorrectly interpreted to mean that SKYCITY was entitled to any benefits secured on a competitor’s licence.

**Regulatory concessions**

We recommend in clause 4 of the bill that the reference to the regulatory concessions “made” be replaced with one to the regulatory con-
cessions “set out”. We believe this is more accurate, as the Crown is the only party that would be making concessions. Schedules 1 and 2 of the bill set out in detail the concessions the Crown has agreed to grant SKYCITY to increase gaming facilities at the Auckland casino site until 30 June 2048.

As introduced, clause 7 of the bill would give these regulatory concessions, as set out in clause 7.3 of the NZICC Agreement, the force of law. The text of this clause of the Agreement is set out in schedule 3 of the bill.

Interpretation
Subclause 4(2) as introduced would require that clauses 6 to 10, and 12, which are operative provisions, be interpreted in the way that best furthers the NZICC Agreement. We recommend that this clause be amended to ensure that this principle would apply to all the operative provisions of the bill. The wording “agreements expressed in the Agreement” is consistent with that used in Treaty of Waitangi legislation, which gives legal effect to arrangements made between the Crown and other parties.

Enforcement
As introduced, clauses 8 to 10 of the bill would require the Gambling Commission and the Secretary for Internal Affairs when enforcing gambling law to exercise their functions consistently with the regulatory concessions.

We recommend removing the words “subject to section 6” from clause 8, and “without limiting sections 6 and 8(2)(a)” from clauses 9 and 10. We believe this would prevent any misapprehension that the concessions would be subject to gambling law as if they were provided for under the current regulatory framework.

Gambling Commission’s continuous review of SKYCITY’s host responsibility programme
The Gambling Act 2003, regulations, and casino licences require casino operators to implement a range of measures in order to minimise and prevent harm from casino gambling. This includes the legal requirement to develop a policy for identifying problem gamblers.
Under the Act, the Gambling Commission is responsible for specifying casino licence conditions. Licences are an integral part of the gambling legal framework. Casinos are required to have a host responsibility programme (HRP) as part of their casino operator’s licence. The HRP states how each casino implements its legal obligations to minimise and prevent gambling harm at its venue.

The Auckland casino operator’s licence, particularly paragraphs 23 to 29, requires the Commission to review the casino’s HRP every 2 years, and the operator is required to report every 6 months to the Commission on the implementation of the HRP. Following the 2013 HRP review, operator reporting will become an annual requirement.

**Independent analysis of effectiveness of the host responsibility programmes in SKYCITY’S Auckland casino**

A number of submitters requested that independent analysis be undertaken of SKYCITY’s host responsibility programme in order to determine its effectiveness. During consideration of this bill, the Gambling Commission’s August 2013 decision (GC 21/13) on the amendment of the “responsible gambling programme” for the Auckland casino was published. This decision demonstrated the Gambling Commission’s process in reviewing their programme. This included extensive consultation with the Salvation Army, the Ministry of Health, the Secretary for Internal Affairs, and Lifeline Aotearoa who were all invited to provide suggestions on matters for possible inclusion in the host responsibility programme. (GC 21/13, paragraph four).

For National Party members of the committee, this gave us confidence that these significant entities were included in the review process and that their views were taken into consideration. It is our expectation that the Gambling Commission will continue to consult with these agencies and entities in their two-yearly reviews of Auckland casino’s host responsibility programme.

The Gambling Commission considered whether there was a need for additional independent evaluation of the effectiveness of the Auckland casino HRP. The Commission felt no such need as it undertakes such an evaluation in the course of their periodic reviews of casino
HRPs. It does so by consulting with a range of knowledgeable parties as well as seeking independent expert assistance. The Gambling Commission engaged Dr Delfabbro, Associate Professor at the University of Adelaide, in their review. He reported to the Commission that New Zealand’s regulatory environment is rigorous in the extent to which it emphasizes responsible gambling principles, and that Auckland casino’s current HRP is of a high standard internationally.

National Party members of the committee concur that the processes put in place by the Gambling Commission in its review of Auckland casino HRP ensured significant third-party input and expert independent review and advice. The committee was also informed that the Department of Internal Affairs inspectors walk through the casino on a regular basis.

**Development of new technologies in regard to harm minimisation**

The Agreement requires SKYCITY to implement enhanced harm minimisation measures at their Auckland casino, these being:

- predictive model created by Focal Research which analyses loyalty data as a tool to identify players who are at risk from gambling harm
- voluntary pre-commitment system whereby “single terminal gaming machine” players may elect to restrict the amount of time they play and/or the amount they spend on machines over a selected period
- doubling of the number of host responsibility executives employed at SKYCITY Auckland casino so as to provide 24hr/day, 7 day a week, coverage at the SKYCITY Auckland casino site
- requirement that the issuance and redemption of Ticket-In Ticket-Out tickets and some cashless gambling credit above $500 in non-restricted areas is linked to suitable player identification.

These measures will be added to SKYCITY’s Auckland casino HRP, which is monitored and enforced by the Department of Internal Affairs and the Gambling Commission.
Currently 67 percent of gaming machine turnover at SKYCITY’s Auckland casino is loyalty-account based, and associated with individuals and therefore able to be tracked at all times.

It is the view of National Party members that these measures, particularly the predictive modelling tool through electronic monitoring, will enable identification of players who are at risk from gambling harm and will raise the bar in harm minimisation programmes. National Party members understand that SKYCITY’s development of this tool is an international first. This bill ensures that this technology is developed and implemented and offers another tool to mitigate gambling harm.

**Accessibility and gambling harm**

The view was presented by many submitters that increased opportunities will increase gambling harm. Certainly National Party members of the committee were concerned about a potential increase in gambling harm. However, we noted the Australian Productivity Commission’s report on “Accessibility and Gambling Harm” acknowledged the view that where gambling opportunities are increased in venues where gambling pre-exists, that “adaptation (host immunity and protective environmental changes such as reduced novelty in gambling and public awareness of problem gambling) typically occurs and problem gambling levels stabilise or reduce, even in the face of increasing exposure.”

Professor Max Abbot, Professor of Psychology and Public Health at Auckland University of Technology (author of the above statement), said to the committee in his oral submission that the degree of correlation between increased opportunity and increased harm was “uncertain”.

**New Zealand Labour Party minority view**

**Process and related issues**

Labour Party members of the committee asked that Treasury, Internal Affairs and Ministry of Health officials advise the committee in order to strengthen the robustness of the economic analysis of the casino extension proposal, detailed changes to gambling law, and the effect on addicted individuals and problem gambling generally. Govern-
ment members blocked those requests, and the quality of analysis and the ability of the committee to present a useful report to the House suffered accordingly.

We also wish to express our concern at the approach taken by the Ministry of Business, Innovation and Employment officials advising the committee. They appeared to confuse their role as advisers to the committee with their normal roles working for the Minister in charge of the bill. Their analysis, where it was done, was poor and defensive. We suggest that the Clerk of the House and the State Services Commissioner work together to establish protocols that inform advisers to committees in the future.

We are further concerned at the warning given to organisations providing services to problem gamblers contracted to the Ministry of Health that individuals involved in providing services pursuant to those contracts should not make public comment on this legislation. The committee was deprived of the type of expertise that would have aided our consideration of the bill.

**Economic issues**

There has been no transparent evaluation process for this economic development initiative. There were no competitive bids.

We agree with the Deputy Auditor General when she said “we do not consider that the evaluation process was transparent or even handed.” And as the Treasury expressed “strong concerns that private benefits to Sky City will exceed public benefits to New Zealanders.”

There is a growing consensus that the Ministers have undervalued the worth of the additional pokie machines and especially the gaming tables, but more importantly that the value to SKYCITY of the 27-year extension to their exclusive licence in Auckland was not properly calculated and brought into consideration.

While as Treasury noted international arrivals for conferences have plateaued since 2005, and there is a low level of public benefit from conference centres, Labour Party members are concerned at an economic development focus on low-paid often casual jobs rather a high-skill high-wage economy.

We also note that the New Zealand Institute of Economic Research report prepared for the Minister indicates that because of diversion of investment there will only be a net 18 new jobs created.
Even if a convention centre is considered a public good investment then alternative funding streams, including for example, an international airport visitor levy, should have been considered in order to better approximate a user-charge approach.

**Gambling harm**

This bill and the Agreement it seeks to implement are inconsistent with the widely agreed and well established objectives of harm minimisation in the Gambling Act. It is inconsistent with the established “sinking lid” policy of the Auckland City Council which has resulted in a reduction in the number of pokie machines. It will grow the most harmful gambling, which results in loss of significant assets especially homes, family breakdowns, and in some cases suicide and murder. The bill removes the opportunity for community input in the 2021 renewal process; and if a renewal is granted in that year, again in 2036. It further removes the Gambling Commission from that process and thereby cancels the requirement to consider an independent casino impact report in each of those years.

**The ability of Parliament to amend the law**

The committee sought and received advice on the ability of a future Parliament to repeal this legislation. The Ministry officials consulted with Crown Law and their report takes account of published judgements referenced in that report. The relevant advice states:

- The NZICC Bill and Agreement provide for the possibility that the regulatory concessions provided by the Agreement may be removed because of direct or indirect Crown action. In this event, the Agreement provides for the payment of compensation referred to as the SKYCITY Compensation Sum.
- Parliamentary sovereignty means that a future Parliament remains free to amend the Agreement and associated NZICC legislation. However unless the amending legislation expressly overrode the compensation provisions, the SKYCITY compensation sum would be payable.
It would also be open to a future Parliament to legislate to nullify the compensation provisions and provide that no compensation or remedy would be available to SKYCITY. However there is a presumption against interpreting legislation as removing property rights without compensation unless the intention to do so is expressed in unequivocal terms. Therefore, if a future government were to intend to remove the requirement to pay compensation, any legislation intended to provide for this would need to be clear and unambiguous. A Court would be likely to interpret any ambiguity in favour of the payment of compensation to the extent that such an interpretation was open to it.

Labour Party members reserve the right to change the law when in government.

**Green Party minority view**

The Green Party believes that the Government has a responsibility to protect New Zealanders from gambling harm through sensible regulation and law making. We are opposed to the NZICC bill in its entirety because the Agreement the bill legislates for is an abrogation of that responsibility.

Parliament’s proper place in relation to gambling is to establish and hold accountable regulatory institutions and processes. This bill compromises the integrity of that role. Legislation permitting the funding of the Government-sponsored international convention centre in Auckland through the proceeds of gambling concessions to a monopoly private operator crosses a line between controlling gambling policy and law and participating and benefitting from the expansion of gambling.

The Gambling Act 2003 was designed to protect New Zealanders against gambling harm by putting a cap on the number of casinos in New Zealand, and preventing existing casinos from increasing the opportunities they offer to gamble.

The NZICC bill exempts SKYCITY from the public health protections of the Gambling Act, allowing for a significant increase in gambling machines and opportunities and the avoidance of the scrutiny required by that Act in relation to licence renewals.

Under the deal, SKYCITY has had its licence, which was due to expire in 2021, extended to 2048. The Green Party is extremely dis-
Commentary

New Zealand International Convention Centre Bill

appointed that despite the extent of these concessions SKYCITY did not appear before the committee in relation to this bill.

The Gambling Act’s processes in relation to renewal are specific, expert, independently conducted, and include a significant opportunity for the public and the Gambling Commission to examine casino operations. If this legislation passes then the only opportunity anyone has to consider the appropriateness of this licence extension is the select committee process, a process that SKYCITY has not engaged in at all.

The deal also allows 230 extra pokie machines and a further 12 gaming tables that can be automated with up to 20 terminals per game. Thus the real impact of the deal is actually 470 extra electronic gaming terminals.

When a society increases the opportunities to gamble, it increases problem gambling harm as a result. Gambling harm hurts everyone. It has a corrosive effect on societies and is directly linked to increased family breakdown, crime, child abuse and suicide.

The Green Party believe that a deal that trades the wellbeing of people for a building is wrong.

Officials have described as “almost certain” increases in harm to thousands of families as a result of the concessions.

Government Ministers were warned by the Department of Internal Affairs (DIA) officials that the extra gambling concessions in the bill would “almost certainly” increase gambling-related harm,¹ and officials warned that those who presented for help were likely to be the tip of the iceberg.

DIA officials estimated that about 6,500 children would be affected by gambling harm from the deal, and this could include “being inadequately clothed and fed, and suffering other examples of deprivation and poor parenting”.

The Government has repeatedly said that any harm resulting from the gambling concessions in the deal will be offset by the “significant additional harm minimisation measures” the casino has signed up to.

These include:\(^2\)

- doubling the number of full-time host responsibility staff in Auckland from three to six, providing dedicated host responsibility staff onsite at all times, 24/7
- introducing predictive modelling technology which analyses player data to help identify customers most at risk from gambling harm
- continuing to roll out SKYCITY’s voluntary pre-commitment programme allowing customers to set both the time and the amount they wish to spend over a given period.

Minsters were warned by Ministry of Health and DIA officials that the so-called harm reduction measures in the bill were largely either already being used by SKYCITY and offered no additional protections at all, or in the case of voluntary pre-commitment, were largely useless.

More specifically, the Ministry of Health’s expert gambling harm team’s advice said that voluntary pre-commitment was unlikely to work, doubling host responsibility staff at SKYCITY was likely to have “minimal” effect, and the inclusion of predictive modelling in the deal was pointless unless it specified what the technology was supposed to achieve.\(^3\)

The predictive model by Focal Research has been in use by SKYCITY for some years but has not been independently reviewed or tested.\(^4\) This tool risk-profiles players for signs of problem gambling. The data associated with the development of this algorithm is very important as it provides insight into SKYCITY’s business model and in particular how reliant the casino is on the turnover from at-risk or problem gamblers. This is important as evidence from Australia, USA, Canada, and New Zealand suggests that between 15 percent

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\(^4\) The Gambling Commission makes reference to the predictive algorithm in the 2007 decision approving the SkyCity Auckland Host Responsibility Programme (GC24/07 – paragraph 55)
to 33 percent of gambling revenue is derived from problem gamblers. This does figure does not include at-risk and affected others. The increase of host responsibility staff from three to six does not necessarily mean that host responsibility measures will be improved. SKYCITY has been considering investing in additional “on-the-floor” host responsibility staff from as early as 2007 when it commissioned Adelaide casino host responsibility coordinators programme.

Research from Australia shows that the Ticket-In Ticket-Out technology that is also part of the deal reduces staff on the floor. Trained staff on the floor is an effective method of harm minimisation.

The Problem Gambling Foundation (PGF) told the committee that the proposal by SKYCITY to introduce host responsibility initiatives is a move to make the deal more palatable. They agreed with the Ministry of Health and DIA advice that the host responsibility measures contained in the Agreement are already in place and do not offer any meaningful improvement to SKYCITY’s current practices.

The predictive model by Focal Research has been in use by SKYCITY since 2007 and is reported on to the Gambling Commission. This tool identifies problem gamblers. PGF is concerned that SKYCITY will use this information to manage the gambler rather than stop the gambler.

The PGF asserted that 40 percent of money lost on pokie machines comes from people with a gambling problem. Therefore SKYCITY’s business model relies on problem gamblers continuing to spend money.

Overall PGF concluded that while the host responsibility measures look good on paper their experience of dealing with SKYCITY’s clients suggests the demands of revenue generation by SKYCITY will outweigh community and corporate responsibility considerations.

We were also concerned about the lack of clear evidence demonstrating the economic benefits of the Agreement. Many submitters raised concerns about the fact that there was economic analysis (such as

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6 Problem Gambling Foundation Submission of NZICC Bill
the Howarth and KordaMentha reports) showing a low rate of economic return and low numbers of jobs created, while other submitters referred to evidence that the job numbers would be significant. However, there is no evidence presented of the latter.

The regulatory impact statement (RIS) relies on a 2011 NZIER report and information “supplied by SKYCITY”. The information supplied by SKYCITY has not been released. However following parliamentary questions and an Official Information Act request the NZIER report was released to us recently. The employment figures referred to in the RIS, “1000 construction jobs and 800 operational jobs at the NZICC itself”, are not contained anywhere in that report.

In fact, the NZIER report looks at the net employment impact in Auckland and nationally of the NZICC and concludes:

- NZ net 120 full-time equivalent (FTE) jobs during construction (380 in Auckland)
- NZ net 18 FTE jobs during operation (340 in Auckland).

In other words, all the job gains are in Auckland, with the investment effects of the deal leading to 260 fewer FTE jobs outside Auckland during construction and 322 fewer FTE jobs outside Auckland during operation.

The Green Party has also obtained employment figures from Australian convention centres which show far fewer than the 800 jobs (500 FTEs) the Government claims will be delivered by this deal. The 3,500-capacity Sydney convention centre employs 200 FTEs, and Melbourne’s 5,000-capacity convention centre employs 133 full-time and 273 casual staff.

University of Auckland law professor Jane Kelsey raised concerns that the contract between the Government and SKYCITY could put a halt to the effective regulation of gambling for the next 35 years. Professor Kelsey said that foreign investors could sue any future government for breaching New Zealand’s international investment obligations if any new laws reduced the profitability of the casino and the value of the company’s shares.

This case would not be heard by New Zealand courts but would take place in a private overseas investment tribunal. New Zealand’s best defence in this case would be the fact that many of our existing free trade treaties provide room for the Government to regulate for public morals.
Professor Kelsey is concerned however that the proposed Trans-Pacific Partnership Agreement (TPP) would prove riskier. The United States is one of the 11 potential signatories to this TPP agreement and some of SKYCITY’s shareholders are United States-based finance companies. This bill, giving effect to the Agreement, opens New Zealand up to being sued by investors from those countries that have agreed to include investor state disputes clauses in this TPP agreement.

We do not agree that laws should be sold to the highest bidder, especially if those laws are designed to protect the community from harm, and the changes to those laws benefit only a select few.

We also do not agree that future governments and future citizens should be constrained by decisions made by politicians today and threatened with financial penalties if they use their right to change the law, bettering the interests of public health, in the future.

The Green Party believes that this bill, which legislates for the SKYCITY deal is legally flawed and morally wrong.
Appendix

Committee process
The New Zealand International Convention Centre Bill was referred to the committee on 11 July 2013. The closing date for submissions was 22 August 2013. We received and considered 730 submissions from interested groups and individuals. We received 6,105 form submissions. We heard 34 submissions, which included holding hearings in Auckland and Wellington. We heard evidence from Denise Roche on her petition.
We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Jian Yang
Hon Trevor Mallard replaced Clare Curran, and Metiria Turei replaced Julie Anne Genter for this item of business.
Electronic Transactions (Contract Formation) Amendment Bill

Member’s Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Electronic Transactions (Contract Formation) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Electronic Transactions Act 2002 to clarify in legislation the time at which a contract is formed when the acceptance of the offer is communicated electronically.

Contracts are generally understood to be formed at the time that the acceptance is communicated to the offeror. An exception emerged in Adams v Lindsell; the “postal acceptance rule” deems, for offers accepted by post, that a contract is formed at the time at which the acceptance was posted. Whether this rule could be extended to contract acceptances communicated electronically has not been tested in the courts. However, if the “postal acceptance rule” were used in an argument relating to electronic communication, the bill would ensure that the general rule of contract acceptance applied.
Time of communication of acceptance of offer
Clause 5 of the bill relates to contract formation and, as introduced, proposes inserting new section 32A to explicitly state that an offer submitted electronically would be deemed to be accepted at the time of receipt of the acceptance by the offeror. We believe this could create a misapprehension that a “hard-wired” rule applies; that an offer can be deemed to be accepted electronically “only at the time of receipt”. We therefore propose amending clause 5 to insert new section 13A into the Act (instead of new section 32A) to make it clear that this is a default rule instead of a rigid approach from which the parties would be unable to contract out.

We consider new section 13A(1) would ensure the bill achieves its intended effect. Section 11 of the Act establishes the time an electronic communication is taken to be received. Our amendment would make it clear that the time of receipt referred to in section 11 of the Act also applies to acceptances of contract offers that are communicated electronically.

New section 13A(2) specifies that the acceptance rule would not apply if the contracting parties agree otherwise, or an enactment provides otherwise. The principal Act currently allows negotiating parties to specify their own mutually agreed conditions in relation to the time and place of receipt and dispatch of electronic communication. We believe our amendment would maintain the freedom of the contracting parties to decide the time a contract is formed where the acceptance is communicated electronically.

Purpose clause
Clause 4 as introduced details the purpose of this bill. We consider section 3 of the principal Act sufficiently addresses the purpose of the legislation and a purpose clause is unnecessary in an amendment bill. We recommend clause 4 be amended to update the overview (section 4) of the Act to add reference to new section 13A.

Defining “time of receipt” and “designated information system”
We considered whether the terms “time of receipt” and “designated information system,” used in sections 10 and 11 of the principal Act,
lacked clarity. However, we were not persuaded that they lack clarity, and consider the terms are therefore in no need of definition.
Appendix

Committee process
The Electronic Transactions (Contract Formation) Amendment Bill was referred to the committee on 15 May 2013. The closing date for submissions was 27 June 2013. We received and considered nine submissions from interested groups and individuals. We heard two submissions.

We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Jian Yang

---------------------------------------------
Petition 2008/ 134 of Allen Hair and 236 others

Report of the Commerce Committee

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Petition 2008/134 of Allen Hair and 236 others

Recommendation
The Commerce Committee has considered the Petition 2008/134 of Allen Hair and 236 others, and recommends that the House take note of its report.

Background
Petition 2008/134 of Allen Hair and 236 others was presented to the House on 14 July 2011 and then referred to the Commerce Committee. It requests

that the House call on the Government in its role as employer to adjust the annuities payable to the members of the Government Superannuation Fund and the National Provident Fund to reflect taxes applicable in 2011 rather than the current reduced annuities that reflect 1990 taxes.

The Government Superannuation Fund (GSF) was established in 1948 as a retirement savings vehicle for state-sector employees. Members of the scheme made regular contributions and upon retirement received a “defined benefit” payment, or defined level of income. The benefits of the GSF are paid in the form of an annuity for the life of the policy holder; upon their decease 50 percent of the annuity is paid to a surviving spouse. The GSF was closed to new members on 1 July 1992. It currently has 66,000 members, 47,000 of whom are annuitants. It is estimated that entitlements will continue to be paid for the next 60 years. The GSF’s assets, investment returns, and contributions are insufficient to meet projected entitlement payments. The shortfall is covered by an annual government “top-up.”

The National Provident Fund (NPF) is the collective name for 11 superannuation schemes. Like the GSF, most of the NPF schemes are defined benefit schemes that are guaranteed by the Government. This means that members’ benefits are secured. NPF schemes have been closed to new members since 31 March 1991.

From 1988 to 1990 taxation reforms prompted a major change to the tax treatment of superannuation schemes, including

• investment earnings being subject to tax from 1 April 1988
• employer contributions being subject to superannuation withholding tax from 1 April 1989
• pension payments becoming tax-free from 1 April 1990.

Superannuation entitlements were reduced to prevent an unintended “windfall” gain to superannuitants from the tax-free treatment of pensions, which would have resulted in a large continuing cost for the Government. Annuities paid after 1990 from the GSF were reduced on a graduated scale by a maximum of 30 percent. Similarly, NPF payments were reduced by a maximum of 40 percent of the original annuity amount.
Committee consideration

It is our view that to compare a defined benefit scheme such as the GSF or NPF with individual tax rates, particularly the rates of retirees, is inconsistent with the Inland Revenue’s rules which state:

The Taxation (Annual Rates and Budget Measures) Act 2011 removed the employer's superannuation contribution tax (ESCT) flat rate of 0.33 as a default rate from 1 April 2012. Instead ESCT must be deducted at an ESCT rate based on an employee’s annual salary or wages and employer contributions. However for superannuation schemes which operate on a principle of unallocated funding, like defined benefit schemes, employer’s superannuation cash contributions may not be attributed for the benefit of any particular employee. This can make it impractical for employers to determine the appropriate ESCT rate, as they cannot link contributions with particular employees' annual salary or wages and employer contributions.¹

We also consider it inconsistent to compare the GSF and NPF with current superannuation or Kiwisaver schemes, as the former are annuity schemes which make payments for the life of the policy holder, or on their decease that of their partner; whereas a modern superannuation or Kiwisaver scheme makes payments to the beneficiary only until their savings are fully expended. A subscriber to the GSF or NPF annuity scheme has a defined benefit based on their final average earnings and the length of contributory service, neither of which is affected by changes to tax rates, either upwards or downwards.

We heard that members on higher pensions who were also in receipt of national superannuation would have benefited from the removal of the national superannuation surcharge in April 1998, under which half of any tax-free annuity was deemed to be assessable income.

Furthermore, the GSF and NPF schemes now receive cost-of-living adjustments indexed to inflation, with all but the last increase in 2009 (increasing the adjustment for applicable members from 90 percent to 100 percent) backdated to the commencement of a member’s annuity or the point at which cost-of-living adjustments were introduced in 1969, whichever was the later. This has incurred a direct cost to the Government.

We also consider that GSF and NPF policy-holders have already received some partial benefit from the 2011 tax reductions through their New Zealand Superannuation payment, which was adjusted at the time. During the course of the consideration of this petition we received an extensive written submission from Treasury officials who also appeared before the committee to answer our questions.

We have no further matters to bring to the attention of the House.

Labour Party minority view

Labour members do not support the majority conclusion on this report.

In 1985 the then Labour Government legislated changes to the GSF scheme to move it away from its traditional male breadwinner career service design to reflect the fact that people had interrupted work histories.

PETITION 2008/134 OF ALLEN HAIR AND 236 OTHERS

The then Labour Government acknowledged and corrected various anomalies in the GSF and NPF schemes and introduced full inflation indexation in 1985 for future annuitants and moved progressively to 100 percent indexation for pre-1985 annuitants.

Labour recognised back then that inflation was a risk that individuals alone could not carry.

Labour will willingly work with the Government Superannuitants Association (GSA) to discuss tax equity and the GSF but notes that the issues are complex and would be subject to critical analysis by officials.

It should also be noted that the annuity reduction was part of the change to the superannuation tax regime in 1990. Tax was transferred from the annuity itself to the contributions making up the annuity. As the GSF was not fully funded, the reduction factor (for future annuitants) was calculated using an actuarial model and this produced a 40 percent reduction that was then lowered to 30 percent.

A review of the reduction factor might not work in annuitants’ favour.

Certainty and predictability in retirement income is important. An increase in tax rates could have the opposite effect on the reduction factor.

A Labour Government would vigorously defend GSF entitlements, for which the Government’s deferred contribution is currently $813 million annually.

Labour would re-institute a joint working group between the GSA and the Treasury. The working group would be tasked with finding a fair solution to the current issue.

**Green Party minority view**

The Green Party does not support the majority view of the Commerce Committee. Historical changes to the way some pensions are taxed have left some people being unfairly disadvantaged, especially those receiving defined benefit schemes such as through the GSF and the NPF. There is an outstanding issue of equity that has not been addressed by this committee.

Due to the complex nature of the tax changes involved, the Green Party supports an independent and expert inquiry into the issue.
Appendix

Committee procedure
The committee met on 2 August 2012, 16 August 2012, 23 August 2012, 8 November 2012, 5 December 2012, 30 May 2013, 27 June 2013, 1 August 2013, 22 August 2013, 17 October 2013, 24 October 2013, 7 November 2013, 21 November 2013, and 5 December 2013 to consider this petition. We received and considered five submissions from interested groups and individuals. We heard evidence from the Government Superannuitants Association and the Treasury.

Committee members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Jian Yang
Construction Contracts Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Construction Contracts Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Construction Contracts Act 2002 (the Act), which prescribes default progress payment arrangements and provides a dispute resolution process (adjudication) as a lower-cost alternative to the courts. The principal amendments proposed in the bill would

- remove most of the distinctions between the treatment of residential and commercial contracts under the Act
- extend the scope of the Act to apply to contracts for design, engineering, and quantity surveying work
- remove the distinction between enforcement of payment determinations and of those relating to rights and obligations
- make the enforcement process more efficient.
Our commentary covers the key amendments we recommend to the bill. It does not cover minor or technical amendments.

**Provisions relating to adjudication**

Whilst adjudication provides an effective means of resolving disputes in the sector, we acknowledge that the tight timeframes set out in the Act could create opportunities for “ambush claims”. Currently, claimants can set adjudication in motion within one working day and the respondent is required to reply within five. Residential owners and smaller contractors are particularly vulnerable to “ambush” as they are not likely to be familiar with the adjudication provisions of the Act. Our recommendations relating to adjudication are set out below.

**Selection of adjudicator**

We recommend adding new clause 13A changing the timeframe for selecting an adjudicator to two to five working days after the notice of adjudication has been served where the parties cannot agree on the appointment. We consider that the resultant pause in the process would limit the ability of a claimant to rush adjudication for tactical reasons.

**Notice of acceptance**

We recommend adding new clause 14A to require the information in a notice of acceptance to be prescribed by regulations. We expect the regulations will require that the following information be included in the notice:

- a statement that the adjudicator has accepted the appointment
- if the adjudicator has been appointed through a nominating body, a statement that this is because the parties were unable to agree on who to appoint
- confirmation the adjudicator meets the eligibility criteria under section 34 of the Act
- all timeframes for adjudication clearly set out and a statement as to which of them have already commenced
- an indication of which timeframes the respondent can ask the adjudicator to extend if necessary
• an estimated cost of the adjudication process
• a statement that the parties have alternative options for seeking redress (including mediation and the courts), if they do not wish to continue the adjudication process.

Currently the content of the notice of acceptance, which commences the adjudication process, is not prescribed. We believe prescribing the information it must convey is the best way to ensure consistency and ensure parties are aware of the process.

Pre-adjudication conference
We recommend deleting clause 15. As introduced, the bill proposes mandatory pre-adjudication conferences. We believe this would add cost and delay adjudication. The Act already allows adjudicators to hold conferences, and making them mandatory is unnecessary. We believe prescribed forms would be a more effective way of informing parties of their rights and the standard procedures involved in adjudication.

Response to an adjudication claim
We recommend inserting new subclause 16(2), which requires an adjudicator to allow a respondent additional time if the adjudicator believes the claim has been served with “undue haste” and the “respondent has had insufficient time” to prepare a response. This amendment would further reduce the opportunity for “ambush” by claimants. We also believe it would allow sufficient time to consider more complex claims relating to design, engineering, and quantity surveying work.

We recommend a further amendment to subclause 16(2) to make it clear a respondent to a claim could seek a time extension from the appointed adjudicator only before the end of the designated response period.

Right of reply
We recommend inserting new clause 16A in the bill to allow claimants a right of reply to an adjudication response. Adjudicators would be free to ignore replies that raise new issues or material, and would be able to allow respondents a further reply.
Adjudicator’s determination form
We recommend amending clause 18 to require that an adjudicator’s determination be dated.

Enforcement of adjudicator’s determination
We recommend amending subclause 28(3) to remove the distinction between payment and other types of determinations. We consider this amendment reflects a key purpose of the bill.

Defendant may oppose entry as judgment
We recommend amending subclause 29(2) to introduce a change of circumstances that makes compliance impossible as an additional ground for opposing an adjudicator’s determination being entered as a judgment in the District Court. Adjudicators’ determinations are not directly enforceable; they must first be entered as a judgment in the District Court.

Meaning of construction work
In the bill as introduced, clause 6 extends the definition of construction work to include design, engineering, and quantity surveying activities. We recommend amending this clause to add operations that are critical for the completion of, or preparatory to, the scope of design, engineering, and quantity surveying work. These “related services” directly affect the quality of building work, and it would benefit consumers if they were covered by the legislation. We did not agree with the contention that extending the meaning of construction work would unfairly open up to adjudication persons who were not party to a construction contract. Under the Act any dispute that requires adjudication would be between the parties to the construction contract.

Interpretation
We recommend amending the definition of “construction site” in clause 5 of the bill as it relates to “related services” to include land where work is planned but has not yet begun. This amendment would apply to land and premises that were subject to the contract.
We consider this is necessary to ensure that design, engineering, and quantity surveying work is covered under the Act.

**Commencement**

We recommend amending the commencement date of the legislation in clause 2 to 1 November 2014.

We recommend inserting new subclause 7(3) and new clause 32 to insert a new schedule, which makes it clear that the amendments proposed in the bill would apply only to contracts entered into, or renewed, on or after the commencement date.

We recommend amending subclause 7(2) to stagger the commencement date for the Act as it would apply to “related services” to 1 November 2015. We believe this would allow enough time for designers, engineers, and quantity surveyors to be informed about, and adapt to, the reforms in the legislation.

**When the Act does not apply**

We recommend inserting new clause 8A to exclude contract provisions for the sale and purchase of second-hand assets, and property management (where they are part of a contract that includes construction work) from the Act. We consider that only the design and construction phases of contracts are intended to be covered under this legislation.

**Progress payments**

We recommend inserting new clause 8B to delete the term “progress” from the payment provisions. This amendment would allow parties to agree to a single payment on completion of work. This is particularly relevant to small construction works that are completed within a few weeks. We believe this amendment is desirable to make it clear that contracting parties are free to agree their own payment terms.

**Payment claims**

We recommend inserting new clause 8C to modify section 19 of the Act. This clause would allow a “claimed amount” to include liquidated damages, breaches of implied warranties under the Building Act 2004, and construction work already carried out. We believe
this amendment would make certain that damages could be claimed if they were specifically agreed in a contract or implied by law.

Payment schedules
We recommend the addition of new clause 9A, replacing the word “indicate” with the word “state” in sections 20(2)(d) and 21(2)(c) of the Act. We consider that the amount of a claim should be specified exactly.

Service of notices
We recommend adding new clause 30A, to make it clear that “prescribed” in section 80 of the Act means “prescribed by regulations.” We believe this would prevent the misapprehension that it meant terms prescribed by the contract.

Other matters
We gave careful consideration to a number of other matters which did not result in amendments to the bill. Our comments relating to these matters are set out below.

Retentions
We are aware of growing concern in the sector relating to retentions. Retentions are a portion of the contract price which is withheld by a developer, or head contractor, until the work is completed, and found to be free of defects, when the retention is paid to the subcontractor. We were concerned to hear that many head contractors may be mis-using retentions as working capital, delaying payment, or holding retention amounts disproportionate to the contract prices. This behaviour undermines the sector’s growth and productivity. While it is outside the scope of this bill we are encouraged to hear the Ministry of Business, Innovation and Employment is giving priority to addressing these issues. We urge the ministry to continue to work with industry players and look forward to policy solutions in legislation in early 2014.
Labour members noted that the Minister has changed his position from one of stating that there was no issue around security of payment and retentions to one of now actively exploring remedies around
these two key issues. Labour members would urge the Minister to expedite the formulation of proposals around retentions and security of payment to provide the industry with a resolution to these long-standing problems. Labour members also note that there is no obstacle to the Minister putting forward a supplementary order paper to this legislation with a set of remedies encapsulated in it.

Security of payment
We considered issues relating to security of payment, involving the party commissioning construction work setting aside the contract price. We believe that security of payment mechanisms in the sector are mostly effective, and the Act provides remedies for non-payment. We consider that changes proposed in this bill should improve access to redress in such an event.

Charging orders
A charging order is a court order registered against a land title that prevents its sale until the basis for the order is satisfied. Under the Act, charging orders can be obtained only for non-payment of commercial construction contracts. We considered suggestions that charging orders should also be available for residential contracts. However, we consider that the distinction between residential and commercial contracts should be maintained. There is a risk that a charging order registered against a residential property could cause a mortgage default, which would not benefit either party.

Ability to claim interest
We considered whether the bill should allow interest claims for late payments, unpaid amounts, and payments awarded through adjudication. Currently, interest claims are precluded only when interest is not mentioned in the contract; where a contract provides for interest, it can be claimed in a payment claim or awarded in an adjudication determination. We were not persuaded that further regulation is required.
Appendix

Committee process
The Construction Contracts Amendment Bill was referred to the committee on 11 June 2013. The closing date for submissions was 25 July 2013. We received and considered 31 submissions from interested groups and individuals. We heard 22 submissions.

We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafōi
Julie Anne Genter
Peseta Sam Lotu-Iiga
Mark Mitchell
Dr Jian Yang
The Education and Science Committee has considered the Report from the Controller and Auditor-General, *Education for Māori: Context for our proposed audit work until 2017*. We have no matters to bring to the attention of the House.

Dr Cam Calder
Chairperson
Petition 2011/46 of John Leadbetter

Report of the Education and Science Committee

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Petition 2011/46 of John Leadbetter

Recommendation

The Education and Science Committee has considered Petition 2011/46 of John Leadbetter and recommends that the House take note of its report.

Introduction

We have considered Petition 2011/46 of John Leadbetter requesting that the House of Representatives “note that more than 7,000 teachers have signed an appeal calling on the Prime Minister to halt the Government’s plan for the future of education in Christchurch, and that the House support this appeal.”

The petition relates to the Government’s Education Renewal Programme for the greater Christchurch area, including the closing and merging of some schools, which was initially announced on 13 September 2012.

Evidence of John Leadbetter

The petitioner told us that a number of teachers felt frustrated and angry with the direction of education in New Zealand, and particularly with the way decisions about Christchurch had been handled. The petitioner argued that the proposals for closure or merger were based on poor and/or wrong information, and that the timeline for consultation was unrealistic. He expressed a view that the plans were developed without genuine engagement or partnership with Christchurch schools, and said that they were driven by issues regarding buildings, rather than how best to educate Christchurch children. The petitioner accepted that some schools needed to be closed in Christchurch after the earthquakes, but felt that the decisions were not being based on correct information or robust evidence.

Evidence from the Ministry of Education

The Ministry of Education told us that the September announcement was informed by extensive community and sector consultation over the preceding year. This process involved initial consultation in October 2011, a draft document released in May 2012, and a public submissions process. It was focused on the future of education in Christchurch, from early childhood to tertiary level, not on individual schools. There were also consultations with affected boards of trustees after the September proposals were announced.

We were told that the proposed changes to the schooling network in Christchurch were the result of the movement of land and people, and reflected the quality of school buildings; and that the statistical information and data that the decisions were based on is publicly available on the ministry’s Shaping Education website.

Interim decisions on mergers and closures in Christchurch

We are aware that on 18 February 2013, after the committee heard from the petitioner, the Ministry of Education released interim decisions on the future of schooling in Christchurch. The interim decisions propose that twelve of the schools that were originally
proposed for closure or merger will now remain open, while seven schools will be closed, 12 will merge, and five new schools are planned to open. We understand the Minister intends to formally announce confirmed decisions on all proposals, where appropriate levels of consultation have been concluded, on 5 April 2013. Some consultations on particular proposals will have a longer consultation period.
Appendix

Committee procedure

The petition was referred to us on 11 December 2012. We heard evidence from the petitioner on 15 February 2013, and received advice from the Ministry of Education.

Committee members

Dr Cam Calder (Chairperson)
Catherine Delahunty
Hon Jo Goodhew
Chris Hipkins
Colin King
Tim Macindoe
Tracey Martin
Sue Moroney
Simon O’Connor
Dr Megan Woods
Education Amendment Bill

Government Bill

As reported from the Education and Science Committee

Commentary

Recommendation
The Education and Science Committee has examined the Education Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
This bill is intended to amend the Education Act 1989 in two principal ways; by setting out the legal framework for a new type of school, to be known as partnership schools kura hourua; and by establishing powers regarding surrender and retention of property. The bill would make a number of miscellaneous amendments to other parts of the Act.

This commentary covers the major amendments that we recommend; it does not discuss minor or technical amendments.

Surrender and retention of property
The bill as introduced includes a number of new sections intended to clarify the powers of the school to search and retain students’ prop-
property. There was some concern that these powers would be too restrictive on schools. The majority of us propose a number of amendments to this part of the bill, to clarify the provisions in the bill, and ensure that schools could exercise appropriate powers in respect of the properties they occupy.

**Authorised staff**

The majority of us recommend amending clause 28, new section 139AAA, to create a power for school boards to authorise appropriate staff other than teachers to exercise the powers of surrender and retention of property. These powers would be restricted to persons in an employment relationship with the school board. The majority of us believe that some non-teaching staff members, such as guidance counsellors, might be suitable to exercise these powers. Where appropriate staff members were given authority, it would have to relate to a specific power or powers, and to be noted in writing; it could also be conditional.

**Search and seizure**

The majority of us recommend inserting new section 139AAAB, in clause 28, to allow a teacher or staff member to require that a student remove their jacket or outer clothing so that it can be searched, and to require the search to comply with the safeguards detailed in new section 139AAAC. The removal of outer clothing would not be permitted if the student had no other clothing, or only underclothes, under the outer clothing. Students might be suspected of having harmful or illegal items in the pockets of their jackets or outerwear, and the new section proposed would make it clear for teachers how they would be permitted to search for such items.

The majority of us also recommend new section 139AAAB provide a power to require the removal of items such as head covering, gloves, footwear, or socks, (which does not include tights or stockings), which would not otherwise be classified as outer clothing.

The majority of us recommend amending section 139AAD to allow a teacher or an authorised staff member to take reasonable disciplinary steps if a student refuses to remove any outer clothing, head covering, gloves, footwear, or socks, or to surrender a bag or other container.
The recommended new section 139AAAB would allow a teacher or other staff member to require a student to hand over a bag or other container and allow it to be searched, if they believed the student is in possession of a harmful item. The majority of us are concerned that the legislation as introduced would prohibit a teacher from requiring a student to hand over a bag containing a harmful item, leaving the teacher unable to take this step to provide a safe learning environment.

The majority of us also recommend inserting new section 139AAAC, to require that any search be carried out with sensitivity and so as to afford the student maximum privacy and decency; and that where possible the search be carried out by a teacher of the same sex as the student, in the presence of another teacher or authorised staff member of the same sex. The majority of us believe these restrictions would minimise the potentially invasive aspect of such searches.

None of the changes proposed to the Education Act would in any way affect police search powers or the use of dogs.

**Bodily samples**

The majority of us recommend amending section 139AAB so that teachers or staff members could encourage a student to participate in a voluntary drug programme that involved testing of bodily samples. The bill as introduced would prohibit teachers from requiring students to provide a bodily sample, which might be interpreted as preventing school staff from suggesting students participate in voluntary drug programmes, since they may involve drug testing. School boards can already require that drug testing be an agreed condition of return to school after a suspension; but we hope that this amendment clarifies that schools may encourage students to enter programmes involving drug testing without the student having to undergo suspension.

**Drug dogs**

The majority of us recommend amending clause 28, new section 139AAC, to allow a contractor to bring a suitably trained dog to a school to search school property. We heard that the use of drug dogs effectively deters students from bringing drugs to school. However, the majority of us believe because of potential New Zealand Bill of
Rights Act 1990 issues, among other reasons, dogs operated by contractors should not be used to detect drugs on students, but only to search school property, such as lockers or desks. Our amendment specifies what property the dogs could and could not search.

Rules and guidelines
The majority of us recommend amending clause 28, new section 139AAF, to require the Secretary of Education to issue rules regarding the surrender and retention of property and searches by schools. The bill as introduced provides for the Secretary to issue such rules, but we believe that their issuance should be mandatory. The majority of us also recommend amending new subsection (2), and inserting new clause 40A, to reflect the passage of the Legislation Act 2012.

To ensure the appropriate application of these rules, we also recommend amending clause 28 to add new section 139AAG, making it mandatory for the Secretary for Education to issue guidelines about exercising the powers of searches and the surrender and retention of property. Guidelines can provide more explanation, examples, and description of best practice than is possible in rules. Boards, principals, teachers, and authorised staff members must have regard to these guidelines when setting their schools’ policies and procedures. This should give schools the best possible assistance in managing this difficult area.

Some of us considered whether this clause should include a requirement for the Secretary to consult the sector before issuing guidelines; the majority of us believe this consultation is very important, but consider that it is standard practice so does not need to be mandated in legislation. The majority of us also note that if the legislation explicitly required consultation, this would unnecessarily restrict the Secretary when a minor technical change was involved, or when an immediate change was needed.

The majority of us believe the guidelines should address the rights of families when their child is subject to these provisions. We are aware that Community Law has produced a document, “Schools and the Right to Discipline”, which outlines the rights of a parent, but we understand it has not been updated for several years. We have an expectation that it would be updated to reflect any changes resulting from the passage of this legislation.
The majority of us recommend amending clause 2 so that clauses 28 and 40A, which deal with surrender and retention and transitional provisions, would come into force on 1 January 2014. This would allow time for the Secretary to develop the necessary rules and guidelines, so that they could come into force at the same time as the relevant provisions in the legislation. The rest of this Act would come into force the day after the date on which it received the Royal assent.

**Bags or containers in a student’s control**

The bill makes a number of references to bags or containers that are in a student’s control. We considered including a definition of “control” in this context. For example, if a student is made to leave a room without their bag, we considered whether the bag is still under their control and whether a teacher could then search the bag without their agreement. However, the majority of us feel such questions are better addressed in the guidelines than in legislation, as guidelines can provide examples and discussion of the appropriate application of these sections. When the Secretary of Education is developing the guidelines, the majority of us would expect to see consideration given to the issue of a manufactured loss of control, such as we have described above, and it should be clear that this does not imply relinquished control.

**Partnership schools kura hourua**

We considered whether partnership schools should be subject to the same oversight as existing state schools, for example via the Ombudsman. On balance it is our view that the Ombudsman Act 1975 should apply to the exercise of discipline powers relating to suspensions, expulsions, stand-downs, and exclusions, and we therefore recommend amending clause 31, new section 158X, and inserting new clause 43. This provision would have the effect of ensuring that all children and their families would have access to the Ombudsman. We also considered the possibility of independent dispute or complaints processes for schools. We note that currently, any board of trustees in New Zealand can initiate an independent review process, and that whether they choose to avail themselves of this right depends on an individual board’s disciplinary policy.
We recommend amending clause 31, new section 158D(3), to require any contract between the Minister of Education and a partnership school sponsor to include a procedure for the independent review of complaints against the school. The independent entity conducting the review would make recommendations to the sponsor if an issue arose that was not resolved satisfactorily through a partnership school’s internal processes. Such a review process is important since students are legally required to enrol in and attend school, and parents have no contractual relationship with the institution.

We recommend inserting new section 158DA in clause 31 to allow a person who refers a complaint about a sponsor to the Ombudsman to refer a complaint to an independent reviewer in respect of the same matter. We believe that it is important parents be able to access both review options. The independent reviewer would be able to review the complaint irrespective of whether or not the Ombudsman had completed its investigation, and irrespective of the outcome. We feel that including the Ombudsman in the review process would benefit students and their families in managing the practical aspects of complaints about disciplinary decisions. It would also allow the students and their families to benefit from the existing body of precedent relating to the disciplinary process.

We recommend the inclusion of new clauses 40B, 40D, 40E, 40F, and 42 to make consequential amendments to various Acts to reflect the introduction of partnership schools.

**Other amendments**

We recommend amending clause 21 to prevent the Minister of Education from approving an alternative constitution for a board unless he or she has reasonable cause to believe that an alternative constitution is in the best interests of the school or schools governed by the board. We are concerned that the bill as introduced implies that the Minister would not be required to take account of this consideration in some circumstances, and we believe dividing new subsection (1A) into new subsections (1AA) and (1A) would clarify the intention.

We considered recommending amending clause 21, new subsection (1B), to include an explicit requirement for the Minister to consult on whether the alternative constitution is in the best interests of the school. However, a legislated consultation requirement already ap-
plies where schools are being merged, a new school established, or school boards combined, and, as these are the circumstances where the provisions in new subsection (1B) would apply, a separate consultation requirement is unnecessary.

As it is proposed to amend the Education Act to allow the allocation of National Student Numbers to children not enrolled at an early childhood education centre, we recommend inserting a new clause 40C to make a consequential amendment to Schedule 1A of the Births, Deaths, Marriages, and Relationships Registration Act 1995. This is necessary, as Schedule 1A as introduced authorises the disclosure of certain information for the purposes of verifying and updating “student” information held on the National Student Index, a term that does not apply to children who are not enrolled.

**Minority views**

**New Zealand Labour Party**

The New Zealand Labour Party does not support the introduction of partnership schools. We believe that the Government should be focused on ensuring that every school in New Zealand is a great school, and that every student has access to a broad education that allows them to fulfil their individual potential. We are concerned that the Government is narrowing the focus of the education system, focusing on a small set of measurable targets to the exclusion of a broad and balanced curriculum. We recognise that schools are places where students develop communication, self-management, perseverance, curiosity, and social skills, and we need to value these too.

*The failed competitive model*

The introduction of partnership schools is based on the failed notion that increased competition will improve overall educational outcomes. Even the Treasury has argued that schooling systems that use highly competitive elements, including partnership schools, do not produce systematically better outcomes. The New Zealand Labour Party is concerned that in one of the areas the government has highlighted for partnership schools, Christchurch, existing schools are being closed or merged partly on the basis of existing over-provision. No partnership school should be allowed to operate in an area where state schools have been forced to close or merge.
Quality teaching
At a time when the Government claim they are focused on increasing the quality of teaching, and announced in Budget 2012 that they intended to introduce a postgraduate qualification as a requirement for all trainee teachers, this bill allows partnership schools to employ staff with no formal teaching qualifications at all. The bill does not even require the principal of a partnership school to be a qualified teacher. We note the comments of submitters who produced evidence to show that schooling systems with the highest rates of performance in the OECD also have some of the most stringent teacher registration requirements. The New Zealand Labour Party recognises that teaching requires a unique set of skills, and believes that all teachers should be appropriately qualified for the job and registered.

Public scrutiny
The New Zealand Labour Party is concerned that partnership schools will not be subject to the same level of public scrutiny as existing state schools. We were alarmed to learn that the government has ignored the concerns raised by the Ombudsman about the exemption of partnership schools from the Official Information Act. These schools will receive significant amounts of taxpayer funding and should be held accountable for how they use it.

A broad and balanced curriculum
All students in New Zealand schools should be taught a broad and balanced curriculum. The existing New Zealand Curriculum is recognised as one of the best in the world. We are concerned that partnership schools will not have to teach to the existing curriculum, and subjects such as science may be distorted to fit the beliefs of school owners, rather than ensuring that students gain a solid understanding of established scientific principles. It is still unclear who will approve the curriculum that a partnership school will teach to.

The profit motive
The New Zealand Labour Party does not believe that partnership schools should be allowed to operate as private, profit-making enterprises. Money withdrawn from the education system in the form of profits is money that is not going towards educating young New
Zealanders. The Government is placing an over-reliance on the “contract” with partnership school operators, and excluding partnership schools from many of the existing scrutiny and accountability mechanisms on that basis. Parents will be excluded from decisions affecting their child’s education because there will be no boards of trustees. There are no restrictions on who or what can be a partnership school sponsor, and no clear process is set out in the legislation for approving applications.

Enrolment

Partnership schools will not have an enrolment zone. There is nothing to prevent a partnership school from accepting the majority of their enrolments from outside the school’s immediate neighbourhood. The government claims that partnership schools will be targeted towards priority learners, yet there is nothing in legislation to ensure that this happens. We remain concerned that partnership schools will use under-hand methods to “cherry pick” students.

Underachieving students

We recognise that there are a number of learners who are currently struggling within the school system. Māori and Pasifika students often have lower rates of qualification attainment than their counterparts. The New Zealand Labour Party believes that the government should be focused on ensuring that all students, regardless of which school they attend, are supported to reach their full potential. The Government should be carefully reviewing the evidence about what works and extending programmes that have already been proven, rather than embarking on an ideological experiment that, even if successful, would only benefit a small number of students.

Flexibility already exists

A variety of different types of school already exist within legislation, for example special character schools can already be established within the existing public schooling framework. There is no need to create a new category of partnership schools in order to achieve the flexibility that the Government claims it seeks.
No mandate for partnership schools
The New Zealand National Party government began working on proposals for partnership schools before the 2011 general election, yet it appeared nowhere in their manifesto. Before this bill has even progressed through Parliament, the Government have already begun the process of establishing partnership schools. We believe that this shows absolute contempt for those who took the time to make submissions, including those who submitted in favour of partnership schools but suggested amendments to the bill as drafted. At the very least the commencement of this bill should be delayed until after the next general election, so that voters can have their say on it.

The future of partnership schools
On-going funding and support for partnership schools will not be guaranteed under a future New Zealand Labour Party government. We will not guarantee any partnership schools established during the term of the present Government the right to integrate into the state school system. We reserve the right to impose additional contractual obligations on any partnership schools established, such as a requirement to employ registered teachers and the removal of exemption from the Official Information Act 1982. No further partnership schools will be established under a New Zealand Labour Party government and legislation allowing for their establishment will be repealed.

Other provisions
The New Zealand Labour Party opposes the proposal in the bill that would allow property developers to derive a profit from the use of Crown land for the building and leasing of early childhood education facilities on school sites. Community-owned and -operated early childhood education facilities can already be built and provided on land designated for state education and the New Zealand Labour Party believes this approach should be encouraged, rather than the privatisation of a community asset proposed by this bill.

Green Party of Aotearoa New Zealand
The Green Party of Aotearoa New Zealand opposes this legislation almost in its entirety. While some aspects of the Education Act might
be better clarified by some provisions of this bill, its primary purpose is to establish partnership schools to the detriment of a strong high-quality public education system. We also disagree with the provision of more stringent and in our view unjustified search powers by schools of children and young people.

**Partnership schools kura hourua**

We consider that the establishment of this new class of publicly funded but unaccountable school is a deliberate attempt to extend the privatisation of the public school system into the primary sector. New Zealand’s education system scores extremely well in OECD comparisons and this new model of corporate schooling is a direct import from countries who score well below New Zealand’s ranking. We cannot see how importing a failed model of privatised yet publicly funded schools from lower ranked nations could advance New Zealand’s educational reputation nor the educational achievement of New Zealand’s children.

The bill provides these schools with a high level of discretion and control but with very little regulatory oversight of their operations. We agree with the new provision that allows for application of the Ombudsmen Act to these schools but remain concerned that the Official Information Act provisions do not apply to organisations who receive public funding. While we were told that contractual arrangements between the government and the school would be publicly available, we know from other similar public service privatisation examples, such as private prisons, that crucial financial information is kept from the public on the grounds of commercial sensitivity. That concern has not been allayed during the consideration of this bill.

Neither are we convinced by any evidence presented during the select committee hearings that these new partnership schools will provide any better education to the children with the greatest educational need. Again we were assured that the contracts between these schools and the government will be focused on these learners, but overseas evidence shows clearly that these schools tend to cherry-pick the more successful students from the vulnerable learning population and leave the genuinely vulnerable students without the education support they need. This risk is exacerbated by the absence of a requirement that teachers at these schools be registered teachers. While described by some submitters as a necessary alternative, we
consider that these schools are a dangerous experiment on the children who are the most in need of the highest quality best practice learning environment.

We believe that the New Zealand public education system has all the best practice models and flexibility needed to deliver for the so-called tail of underachievement but that as a result of a political deal between the New Zealand National Party and ACT New Zealand parties, those demonstrably effective opportunities are being ignored in favour of this political experiment.

*Search and surrender*

While we agree that a school must be a safe place for students and teachers we do not believe the additional powers in the bill can be justified. We were dismayed that committee members suggested wording for the legislation which was contrary to the expert advice that we received from submitters who were experts in human rights, teaching, and safety. The provisions to search, including under head wear and in socks, are unnecessary and are more rightly the search powers that are exercised by the police. In addition the legislation does not make clear that teachers have no authority to engage in police-like searches and that students can refuse to be searched. The rules and guidelines are yet to be developed that will give teachers clear boundaries on what they can lawfully require of a student or what searches families can expressly refuse to allow. Too many of the boundaries of the search powers are left to the Ministry to develop and this makes the law unclear and in our view unworkable.

*The New Zealand First Party*

The New Zealand First Party wishes to acknowledge the 2,193 submitters on this Amendment Bill. The New Zealand First Party also acknowledges that of these submitters 2,100 were opposed to the creation of partnership schools kura hourua, 62 were in support of partnership schools, and approximately 31 remained silent on this specific issue inside their submissions.

The committee heard or were provided with several examples, from submitters both supporting and opposing the creation of partnership schools, of how provisions currently available inside the Education
Act 1989 can and do provide the suggested flexibility and innovation required for a successful partnership school. For example, Mai I Te Maru o Nga Kura-a-Iwi o Aotearoa is a group of 23 iwi or tribal schools. According to their in-favour submission they are high performing schools in terms of literacy, numeracy, Ngā Whanaketanga Rūmaki Māori-Māori-medium National Standards and NCEA and they are rightly proud of that record. However the committee also heard that they were created, are currently operating and have achieved their success under the flexible provisions of the existing Education Act. The committee heard that inside mainstream schools there are classes or units being run under alternative educational philosophical guidelines, for example Montessori Units. The School Trustees Association confirmed that under current legislation the board of trustees of any state school can open a unit of special character should they believe there is a demand for such a unit or classroom from their school community. We heard that under the current legislation the board of trustees of any state school already has the ability to set the time of the school day as long as it does not contravene the minimum requirement of attendance inside Part 7, section 65B(3)(b) of the Education Act. The New Zealand First Party remains disappointed that while it was never denied by advisors or the Partnership Schools Working Party that this flexibility already exists, that a predetermined view was developed to ignore this reality so as to “create the environment” which allows the sponsors of partnership schools to take advantage of other amendments in the bill. We understand from advisors that these amendments will see partnership schools bulk funded to the level of a Decile 3 state school. This will be inclusive of the property dollar, targeted education grant, and teacher salaries, but without any requirement to spend those monies on modern learning environments, qualified and registered teachers, or the delivery of the full New Zealand Curriculum. The Partnership Schools/Kura Hourua Working Group informed us that the motivation for these schools is “to lift educational achievement amongst our most disadvantaged students.” The New Zealand First Party has been unable to establish how partnership schools will be able to target these specific students, particularly those whose academic performance has them sitting at stanine one to stanine
three–referred to as the tail of the bell curve–when the bill itself directs partnership schools to have an open door enrolment policy without zone restrictions. The New Zealand First Party believes it is worthy of note that while two submitters spoke in general defence of profit motive no arguments were forwarded by any submitters in support of a “for profit” industry around partnership schools.

The New Zealand First Party also notes that many submitters held current or past teaching qualifications and that they came to the committee in good faith with a strong belief in teaching as a profession. They also came with an expectation that the members of Parliament they addressed would hear their submissions with an open mind. We were disappointed that not only did some members of the committee suggest that a professional standing was not required as there was “an inherent ability” to teach in every human but that it was also suggested by some members that these submitters’ opinions and views be dismissed as having a vested interest as opposed to carrying any professional expertise.

The New Zealand First Party remains committed to the best individual educational outcomes possible for each and every New Zealand student. We do not believe that the application of partnership schools kura hourua as developed in this Amendment Bill will achieve this goal for either the suggested target student body or the country as a whole. As a consequence, while good work has been done around amendments to the surrender and retention provisions and with further policy work that saw the reinstatement of the Ombudsman around suspensions, stand-downs, exclusions, and expulsions, the New Zealand First Party will oppose the bill upon its return to the House.
Appendix

Committee process
The Education Amendment Bill was referred to the committee on 18 October 2012. The closing date for submissions was 24 January 2013. We received and considered 2,193 submissions from interested groups and individuals. We heard 99 submissions, at hearings in Christchurch and Auckland as well as Wellington. We received advice from the Ministry of Education. The Regulations Review Committee reported to the committee on the powers contained in new sections 139AAA and 139AAF.

Committee membership
Dr Cam Calder (Chairperson)
Carol Beaumont
Catherine Delahunty
Hon Jo Goodhew
Chris Hipkins
Colin King
Tim Macindoe
Tracey Martin
Simon O’Connor
Dr Megan Woods
Metiria Turei replaced Catherine Delahunty for this item of business.
Petition 2011/27 of Helen McDonnell on behalf of the Board of Trustees of Salisbury School

Report of the Education and Science Committee

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Petition 2011/27 of Helen McDonnell on behalf of the Board of Trustees of Salisbury School

**Recommendation**

The Education and Science Committee has considered Petition 2011/27 of Helen McDonnell on behalf of the Board of Trustees of Salisbury School, and recommends that the House take note of its report.

**Introduction**

We have considered Petition 2011/27 of Helen McDonnell on behalf of the Board of Trustees of Salisbury School requesting that the House support the retention of Salisbury School, and note that more than 3,000 people have signed an online petition supporting this request.

**Background**

Salisbury School is a residential post-primary single-sex school for girls with underlying intellectual impairment. In May 2012, the Ministry of Education published a consultation document, *The future role of residential special schools*, which sought to determine whether residential schools represented the best special education service, or whether the new Intensive Wraparound Service (IWS), which provides comprehensive specialist support and services for students with complex behaviour/social needs within their families, communities, and local schools, was better. Soon after, in June 2012, this petition was lodged with the House of Representatives. Following the conclusion of the ministry’s consultation and on the ministry’s recommendation the Minister of Education announced in August 2012 that she had decided to close Salisbury School.

**Closure of Salisbury School**

We received evidence from the Ministry of Education that the result of its review reflected advances in IWS. The ministry explained that early indications of the success of the IWS programme persuaded it to recommend to the Minister of Education that the IWS be expanded, and it was expected that this expansion would affect the number of students attending residential special schools. The ministry therefore recommended a consolidation of residential schools, from four to two; IWS would take up to 120 additional children, and retaining two schools would keep a residential option available for 100 children. Salisbury School was one of the two residential schools recommended for closure, with students to be relocated to Halswell Residential College (currently a single-sex boys school, which was expected to become a co-educational institution).

**Judicial review and outcome**

Following the Minister’s announcement in August, Salisbury School applied for a judicial review of the decision. The High Court set aside the decision for two reasons; it said the Minister could not assume a lawful power to authorise enrolment of girls at Halswell in numbers up to a half of the total number enrolled in 2013 whilst it remains a single-sex boys’ school; and it found the decision incorrectly disregarded the prospect of greater risk...
of sexual or physical abuse to girls who would otherwise reside in a single-sex girls’ special needs school, if they were enrolled at a co-educational residential facility.

Given the court’s decision, Salisbury School is now not at immediate risk of closure. We were told that the Minister will give careful consideration to the issues raised in the judicial review before any future options for the residential schools network are considered. We were assured by the ministry that the Minister is not considering any option at this stage regarding Salisbury School’s future.

We have no further issues to bring to the attention of the House.
Appendix

Committee procedure
The petition was referred to us on 25 June 2012. We received evidence from the Ministry of Education.

Committee members
Dr Cam Calder (Chairperson)
Carol Beaumont
Catherine Delahunty
Hon Jo Goodhew
Chris Hipkins
Colin King
Tim Macindoe
Tracey Martin
Simon O’Connor
Dr Megan Woods
The Education and Science Committee has considered the Report of the Controller and Auditor-General, *Crown Research Institutes: Results of the 2011/12 audits*, and has no matters to bring to the attention of the House.

Dr Cam Calder
Chairperson
The Education and Science Committee has considered Petition 2011/50 of Hon Damien O'Connor on behalf of the students and staff of Parklands School Motueka, which requests that the House note that 78 people have signed a petition advising that the Novopay situation has affected everyone at Parklands School in some way, and requesting that it be urgently sorted out.

We have no matters to bring to the attention of the House.

Dr Cam Calder
Chairperson
The Education and Science Committee has considered the Report from the Controller and Auditor-General, *Education sector: Results of the 2011 audits*, and has no matters to bring to the attention of the House.

Dr Cam Calder
Chairperson
Petition 2011/37 of Dorothy Stewart

Report of the Education and Science Committee

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Petition 2011/37 of Dorothy Stewart

Recommendation

The Education and Science Committee has considered Petition 2011/37 of Dorothy Stewart and recommends that the House take note of its report.

Introduction

We have considered Petition 2011/37 of Dorothy Stewart and 12,666 others requesting that the House prevent the proposed closure of the Ranui Special Needs Unit and other existing units for children with moderate learning needs and dedicate direct funding from the Ministry of Education to teachers attached to these units.

The petition specifically relates to the special needs unit at Ranui School, which has since closed, affecting 24 students, but it also addresses the closure of similar units around the country. We heard from the petitioner and the Ministry of Education, and discussed both the unit at Ranui School, and other forms of assistance that the ministry offers to students with learning needs.

Closure of Ranui School Special Needs Unit

The petitioner told us she believes the education system does not cater for students with moderate learning needs, including her own children. The petitioner has three school-aged children with special needs, and receives Ongoing Resourcing Scheme (ORS) funding for one of them. After the Ranui Special Needs Unit was closed, her 17-year-old daughter was put in a class with 12-year-olds; she stopped attending school because of bullying from classmates, and now studies through the Correspondence School. The petitioner told us her son is crying in fear at the thought of having multiple teachers each day when he starts college next year. The third child was placed in a special needs unit at another school, but the petitioner was told by the Ministry of Education that he would not be funded to attend the unit, and would need to attend the closest school. The petitioner felt that this school was unable to meet his needs.

We heard that one of the families affected by the closure has emigrated to Australia as a result; another student moved to a school where the teacher was unable to respond to his learning needs, and so gave him colouring-in to occupy him. We heard that the children and their new teachers did not receive teacher aide support, with the exception of one child who refused to enter his new class without his teacher aide.

The unit at Ranui School was funded by the local schools combining their Resource Teachers of Learning and Behaviour (RTLB) resources and providing designated teachers to work there. This practice is now prohibited, and RTLBs are directed to support teachers in multiple schools. We heard from the ministry that when permission was granted for the creation of the Ranui Special Needs Unit in 2004, it was made clear at the time that this was a special exception to the itinerant model, and could be reviewed. The petitioner told us that the ministry informed her that the units could remain open if the schools or clusters
of schools fund them themselves, but the RTLBs can no longer be used in the units. The petitioner argued that schools cannot support the units from their current funding.

**Resource Teachers of Learning and Behaviour**

After the unit at Ranui School closed, children from the school were enrolled in mainstream schools and assigned itinerant RTLBs. The ministry told us that RTLBs were introduced in 1999 as part of the Special Education 2000 framework, and are the principal school-based resource to help teachers develop effective, inclusive classroom environments for Year 0-10 learners with learning or behaviour difficulties. RTLBs are funded to work itinerantly with a cluster of schools, to support teachers of students with learning and behaviour difficulties, but also spend some time with the families.

The petitioner told us that in mainstream schools, RTLBs would merely check up on the children two to three times a week to ensure they were attending class. In one or two cases, the RTLBs spent more time with high-need children in class once or twice a week. The petitioner told us that each RTLB is responsible for such a large group of students that they cannot reach every student, or even visit every teacher who works with the students.

The ministry said that having RTLBs situated in one classroom all the time limits the number of learners in the RTLB cluster who can receive support, and the potential for building the capability of teachers in all the schools in the cluster. The ministry suggested that such an approach results in inequitable service coverage for learners around the country.

**Ongoing Resourcing Scheme funding**

The petitioner told us that she would prefer to see Ranui and other such units reopened; but if this is not possible, the next best solution would be to increase ORS funding to cover 2 to 3 percent of the student population, allowing students with “moderate” needs to be catered for. The petitioner told us the current level of ORS funding is the lowest for comparable purposes in the OECD. She considered the RTLBs should be retained to work with students who are able to learn in the mainstream environment with support.

The Ministry of Education told us that the ORS funding is targeted at 1 percent of the student population, and stays with the students throughout their schooling. Altogether 8,000 children are covered by the scheme. The funding provides three types of support: teacher aide support, additional teacher time, and access to a range of specialist services. We heard that teacher aide support funding has increased with successive Budgets, to reflect the rising cost of living. We were told that any increase in ORS funding to cover 2 percent of the student population, as the petitioner proposed, would entail a decrease in another part of the system. We also heard that schools can still choose to pool their ORS funding to provide a unit for students with special needs. However, once the student leaves the unit, to attend a new school or having finished their education, the ORS funding would follow the child, resulting in the unit receiving less funding.

**Other measures**

We are aware that the Ministry of Education has begun to offer an Intensive Wraparound Service for some students, which is in the early stages of implementation. The service is under evaluation by the New Zealand Council for Educational Research, which will measure the resultant shifts in students’ life outcomes and relationships, and in teachers’ confidence, among other indicators, to ensure it is operating effectively.
We heard that the ministry has recently launched Inclusive Education Capability Building Project, an initiative targeted at facilitators who provide professional development to schools. This project will employ up to 30 professional development providers full-time to develop a framework for inclusive practice; and tools and resources for teachers, to help teachers improve their ability to assist students with disabilities. After two years, the goal is to have achieved world-leading practice in inclusive education.

**Conclusion**

We recognise that these families felt well served by the previous system, and they have been affected by the closure of this unit. We look forward to seeing the results of the Inclusive Education Capability Building Project, and how it serves children and families in a similar position to that of the petitioners.
Appendix

Committee procedure

The petition was referred to us on 18 October 2012. We heard evidence from the petitioner on 17 April 2013, and from the Ministry of Education on 8 May 2013.

Committee members

Dr Cam Calder (Chairperson)
Carol Beaumont
Catherine Delahunty
Hon Jo Goodhew
Chris Hipkins
Colin King
Tim Macindoe
Tracey Martin
Simon O’Connor
Dr Megan Woods
The Education and Science Committee has considered the Report from the Controller and Auditor-General, *Education for Māori: Implementing Ka Hikitia—Managing for Success*.

We have no matters to bring to the attention of the House.

Dr Cam Calder
Chairperson
Student Loan Scheme Amendment Bill (No 2)

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Student Loan Scheme Amendment Bill (No 2) and recommends by majority that it be passed with the amendments shown.

Minority views
While supporting the intent of the bill to collect overdue student loan repayments, the New Zealand Labour Party has concerns about clause 39(4) which inserts a regulation-making power, and therefore opposes this clause.
The Green Party opposes the bill in its entirety.

Introduction
The student loan scheme represents a major financial commitment by the Government to support people in tertiary education. The bill aims to improve the value and fairness of the scheme, and to ensure
that student loans are administered as efficiently as possible. It seeks
to amend the Student Loan Scheme Act 2011 in two main ways:

• introducing information-matching with the New Zealand Cus-
toms Service to locate borrowers in serious default when they
enter or leave the country
• widening the definition of income for student loan repayment
purposes so that a borrower’s repayment obligation more ac-
curately reflected their ability to pay. The amended definition
of income would broadly align with that used for Working for
Families tax credits and student allowances.

The bill also proposes that various measures, which were provided
for in the Act and due to be implemented from 2013 to make admin-
istration of the scheme more efficient, should not now proceed. This
reprioritisation would allow the Inland Revenue Department to focus
on the Act’s core policies within the constraints of its existing com-
puter system, and would have minimal impact on borrowers.

Finally, the bill seeks to make several technical remedial amendments
to ensure the Act works as intended.

This commentary discusses the more significant amendments we re-
commend to the bill. We are also recommending several minor and
technical amendments, which are not discussed in this commentary.
They include changes or insertions in clauses 7(2), 13, 15, 21A, 25A,
31, 53, 56A, 57A, 57B, and 57C.

**Repayment obligations for first-time borrowers**

We recommend amending clauses 6(7) and 13 (inserting new section
72) to correct an unintended consequence of the 2011 Act. From
1 January 2012, the Act enabled the Inland Revenue Department to
receive information from StudyLink about loan advances almost in-
stantly, rather than only once a year, in February. This allowed bor-
rrowers to view their consolidated loan balance, rather than having to
add the amounts managed by two different agencies. However, an
unintended drawback of the earlier transfer has been that new bor-
rrowers’ repayment obligations are calculated on their income for the
entire tax year, even when they have had the loan for only a short
time.

The amendment we propose would provide that a new borrower who
took out a loan after 31 December would not be subject to the end-
of-year assessment for that tax year. (Repayment deductions would, however, continue to be made from any salary or wages from the date that the borrower first drew down the loan.) We recommend that this amendment apply from 1 April 2012 for the 2013 and future tax years.

To assist any borrower adversely affected in the 2012 tax year, we recommend amending clause 39 and inserting new clause 49A to continue the relief currently provided through the Student Loan Scheme Act 2011 (Transitional Provisions) Regulations 2012, which would otherwise expire in 2015.

**Further reprioritisation measures**

The bill recognises that some of the changes to the administration of the student loan scheme originally provided for in the Student Loan Scheme Act 2011 would be too complicated to implement within the Inland Revenue Department’s current computer system, and should therefore not proceed. Based on further examination of priorities, and the costs and benefits of making changes, we recommend that four other measures provided for in the 2011 Act should also be cancelled. They are discussed below.

**Relief for small amounts of loan obligations**

Under the Student Loan Scheme Act 1992, repayment obligations under $20 were not collected and were written off. The 2011 Act changed this so that small amounts remain part of a borrower’s loan balance, for future collection. As the scheme will continue to be administered under the Inland Revenue Department’s current computer system, it is most cost-effective to reinstate the discretion to write off small obligation amounts under $20. We therefore recommend amending clause 22 by inserting subclauses (2) and (3) to reinstate this discretion in section 144 of the Act.

**Loan interest calculation method**

In the bill as introduced, clause 54 would change the interest calculation method in two ways with effect from 1 April 2013: loan interest would only be calculated for overseas-based borrowers, and it would be calculated daily and charged and compounded monthly.
We recommend the removal of clause 54 so that the current system for calculating loan interest is retained. Under the current system, loan interest is calculated for all borrowers and then written off for New Zealand-based borrowers; the method used entails interest accruing daily and being charged and compounded annually.

Removing clause 54 from the bill would have the effect of retaining the existing loan interest regime in sections 134 to 137 of the Act. As a consequence of the above, we recommend inserting clause 59A, amending section 196 of the 2011 Act in order to retain the 30-day grace period currently allowed for cancelling loan interest if a borrower’s consolidated loan balance is paid in full within 30 days of receiving a notification of their loan balance. Section 196 would otherwise expire on 1 May 2013. We consider retention of the grace period desirable if, as recommended above, the existing system for daily accrual of interest is retained.

**Payment allocation**

We recommend the removal of clause 59 in the bill as introduced in order to retain the existing way in which payments are allocated to repayment obligations and debt. The current practice is for payments and deductions first to be offset against any interest charged, with any remainder then used against any principal outstanding. In the bill as introduced, clause 59 would have changed the practice to allocate payments and deductions in a specific order.

However, we also recommend the insertion of new clauses 59 and 59A to retain a useful point of clarification from clause 59 of the bill as introduced. This would make it clear that standard deductions and Commissioner deductions (made to collect previous under-deductions) must always be allocated to the loan balance (that is, such deductions would be “full and final”), and could not be used to satisfy the repayment of unpaid amounts for other current-year obligations such as interim or terminal payments or penalties. This would avoid any misunderstanding on the part of borrowers.

**Meaning of adjusted net income**

Clause 64 and Schedule 3 of the bill would make changes to the definition of “adjusted net income” so that it broadly aligned with the definition of income under the Working for Families tax credit rules.
To maintain consistency, we recommend that recent clarification of the Working for Families definition of “family scheme income” also be reflected in the bill, by amending clauses 5 and 9 of Schedule 3. These changes would ensure that withdrawals made from KiwiSaver or a complying superannuation fund would be disregarded in calculating net income, and that certain tax-exempt overseas pensions would be included in the calculation.

**Transitional regulation-making provision**

After careful consideration, we recommend the insertion of clause 39(4) to amend Schedule 6 to include a transitional provision allowing regulations to be made to smooth the transition to the new regime. The changes the bill would make to the 2011 Act are complex. They involve amendments to previous amendments that have not yet come into force, the repeal of provisions that were to come into force in the future, and inter-relationships between provisions that would be amended or repealed at different points in time. There is also the challenge of ensuring that Inland Revenue’s computer system implements the amendments accurately. There is a relatively high risk that unforeseen issues or unintended consequences may emerge in the transition to this legislation, creating a need for regulations.

The amendment we propose is similar to that in section 216 of the 2011 Act, which provided a power to make regulations on the recommendation of the Minister to enable an orderly transition to the new legislation.
Appendix

Committee process
The Student Loan Scheme Amendment Bill (No 2) was referred to the committee on 20 September 2012. The closing date for submissions was 31 October 2012. We received and considered 10 submissions from interested groups and individuals. We heard two submissions. We received advice from the Inland Revenue Department.

Committee membership
Todd McClay (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
Hon Clayton Cosgrove
Paul Goldsmith
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Hon Dr Nick Smith
Standard Estimates
Questionnaire 2013/14

Report of the Finance and Expenditure Committee

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Standard Estimates Questionnaire 2013/14

Recommendation

The Finance and Expenditure Committee recommends that the House take note of the Standard Estimates Questionnaire for 2013/14, which is attached as Appendix B.

Introduction

The Finance and Expenditure Committee has approved a Standard Estimates Questionnaire to be used in the select committee examinations of the 2013/14 Estimates of Appropriations. The questionnaire is attached as Appendix B.

The Standard Estimates Questionnaire for 2012/13 was used as the basis of the 2013/14 questionnaire. After consultation with the Office of the Controller and Auditor-General, we resolved to revise the questionnaire as outlined below to improve its relevance and usefulness for the 2013/14 Estimates examination.

Content

The questionnaire is designed to be brief and high-level, asking only for information supplementary to that supplied in the Estimates. It is not expected to be burdensome. The main focus is on votes rather than on the operations of departments and other Crown entities, as current and past operations are examined in the subsequent financial reviews.

The objective of the questionnaire is to elicit matters on which vote Ministers may wish to elaborate orally before a committee, and to help a committee target its examination of the vote with the administering department or entity.

We have removed question 6 from the 2012/13 questionnaire (Which outputs under the vote are considered priorities in 2012/13 for achieving the outcomes desired from the vote and why? Please provide detailed information in your response along with a list of the outputs considered to be main priorities, arranged in order of priority.) Experience has shown that the responses to this question tend not to include information of value that is not already supplied in response to other questions.

We have removed the final bullet point of question 8 in the 2012/13 questionnaire (Have any concerns arisen regarding the performance of the Crown entities over the previous financial year? If so, please provide details.) as we consider that this question is more appropriate to a financial review than an Estimates examination, being focused on the previous year’s performance.

For the same reason, we have re-worded question 13 from the 2012/13 questionnaire to focus the question on the Estimates for the coming financial year rather than on the previous year’s performance.
Appendix A

Committee procedure

The committee met on 13 and 27 March 2013 to consider the Standard Estimates Questionnaire 2013/14.

Committee members

Todd McClay (Chairperson)
Maggie Barry
David Bennett
Hon Clayton Cosgrove
Hon David Cunliffe
Paul Goldsmith
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Hon Kate Wilkinson
Appendix B

Standard Estimates Questionnaire 2013/14

Outcomes desired from the Vote

1. Which agencies incur expenditure under this Vote, and who are the responsible Ministers? What outcomes are sought from the Vote, and how do these agencies contribute to these outcomes? Please indicate where outcomes desired from the Vote are shared with another Vote and/or department, and explain how results against these shared outcomes will be reported.

Expenditure under the Vote

2. Please provide a copy of the output agreement, and describe the main current or emerging factors (including social, environmental, or economic factors) that have affected the type and amount of the appropriations sought under the Vote in 2013/14. If applicable, please provide a copy of the department’s 4-year budget plan and the associated organisational development plan (workforce strategy).

3. What effect have fiscal pressures had on the appropriations and the outputs sought under this Vote in 2013/14? What impact are fiscal pressures expected to have on output performance? How will adverse impacts on output performance be managed?

4. What financial risks have been identified in relation to this Vote? How are any financial risks that have been identified being monitored and managed?

5. Please explain briefly the significant changes and reasons for them, affecting this Vote for 2013/14, including the following:
   - New policies or outputs.
   - Policies or outputs that have been discontinued from the previous year.
   - Policies or outputs that have changed from the previous year (for example, reprioritised or refocused policies, increased or decreased outputs).
   - Any changes to types of appropriation, or increases or decreases of 10 percent or more (or $10 million or more, whichever is lesser), in the amount of appropriations; where appropriations have decreased, please explain the impact on the department administering the Vote and the agencies receiving funding.
   - Any funds carried forward or transferred from previous appropriations.
   - Any changes to staffing levels in the 2013/14 financial year and out-years, including full-time-equivalent staff; total head-count; and the numbers and percentages of staff defined as “front-line” staff (whose roles require them to provide a service directly to the public for a significant rather than an occasional part of their duties), and “back-office” staff.
   - Any changes to the Vote arising from the Canterbury earthquakes (please outline all significant impacts on the Vote).
6 Is the department administering this Vote reviewing, or intending to review, any legislation for which it is responsible? What changes to legislation are proposed, and why? If legislation needs to be changed because of policy changes, please specify the policy areas and changes being considered. How would the proposed legislative change affect the appropriations within this Vote? What effect is it expected to have on any other Vote?

Crown entities funded under the Vote

7 In relation to any Crown entities funded under the Vote:
   • Are there any significant changes to the outputs they produce, and, if so, how do these changes affect the appropriations sought?
   • What changes, if any, have Crown entities made to the structure and scope of their output classes to ensure they are consistent with the relevant appropriations in this Vote?
   • What changes, if any, have been made to Crown entities’ performance information presented in this Vote?
   • Are there any particular performance risks or concerns for the 2013/14 year?
   • How will the performance of the Crown entities be monitored to ensure the risks are well managed?

8 What specific expectations have been signalled by the responsible Minister to each of the Crown entities funded under the Vote? If no expectations have been set, please explain why. Please describe in detail any specific human-resource, financial, or operational issues or risks that may arise in meeting these expectations. How will any issues and risks be managed?

Capability of agencies to deliver outputs

9 What specific capability risks and challenges have been identified in the agencies delivering outputs under this Vote? What action is being taken to manage these challenges?

10 What are the particular challenges and priorities for the agencies funded by the Vote in responding to the Canterbury earthquakes?

11 Does the department administering the Vote intend to use external resources (such as external consultants, leased executives, advisers, or contractors) in providing its outputs in 2013/14? If so, please provide the following details regarding this expenditure:
   • the total budget for 2013/14, compared with the overall departmental budget
   • the purpose of each engagement
   • the reason that internal resources cannot be used.

12 How have any mergers and machinery-of-government or other structural changes made in 2012/13 affected the Vote?

13 Are any of the entities funded under the Vote considering or developing any plans to
   • enter into any kind of shared services arrangements?
   • form or enter into any type of joint venture or public-private partnership?
• access external equity?

In each case, please provide details.

Other information

14  What improvements have been made to the performance information presented under this Vote for 2013/14? What advice has your department received from central agencies and the Controller and Auditor-General about performance information areas that need improvement, and what steps are being or will be taken to improve them?

15  Do you wish to bring to the attention of the committee any other matters relevant to your Vote that have not been described in the Estimates documents, in your Budget press statements, or in response to other questions in this questionnaire?

16  Please provide an electronic copy and 25 paper copies of each output plan drawn up between you (or an agent) and a department and/or other party for the supply of outputs for the 2013/14 year related to this Vote. If output plans have not yet been finalised, and you do not wish to provide draft plans, please notify the timetable for finalisation, and provide an electronic copy and 25 paper copies of each output plan as it is completed.
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General, *Draft Statement of Intent 2013–16*, and has no matters to bring to the attention of the House.

We wrote to other select committees on 26 March 2013 seeking their comments on the draft statement of intent. No matters of concern were raised for us to bring to the attention of the Auditor-General or the House.

We appreciate the important role of accountability documents such as the draft statement of intent in ensuring that the work of the Controller and Auditor-General is relevant and responsive to Parliament, and transparent to the public.

We recommend that the House take note of this report.

Todd McClay
Chairperson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General, *Central government: Results of the 2011/12 audits*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Todd McClay
Chairperson
State Sector and Public Finance Reform Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the State Sector and Public Finance Reform Bill and recommends by majority that it be passed with the amendments shown.

Introduction
This omnibus bill seeks to amend the three principal statutes governing the management of the State sector and public finances in New Zealand. It draws on the work of the Better Public Services Advisory Group, and aims to establish a framework to support and encourage innovative, flexible, efficient State services. The changes are designed to strengthen collaboration throughout the State-sector system, to improve financial flexibility, and to provide more meaningful performance information for scrutiny by Parliament.

The bill is in three parts, which seek respectively to amend the State Sector Act 1988, the Public Finance Act 1989, and the Crown Entities Act 2004, with consequential amendments to other legislation.
Part 1 of the bill proposes amendments to the State Sector Act. The main changes it would make are as follows:

- Strengthening the role of the State Services Commissioner in leading the State services and ensuring that government agencies work collaboratively as a system. For the first time, the Commissioner’s role would be set out in legislation.
- Broadening the Commissioner’s functions to include the ability to transfer chief executives within the public service when a vacancy arises, and to draft Government policy on workforce and employment matters from the perspective of the State-sector system as a whole. This power would not extend to determining pay or conditions.
- Extending the responsibilities of chief executives to their Ministers, to include matters relating to the collective interests of Government, and stewardship of the interests of the Crown and departments in the medium and long term.
- Giving chief executives the power to delegate statutory functions and powers between agencies and, subject to certain safeguards, to non-government service providers.
- Creating a new organisational arrangement, called a departmental agency, as an option for providing public services. Such an agency would sit legally within a host department, which would administer the appropriations used by the departmental agency, but the departmental agency would have its own chief executive directly responsible to a Minister for its specific activities.
- Increasing the Act’s flexibility by changing the provisions relating to appointments of chief executives and senior leaders.
- Amending section 86 of the Act to ensure that it achieves its intended purpose of protecting from personal liability Crown employees and chief executives who have acted in good faith in the performance of their duties.

Part 2 of the bill proposes amendments to the Public Finance Act, principally the following:

- Establishing a new appropriation type, to be called a multi-category appropriation (MCA), to allow different types of expenditure to be grouped into a single appropriation if they contribute to a single overarching purpose.
• Making it clear that other departments as well as the one administering an appropriation can incur expenses against the appropriation.
• Changing the information required in the Estimates and supporting information, to focus more closely on what is intended to be, and has been, achieved with each appropriation.
• Changing the requirements for information about departments’ strategic intentions, including the frequency of its provision.
• Allowing annual reports of more than one department to be presented together in one document where this would provide more meaningful information about the departments’ performance and achievements; similarly, allowing end-of-year reporting on appropriations that contribute to a common purpose but are administered by different departments to be presented in one document.
• Standardising the governance and performance reporting requirements for companies currently listed in Schedule 4 of the Public Finance Act (and proposed to be moved to a new Schedule 4A), to make the framework more consistent with the provisions that apply to Crown entity companies covered by the Crown Entities Act.
• Specifying the financial responsibilities of departmental chief executives, to make it clear that they include financial stewardship for the long term, and responsibility for managing and advising on relevant non-departmental appropriations, assets, liabilities, and revenue.

It should be noted that changes to Part 2 of the Public Finance Act, which relate to fiscal responsibility, are proposed in a separate bill which we are considering and reporting on separately.

Part 3 of the bill proposes amendments to the Crown Entities Act. The main changes sought are the following:
• Requiring the boards of statutory Crown entities to ensure that the entities collaborate with other public entities where practicable.
• Broadening the grounds on which the Minister of Finance and the Minister of State Services can issue whole-of-government
directions, and allowing directions to be issued to smaller groups of entities.

- Simplifying and streamlining the planning and reporting provisions for most Crown entities and their subsidiaries (The requirements for Crown Research Institutes, Tertiary Education Institutions, and School Boards of Trustees are mostly covered by separate legislation.) The changes would include allowing the publication of a statement of intent at least once every three years rather than annually, the annual information previously included in the statement of intent being separately reported in a statement of performance expectations. The statement of intent, the statement of performance expectations, and the annual report could be presented in a single document when reporting to Parliament.

- Formalising the current role of monitoring departments and Crown entities in helping Ministers to carry out their responsibilities under the Act.

- Strengthening the role of the Minister of State Services by providing a power to require Crown entities to provide information pertaining to system-wide capability and performance.

**Supplementary Order Paper 168**

The Minister of State Services released Supplementary Order Paper 168 to the bill on 14 December 2012. The SOP proposes amendments to Parts 2 and 3 of the bill, relating respectively to the Public Finance Act and the Crown Entities Act.

The purpose of the amendments is to make minor policy and technical refinements to the Public Finance Act and the Crown Entities Act. Most of the amendments seek to clarify and simplify the reporting requirements under the Acts, with a focus on the activities of Crown entity groups rather than individual entities within the group. The SOP also proposes a “roll-over” provision for chairs and deputy chairs of statutory Crown entities, similar to that provided for other board members. Finally, the SOP proposes exempting Crown Fibre Holdings Limited until 30 June 2021 from the governance provision of the Crown Entities Act in respect of subsidiaries that are subject to existing contractual agreements.
The Minister wrote to the committee on 14 December 2012 inviting us to consider the amendments proposed in the SOP during our consideration of the bill. We have done so, and recommend that these amendments be incorporated into the bill.

Proposed amendments
The following commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amendments.

Part 1—Amendments to State Sector Act 1988
Purpose of the Act
We recommend amending clause 5, section 1A(e), to provide that a purpose of the State Sector Act is to promote and uphold a State sector system that “is supported by effective workforce and personnel arrangements” rather than one that merely “provides for workforce and personnel matters”. We consider the amended wording more accurate, as it is the Act, not the system, that “provides” for such matters.

We considered whether the purpose provision in the bill should retain explicit mention of other employment matters, such as equal employment opportunities, which are currently in the Act’s long title. The majority of us consider it preferable to keep the bill’s purpose broadly worded, and are satisfied that obligations regarding equal employment opportunities are covered by the reference to “workforce and personnel arrangements” in the purpose provision, and maintained in section 56 of the Act.

Definition of ministerial staff
For clarity, we recommend amending the definition of “ministerial staff” in clause 6(7) to make it clear that it applies only to quasi-political appointees employed on event-specific agreements to work directly for a Minister rather than a department, and does not include staff seconded by departments to Ministers’ offices to work as private secretaries or advisers on the work of those departments.
Independence of chief executives
As we note later in relation to Government workforce policy, we consider the avoidance-of-doubt provision in clause 26, section 33(3), unnecessary, and we recommend that it be deleted.

Chief executives’ ability to delegate functions or powers
Clause 35 (amending section 41 of the State Sector Act) would extend the ability of Public Service chief executives to delegate functions or powers within or outside the Public Service. (The separate ability to contract out the delivery of services, which has existed for many years, is not affected by the bill.) This provision prompted some concern, particularly over whether more use of delegations would reduce transparency and accountability to Parliament and the public, and increase the scope for conflicts of interest.

We consider that allowing chief executives to delegate their functions and decision-making powers to another agency or to non-government service providers can be, in certain carefully-defined circumstances, an effective and efficient means of delivering government services. We expect the ability to be used selectively, and understand that this is the intention. We do, however, consider it vital that the ability to delegate be matched by safeguards. We have therefore considered carefully whether the bill specifies adequate restrictions on and controls over delegations.

Delegations, within or outside the Public Service, are already permitted under several Acts. The bill would not affect any other statute that allows or restricts delegations, and any specific prohibitions, restrictions, and conditions imposed on the power to delegate under such statutes will remain. (Later in this commentary, however, we propose one change, in respect of the Tax Administration Act 1994.) The bill would expand the range of conditions and restrictions, with requirements including the following:

- Any delegation outside the Public Service would require the Minister’s approval.
- Any delegate would be subject to the same statutory obligations as public servants.
- After any delegation, a chief executive would have to report on it in the annual report and comment on its effectiveness.
Importantly, chief executives would retain responsibility for the performance of their functions and powers, notwithstanding any delegation. We also note that, as required by good administrative practice, a chief executive would have to be satisfied about several matters before making a delegation, including the delegate’s suitability as a fit and proper person, and that any conflicts of interest could be managed satisfactorily and transparently.

While we consider these valuable safeguards, we believe the delegation provisions could usefully be enhanced. We recommend the following amendments to clarify the extent of delegations within the Public Service, and to impose some additional conditions and restrictions on delegations outside the Public Service.

We recommend amending clause 35(1) to specify that delegations must be in writing, and that functions or powers delegated to a chief executive by a Minister or the State Services Commissioner may not be delegated further without their prior written approval.

To allay concerns that a chief executive might delegate their duties as an employer, which was not the policy intent, we recommend amending clause 35(2) to limit delegations to a “function or power”, rather than a “function, duty or power” as provided in the bill as introduced.

We also recommend amending clause 35(2) to make it clear that those to whom functions or powers might potentially be delegated within the Public Service would include a person seconded from elsewhere in the State Services, or an office-holder in the Public Service.

We recommend amending clause 35(3), section 41(2), to make it clear that functions or powers delegated by a chief executive could not be sub-delegated without the prior written approval of the chief executive, and then only to a person within the Public Service.

Any delegation outside the Public Service would require the Minister’s approval. We recommend amending clause 35(3), section 41(2A), to require that any such approval be in writing prior to the delegation commencing.

We understand that it is the policy intent that any decision to delegate would be made case-by-case, with the power or function to be delegated clearly identified in writing. We consider it important that this intention be explicit, and therefore recommend amending clause 35(3), section 41(2A), so that the function or power being delegated to a person outside the Public Service must be clearly identified.
While we recognise that a chief executive would consider carefully, before making a delegation, any potential conflict of interest affecting a delegate, we consider it important to make this responsibility explicit. We therefore recommend inserting in clause 35(3), section 41(2A), a requirement that the chief executive must, before making a delegation, satisfy him- or herself that any potential conflicts of interest will be avoided or managed. We intend this amendment to cover actual, apparent, or perceived conflicts of interest. We understand that it is standard legal practice to interpret “conflict” as covering all three situations.

We note that a delegate outside the Public Service could not in turn sub-delegate any function or power (section 41(2AA)).

In the bill as introduced, section 41(2C) would require any delegate outside the Public Service to comply with all relevant statutory obligations, in the same way as a delegate within the Public Service. We recommend amending this provision to require the delegate also to comply with the public servants’ code of conduct.

We also recommend amending clause 35(4) to insert new sections 41(2D) and 41(2E), making it clear that any delegate, and any information they hold, would be subject to the Official Information Act 1982 and the Ombudsmen Act 1975.

We recommend inserting clause 35(5) to amend existing section 41(3) to make a delegate subject to the same restrictions as the chief executive in exercising functions or powers.

We recommend inserting clause 35(6), new section 41(4A), requiring that any document informing a person about an action taken by a delegate also inform them that the action was taken by a delegate, give the delegate’s name and office, and state where a copy of the delegation may be inspected.

**Government workforce policy**

We are recommending several amendments to clause 42 of the bill, which would insert a new subpart into Part 5 of the Act, creating a mechanism for Government Workforce Policy Orders.

In the bill as introduced, clause 42 would allow the State Services Commissioner to address workforce policy matters from a State-sector-wide perspective by drafting policy guidelines that, when issued by Order in Council, would become Government Workforce Policy
Orders. Departments and Crown agents would be required to give effect to such orders, and autonomous Crown entities to have regard to them.

We understand the intention is that the orders would indicate the Government’s broad policy on how the State services should approach employment relations and workforce capability. The aim is to provide a more transparent and consultative mechanism for developing formal workforce policy for the State services, and to allow a consistent approach to resource allocation. The orders are not intended to have legislative effect, nor to override existing legal rights or obligations, including negotiated terms for pay and conditions and existing bargaining rights.

We are aware of concern about the broad scope of such orders in the bill as introduced, and their potential to interfere with the collective bargaining process or to override negotiated agreements about pay and conditions. While we accept that this was not the policy intention behind the bill, we believe several changes are warranted—including re-naming the orders “Government Workforce Policy Statements”—to clarify the provisions and to constrain them to their intended effect.

We consider it important that the legislation provide a clear statement about the purpose of Government Workforce Policy Statements. We are recommending including in the bill an express statement that their purpose is to foster a “consistent, efficient, and effective” approach to workforce matters, including employment and workplace matters, across the State sector. We consider that the terms “consistent, efficient, and effective” together represent a balance of impartial objectives, with each term carrying equal weight without bias. It is not our intention to insert any bias toward cost-efficiency. While other options, including an explicit reference to the concept of fairness, were discussed, we believe these terms avoid the risk of introducing the subjective element that can accompany other concepts. Collectively, a legislative purpose of fostering a “consistent, efficient, and effective” approach would set an enduring framework within which successive governments could set their workforce policies.
We recommend the following changes to make the policy intentions clearer:

- Amending clause 42 by deleting all references to “Government Workforce Policy Orders” and substituting “Government Workforce Policy Statements”.
- Amending clause 42 by inserting new section 55B(1) to require the Commissioner to consult any other parties the Commissioner considers appropriate.
- Amending clause 42, section 55B(2), to make it clear that workforce policy must relate to workforce matters “for the purpose of fostering a consistent, efficient, and effective approach to such matters across the State sector”.
- Amending clause 42 by inserting section 55B(2A) to make it clear that the content of Government workforce policy would reflect the Government’s expectations about the negotiation of collective agreements and individual employment agreements in the State services, but that these expectations would not determine pay or conditions.
- Amending clause 42, section 55B(4), and inserting new section 55C so that, instead of an Order-in-Council approval mechanism, workforce policy statements would be approved by the Minister and published on an Internet site by the State Services Commissioner, who would also be required to send a copy to all affected agencies. We consider that this process would effect the purpose of disseminating the statements, without implying that they had the force of regulation.
- For the avoidance of doubt, amending clause 42, section 55C (renumbered as section 55D) to make it clearer that a Government workforce policy statement would not have legislative effect, and in particular would not create, alter, or remove employment or other legal rights or obligations.
- Deleting from section 55C(1) of the bill as introduced the reference to workforce policy orders not overriding the independence of chief executives. We consider this provision unnecessary as there should be no incompatibility between the requirement to give effect to workforce policy statements—which concern the Government’s overarching policy position regarding the State services—and the independence of chief execu-
tives in individual employment decisions. (We have recom-
mended that the corresponding provision in clause 26 also be
deleted.)

Restriction of redundancy payments in certain situations
The bill seeks to amalgamate the various provisions in the State Sec-
tor Act relating to redundancies, redeployment, and transfers of em-
ployees, so as to apply a cohesive scheme to the whole Public Ser-
vice.
Clause 49 (together with clause 20, repealing existing sections),
would replace sections 61A and 61B of the Act, to restrict rights to
redundancy payments in certain situations. This aspect of the bill
provoked much concern, and we have examined it at length. In our
consideration we have sought to balance fairness to employees who
have negotiated redundancy entitlements in good faith against fair-
ness to taxpayers. It is generally accepted that public servants should
not be entitled to compensation in cases of technical redundancy.
At present, section 30E of the State Sector Act restricts payments for
technical redundancy. The bill would extend the restriction, which
currently applies in the event of a transfer of functions, to any redu-
dancy situation in the Public Service; in practice, however, a trans-
er of functions is likely to remain the most common such situation.
The bill would also restate the test of a technical redundancy, focus-
ing on whether the employee was offered an “alternative position” in
the State services, rather than whether they were offered “equivalent
employment” in the department receiving the transferred functions,
which is the test in the Act at present. In essence, section 61A of the
bill as introduced stipulates that an “alternative position” must
• have comparable duties and responsibilities
• be on terms and conditions (including those for redundancy
and superannuation) that are no less favourable overall
• be in substantially the same general locality, or within reason-
able commuting distance
• treat service in the State services as continuous service.
We have examined the implications of the test of “alternative posi-
tion” carefully, considering what scenarios might be deemed to pass
or fail this test, and we have explored other possible ways in which
the test could be formulated.
We considered very carefully the provision in the bill as introduced restricting an entitlement to redundancy payment if an employee who faces redundancy is offered an alternative position that is on terms and conditions that are “no less favourable overall”. The insertion of the qualifier “overall” was proposed to clarify the existing provision in section 30E(2)(c) of the State Sector Act which refers to terms and conditions that are “no less favourable”. It is our understanding that the existing law does not require each term or condition to be exactly the same as those in the existing position line by line, but that some regard can already be given to the collective package of terms and conditions which should be no less favourable. We are therefore satisfied with recommending deletion of the word “overall” from the bill because no change is intended to the existing law in respect of the interpretation of the “no less favourable” test.

We note that ultimately, as in all employment matters, the interpretation of an alternative position would be one for employers and employees to discuss in good faith, case by case, taking into account the circumstances of the individual employee, and employing mechanisms under the Employment Relations Act 2000 to manage any dispute.

We recommend amending clause 49 by inserting new section 61A(1)(b)(iaaa) stipulating that any offer of an alternative position should provide for immediate re-employment.

We also recommend amending clause 49 so that the list of criteria in section 61A(1)(b)(iaaa), (iii), and (iv) that determine an alternative position is replicated in section 61A(1)(a), relating to a situation where a Public Service employee is offered and accepts another position in the State services.

Finally, we recommend amending section 61A(1) to make it clear that reference to an employee means a Public Service employee.

We recommend the inclusion of a transitional provision in the bill, so that the existing law would continue to apply for 3 years from the bill’s enactment. This would avoid any retrospective application of the bill to agreements, whether individual or collective, already negotiated. Under the current law, collective and individual agreements can continue to be renewed or renegotiated. The effect of our amendment would be to treat both collective and individual agreements equally by allowing either to be renewed or renegotiated until the end of the 3-year period. The bill would not affect any re-
dudnancy entitlements until the new sections came into force after 3 years.
To effect this change, we recommend amending clause 49 to insert new section 61AB, to provide that all of the Act’s existing provisions relating to redundancy payments and other matters (sections 30C, 30D, 30E, 30F, 61A, and 61B) continue to apply for 3 years, whereupon the new regime under the bill would come into effect.

Protection from liability for Public Service chief executives and employees
As outlined in the explanatory note to the bill, the amendments proposed in clauses 54 and 57 are considered necessary in the light of the Supreme Court’s decision in Couch v Attorney-General,1 which created uncertainty about the status of liability of Public Service chief executives and employees under section 86 of the State Sector Act. The bill aims to clarify the position by affirming the original policy intent behind section 86 of the State Sector Act, that Public Service chief executives and employees should have immunity from civil proceedings for any actions or omissions in their work so long as they acted in good faith, but that the Crown itself could be found liable on their behalf for any losses suffered. Clauses 54 and 57 would restore what was widely understood to be the position prior to the majority decision of the Supreme Court.
We have received a copy of advice from the Crown Law Office confirming that in its view the wording proposed in the bill would achieve the policy intent, and would not affect the ability of a person to sue the Crown vicariously for actions or omissions by public servants.
In our consideration, we gave thought to whether immunity or indemnity is the better protection for public servants. We understand that the Law Commission is considering this issue in its current review of the Crown Proceedings Act 1950. We considered whether the bill should await the outcome of the review, as we did not find it self-evident that protection for public servants should necessarily take the form of immunity. We understand that the Law Commission has a preference for an indemnity approach, considering it the cleanest and most conceptually “pure” means of providing protection for

public service employees. However, their work in this area is not yet complete. To resolve the present uncertainty, we concluded that it was preferable to retain the immunity approach taken in the bill and thus restore what was widely understood to be the status quo, in the knowledge that it would be open to Parliament to amend the provision once the Law Commission’s review was concluded if there were a compelling case for doing so.

For consistency and to correct an oversight, we recommend inserting new clause 51A, which would amend section 77 of the State Sector Act to provide corresponding protection from personal liability for chief executives and employees in the education service. Like the changes to be made by clauses 54 and 57, this would accord with the policy intent of section 86.

**Delegations under the Tax Administration Act**

We recommend inserting clause 56A, which would amend the Tax Administration Act 1994 to align its provisions regarding delegations with the regime provided for in the bill. Since 1944, tax legislation has allowed the Commissioner of Inland Revenue to delegate functions or powers, but only within the Inland Revenue Department. While such a restriction was appropriate when all tax administration functions were undertaken within IRD, we consider it appropriate to update the provision to allow certain low-level functions and decisions to be outsourced. The provision we propose would make it clear that IRD’s more coercive powers, for example to impose penalties or to require taxpayers to provide information, could not be delegated outside the department.

Specifically, we propose that the Commissioner should not be able to delegate to a person outside of IRD powers or functions in relation to:

- obtaining information
- imposing civil or criminal penalties in various circumstances
- deducting amounts from payments due
- entering into tax recovery agreements with other jurisdictions.

We acknowledge that changes to the Tax Administration Act would normally be considered in the tax policy process, for inclusion in specific tax amendment legislation rather than this broad framework bill. We are, however, prepared to recommend their inclusion in this bill with the restrictions we have specified above.
Functions of Commissioner in relation to Office of the Clerk of the House of Representatives and Parliamentary Service

For the avoidance of doubt, we recommend inserting new clauses 57A and 57B to acknowledge that the Office of the Clerk and the Parliamentary Service operate within the legislative branch of government, independently of the executive, and are therefore not part of the State services. That is, if the State Services Commissioner exercises functions in respect of these agencies, he or she must do so only upon the request of the Speaker of the House, and in a manner consistent with their role and separation from the executive. Clauses 57A and 57B would make consequential amendments to this effect in section 17 of the Clerk of the House of Representatives Act 1988 and clause 15 of Schedule 1 of the Parliamentary Service Act 2000.

Part 2—Amendments to Public Finance Act 1989

Miscellaneous amendments

In addition to the amendments discussed in detail below, we are recommending numerous amendments to this part of the bill for purposes of clarification. We wish to ensure it is clear when a section in the Public Finance Act applies to a department, a departmental agency, or to both. Although the bill generally provides that “department” also refers to any of its departmental agencies, some of the Act’s provisions (such as those for operating a bank account or preparing a statement of intent) apply only to departments, while some provisions apply only to departmental agencies (for example, those for the responsibilities of departmental agency chief executives), and some provisions, such as those for preparing annual reports, apply to both.

Several other changes we recommend, such as comprehensive amendments to or the deletion of clauses 68–70, 78, and 109, are mainly for technical drafting reasons and to ensure consistency within the bill. To align the legislation with new drafting practice, we recommend moving clauses 109 and 147 to new Schedule 1, inserted by clause 75.

Publication of financial statements

Clauses 63 and 64 would require the Government’s annual and monthly financial statements to be published on the Treasury’s
website. We recommend an amendment to stipulate that they must remain available on the site for at least 5 years after the financial year to which the statements relate. In practice, documents are likely to remain on the website for longer, and after removal would remain publicly available under normal archival practices.

**Publication of notices in the Gazette**

We recommend amending clause 65 to remove the requirement to publish a notice in the Gazette about the publication of the Government’s financial statements. With the financial statements available on the Internet, we consider that gazetting adds little in the way of transparency, and is an outmoded form of publication that does not sit well with the bill’s aim of setting a framework for the longer term.

For the same reasons we recommend inserting clauses 70A and 70B to remove the requirement to publish a notice in the Gazette about the giving of a guarantee or indemnity. We also recommend amending clause 129, section 25A, and inserting new clause 61B to remove the requirement to publish a notice in the Gazette about expenditure incurred without appropriation or an unauthorised capital injection to meet a declared emergency. We consider the requirement an anomaly, as unappropriated expenditure in a non-emergency situation need not be gazetted.

We note that even without gazetting, the required information relating to guarantees, indemnities, and unappropriated and emergency expenditure would be publicly available, as it must be included in the Government’s financial statements, which the bill would require to be published on the Treasury’s website.

**Presenting and publishing departmental annual reports**

We recommend amending clause 88 to allow a department’s annual report to be presented or published together with other reports or information, not just other information required under the Public Finance Act, provided that the constituent parts of the single document are separately identifiable. We consider this desirable to allow whole-sector or cross-agency reporting. We also recommend the insertion of new clause 66A to provide for transitional arrangements allowing departments and departmental agencies to present and pub-
lish their annual reports for 2012/13 together in a single document, provided the constituent parts are separately identifiable.

**Authority to lend money**
We recommend amending clauses 78 and 100, and inserting new clause 99A, to make clear the policy intention that the Crown may not lend money except as authorised by legislation, and to include a definition of “lend money”. In the bill as introduced, clause 100 would replace section 65N of the Act with a more detailed provision specifying the activities that may be undertaken under the authority given to the Minister of Finance to lend money on behalf of the Crown. The intention was to clarify what lending may entail, without changing the existing concept of lending under the Act. For example, the bill would make it explicit that the authority to lend money includes, as it does under the existing Act, the authority to enter into hire purchase agreements and finance lease arrangements.

We considered whether the bill appeared to broaden the concept of lending to the point where it might potentially include the leasing out of public assets without proper parliamentary and public debate. We note that the existing Act already permits the Minister of Finance to lease out assets, but any such lending must be appropriated. To make the position clear, we recommend replacing clause 100, relating to the authority to lend money, with a definition of “lend money” in clause 78. We also consider it desirable to strengthen the restriction on lending currently in section 65K of the Act by making it a clear prohibition on the Crown’s lending money except as authorised by statute. We recommend effecting this strengthening by inserting clause 99A, replacing section 65K of the Act.

**Power to amend Schedules 4 and 4A**
Concern was expressed to us that clause 79 of the bill as introduced would appear to allow Crown entity companies and State enterprises to be added to Schedule 4A of the Public Finance Act by Order in Council—that is, without parliamentary scrutiny—whereupon shares in the companies could potentially be sold. This was not the policy intention, as is clear when the bill is read in conjunction with the Crown Entities Act or the State-owned Enterprises Act 1986. We recommend amending clause 79 to make it clear that Crown entity...
companies and State enterprises cannot be added to Schedule 4A of the Public Finance Act by Order in Council.

**Responsibilities of directors**
We recommend deleting section 45OB, inserted by clause 92. The intention of this clause is to allow directors of companies listed in Schedule 4A of the Act to act in certain circumstances in the best interests of shareholders, rather than in the best interests of the company. However, the clause could be interpreted as providing a new tool to direct Schedule 4A companies, which was not the intention. As the clause does not achieve the desired clarity, we consider it best removed.

**Responsibility for, and administration and use of, appropriations**
The bill would retain the requirement that one Minister be responsible for each appropriation, and one department administer it. To facilitate collaboration between departments, however, the bill would allow the administering department to agree to another department spending against the appropriation, or the Minister responsible for the appropriation to direct it.

We recommend the following amendments to clauses 81 and 85 to ensure clear lines of accountability under such an arrangement:

- Specifying that, if the Minister directed a department or departmental agency other than the administering department to use an appropriation, then this other department or agency would be responsible to the appropriation Minister for whatever was achieved by using it. The appropriation Minister would be accountable to Parliament for the use of the appropriation.

- Limiting use of an appropriation administered by another department to departmental expense appropriations and multi-category appropriations. That is, non-departmental appropriations would be excluded, as they are managed on behalf of the Crown by the administering department.
Reporting requirements for departmental agencies

We recommend amending clauses 90, 136, and 138 to make clear the connection between a departmental agency and its host department. Part 1 of the bill sets out provision for the creation of departmental agencies as a new organisational arrangement. Such an agency would sit legally within a host department, which would administer the appropriations used by the departmental agency, but the departmental agency would have its own chief executive directly responsible to a Minister for its specific activities.

Separate financial statements would not be required from departmental agencies, as their financial activities would be reported, in consolidated form, in the financial statements of their host departments, which are audited. Departmental agencies would provide a separate annual report assessing their operations for the year, which could include financial and non-financial performance information.

The amendment we recommend to clause 90, inserting section 45AA(1A), would clarify the connection by requiring a departmental agency’s annual report to identify its host department. The recommended amendments to clause 136, inserting section 40(2)(aa), and to clause 138, inserting section 45(3A), would require a host department to identify any departmental agencies hosted by the department in its statement of intent and annual report.

Information requirements for appropriations

We intend that the effect of the bill should be that all appropriations would be traceable and accountable from year to year. Traceability must be explicit where an appropriation or categories within an appropriation have changed, including where a multi-category appropriation is used. We recommend several amendments to clause 120 to refine the requirements for information to be reported in the Estimates and main Appropriation Bill, and to set them out more clearly in the bill.

Under the bill as introduced, all information relating to permanent legislative authorities would be included in the information supporting the Estimates. We recommend deleting section 15C and inserting new sections 14(1A) and 15A(1) so that information relating to permanent legislative authorities would have to be included either in the Estimates or in the supporting information.
Section 15(2) of the bill as introduced covers the situation where a Vote has been restructured. To ensure proper scrutiny, it would require information to be provided in such a way as to facilitate comparison of equivalent information derived before and after the restructuring. We recommend inserting a similar provision in section 15AA, requiring information to be provided to ensure that changes in expenditure could be clearly traced where an appropriation had been restructured within a vote. We consider it important to ensure in this way that the public, and successive governments, can trace accurately changes in expenditure over time.

The intention of the bill is to require the provision of performance information at the level of each category within an appropriation. To ensure this intent is achieved, we recommend the following amendments:

- Inserting section 15A(3)(c) to require the provision of projected and estimated actual spending for each category within a multi-category appropriation for the previous financial year. This would ensure that full comparative information was available for scrutiny.

- Inserting a requirement in section 15A (and new section 15AA) for a concise explanation of what each category of a multi-category appropriation is intended to achieve, and of how performance in the category would be assessed in end-of-year performance information. Under the bill as introduced, this information would be required only in aggregate form for the MCA as a whole, which is insufficient to allow proper scrutiny.

We have examined the provision in section 15B for the Minister to grant exemptions from end-of-year performance information requirements for certain categories of expenses and capital expenditure. We are satisfied that the provision is restrictive, and exemptions could be granted only in specified situations.

We support the proposal in SOP 168 that supporting information for the main Appropriation Bill need not include further end-of-year performance information about an appropriation for borrowing expenses. The performance measure for such expenses is the amount of interest paid, which would be recorded both in the supporting information for Appropriation bills and in departmental annual reports. To avoid incurring duplication or the provision of unnecessary data,
we recommend inserting new section 15A(4)(b) to provide an exemption for such appropriations.

**Information in Supplementary Estimates**

We recommend amending clause 122, section 17, to make it clear that any changes made to an appropriation during a financial year, including any change in the appropriation Minister or the performance reporter, must be reported in the Supplementary Estimates. This would ensure that Parliament had full, up-to-date information about appropriations. Other changes we recommend to this clause would make the bill easier to read by spelling out what is currently only cross-referenced. Consequential drafting amendments are recommended to clauses 123 and 124.

**End-of-year performance information**

We recommend amendments to clause 125, sections 19A(1) and B(1), and clause 142, section 45D(1A), to recognise that changes may occur during the course of a year as to who is best placed to provide performance information: a department, a departmental agency, an Office of Parliament, a Crown entity, or an appropriation Minister. We consider it appropriate that the reporting obligation apply to the performance reporter most recently identified in documents presented to the House (the Estimates or Supplementary Estimates).

As proposed in SOP 168, we also recommend amending clause 125, section 19C(3), which requires all end-of-year performance information to be prepared in accordance with generally accepted accounting practice. To anticipate the broadening of the scope of financial reporting standards when the Financial Reporting Bill is enacted, we recommend that this provision apply to the extent that there is an applicable financial reporting standard.

**Statements of responsibility**

To strengthen the line of accountability from appropriation to performance, the bill proposes replacing statements of service performance with end-of-year reporting on what has been achieved with each appropriation. Under the bill as introduced the chief executive of a department administering an appropriation would be required to sign
a statement taking responsibility for the accuracy of the performance information. We recommend amending clause 141, section 45C, to make it clear that there are two aspects to a departmental chief executive’s responsibility for end-of-year performance information:

- responsibility (as appropriation administrator) for ensuring that end-of-year performance information is provided on each appropriation administered by the department
- responsibility (as user of an appropriation) for the accuracy of any end-of-year performance information prepared by the department.

These responsibilities would apply regardless of whether or not such information was included in the department’s annual report.

**Statements of intent**

In a change from the current requirement that departments set out annually their future operating intentions (published in a department’s statement of intent), the bill would require departments to publish information on their strategic intentions three-yearly, or more frequently if there was a significant change in their functions (clause 136, replacing sections 38 to 41).

The proposal to change from annual to three-yearly SOIs prompted several concerns, particularly as to timing in relation to the three-yearly election cycle. Along with the output plans and performance agreements negotiated with departmental chief executives, SOIs represent a key part of the contract between a department and its Minister as to what the department will achieve. Since an SOI would be required to set out intentions for at least the following three years, incoming Ministers could find themselves bound by their predecessors in the event of a change of Government. To avoid this problem, we considered whether the default period for requiring SOIs should remain at one year or be lengthened to two years rather than three, or alternatively whether departments should be required to produce a new SOI immediately following a change of government, or within a certain period thereafter. The majority of us concluded that it would be preferable to allow Ministers to require an SOI to be updated at any time, which could more readily accommodate changing requirements.
Accordingly, we recommend amending clause 136 by inserting new section 38A, which would allow a Minister to require a department to provide new information on strategic intentions at any time. We note that this would align with comparable provisions in the Crown Entities Act, which allow Ministers to require that a statement of intent be refreshed at any time. We are also recommending that the Cabinet Manual be amended so that officials are required to inform Ministers that they have this ability.

The bill as introduced would require SOIs to cover at least four years. We believe this provision needs refining in the light of the change proposed above, which could mean that a statement of intent took effect part-way through a financial year. We recommend amending clause 136, section 38(2) and (3), so that an SOI would apply either from the start of the next financial year and for at least four financial years, or for the balance of the current financial year and at least the following four financial years. SOIs would also need to state clearly the period for which they applied.

Clause 136 in the bill as introduced would amend section 39 to require departments not to publish information on their strategic intentions during the 3 months before Budget day, to avoid the early release of Budget-sensitive information. For completeness, we recommend amending section 39 to cover the situation in which the Budget date was announced less than 3 months in advance, in which case the restriction would apply immediately and be lifted when the Budget was delivered.

**Public Finance Act companies: Schedules 4 and 4A**

Clauses 92, 111, and 112 (inserting new Schedule 4A) would correct a weakness in the governance and reporting regime for companies listed on Schedule 4 of the Public Finance Act. Initially designed to cover various small public bodies for which the full application of the provisions of the Crown Entities Act was not appropriate, Schedule 4 now includes nine new companies that have been added since its enactment. The bill would transfer these companies to a new Schedule 4A and apply to them many of the governance and reporting provisions of the Crown Entities Act. To be listed on Schedule 4A, a company must be at least 50 percent Crown owned, and not be listed on a registered share market.
We recommend amending clause 111 and the proposed new Schedule 4A to include Network for Learning Limited and Tamaki Redevelopment Company Limited in the list of companies to be removed from Schedule 4 and included in Schedule 4A. These companies were established and added to Schedule 4 after the bill was introduced.

We also recommend moving the transitional arrangements for Crown Fibre Holdings Limited from new section 45OAB to the new transitional Schedule 1. As this provision is designed to apply to a specific entity for a limited period, we consider it more appropriate to deal with it in a schedule than to incorporate it in the body of the bill, which is designed to set a generic framework for the long term.

Part 3—Amendments to Crown Entities Act 2004

Definitions of subsidiaries
As proposed in SOP 168, we recommend the insertion of clauses 148A to 148C to clarify the definition of subsidiaries, with a consequential amendment to clause 149. We also recommend inserting new clause 177A making a consequential change to section 136 of the Act.

Obligations on parents of Crown entity subsidiaries
As proposed in SOP 168, we recommend the insertion of clause 159A and amendment of clause 160 (amending, respectively, sections 97 and 98 of the Crown Entities Act) to acknowledge that a Crown entity parent that does not have unilateral control over a subsidiary may not be able to compel the subsidiary to comply with these sections. In the current Act, a parent is required to ensure, “to the extent of its powers”, that its Crown entity subsidiaries comply with certain rules. We recommend that the requirement be amended to “to the extent that it is reasonably able to do so”.

As a consequential amendment, we recommend that the same wording change be made to section 78NA(2) of the Education Act 1989.

Transitional arrangements
We recommend the insertion of clause 170A, inserting new Schedule 1AA, and amendments to clauses 10A and 200, to improve the workability of the transitional provisions in the bill as introduced, and to
make them easier to understand. The amendments we propose would also bring the transitional provisions into force earlier, which would ensure that entities undertook the actions necessary to have their new statements of intent and statements of performance expectations finalised before the 2014/15 financial year begins.

**Appointments of chairpersons and deputys**

In clause 171, which amends Schedule 5 of the Crown Entities Act, we recommend an amendment to provide a “roll-over” provision for chairs and deputy chairs of statutory Crown entities, similar to that provided for other board members, as proposed in SOP 168.

**Statements of intent**

As we noted regarding Part 2 of the bill (our proposed changes to clause 136), the bill as introduced would allow a Crown entity’s responsible Minister to require the entity to prepare a new statement of intent at any time (clause 179, section 139(5)). Because this could mean that a statement of intent would take effect part-way through a financial year, we recommend amendments to clause 179, inserting new section 139AAA, to clarify the period the SOI would be expected to cover.

In specified circumstances, the bill would allow the responsible Minister to grant an extension of time for a statement of intent to be produced, or to waive the requirement altogether if an entity was likely to be disestablished (clause 179, section 139A). The responsible Minister would be required to notify the House of any such extension or waiver. In the interest of transparency, we recommend amending section 139A(4) to require that any such extension of time or waiver also be published on the entity’s website and recorded in its annual report.

We recommend amendments to clauses 184 and 186 to clarify the timetable to be followed in providing or amending statements of intent. We also recommend amending clause 188 by inserting new section 149AAA to clarify the process for publishing and presenting amendments to SOIs.

We recommend amending clause 188, section 149, to allow a responsible Minister to restrict the publication of a statement of intent within 3 months before Budget day. This is designed to avoid the inadver-
tent release of Budget-sensitive information. A similar amendment is recommended to clause 188, section 149J, regarding statements of performance expectations.

To provide flexibility as to how information in SOIs and statements of performance expectations is presented to the House, we recommend allowing them to be combined with the annual report or other document, by amending clauses 188, section 149, relating to SOIs, and clause 188, section 149J, relating to statements of performance expectations.

**Statements of performance expectations**

We recommend amending clause 188, section 149B, and inserting new section 149BA to improve the workability of requirements regarding statements of performance expectations for a newly established entity. An entity would be required to produce a statement of performance expectations unless it was so recently established that the Minister chose to waive the requirement and allowed the statement to be combined with that of the following year.

The amendments we recommend to clause 188, sections 149C and 149J, are for purposes of clarification and transparency. They would ensure that statements of performance expectations made it clear whether a Crown entity intended to provide any other classes of outputs, such as services contracted by third parties. They would also clarify the process for publishing and presenting amendments to the statements.

**Reporting by Crown entity groups**

At present, the Act requires both the parent and any subsidiaries of a Crown entity group to prepare financial statements (which must be audited), but it only requires presentation to the House of the financial statements for the parent and the group as a whole. The bill as introduced would continue to require group reporting, but would also require individual reporting by subsidiaries in some circumstances. In the interests of reducing compliance costs while maintaining an appropriate degree of accountability to Parliament, we recommend amending this arrangement so that the overall parent of a Crown entity group would be required to report for the group as a whole, while other members of the group would not report unless required to do
so by the Minister of Finance. This change, proposed in SOP 168, would be effected by the insertion of clause 196A (inserting new sections 156A and 156B) and clause 197 (replacing section 157), with consequential changes to clauses 179, 188 (section 149E), 189, and 191, the insertion of new clause 182A, and deletion of clause 194.

For transparency, we recommend inserting new clause 191A to make it clear that payments made to board members, committee members, and employees must still be disclosed for each Crown entity in a group and not merely presented in consolidated form in the parent entity’s annual report.

Again, for transparency and accountability reasons, we recommend the insertion of section 157(5) in clause 197, so that details of any exemptions granted by the Minister of Finance to a multi-parent subsidiary that was part-owned by a school board of trustees or a tertiary education institution must be notified to the House and published in the Gazette.

**Audit reports**

We recommend amending clause 196, replacing section 156, to address a gap in the Crown Entities Act by ensuring that all information required from an entity is audited by the Auditor-General.

**New Zealand Labour Party minority view**

The New Zealand Labour Party will be supporting the bill overall, but does so with significant reservations.

Labour supports the general policy intent to reduce or remove barriers to closer co-operation and alignment of agencies within the State sector.

We support an enhanced focus on the need to deliver value for money from taxpayers’ funds. We generally support the principle of developing and coordinating leadership across the State services. We also support the intent of amending the Public Finance Act to provide for multi-category appropriations. At the same time we believe there is a need to enhance, rather than diminish, the clarity of expenditure tracking and accountability within revised Budget and performance management documents.

We consider that there were major problems with the bill as introduced, and we are pleased to have worked with the Government and
key stakeholders, including public sector unions, to achieve improvements to the drafts.

The amendments proposed by the committee are considerable and far-reaching, and it is on the basis of these amendments that we are now able to confer support for the bill as a whole. However, we retain reservations about key aspects of the bill as set out below.

With regards to the redundancy rights of public servants (clause 49, sections 61A and 61B), the new sections as introduced would have removed provision for transfer of employees between public service departments, and unduly restricted redundancy payments where State-sector employees who have received a redundancy notice are offered and accept an alternative position prior to ceasing employment. The effect of those provisions would have been to remove existing rights contained in collective agreements, and would ignore the fact that the State Sector Act established agencies as separate organisations. We note that changes to the bill agreed by the committee provide enhanced protections to State sector employees including, crucially, that any alternative position that would restrict a redundancy entitlement be on terms that are “no less favourable”. The removal of the word “overall” from the draft as introduced indicates that, while the existing settled law allows for an employment package to be seen as a whole, no further flexibility is intended by the committee.

The committee’s amendments to the transition arrangements in section 61A, with the insertion of a three-year sunset clause following the enactment of the bill, will ensure the collective and individual agreements are treated equally. We have been reassured that section 61A and section 61B would not undermine the transfer of undertakings of existing employees.

The committee has also made significant amendments to the drafting of the proposed Government Workforce Policy Orders (now “statements”, as amended) to reinforce the principle that no existing legal rights of State-sector employees in the bargaining process would be undermined. We have also recommended a specific consultation requirement with interested parties for the drafting of workforce policy.

Other progress made by the committee includes:

- Conflict of interest provisions have been strengthened where the delegation of powers is proposed from any State-sector
entity, and the application of the Ombudsmen Act has been clarified.

- Improvements have been made to provisions for strategic intentions (as embodied in the formal Statements of Intent) enabling the responsible Minister to require the department to provide new information on strategic intentions at any time. We are also recommending an amendment to the Cabinet Manual to require officials to advise Ministers that they may so require. Full traceability of votes and appropriations has been clarified in the provisions relating to Budget documents, including where the title of appropriations, output or sub-output classes, have changed and where multi-category appropriations have been instituted.

- To amend section 55B(2) to balance the efficiency objectives with a broader notion of effectiveness (that includes procedural and substantive fairness considerations).

Notwithstanding the considerable progress made on the bill, which allows us to support the bill as a whole, the Labour Party retains significant reservations about its content.

In respect of the redundancy provisions there are still concerns that the protections only relate to the public service; that someone who accepts another job during a notice period now has greater protection in maintaining continuity of service; and that the position must start on, before, or immediately after the date on which the employee’s current employment ends.

We are also concerned that the delegation of powers from the core State sector to non-State partners and implementing agents is constructed too broadly. Close monitoring will be required to ensure that this practice is used only in circumstances where benefits to the public clearly outweigh the costs and risks.

We are concerned that immunity from suit, rather than indemnity, is being afforded, and note the Law Commission’s concerns in this regard.

Amendments to the Public Finance Act that will assist in removing barriers to greater cooperation between public sector entities need to be balanced in practice with greater clarity of financial accountability documents.
Labour notes the importance of the Statement of Intent process in establishing a clear contractual relationship between Ministers and public sector chief executives, which is a crucial link in the accountability chain to Parliament and the public. Reduction of the frequency of required SOI updates to three-yearly risks diluting ministerial accountability for their agencies, notwithstanding the option to amend these more frequently if required.

On balance, however, the amendments to the bill provide sufficient protection for Labour to be able to support it as a whole, acknowledging that bipartisan consensus on framework legislation of this type is desirable where broad agreement can be forged.

Green Party of Aotearoa/New Zealand minority view

The Green Party acknowledges that some positive changes have been made to the original bill through the select committee process, however we remain concerned that this legislation as it stands will have a significant effect on the conditions of employment of public servants.

We cannot support the bill in the absence of provisions which retain and strengthen transfer mechanisms for staff. We do not agree that this bill will meet the new purpose statement of the Act which includes promoting and upholding a State sector system that “is supported by effective workforce and personnel arrangements.”

We consider the new provisions relating to redundancy will have a chilling effect on career progress throughout the public sector.

The Green Party remains concerned about the changes the committee wishes to introduce over the test for technical redundancy. The test set out in section 30E of the State Sector Act is that an offer of “equivalent employment” means a public service employee is not entitled to redundancy payment. The bill’s provision to change that test to the offer of a job that has “terms and conditions no less favourable” removes 25 years of legal interpretation.
Appendix

Committee process
The State Sector and Public Finance Reform Bill was referred to the committee on 29 November 2012. The closing date for submissions was 7 February 2013. We received and considered 1,349 submissions from interested groups and individuals. Of the total number of submissions received, 1,303 were in the nature of form submissions, with replicated content. We heard from all 23 submitters who indicated a wish to be heard in person.

We received advice from the State Services Commission, the Treasury, and the Office of the Controller and Auditor-General.

Committee membership
Todd McClay (Chairperson)
Maggie Barry
David Bennett
Hon Clayton Cosgrove
Hon David Cunliffe
Paul Goldsmith
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Hon Kate Wilkinson
Denise Roche replaced Dr Russel Norman for this item of business.
Public Finance (Fiscal Responsibility) Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Public Finance (Fiscal Responsibility) Amendment Bill, and recommends by majority that it be passed with the amendments shown.

Introduction
The bill seeks to amend the fiscal responsibility provisions of the Public Finance Act 1989 by adding new principles of responsible fiscal management and codifying some existing reporting practices as legislative requirements.

The new principles would require the Government to
• formulate fiscal strategy with regard to its interaction with monetary policy
• formulate fiscal strategy with regard to its likely impact on present and future generations
ensure that the Crown’s resources are managed effectively and efficiently.

One existing principle would be amended to require revenue strategy to have regard to efficiency and fairness, including the predictability and stability of tax rates.

The bill would amend reporting requirements in four main ways:

- Introducing a requirement for fiscal strategy reports to include an assessment of the extent to which the Government’s fiscal performance is consistent with its fiscal strategy.
- Requiring fiscal strategy reports to include details of the Government’s revenue strategy, including the Government’s objectives for the tax system and tax policy; although producing a revenue strategy has been established practice for some time, it is not currently required by legislation.
- Requiring regular investment statements, prepared by the Treasury, to be presented to the House; while an investment statement was prepared in 2010, with a supplement in 2011, neither document was required by legislation.
- Requiring fiscal strategy reports to be clear about what the Government is trying to achieve and how its management of the Crown’s resources contributes to those goals.

This commentary explains the amendments the majority of us recommend to the bill, which aim to clarify one of the principles and refine the reporting requirements to help the legislation operate more effectively.

**Principles of responsible fiscal management**

One of the new principles of responsible fiscal management to be inserted by clause 4 of the bill is “formulating fiscal strategy with regard to its interaction with monetary policy” (new section 26G(1)(f)). To avoid possible misinterpretation of its intent, we recommend, by majority, amending the provision to refer to “formulating fiscal strategy having regard to the interaction between fiscal policy and monetary policy”. (We are also proposing minor drafting improvements to this and the two preceding principles.)

The Act does not mention monetary policy. The majority of us understand that in doing so, the bill aims to ensure that governments take explicit note of the fact that fiscal policy and monetary policy are in-
terdependent; and that different fiscal strategies can prompt different monetary policy responses.

The majority of us believe our recommended amendment would make clearer this interdependence between fiscal policy and monetary policy, without giving a mistaken impression that the relationship is one-way; that is, that fiscal policy should take monetary policy into account, but not the reverse.

**Contents of fiscal strategy report**

Clause 5, inserting new section 26KA, would implement the policy goal of requiring fiscal strategy reports to be clear about what the Government is trying to achieve, and how its management of the Crown’s resources contributes to doing so. As introduced, the bill would require the fiscal strategy report to state and explain the Government’s priorities for allocating the Crown’s resources. The majority of us consider that the use of the word “priorities” might encourage a focus on short-term spending plans, whereas the majority of us believe the intention of this reporting requirement is to have governments explain their focus for the medium term. For clarity, we therefore recommend by majority amending clause 5 so that it refers to the Government’s strategy for management of the Crown’s resources, and specifies that these resources consist of expenditure, assets, and liabilities. We also recommend, by majority, a consequential amendment to clause 7(2), inserting section 26M(3)(c).

**Publication of notices in the Gazette**

Clause 10 of the bill as introduced would amend section 26Y of the Public Finance Act to add investment statements to the list of reports which must be “gazetted” upon presentation to the House; that is, a notice must be published in the Gazette to publicise the fact that the reports are publicly available. The majority of us consider this requirement largely outdated, and believe public communication and transparency are better served by making such documents available on the Internet.

Accordingly, we recommend, by majority, amending clause 10 to replace the requirement under section 26Y to publish a notice in the Gazette upon presentation of specified reports to the House with a requirement that the specified documents be published on an Internet
site maintained by or on behalf of the Treasury. The Secretary to the Treasury would be required to ensure that such documents remained accessible on the site for at least 5 years. In practice, they are likely to remain on the website for longer, and after removal would continue to be publicly available under normal archiving practices.

**New Zealand Labour Party minority view**

This amendment bill has its genesis in the confidence and supply agreement between the National and ACT parties. It expands and amends the list of criteria to be taken into account by the Government when managing the country’s finances.

The changes proposed would not make the management of the Crown’s finances any better, and in one case (interaction with monetary policy) has the potential to make imbalances in the economy worse.

New section 26G(1)(g) says the Government should be “formulating fiscal strategy with regard to its likely impact on present and future generations, and”. Of course prudent governments should already do this.

It is clear from advice from officials that the amendment will have no enforceable effect on National’s refusal to address the age of eligibility for superannuation, despite this being the most obvious example of budget settings that have effects between generations. Superannuation costs rose from $7.3 billion in 2008 to $10.2 billion in 2013. This is already more than the cost of all welfare benefits combined. Within two years superannuation exceeds the amount spent by Government on all education (preschool, primary, intermediate, secondary, and tertiary combined). The proposed amendment has no effect on this.

A more significant change is proposed to section 26G(1)(f) which proposes “formulating fiscal strategy with regard to its interaction with monetary policy”.

Assuming that this phrase is not meaningless, its effect must be to elevate the status of monetary policy in regard to fiscal strategy compared with the status quo. We suggested the wording should require the interaction between fiscal and monetary policy to be considered, but not elevate monetary policy in this way.
The Treasury and Government reading of “monetary policy” in paragraph (f) is too narrow. We believe the wording in (f) should be “formulating fiscal and monetary policy with regard to the interactions between them”. This proposed change was rejected by the Government, who have said fiscal responsibility legislation should not influence monetary policy. If that logic were applied consistently, then fiscal responsibility legislation should not refer to effects on economic efficiency either, which this bill does.

In any event, Labour members do not accept the officials’ advice that all monetary policy is delegated to the Reserve Bank. It is true that that which is delegated to the Reserve Bank through the Reserve Bank Act is delegated, but other monetary policy (including advice functions and other relevant considerations for the Government) remain with the Treasury and the Government.

A comparison with the equivalent legislation in Australia is also relevant. The Australian equivalent makes express reference to achieving adequate national savings. When we asked officials about this, they emphasised Government savings, which is only a subset of national savings. Given the entrenched problem that New Zealand has as a consequence of a current account deficit spanning decades, which is currently the worst in the developed world, we think that the reference to national savings is at least as important as reference to monetary policy. This proposed amendment was also rejected by Government members.

Overall this legislation is poorly drafted and will do nothing to improve fiscal responsibility. It is a waste of Parliament’s time and is accordingly opposed by the Labour Party members.
Appendix

Committee process
The Public Finance (Fiscal Responsibility) Amendment Bill was referred to the committee on 4 December 2012. The closing date for submissions was 14 February 2013. We received and considered four submissions from interested groups and individuals, and heard two submissions. We received advice from the Treasury.

Committee membership
Todd McClay (Chairperson)
Maggie Barry
David Bennett
Hon Clayton Cosgrove
Hon David Cunliffe
Paul Goldsmith
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Hon Kate Wilkinson
Report from the Controller and Auditor-General, *Draft Annual Plan 2013/14*

Report of the Finance and Expenditure Committee

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Recommendation

The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General, Draft Annual Plan 2013/14, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Introduction

Under the Public Audit Act 2001, the Controller and Auditor-General is required to present to the Speaker at least 60 days before the beginning of each financial year a draft annual plan describing the Auditor-General’s proposed work programme for the year. A finalised annual plan must be presented to the House before the beginning of each financial year.

The Auditor-General may take into account any comments from the Speaker or any committee of the House when preparing a final version of the annual plan. The Auditor-General is required to indicate in the final version of the annual plan the nature of any changes to the work programme priorities suggested by the Speaker, or any committee, that are not included in the final annual plan presented to the House. This review process allows the Auditor-General’s work to be relevant and responsive, while still maintaining her independence to determine the content of the final work plan herself.

The Finance and Expenditure Committee is responsible for facilitating and coordinating feedback on the draft annual plan from other committees.

Features of the draft work programme

In 2013/14 the theme of the Auditor-General’s work programme will be “service delivery”.

Performance audits

The office’s performance audits will focus on entities’ planning, targeting, and objective-setting for services; how well they work together to deliver services; how they evaluate the quality and effectiveness of service delivery; and how they assess and work to improve the value for money from services.

The Auditor-General intends to report on

- delivering services in a digital environment
- client-focused management of public services
- service delivery through third parties (Whānau Ora)
- education for Māori educational success (second report)
- local government asset and service-level management
Auckland Council: a service performance review of the council’s building and resource consent processes, or an evaluation of the effectiveness and efficiency of Watercare Services Limited’s customer services, or both.

The office is also exploring with the Australasian Council of Auditors-General the possibility of working jointly with some audit offices in Australia on a topic of common significance.

Completing reports from 2012/13

In 2013/14 the office will complete the following reports from its 2012/13 work programme, which had the theme of “Our future needs—is the public sector ready?”:

- new migrant settlement and contribution
- regional services planning by DHBs and capital investment
- ageing population
- New Zealand’s Long-term Fiscal Statement
- board reporting by CRIs and SOEs
- justice: reduction of reoffending

It will also prepare an overview report on the results of its work under that theme.

Audit reports

As well as reporting to Parliament on the annual audits of public entities, which make up about 87 percent of the office’s work, the Auditor-General will prepare several sector overview reports, probably divided into central government, local government, the health sector, the education sector, and entities in the social sector.

As usual, the Auditor-General will report on progress by public entities in implementing past recommendations made in inquiries and performance audits.

Inquiry reports

The office cannot plan its inquiry work, which responds to requests received. It allows for five to ten such reports each year. One inquiry to be undertaken in 2014/15 will cover investments by Delta Utility Services Limited in residential development around Wanaka and Queenstown.

Other work

The accountability arrangements for public entities will be affected by various changes in accounting standards and legislation in 2013/14, including planned changes to the State Sector Act 1989, the Public Finance Act 1989, and the Crown Entities Act 2004. The office will work to prepare itself, its auditors, and public entities for the new arrangements.

Plans for 2014/15

Looking ahead to the office’s work programme for 2014/15, the Auditor-General proposes to focus on governance and accountability in the light of the changes proposed to legislation, the structural form of public entities, service delivery mechanisms, and accounting standards. It will also propose a five-year rolling work programme for comment from members of Parliament.
Comment

We wrote to other select committees seeking their views on the draft annual plan. We have received comments from several committees, which we will pass on to the Auditor-General for consideration.

Suggestions by committees include a recommendation by the Primary Production Committee that the Auditor-General consider and report on Primary Growth Partnerships. The Health Committee recommends that proposed work on client-focused management of public services specifically include benchmark numbers of general practitioners, midwives, and obstetricians, and the distribution of this clinical resource between District Health Boards on the basis of birthing data. The Education and Science Committee noted that a second report is planned about education for Māori educational success, and suggested that the office consider undertaking a similar study examining the various programmes intended to improve the educational outcomes for Pasifika students. Similarly, the Social Services Committee indicated that the Auditor-General should monitor and assess how entities are performing in relation to Pacific issues. The Local Government and Environment Committee questioned the limiting of the proposed review of Watercare Services Limited to evaluation of its customer interface. We expect that these comments will be considered and addressed by the Auditor-General when finalising her work plan.

We value the work undertaken by the Controller and Auditor-General, and appreciate this opportunity for select committees to provide feedback and input on her proposed work programme. Such consultation on the Auditor-General’s draft accountability documents helps to ensure that the office’s work and reporting is relevant and useful to Parliament, public sector entities, and the public.
Committee procedure

The committee met on 8 May and 5 June 2013 to consider the report from the Controller and Auditor-General, *Draft annual plan 2013/14 (including the Auditor-General’s proposed work programme for 2013/14)*.

We consulted all subject select committees during our consideration of this item of business.

Committee members

Todd McClay (Chairperson)
Maggie Barry
David Bennett
Hon Clayton Cosgrove
Hon David Cunliffe
Paul Goldsmith
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Hon Kate Wilkinson
Report from the Controller and Auditor-General, Annual Plan 2013/14

Report of the Finance and Expenditure Committee

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Report from the Controller and Auditor-General, Annual Plan 2013/14

Recommendation
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General Annual Plan 2013/14, and recommends that the House take note of its report.

Introduction
This report summarises the areas of work the Auditor-General will focus on over the coming year.

We reported to the House in June on the Auditor-General’s draft annual plan, which outlined her office’s proposed work programme for 2013/14. In reviewing the draft plan, we passed on to the Auditor-General comments and suggestions from several other committees; the office has taken them into account in preparing the final plan.

The office’s work
The bulk of the office’s work (about 87 percent) is required by statute, and entails annual financial audits of roughly 4,000 public entities. They range from large government departments, SOEs, Crown research institutes, and district health boards, to small schools and tiny cemeteries. Audits also cover subsidiaries of these agencies, which are increasing in number.

The rest of the office’s work involves reporting on public entities’ use of resources, and contributing to national and international good practice. The office’s performance audits, inquiries, and other studies can examine aspects of public-sector management in more depth than a statutory financial audit. The Auditor-General also provides advice to Parliament’s committees regarding financial reviews and Estimates examinations.

Features of the 2013/14 work programme
The Auditor-General proposes to focus this year’s work programme on “service delivery”, examining how well the public sector is providing services to the public of New Zealand. The office considers this is appropriate given extensive changes in the shape of the public sector, and in the way services are being delivered.

Financial audits
The annual audits of public entities’ financial statements form the core of the office’s work. They also provide the material for the briefings the Office of the Auditor-General provides to Parliament’s committees for their financial reviews and Estimates examinations.

The Auditor-General is required to report to Parliament on the results of the audits. Instead of gathering the full audits of 4,000 entities into a compendium, the Auditor-General produces sector reports, compiling information from the audits in a compact and useful form. In 2013/14 the office proposes to produce sector reports on SOEs, schools,
the social and health sectors, and local government, as well as two volumes on central government.

We concur with the Auditor-General that there is often not a clear understanding of what is entailed in a financial audit, and public expectations can be unrealistic. As the Auditor-General points out, a “clean” audit report does not certify that every aspect of an organisation has been checked and is in order. The key test in audits is materiality: the auditors focus on big items that will affect the financial results, and on control mechanisms; beyond that, indicative samples are checked according to statistical methods, to give a general picture. Strict standards guide audits, but the Auditor-General can then exercise judgement, and ask the auditors to look at certain aspects in more detail.

This year the office will be asking the auditors to pay particular attention to asset management practices and whether public entities have deferred any maintenance of their assets. We are also encouraging committees to ask chief executives about these matters when they conduct their financial review examinations.

The office will also monitor and report on major developments in the recovery from the Canterbury earthquakes, including funding, progress with housing repairs, and procurement processes for rebuilding in the central business district. We will take a close interest in the resulting reports.

We heard that the Auditor-General’s office has been working with public entities over the past several years to help them improve their financial and non-financial reporting, so that value-for-money issues become more apparent. We would welcome further efforts by the office to examine whether results are being achieved in the most cost-effective way.

**Performance audits**

The office’s performance audits look at aspects of public sector management in more depth than is appropriate within the statutory scope of a financial audit. They evaluate whether public entities are carrying out their activities effectively, efficiently, and without waste; whether they are exercising probity and financial prudence; and whether they are complying with their statutory obligations.

The performance audits proposed by the office for 2013/14 are listed below. This year’s focus being the delivery of services, they will concentrate on public entities’ planning, targeting, and objective-setting for their services; how well they work together to deliver services; how they evaluate the quality and effectiveness of service delivery; and how they assess and improve value for money from services.

- *Delivering services in a digital environment.* The precise focus of this performance audit is still being worked out, but the topic is considered timely because of increasing reliance on technology to deliver public services.

- *Client-focused service delivery.* This performance audit will focus on services delivered by the Accident Compensation Corporation and the Ministry of Social Development. Issues to be examined will include how easy the services are to access and use; how the needs of vulnerable users are served; and the effectiveness of complaints procedures. It will look at specific groups of people who use the services, including Pacific Island communities, Māori, and youth.
- **Service delivery through third parties.** As public and social services are increasingly being delivered through arrangements with parties outside the public service, the Auditor-General will examine how effectively and efficiently the arrangements are working. It will focus particularly on maternity services, at the request of the Health Committee, and on the Whānau Ora programme.

- **Education for Māori educational success.** This will continue a five-year audit programme (2012–2017) looking at how well the education system is serving Māori students. This year it will focus on partnerships and collaboration between agencies, education providers, local iwi, Māori organisations, and parents and other whānau.

- **Local government asset and service-level management.** This audit will examine the lifespan profile of assets in the local government sector, when and where reinvestment is needed, and the adequacy of asset management practices.

- **Auckland Council: review of service performance.** Auckland Council’s legislation requires the Auditor-General to report on the council’s performance; the council funds the work. The office will undertake two reviews, looking at the council’s building consent processes, and Watercare Services Limited’s customer services. We heard that the review of Watercare is expected to be completed by the end of 2013; the review of building consents is more complex, and is likely to take longer.

- **Governance of council-controlled organisations.** The office will report on how well the statutory framework for the governance and accountability of local government subsidiaries is working.

- **Primary Growth Partnerships.** In response to a suggestion by the Primary Production Committee, an audit is planned of the Primary Growth Partnership programmes, which have been running since 2009/10, funded jointly by the Crown and industry. The audit is likely to examine the Ministry for Primary Industries’ oversight of the programmes.

The Auditor-General also intends to follow up recommendations from previous years’ reports, and to issue an overview report on last year’s performance audits, which had the theme “Our future needs”.

We welcome these areas of work, and look forward to the Auditor-General’s reports. Regarding plans to examine the governance framework for local government subsidiaries, we drew attention to some recent instances where council-owned subsidiaries in Canterbury and Wellington have got into financial difficulty, with repercussions for other parties as the statutory guarantee over local authority debt apparently did not apply. The Auditor-General told us she would seek more information about these instances.

**Inquiries**

The office undertakes inquiries in response to public requests; it generally has about 30 open at any time. Two major inquiries under way at present involve the holding company for Dunedin City Council, Delta Holding, and the Kaipara District Council’s Mangawhai sewerage scheme.

The Auditor-General told us she firmly hopes to have the Kaipara inquiry completed by the end of the year. The inquiry has taken some time as the scheme’s 17-year history is complex. The inquiry report will be substantial, in several parts. The first part, looking into the construction of the sewerage system, has been completed and is now being checked.
Another part entails a review by the chair of the External Reporting Board of the audit work carried out on the scheme by Audit New Zealand (part of the Office of the Controller and Auditor-General). To ensure independence, a former Auditor-General of Australia will peer-review this work. We are pleased that efforts are being made to ensure the inquiry process is sound and independent, as previous audits of the Mangawhai scheme have been criticised.

Other possible inquiries

We note that the Earthquake Commission’s customer services have attracted criticism, and asked whether an inquiry into these operations was planned. The Auditor-General told us that customer relations are examined in the office’s audit of the commission’s home repairs programme.

Some of us strongly believe the Auditor-General should conduct an inquiry into how Solid Energy got into such a disastrous financial position, since it seems that no official inquiry is otherwise being carried out. The Auditor-General told us her office’s present focus is on Solid Energy’s financial audit. Once that is completed and an audit opinion is issued on the financial statements, she is open to reconsidering whether her office should investigate further.
Appendix

Committee procedure
We met on 21 August and 16 October 2013 to consider the report from the Controller and Auditor-General Annual Plan 2013/14. We heard from the Office of the Controller and Auditor-General.

Committee members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to make amendments to several Acts, including the Income Tax Act 2007, the Tax Administration Act 1994, the Goods and Services Tax Act 1985, and the Income Tax Act 2004, in order to improve the fairness of existing tax law and regulations, protect the tax base, and minimise the burden on businesses. The following are the main changes the bill proposes:

- Expanding on the rules for livestock valuation introduced in Budget 2012.
• Tightening the rules for deducting expenditure on assets such as holiday homes, boats, and aircraft that the owner uses both privately and to earn income.
• Changing the time periods for claiming refunds.
• Changing the GST rules for business-to-business cross-border transactions, and several other GST-related amendments.
• Conferring donee status on three charities whose purposes are largely outside New Zealand.

The bill also proposes various remedial amendments, including the following:
• Aligning amortisation rules for the primary sector with general depreciation rules.
• Removing mismatches in the tax treatment of certain foreign currency hedges.
• Correcting an unintended minor change to the tax treatment of allowances for members of Parliament.

This commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amendments. Some of the amendments we recommend would make provisions apply retrospectively. We consider that taxpayers would not be adversely affected by these amendments.

Supplementary Order Paper 167
The Minister of Revenue released Supplementary Order Paper 167 on 11 December 2012, and wrote to the committee inviting us to consider the proposed amendments set out in the SOP during our consideration of the bill. The SOP proposed four principal amendments, and some minor remedial amendments.

Car park tax proposal
One of the key proposals in the SOP was to broaden the fringe benefit tax coverage of car parks provided by employers to employees. The new rules would apply mainly to parking spaces in the central business districts of Auckland and Wellington, where the benefits to employees are greatest.

We considered the proposal at some length, noting that there was widespread concern about the associated compliance costs. The
Commentary  

Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill  

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proposal also generated some considerable comment in the media. We question whether the additional revenue to be gained from such a measure would outweigh the increased compliance costs that it would impose on employers and businesses; we also consider the proposed measure would raise safety issues for some CBD employees. We understand that the proposed amendment is no longer supported by the Minister of Revenue, and we are recommending that it not be included in the bill.

Other proposals

We support the other proposals in the SOP, and recommend them as amendments to the bill, with some minor adjustments. The proposals relate to the following matters:

• Changing the tax treatment of lease inducement and lease surrender payments.
• Including certain salary trade-offs and non-cash benefits, such as vouchers, as income in social assistance calculations.
• Preventing taxpayers from electing to treat short-term agreements, or agreements for the sale and purchase of property or services, as financial arrangements.

The SOP also proposes several technical amendments to support the restructuring of KiwiRail’s balance sheet to reflect a standard commercial valuation approach, with effect from 31 December 2012, and a number of minor remedial amendments, mostly to improve the drafting and remove redundant references.

We are satisfied that the amendments proposed in the SOP are consistent with the bill’s original policy intent.

Rules for mixed-use assets

Clause 19 of the bill would insert new subpart DG in the Income Tax Act 2007, changing the tax rules for assets, such as holiday homes, aircraft, and boats, that are used by the owner both privately and to earn income. We share the policy concern about risks to the tax base from the over-claiming of deductions. The changes would limit the amount of income tax deduction allowed, by applying the principle of apportionment to the use of such assets. General expenditure relating to the asset would be deductible according to the ratio of its income-earning use as a proportion of its total use. (For example, a boat that
was hired out for a one-day fishing trip, used by its owner for 50 days, and left idle for the rest of the year could have one-51st of the year’s expenses on it deducted against the hire charge.) At present, expenditure is deductible as long as the asset is available for hire or rental, whether or not it is used.

Where a close company owns a mixed-use asset, the deductibility of interest would be limited by applying the same apportionment ratio. Interest deductions of group companies and shareholders would also be limited in some circumstances. At present, interest incurred by companies is deductible regardless of the use of the borrowed funds. The bill would also ring-fence, or quarantine, certain losses. If the permissible deductions exceeded the income earned from an asset, the loss would be quarantined and carried forward to offset against future income generated by that asset. The quarantining would apply only where the income generated from the asset was less than 2 percent of the asset’s market value.

We strongly support the intent of measures to restrict the over-claiming of deductions for mixed-use assets. However, we consider a number of amendments desirable to address concern about the complexity of the proposed rules, and to improve their workability. In particular, the majority of us recommend refining its coverage to focus on the main assets that offer private benefit: holiday homes, boats, and aircraft. This would achieve the policy intent of preventing the taxpayer-funded subsidies which the owners of such assets have enjoyed under the current rules, without imposing unnecessary compliance costs on owners of other assets. We understand that little revenue would be foregone by excluding other assets, as short-term holiday accommodation represents the bulk of deductions at present. We expect the Inland Revenue Department to be vigilant in monitoring how well the legislation meets the policy intention.

We are also recommending an amendment to avoid the double taxation that would result if the mixed-use asset rules were applied in addition to fringe benefit tax rules.

As the changes we propose would entail comprehensive redrafting of the bill as introduced, we recommend replacing clause 19 in its entirety; amendments are also proposed to clauses 10, 35, and 57 (subclauses 1, 2, 10, 18, 20, 20B, and 24). The following are the principal changes we recommend.
Commencement date

We recommend deferring the implementation date of the apportionment rules until the beginning of the 2014/15 tax year for assets other than land and buildings. Assets such as boats and aircraft are more likely to be held in companies or complex corporate structures than by individuals, and a one-year deferral would reduce compliance difficulties by allowing time for the assets to be transferred out of these structures. We consider such a transition period reasonable, and note that boats and aircraft make up only a small proportion of mixed-use assets. We understand that the change would not have fiscal implications. The change would be effected by amending clause 19(2), with consequential changes to clauses 10, 35, and 57.

We also recommend allowing assets (including land and buildings) to be transferred out of a company structure during the transition period without incurring a tax liability for depreciation recovery, provided the assets are transferred to shareholders in proportion to their shareholding, and at the company’s tax book value. A tax liability for depreciation recovery would arise later if the asset were subsequently sold for more than its book value. This change would be effected by new clause 25B, inserting new section DZ 21.

Range of assets to which the rules apply

We recommend refining the scope of the mixed-use asset provisions by amending clause 19, section DG 3, to expressly cover the three main types of asset that are the policy focus of this provision: land (generally short-term holiday accommodation), boats, and aircraft. This would avoid potential complications from the rules capturing other assets, such as earth-moving equipment, which are unlikely to offer a significant element of private benefit.

The bill would apply the rules to boats and aircraft with a cost of $50,000 or more. We recommend making it clear that this cost would apply to an asset considered in its entirety. So, for example, a boat and its motor would be viewed as a single unit, and could not be counted separately in order to fall under the threshold.

We propose that the rules should not apply to assets of which private use is minor or incidental and which are not used in a rental or charter business, to assets for which the income-earning use is long-term
residential, or to assets that change between the owner’s use and income-earning use during a year.

**Relationship with fringe benefit tax and dividend rules**

We are recommending that where the mixed-use assets rules apply, fringe benefit tax rules should not apply, in order to avoid double taxation. However, we do not consider that the same situation applies regarding deemed dividend rules. We consider deemed dividends to be comparable to a cash dividend, which is not deductible to the company paying it, but is income to the person receiving it, who may have imputation credits available to meet the tax liability. We therefore consider it appropriate that both the mixed-use asset and deemed dividend rules apply.

The amendments we recommend, inserting clause 13B and amending clause 19, section DG 2(4), would make it clear that no liability to pay fringe benefit tax would arise from the private use of an asset under subpart DG, but that a company might be required to treat such a benefit as a dividend.

**Private versus income-earning use**

We recommend amending clause 19, section DG 4, to clarify what is, and is not, private use for the purposes of the mixed-use asset rules. In particular, we propose simplifying the provisions in the bill as introduced by using the same concept of private use both to determine whether an asset is subject to the rules, and in the apportionment formula.

Our amendments would make it clear that private use would include use by associates, or use for which less than 80 percent of market value is paid. In the interests of equity, we recommend an amendment to allow any income derived from private use to be treated as non-assessable. The bill as introduced would deny any deduction for expenditure related to private use, yet any income received would be taxed. Our proposed amendment would align the treatment of income and expenditure related to private use.

As for what is not private use, we propose several changes to clarify and extend the rather complex provisions of the bill as introduced. First, we recommend specifying that the use of an asset by a person in the ordinary income-earning process is not private use. Further, we
recommend that the concept of private use exclude any use of an asset necessary to repair damage suffered while the asset was being used to earn income. (Apportionment would, however, apply for normal repairs and maintenance, under section DG 7.) Similarly, where an asset such as an aircraft or boat must be relocated in order to earn income, this would not count as private use provided an amount was included in the normal hire charge toward the cost of the relocation.

Quarantining of losses
We considered carefully the level at which the quarantining rule should apply. In the bill as introduced, losses would be quarantined only when the income earned from an asset was less than 2% of its market value; if earnings exceeded this percentage, losses could still be offset against other income in the year in which they arose. We note that the threshold is low, and question whether it addresses adequately the problem of business assets being used for private benefit on the basis that taxpayers will subsidise any loss. On balance, however, we accept that the bill seeks to achieve a reasonable balance in introducing the principle of ring-fencing of losses. We are therefore not recommending increasing the income level below which quarantining would apply, but we expect the Inland Revenue Department to be vigilant in enforcing the new rules.

We recommend one change to the quarantining provision to allow for a situation in which a mixed-use asset was destroyed or damaged and had to be replaced. Provided the replacement asset was substantially identical, we consider that the losses quarantined and carried forward from the original asset should be able to be offset against earnings from the replacement asset. This change would be made by amending clause 19, section DG 17(6).

Ability to opt out
To reduce compliance costs, the bill as introduced (clause 19, section DG 21) would allow the owner of an asset to opt out of the rules if the asset earned less than $1,000 in a year, or incurred a loss. Any income would be treated as exempt from tax, and in turn the owner would not be able to claim any deductions for expenditure related to the asset. In a loss situation, deductions would be quarantined for use against future income. We consider that a threshold of $4,000
in earnings would be more practicable, and recommend amending clause 19, section DG 21 accordingly.
To avoid unintended consequences, we recommend inserting section DG 21(4) so that the opt-out provisions would not apply when the asset was owned by a company.

**GST treatment**

We recommend amending clause 84 so that the formula for calculating deductions in new section 20G of the Goods and Services Tax Act would include as an income-earning day any day on which consideration is derived whether or not the consideration was at market value. This treatment would improve the bill’s consistency with normal GST rules, by recognising a supply at other than market value, but treating it as having been made at market value if the supply is between associated parties.

**Livestock valuation rules**

The bill proposes elaborating on the rules for the valuation of livestock, introduced in Budget 2012, under which a farmer’s choice to use the herd scheme valuation method is generally irrevocable. The bill proposes an exception to the irrevocability rule, and some new rules relating to disposals of livestock. We recommend some amendments to clauses 26 to 30 to fine-tune the proposed provisions.
As introduced, clause 26, inserting new section EC 4B, requires that if livestock held in the herd scheme are sold to an associated person, the purchaser must also adopt the herd scheme valuation method and the seller’s base number of livestock under that method. We consider that the policy intent of this provision, ensuring tax neutrality, could be achieved more straightforwardly if the transaction were deemed for tax purposes to take place at herd scheme values, without requiring the purchaser to actually adopt the herd scheme method. Similarly, to achieve symmetry between the two parties in the transaction, we recommend that the sale and purchase be deemed for tax purposes to take place in the same year, even if the seller and purchaser have different balance dates. Accordingly, we recommend amending clause 26 by inserting new section EC 4C, with the consequential insertion of new clause 34E.
Clause 26, new section EC 4B(2), proposes a limited exception to the associated persons rule: if a farmer retired and the children or grandchildren purchased the livestock, they would not be required to adopt the herd scheme approach. We recommend some amendments to improve the workability and fairness of this exception. First, to ensure that the exception is not used for tax minimisation purposes, we propose that it apply only where the inter-generational transfer is at market value and on commercial terms and conditions, other than terms and conditions related to financing. Further, we propose a 4-year timeframe from the date of sale; if the seller were to re-commence farming within this period, the younger generation would be required to adopt the herd scheme with retrospective effect, and Inland Revenue could revisit their tax returns back to the date of sale. We also propose that a retired farmer be allowed a minimal level of activity for lifestyle or hobby reasons without breaching the rules for having ceased farming as a business. These amendments would be made in new section EC 4B(2)(b)(ii).

Finally, we consider that the exception the bill proposes to the associated persons rule is overly restrictive, and should be widened slightly. We recommend inserting new section EC 4B(3) in clause 26 to accommodate a situation where the children or grandchildren of a farmer received an interest in livestock through the farmer’s will, when they had not previously held an interest in the stock. We also recommend inserting new clause EC 4B(7) to avoid the exception being restricted inappropriately where a farmer’s relatives operated a separate and independent farming operation.

**Lease inducement and lease surrender payments**

We recommend amending the bill to change the tax treatment of lease inducement and lease surrender payments, largely as proposed in SOP 167. We have incorporated some variation from the proposals in the SOP, mainly for clarification.

These measures, which were the subject of an issues paper and public consultation in the past year, seek to improve fairness and remove distorted business incentives by correcting some imbalances in the current tax system. At present, lease inducement payments, which are generally made by commercial landlords to prospective tenants, are deductible for the landlord but non-taxable for the tenant. This
creates an opportunity for taxpayers to substitute non-taxable inducement payments for tax-deductible rent payments. Lease surrender payments present a different problem: although they are a business expense, they are non-deductible for the commercial tenant. The bill would make both types of payment taxable for the recipient and deductible for the payer over the term of the lease.

We have taken note of concern about inconsistencies between the existing and proposed rules on land-related lease payments. The inconsistencies arise because the existing rules have been established individually, over a long period. We are aware that a wider review is currently seeking to develop a consistent body of rules for the tax treatment of all land-related lease payments. Rather than proposing interim adjustments to the proposed rules now, we consider it preferable to wait until the full review has taken place. Accordingly, we recommend that the proposals from the SOP proceed, with some adjustments to clarify the provisions and improve their workability.

The amendments we recommend to the bill as introduced are in clause 4B, inserting new sections CC1B and CC1C, clause 17B, inserting new sections DB 20B and DB 20C, new clause 25C, amending section EA 3, new clause 32B, inserting new section EI 4B, and clause 57(19B), amending section YA 1.

**GST rules for non-residents**

Clauses 91 and 92 of the bill would insert new sections 54B and 54C dealing with the registration of non-residents for GST purposes.

As introduced, the bill would not allow a non-resident company to register for GST as part of a group of companies if the group also included a New Zealand resident company. We are recommending that this restriction be removed so that non-resident companies could register (or continue to be registered) within a cross-border group rather than having to meet the more onerous requirements of non-resident registration.

The amendments we propose would mean that the new rules for non-resident registration would apply only when the non-resident (or the GST group in which the non-resident was a member) made no taxable supplies in New Zealand. Otherwise, the existing registration and refund rules would apply.
We consider that making taxable supplies in New Zealand, or being part of a group that does so, implies a presence in New Zealand that makes a non-resident less of a risk to the tax base than a non-resident with no New Zealand connections. In our view, the proposed amendment would strike a reasonable balance, protecting the revenue base while avoiding undue barriers to the formation of cross-border business groups.

**Treatment of short-term agreements for sale and purchase**

We recommend inserting clauses 31B and 33B to make changes to the treatment of certain excepted financial arrangements, which taxpayers can currently elect to treat as financial arrangements. (There are five types: agreements for the sale and purchase of property or services, short-term agreements for sale and purchase, short-term options, travellers’ cheques, and certain variable principal debt instruments.)

The current rule, in section EW 8, was designed to reduce compliance costs for taxpayers in certain situations; for example, if they had short-term agreements for sale and purchase, such as trade receivables or payables, denominated or payable in a foreign currency. The rule has proved to be broader than necessary, however, with unintended consequences. The changes we recommend would conform more closely to the legislation’s original policy intent of reducing compliance costs for taxpayers, and would remove the existing rule’s potential “overreach”. We have incorporated into our recommendations some drafting changes from the original proposal in SOP 167 in order to make the policy intent clearer.

We recommend inserting clause 31B, new section ED 4, to allow taxpayers, for certain excepted financial arrangements, to value amounts receivable or payable denominated in a foreign currency for tax purposes using the same exchange rate used for accounting purposes. Once a taxpayer elected into the rule, they would not be allowed to revoke the election.

We also recommend inserting clause 33B to amend the existing rule in section EW 8 so that, in general, taxpayers would no longer be able to elect to treat the five excepted financial arrangements specified above as financial arrangements. However, notwithstanding this
general rule, an exception would be made for financiers who purchase debt for collection, who would continue to be able to treat the debt under the financial arrangement rules.

**Salary trade-offs**

We recommend providing for certain salary trade-offs and non-cash benefits, such as petrol and grocery vouchers, to be included as income in social assistance calculations. A motor vehicle provided by an employer would be included if it was part of an explicit salary trade-off; that is, if the employee would be entitled to a higher income if they chose not to receive the non-cash benefit. The amendments we recommend would be made by inserting clauses 39B and 39C, which would insert new section MB 7B in the Income Tax Act 2007.

We considered whether employers should be required to provide their employees with a statement setting out the total value and breakdown of benefits received from vouchers, as proposed in SOP 167. After considering the compliance costs likely to be entailed, however, we are not recommending such a requirement.

**Short-term charge facilities**

We recommend some amendments to clarify the position of charitable organisations regarding non-salary trade-offs. Although charities are not generally required to pay fringe benefit tax on goods and services they provide to employees, a long-standing exception applies for benefits provided by way of short-term charge facilities above a certain minimum (currently where the benefits exceed 5% of an employee’s salary or wages). We consider it appropriate to make it clear that vouchers for goods such as groceries and petrol are a form of short-term charge facility, and so would be subject to fringe benefit tax. We also recommend modifying the existing minimum to the lower of $1,200 or 5% of an employee’s salary or wages.

The changes we recommend would be made by inserting clause 13C, amending section CX 25, and clauses 44B and 44C, amending sections RD39 and RD54.
Fair dividend rate foreign currency hedges

At present, there is a mismatch in the tax treatment of foreign currency hedges and some offshore financial assets, principally those taxed under the fair dividend rate rules. The mismatch makes it more difficult to hedge certain investments effectively. The bill addresses this by proposing a new, optional rule that would allow eligible taxpayers to apply fair dividend rate rules to their foreign currency hedges.

We recommend some amendments which would make technical refinements to ensure that the proposed rule works as intended. They would mainly amend clause 33, new subpart EM, with minor amendments to clauses 9, 24, and 57 of the bill as introduced.

We considered whether it was desirable to widen the eligibility criteria or the types of hedging arrangements to which the new rules would apply. However, as this is a complex area of tax law we believe caution is warranted so the effects of any changes can be evaluated carefully. We suggest that this issue might be included in the Government’s tax policy work programme.

Technical and remedial matters

KiwiRail restructuring

We are recommending several amendments, as proposed in SOP 167, to support the restructuring of the KiwiRail group’s balance sheet to reflect a standard commercial valuation approach. The restructuring was announced in June 2012, and the amendments would apply from 31 December 2012. They would ensure that the restructuring did not impose additional tax liabilities, and would provide for the tax position of the new State-owned enterprises following the restructuring.

The amendments are technical in nature, but we note them here because they affect several clauses of the bill as introduced: clauses 12C, 34D (inserting sections EZ 64 to EZ 68 into the Income Tax Act 2007), 57(1B), 57(19C–D), 57(23B), and 57(25B–E), 57D, 74(2)–(3), and 94B.

Services for members of Parliament

Clauses 12, 13, 102, and 103 of the bill would correct an anomaly arising from changes to fringe benefit tax provisions to ensure that
the tax applied only to the private element of any payment or service provided to members of Parliament under the Civil List Act 1979. This would accord with the original policy intent. The Minister of Revenue brought to our attention a further anomaly in this aspect of tax legislation, and we recommend inserting new clause 13D to correct it. This would clarify the administrative practice for calculating fringe benefit tax on the private element of services provided to MPs.

**Transitional imputation penalty tax**
Clause 71 relates to the penalty tax payable if dividends were over-imputed following the recent change in the company tax rate from 30% to 28%. As introduced, the bill would exempt taxpayers from the penalty in some circumstances, to acknowledge that the effect of the tax rate change may not have been fully appreciated initially. We consider that a penalty of 10% is excessively punitive in relation to the scale of the infringement, and should be waived entirely. Accordingly, we recommend amending clause 71 to repeal section 140C containing the penalty tax provision.

**GST agents’ opt-out provisions**
The GST Act currently allows only one tax invoice to be issued when an agent supplies goods or services for and on behalf of a principal. However, some accounting systems automatically issue invoices when goods and services are supplied. To avoid a technical breach of the legislation, the bill (clause 93) would allow principals and their agents to opt out of the agency rules in the GST Act, and permit each to issue a tax invoice in relation to what would be treated as two separate supplies. We consider that some of the additional requirements introduced under this provision could be impractical for some principals and agents, particularly smaller entities. Accordingly, we recommend an amendment to clause 93 to improve the workability of the provision.

**Green Party of Aotearoa/New Zealand minority view**
The Green Party has serious concerns about dropping the proposal to move to a fairer tax treatment of employer-provided car parks, and considers that the compliance cost objections raised by stakeholders
were based on a number of erroneous assumptions. We would support the proposal being included in the bill.
Appendix

Committee process
The Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill was referred to the committee on 29 November 2012. The closing date for submissions was 7 February 2013. We received and considered 41 submissions from interested groups and individuals. We heard 18 submissions.

Supplementary Order Paper 167 was released by the Minister of Revenue on 11 December 2012. The Minister wrote to us asking us to consider it, and other proposals, on 11 December 2012, 7 and 22 March 2013, and 26 April 2013.

We received advice from the Inland Revenue Department, the Treasury, and our specialist tax advisor, Therese Turner.

Committee membership
Todd McClay (Chairperson)
Maggie Barry
David Bennett
Hon Clayton Cosgrove
Hon David Cunliffe
Paul Goldsmith
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Hon Kate Wilkinson
Julie Anne Genter replaced Dr Russel Norman for this item of business.
Twelfth biennial conference of the Australasian Council of Public Accounts Committees (ACPAC), Sydney, Australia, 10 to 13 April 2013

Report of the Finance and Expenditure Committee

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Recommendation

The Finance and Expenditure Committee recommends that the House take note of its report.

Introduction

The Australasian Council of Public Accounts Committees (ACPAC) was established in 1989. ACPAC aims to facilitate the exchange of information and opinions relating to public accounts committees and matters of mutual concern, with a view to improving the quality and performance of public accounts committees in Australasia.

An ACPAC conference is held every two years. The twelfth biennial conference was hosted in Sydney by the New South Wales Parliament, from 10 to 13 April 2013.

ACPAC members from Australia, New Zealand, and Papua New Guinea attended the conference. Also in attendance were invited guests from the Autonomous Region of Bougainville, the Kingdom of Tonga, the Republic of Fiji, the Republic of Indonesia, the Republic of Kiribati, the Republic of South Africa, the Republic of Uganda, the Republic of Vanuatu, the United Kingdom, and the legislatures of the South African provinces of Free State, Gauteng, Limpopo, and Northern Cape. Auditors-General from various jurisdictions also attended. A list of the delegates is included as Appendix B.

The theme of this year’s conference was “Public Accounts Committees: Adapting to a Changing Environment”. Presentations covered such topics as consulting with the public, statutory recognition of Auditors-General, international perspectives on the role of legislatures in public finance oversight, and the relationship between public accounts committees and Auditors-General. The full programme is attached as Appendix C.

New Zealand was represented at the conference by two members of the Finance and Expenditure Committee, chairperson Todd McClay MP and the Rt Hon Winston Peters MP. Mr McClay represented New Zealand in a panel discussion on “Parliamentarians vs. politicians”. Mr McClay also presented a jurisdiction report outlining some of the key work undertaken by the committee since the last biennial ACPAC conference in Perth in 2011. The jurisdiction report is attached as Appendix D.

Presentations

Things that make me cranky

This session, presented by the Hon Michael Egan, the Chancellor of Macquarie University and former Treasurer of New South Wales, recounted some of Mr Egan’s experiences...
during his time in politics, and explained where he believes elected politicians should focus to bring maximum benefit to their constituents.

Mr Egan spoke to delegates on the benefits of a high-quality treasury in the provision of frank advice to Ministers, and his concern that statutory officers are increasingly engaging in the political process using the tools of the politician, such as media conferences.

**Parliamentarians vs. politicians**

This session, for which Todd McClay MP was a panel member, focused on the differences between the roles of members of Parliament as parliamentarians holding the executive to account, and as politicians protecting the interests of their parties. It explored the factors that can influence members’ behaviour in these roles, and focused on equipping delegates to recognise and manage the impact of partisanship on the accountability function of committees.

**Sovereignty of Parliament—developing the Westminster system in a political world**

This session by Professor David Gilchrist, chaired by the Rt Hon Winston Peters MP, examined the ability of Australian parliaments and public accounts committees to function under the pragmatic reforms to the Westminster model that have been made by parliaments across Australia.

**From Federation to follow the dollar**

Mr Des Pearson, the former Auditor-General for the Australian state of Victoria, provided an insight into early audit legislation in Australia, including changes made in the 1970s to include the principles of the Mexico declaration of the International Organisation of Supreme Audit Institutions.

**Engaging with the public**

This session looked at changing methods of communicating with the public, and how they can be made more effective. It focused on the increasing use of social media as a means of engaging with the public. It was agreed that diverse approaches are necessary, and committees need to adapt the tools they use to connect effectively with their audiences.

The session included a presentation on the approach being taken by the New Democracy Foundation to target engagement with specific sections of society via focus groups.

**ACPAC’s role in strengthening accountability in international parliaments**

This session with Rob Oakeshott MP, the Chairman of the Joint Committee on Public Accounts and Audit of the Australian Federal Parliament, focused on moves towards a public accounts committee council for Pacific nations, the hope that the communiqué issued by the Commonwealth Heads of Government meeting in 2013 will mention the importance of public accounts committees as an element of scrutiny, and a proposal that ACPAC develop an international engagement strategy.

**Statutory recognition of the Auditor-General—does it make a difference?**

This session focused on the hypothetical role of an officer of Parliament, and particularly on the important role played by Auditors-General. The panel, consisting of Des Pearson,
the former Auditor-General of Victoria; Mike Blake, the Auditor-General of Tasmania; David Morris, the Chairman of the Public Accounts and Estimates Committee of Victoria; and Philippa Smith, the New Zealand Deputy Controller and Auditor-General, gave short presentations on the circumstances in their own jurisdictions.

The impact of changes to the Queensland Parliamentary Committee system on the public accounts function

This session focused on changes to the Queensland committee system, which have moved it to a model similar to that of New Zealand, with seven subject select committees. The role and functions of a traditional public accounts committee are now part of the remit of the Finance and Administration Committee, with all seven committees having responsibility for the examination of budget estimates, as well as the legislation and public works that fall into their portfolio areas.

The discussion also traversed the consequences for the new committee structure of the last state election results, which returned only seven opposition members out of eighty-nine members of Parliament.

PACs and public finance: New Zealand’s Finance and Expenditure Committee

The session, by Professor Sue Newberry, focused on the wide use by governments of financial instruments such as derivatives, which have been extensively criticised following the global financial crisis.

Professor Newberry explored the use of permanent legislative authority and the borrowing of money by the Government of New Zealand under the Constitution Act 1986 and the Public Finance Act 1989.

Session for Pacific region public account committees

This session was led by Grant Harrison, the deputy director of the Centre for Democratic Institutions at the Australian National University in Canberra, and was targeted at ACPAC members from the emerging Pacific parliaments. It focused on the elements of a successful public accounts committee as a mechanism for accountability, and provided some simple advice on how such committees can carry out their functions effectively.

Capacity and performance in public accounts committees

Professor Kerry Jacobs discussed with delegates the ability of public accounts committees to strengthen accountability and reduce corruption, in a context where institutions are often copied from those of other jurisdictions.

Delegates also discussed the optimal settings for the functioning of public accounts committees.

The relationship between public accounts and Auditors-General

Professor Zahirul Hoque of La Trobe University’s Centre for Public Sector Governance, Accountability and Performance explored the relationship between the budget process, the Auditor-General’s role of examining whether resources have been used properly, and the
public accounts committee’s role of ensuring governments are held accountable for their operating policies and actions.

Professor Hoque discussed with delegates the role of the public accounts committee in good governance accountability processes.

**Jurisdiction reports**

This session was an opportunity for delegates to learn about what was happening in other jurisdictions, ask questions, and exchange ideas. The chairperson of the committee, Todd McClay MP, gave a brief presentation to stimulate discussion of issues of interest to delegates. The New Zealand jurisdiction report is attached as Appendix D.

**Council business**

The members present discussed, and the council resolved unanimously to accept, the proposition by the Joint Committee of Public Accounts and Audit of the Australian Federal Parliament that it lead work on the development of an international engagement strategy. This work would include an initial exercise of mapping existing international engagement by ACPAC members, and contact between ACPAC members and jurisdictions twinned with them through the Commonwealth Parliamentary Association’s twinning programme.

ACPAC members resolved unanimously to accept a proposal by the Finance and Administration Committee of Queensland to amend the constitution of ACPAC. Changes to clause 3.4 were proposed to codify accurately the specifics of the committees in Western Australia, South Australia, and Queensland that are members of ACPAC. Changes to clause 6 facilitate the passing on of the chair and secretariat responsibilities annually at the conclusion of either the biennial or mid-term meetings, rather than only at the conclusion of just the biennial meeting, which is the current arrangement.

By leave, ACPAC members also resolved to amend clause 4.2 to reduce from one month to one hour the period of notice that a jurisdiction with more than one public accounts committee must provide to the ACPAC secretariat of which committee will exercise the jurisdiction’s vote.

**Concluding remarks**

We would like to thank the Parliament of New South Wales for hosting the twelfth biennial ACPAC conference.
Appendix A

Committee procedure
The twelfth biennial conference of the Australasian Council of Public Accounts Committees (ACPAC) took place at the New South Wales Parliament, in Sydney, from Wednesday 10 April 2013 to Saturday 13 April 2013. We met on 5 June 2013 to consider our report.

Committee members
Todd McClay (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
Hon Clayton Cosgrove
Paul Goldsmith
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Hon Kate Wilkinson
Appendix B

AUSTRALIA

The Australian National Audit Office
Mr Steve Chapman, Deputy Auditor-General
Dr Paul Nicoll, Executive Director

The Joint Committee of Public Accounts and Audit
Mr Robert Oakeshott MP, Chair
Mr David Brunoro, Secretary
Mr Shane Armstrong, Senior Researcher

Centre for Democratic Institutions (CDI)
Dr Stephen Sherlock, Director
Mr Grant Harrison, Deputy Director

Certified Practising Accountants (CPA)
Dr Mark Shying, Senior Policy Advisor

NEW SOUTH WALES

The Audit Office of NSW
Mr Peter Achterstraat, Auditor General of NSW
Mr Rob Mathie, Assistant Auditor-General
Mr John Viljoen, Assistant Auditor-General

The Public Accounts Committee
Mr Jonathan O’Dea MP, Chair
Dr Geoff Lee MP, Deputy Chair
Mr John Williams MP
Mr Michael Daley MP
TWELFTH BIENNIAL ACPAC CONFERENCE

Mr Bart Bassett MP
Mr Greg Piper MP
Ms Rachel Simpson, Committee Director
Dr Abigail Groves, Committee Director

NSW Parliament Audit and Risk Committee
Mr Jim Mitchell, Chair

Former Chairs of Public Accounts Committee
Mr Jim Longley
Mr Paul McLeay
Mr Phillip Smiles
Mr Andrew Tink

Clerk Emeritus of the Legislative Assembly
Mr Russell Grove

AUSTRALIAN CAPITAL TERRITORY

Standing Committee on Public Accounts
Mr Zed Seselja MLA, Chair
Ms Mary Porter AM MLA, Deputy Chair
Mr Brendan Smyth MLA
Dr Chris Bourke MLA
Dr Andréa Cullen, Secretary
Dr Brian Lloyd, Secretary

NORTHERN TERRITORY

Northern Territory Auditor General’s Office
Mr Frank McGuiness, Auditor-General

Public Accounts Committee
Ms Lia Finocchiaro MLA, Chair
Mr Gerry Wood MLA
Mr Russell Keith, Clerk Assistant Committees

QUEENSLAND

Queensland Audit Office
Mr Andrew Greaves, Auditor-General

Finance and Administration Committee
Mr Mark Stewart MP
Mrs Freya Ostapovich MP
Mr Reg Gulley MP
Ms Deborah Jeffrey, Research Director

SOUTH AUSTRALIA

Economic and Finance Committee
Ms Lyn Breuer, Presiding Member
Ms Susie Barber, Research Officer

Statutory Authorities Review Committee
Hon Gerry Kandlaars MLC
Hon Terry Stephens MLC
Ms Linda Eckert, Acting Committee Secretary

TASMANIA

Tasmanian Audit Office
Mr Mike Blake, Auditor-General

Joint Standing Committee of Public Accounts
Hon. Ivan Dean MLC, Deputy Chair
TWELFTH BIENNIAL ACPAC CONFERENCE

**VICTORIA**

*Victorian Auditor-General’s Office*
Dr Peter Frost, Acting Auditor-General
Mr Marco Bini, Director Policy & Coordination

*Public Accounts and Estimates Committee*
Mr David Morris MP, Chair
Mr Craig Ondarchie MLC
Mr Robin Scott MP
Mr Neil Angus MP
Ms Valerie Cheong, Executive Officer
Mr Christopher Gribbin, Snr Research Officer

**WESTERN AUSTRALIA**

*Office of the Auditor-General*
Mr Colin Murphy, Auditor-General

*Public Accounts Committee*
Mr Tim Hughes, Principal Research Officer
Ms Lucy Roberts, Research Officer

*Parliament of Western Australia*
Ms Susan O’Brien, Advisory Officer (Legal)

**AUTONOMOUS REGION OF BOUGAINVILLE**

*Public Accounts Committee*
Hon Cosmas Sohia MP, Chair
Mr Douglas Pisi, Secretary
INDEPENDENT STATE OF SAMOA

Public Accounts Committee
Hon Papaliitele Niko Lee-Hang MP, Chairman

KINGDOM OF TONGA

Standing Committee on Public Accounts
Mr ‘Aisake Eke MP, Chairman
Mr Mo’ale Finau MP

NEW ZEALAND

Office of the Auditor-General
Mrs Phillippa Smith, Deputy Auditor-General

Finance and Expenditure Committee
Mr Todd McClay MP, Chairperson
Rt Hon Winston Peters MP

PAPUA NEW GUINEA

Public Accounts Committee
Hon John Hickey MP, Chair
Mr Repe Rambe, Secretary

REPUBLIC OF FIJI

Office of the Auditor-General
Mr Tevita Bolanavanua, Auditor-General
REPUBLIC OF INDONESIA

Audit Board of the Republic of Indonesia (BPK RI)
Dr Hadi Poernomo AK, Chairman
Mr Sapto Amal Damandari, Board Member
Mr Bahtiar Arif, Head of Public and International Relations Bureau
Mr Hery Subowo, Director of Research and Development

State Finance Accountability Committee (BAKN)
Dr Sumarjati Arjoso SKM, Chairperson
Mr Teguh Juwarno M.Si, Apggota
Dr Eddy Rasyidin, Expert Staff

Public Accountability Committee (DPD RI)
Prof Dr Farouk Muhammad, Chairman
Mr Abdul Gafar Usman
Ms Idah Noor Safitri, Secretariat Staff

Consulate General
Ms Novaliana Tambunan, Vice Consul

REPUBLIC OF KIRIBATI

National Audit Office
Mrs Matereta Raiman, Auditor-General

REPUBLIC OF SOUTH AFRICA

Office of the Auditor-General
Mr Mohsien Hassim, Corporate Executive
Mr Thembelani Vanqa, Project Manager

Standing Committee on Public Accounts
Ms Thapelo Chiloane MP
Ms Sarah Mangena MP
Mr Peter-Paul Mbele, Parliamentary Official

FREE STATE LEGISLATURE

Portfolio Committee on Public Accounts
Hon Cornelius Van Rooyen MP, Chairperson
Hon Maureen Scheepers MP
Hon Abraham Oosthuizen MP
Hon Peter Frewen MP
Hon Mantoa Thoabala MP
Ms Shirley Mamashie, Committee Coordinator
Ms Mobakeng Senago, Researcher

GAUTENGPROVINCIALLEGISLATURE

Hon Nomantu Nkomo-Ralehoko MP, Chairperson of Committees

Public Accounts Committee
Hon Sipho Makama MP, Chairperson
Hon Refiloe Ndzuta MP
Hon Wally Valentine Mbatha MP
Ms Glenda Steyn, Member
Mr Dioke Simon Magolego, Senior Committee Coordinator

LIMPOPO LEGISLATURE

Standing Committee on Public Accounts
Hon Derrick Ngobeni, Treasurer

NORTHERN CAPE PROVINCIAL LEGISLATURE

Miss Johanna Beukes, Deputy Speaker
REPUBLIC OF UGANDA

Local Government Accounts Committee (LGAC)
Hon Chrissy Jack Sabiiti MP, Chairman

Public Accounts Committee
Hon Kasiano Wadri MP, Chairperson
Hon Lilly Adong MP
Hon Kafuda Boaz MP
Hon William Nzoghu MP
Hon Muhammad Muwanga Kivumbi MP
Ms Alice Penninah Muheirwe, Secretary

REPUBLIC OF VANUATU

Office of the Auditor-General
Mr John Path, Auditor-General

Parliament of Vanuatu
Mrs Stephanie Mailesi, Secretary

UNITED KINGDOM

Public Accounts Committee
Mr Austin Mitchell MP
Mr Adrian Jenner, Committee Clerk
Appendix C

Programme

**Wednesday, 10 April 2013**

5.00 pm  Delegates arrive at New South Wales Parliament

5.00 pm  Registrations commence

5.30 pm  Welcome function (Speaker’s Garden)

**Thursday, 11 April 2013**

9.15 am  Official welcome from Mr Jonathon O’Dea MP, Chairperson Public Accounts Committee

9.30 am  Keynote speech: *Things that make me cranky*


10.30 am  Morning tea

11.00 am  **Topic: ACPAC’s role in strengthening accountability in international parliaments**

Presenter: Rob Oakeshott MP, Chairperson Joint Committee of Public Accounts and Audit, Commonwealth Parliament

11.45 am  **Topic: From Federation to follow the dollar**

Presenter: Des Pearson, former Auditor-General, Victoria

12.30 pm  Lunch

1.30 pm  **Topic: Engaging with the public**

Panel discussants: Iain Walker, Executive Director, New Democracy Foundation. Steve Chapman, Australian National Audit Office. Steven Reynolds, Deputy Clerk, NSW Legislative Assembly.

3.15 pm  Afternoon tea

3.30 pm  **Topic: Parliamentarians vs. politicians**

Panel discussants: Eric Sidoti, Director, Whitlam Institute. Rob Oakeshott MP, Chairperson Joint Committee of Public Accounts and Audit,
Commonwealth Parliament, Austin Mitchell MP, Member Public Accounts Committee UK, Todd McClay MP, Chairperson Finance and Expenditure Committee New Zealand, Paul McLeay, Former Chairperson Public Accounts Committee New South Wales.

5.00 pm  ACPAC Council meeting
7.00 pm  Conference dinner

Friday 12 April 2013

9.00 am  Topic: **Statutory recognition of the Auditor-General – does it make a difference?**
Presenter: Zed Seselja, Chairperson Standing Committee on Public Accounts ACT Legislative Assembly

**Parallel session: International perspectives on the role of legislatures in public financial oversight**
Presenter: Associate Professor Joanne Kelly, ANZ School of Government

9.45 am  Topic: **The impact of the changes to the Queensland Parliamentary Committee system on the public accounts function**
Presenter: Reg Gulley MP, Member Queensland Finance and Administration Committee

10.30 am  Morning tea

11.00 am  Topic: **The relationship between Public Accounts and Auditor-General**
Presenter: Professor Zahirul Hoque, La Trobe Business School

**Parallel session: PACs and public finance: New Zealand’s Finance and Expenditure Committee**
Presenter: Professor Sue Newberry, University of Sydney

11.45 am  Topic: **Sovereignty of Parliament – developing the Westminster system in a political world**
Presenter: Professor David Gilchrist, Curtin Business School

**Parallel session: Session for Pacific region public account committees**
Presenter: Grant Harrison, Deputy Director Centre for Democratic Institutions

12.30 pm  Reports from jurisdictions (part 1)
1.00 pm  Lunch

2.00 pm  **Topic: Capacity and performance in public accounts committees**

Presenter: Professor Kerry Jacobs, Australian National University

2.45 pm  Reports from jurisdictions (part 2)

3.50 pm  Closing remarks from Mr Jonathon O'Dea MP

**Saturday 13 April 2013**

Sydney Harbour Cruise
Appendix D

Finance and Expenditure Committee’s jurisdiction report

Presented by Todd McClay MP, Chairperson, Finance and Expenditure Committee

Background

This report outlines the main activities of the New Zealand Finance and Expenditure Committee since ACPAC’s last biennial conference in 2011.

Finance and Expenditure Committee

New Zealand’s Finance and Expenditure Committee (FEC) is one of 13 subject select committees. In the current Parliament it comprises 11 members: six from New Zealand National, three from New Zealand Labour, and one member each from the Green Party and New Zealand First.

The FEC’s subject area is defined as the audit of the financial statements of the Government and its departments, and Government finance, revenue, and taxation. As well as sharing the functions of other subject committees, including the ability to initiate inquiries, the FEC plays a central coordinating role in Parliamentary financial scrutiny processes, and has several additional responsibilities.

The sections that follow cover the main aspects of the committee’s work since May 2011 under the following categories:

• Legislation
• The Budget Cycle
• Reports from the Controller and Auditor-General
• Inquiries.

Legislation

An active legislative programme in the 50th Parliament has seen numerous bills referred to the FEC since 2011. ACPAC members may be interested in some apparent trends we have observed, and a summary of the committee’s work in considering and reporting on key pieces of legislation.

We have noted with recent legislation some shortened timeframes for committee scrutiny and reporting. In the past, Standing Orders provided for select committees to report on bills within six months of their referral by the House, unless otherwise instructed by the House. Changes to Standing Order 286(1) in 2011 now require a debate in the House if committees are instructed to report within less than four months. In practice this has led to some bills being referred to committees with a reporting deadline of just over four months. This length of time for scrutiny has obvious flow-on implications for committees’
engagement with the public over legislation, allowing for less time in which bills can be open for submissions, and for a committee to hear evidence from submitters.

In common with other select committees, FEC has also noticed an increase over recent years in the number of form submissions, and submissions that replicate content or render it in a very similar manner. This may be a natural result of the ease of electronic communications, as organisations can readily contact their members to inform them about proposed legislation, and encourage them to engage with the legislative process by providing suggested wording for submissions. Organisations may see this as a means of lending added weight of numbers to their own more substantive submissions, and perhaps of gaining extra hearing time with a select committee. It would be of interest to know whether other ACPAC members have observed an increase in form submissions, and how they see this affecting the public’s engagement with the legislative process.

Climate Change Response (Emissions Trading and Other Matters) Amendment Bill

This bill, which was passed into law in November 2012, makes changes to the New Zealand emissions trading scheme (ETS) designed to improve the scheme’s workability, and to ensure that the ETS is flexible enough to cater for various potential international outcomes from 2013 to 2020.

The bill continues existing transitional measures, which were designed to mitigate the scheme’s effect on costs to businesses and households, and extends them to the waste, agriculture, and synthetic greenhouse gas sectors. It suspends the planned phasing out of the allocation of emissions units to emissions-intensive, trade-exposed industrial activities, and removes a specified entry date for surrender obligations on biological emissions from agriculture. It also introduces forest offsetting within the ETS as an option for pre-1990 forest landowners, to give them more flexibility, and introduces a power to allow auctioning of New Zealand units within an overall cap.

The bill was referred to the committee on 23 August 2012, and we called for submissions with a deadline of 10 September. We received 758 submissions. We held hearings outside Wellington and by teleconference in order to accommodate the 73 submitters who wished to be heard in person, before considering and reporting on the bill by 17 October 2012.

Customs and Excise (Tobacco Products—Budget Measures) Amendment Bill

This bill was passed into law in October 2012. It effects staged increases in the price of tobacco to discourage its use and thereby improve the health of New Zealanders; the excise tax on tobacco products will increase by four cumulative increases of 10 percent from 2013 to 2016. The bill also amends several Acts to ensure that recipients of social assistance are not reimbursed for the increases in tobacco prices.

After considering advice and submissions, we did not recommend any changes to the draft bill, primarily because the bill’s scope did not allow the inclusion of broader measures to reduce the incidence of smoking. However, we recommended that the Government consider further measures to encourage reducing tobacco use in New Zealand, including work to assess the compatibility of New Zealand’s duty-free tobacco concession. The bill was referred to the FEC on 25 May 2012 and we reported on it in August 2012.
Mixed Ownership Model Bill

This bill seeks to prepare for the partial sale of up to 49 percent of the Crown’s shares in four state-owned companies (Genesis Power Limited, Meridian Energy Limited, Mighty River Power Limited, and Solid Energy New Zealand Limited) by providing for their removal from most provisions of the State-Owned Enterprises Act 1986. It would restrict the Crown from holding less than 51 percent of the voting rights in each of the companies, and prevent non-Crown individuals and entities from holding more than 10 percent of the voting rights.

The bill was referred to the FEC in March 2012. We received a relatively large number of submissions, including numerous form submissions. We spent time hearing evidence and considering the bill, holding some hearings outside Wellington, before reporting on the bill in June 2012.

Reserve Bank of New Zealand (Covered Bonds) Amendment Bill

In September 2012 we reported to the House on a bill designed to support financial stability by improving the ability of New Zealand banks to access the international market for covered bonds. The bill would establish a registration regime for covered bond programmes, supervised by the Reserve Bank, and provide legal certainty about the treatment of cover pool assets in the event that an issuing bank was placed into liquidation or statutory management.

State Sector and Public Finance Reform Bill

The FEC is currently considering this bill and holding hearings with submitters. It is an omnibus bill that would amend the main statutes governing the management of the state sector and public finances in New Zealand, with the aim of supporting more innovative and efficient state services.

The main changes to the State Sector Act 1988 aim to strengthen the role of the State Services Commissioner, to extend chief executives’ responsibilities to consider the collective interests of government, and to add a new organisational arrangement, called a Departmental Agency, to the options for providing public services. Changes to the Public Finance Act 1989 are designed to improve financial flexibility, to require the provision of more meaningful information to Parliament to support scrutiny by select committees, and to clarify departmental chief executives’ responsibilities for strategic financial management and financial stewardship. The measures would include the creation of a new multi-category appropriation, and would make it clear that more than one department could incur expenses under an appropriation. Proposed amendments to the Crown Entities Act 2004 would include requiring the board of a statutory entity to ensure that the entity collaborated with other public entities where practicable, expanding the scope for the use of whole-of-government directions, and changing information requirements so as to provide more meaningful information to Parliament.

It should be noted that the bill does not propose any change to the Estimates scrutiny or financial review processes provided for in the Standing Orders; nor does it envisage changes to the content or format of the Estimates or the Information Supporting the Estimates. It would, however, change the content and format of departments’ statements of their strategic intentions, and their end-of-year reporting on appropriations and annual
The changes are designed to sharpen the focus on what is achieved with public resources by shifting the emphasis of end-of-year reporting to reporting against appropriations.

The bill was referred to the FEC in November 2012, and we called for submissions by 7 February 2013. We received a number of submissions, including form submissions, and are currently considering the bill and hearing submitters. We expect to report to the House before the end of May 2013.

**Public Finance (Fiscal Responsibility) Amendment Bill**

As a corollary to the bill discussed above, the FEC is currently considering and holding hearings on a bill to amend the fiscal responsibility provisions in Part 2 of the Public Finance Act 1989. The bill was referred to the FEC in December 2012 and we expect to report on it to the House by June 2013.

**Student Loan Scheme Amendment Bill and Student Loan Scheme Amendment Bill (No 2)**

The Student Loan Scheme represents a major financial commitment by the New Zealand Government to people in tertiary education. Both of these bills were designed to improve the scheme’s fairness and workability, and to encourage repayments.

The first amendment bill was introduced in September 2011, during the 49th Parliament, and the FEC called for submissions. The bill was reinstated at the commencement of the 50th Parliament; in early 2012 we heard evidence and considered the bill, and reported on it in March 2012. The bill was passed into law in April 2012.

Measures proposed in the second amendment bill include introducing information-matching with the New Zealand Customs Service to locate borrowers in serious default when they enter or leave the country, and widening the definition of income so that a borrower's repayment obligation reflected their ability to pay more accurately. After hearing evidence and considering the bill, FEC reported on it in February 2013.

**Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill and Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill**

As the setting of annual taxation rates is required to be confirmed by Parliament, it is usual for the FEC to consider at least one tax bill a year. We reported on the first of these two bills in June 2012, and it passed into law in November.

We are currently considering and hearing submissions on the second bill, and expect to report on it before the end of May 2013. Among other measures, the bill proposes a tightening of the tax deductibility rules for assets such as holiday homes that are used privately as well as to earn income. It would also include as income for tax purposes a wider range of fringe benefits provided to employees.
The Budget cycle

Budget policy statements

The FEC reports on the Government’s Budget policy statement (BPS) each year. The BPS sets out the broad strategic priorities that will guide the preparation of the Budget, the Government’s overarching policy goals, and its major areas of focus; and it explains how the Budget accords with the Government’s short-term fiscal intentions. The statement is presented each year with the Half-year economic and fiscal update prepared by the Treasury, and they are examined together by the FEC.

In examining the statements, the committee usually calls for public submissions on the BPS and hears evidence from the Minister of Finance and from members of the public who have asked to give oral evidence. After the committee reports to the House on a BPS, the first general debate in the House following presentation is replaced by a debate on the BPS, informed by the FEC’s report. This process allows any issues raised to be taken into account by the Minister of Finance in the final Budget documentation. For the 2013 Budget, due to be presented on 16 May 2013, the committee reported on the BPS in March.

Estimates of appropriations

The Budget policy statement is the first stage in the parliamentary financial cycle. Examination of the Estimates of Appropriations set out in the Budget is the next step. In preparation for the Estimates, the FEC updates a questionnaire to be sent to every Minister responsible for a vote, and reports on it to the House. The information supplied is used by subject select committees as a basis for their examinations. The committee aims to keep the questionnaire brief and asks only for information to complement that supplied in the Estimates documentation. The committee recently determined its standard Estimates questionnaire for 2013/14, and reported it to the House.

Following the presentation of the Budget, all Votes of Appropriations are referred to the FEC. The committee may retain votes or allocate them to other subject committees as it chooses. While votes are typically distributed according to the subject areas of the committees, the FEC can, and usually does, retain for examination some votes that fall outside its own subject area. The committee also considers (and may refer) the annual Supplementary Estimates of Appropriations, which adjust the spending plans in the main Estimates for the current year, and are presented as part of the Budget.

Fiscal strategy report and Budget economic and fiscal update

The Standing Orders require the FEC to report on the Fiscal Strategy Report and the Budget Economic and Fiscal Update. The Fiscal Strategy Report states the Government’s long-term objectives and short-term intentions for fiscal policy, assessing how they accord with the principles of responsible fiscal management. The report sets out scenarios illustrating likely progress towards the long-term fiscal policy objectives, based on projections from documented trends. The Budget Economic and Fiscal Update contains economic and fiscal forecasts for the next three financial years, and a statement of tax policy changes.
Financial reviews

Standing Orders require the FEC to allocate, or retain, the task of conducting a financial review of the previous year's performance and the current operations of each individual department, Office of Parliament, Crown entity, public organisation, or State enterprise. When an entity’s annual report is presented to the House, its financial review stands referred to the committee allocated by the FEC. The FEC also examines and reports on the annual financial statements of the Government as part of this process.

For the 2011/12 financial year, the FEC has reported on the annual financial statements of the Government, and retained and reported on the financial reviews of The Treasury, the Inland Revenue Department, the Office of the Controller and Auditor-General, the Reserve Bank of New Zealand, the Canterbury Earthquake Recovery Authority, and the Earthquake Commission.

In addition, since 2008 the Standing Orders also provide for the review of certain reports on non-departmental appropriations. Reports by the responsible Minister under section 32A of the Public Finance Act 1989 stand referred to the FEC for retention or referral to the appropriate subject select committee. The financial review of reports on non-departmental appropriations examines either a statement of service performance comparing actual with forecast performance, or a statement of results against those forecast. For the 2011/12 financial year, the FEC reviewed the non-departmental appropriations for Vote Canterbury Earthquake Recovery.

Select committees' reports on the financial reviews of departments, Officers of Parliament, non-departmental appropriations, and the Government’s financial statements are debated in the committee of the whole House during the second reading of the Appropriation (Financial Review) Bill. The debate for the 2011/12 financial year took place on 12 March 2013.

The financial reviews of Crown entities, public organisations, and State enterprises for 2011/12 are still in progress, and once completed can be considered as a Government order of the day in the committee of the whole House. This normally occurs before the end of the financial year.

Reports from the Controller and Auditor-General

Reports by the Controller and Auditor-General stand referred to the FEC upon presentation to the House. The FEC may consider a report itself or refer it to another select committee for consideration and report to the House. It normally chooses to refer a report if it falls primarily into the subject area of another select committee.

The FEC has considered several reports from the Controller and Auditor-General since May 2011. They include reports covering a number of subject areas, such as the Controller and Auditor-General’s yearly reports on the performance audits of central Government agencies, and on public entities’ progress in implementing the Auditor-General’s previous recommendations.

Recent reports the committee has considered within its subject area have included the Auditor-General’s report on the Treasury’s implementation and management of the Crown retail deposit guarantee scheme, which was set up during the global financial crisis. We are
currently considering a report on the Government’s decision to negotiate with SkyCity Entertainment Group Limited for the development of an international convention centre.

The way in which a report from the Controller and Auditor-General is examined can vary according to the committee given responsibility for considering it, the subject area of the report, and the issues raised. However, it is usual for a committee to hear evidence on the report from the Office of the Controller and Auditor-General in the first instance. The committee may also choose to call publicly for submissions on the issues raised in the report, hear evidence from the departments or Ministers involved, or seek other evidence or advice as the case may require, to assist it in considering the report and formulating its final report to the House.

Where the FEC has chosen to retain reports that relate to the subject areas of multiple committees, it usually writes to these other committees to invite input on the issues which have been raised that fall into each committee’s subject area.

**Controller and Auditor-General’s draft annual work plan**

The committee contributes each year to the development of the Controller and Auditor-General’s annual work plan. Under the Public Audit Act 2001 and the Public Finance Act 1989, the Controller and Auditor-General has a responsibility to present to the Speaker a draft work programme and draft statement of intent, which together form an annual plan, before the beginning of each financial year. These Acts specify that the Auditor-General may take into account any comments from the Speaker or any committee of the House when preparing a final version of the annual plan before it is presented to the House of Representatives.

The FEC takes responsibility for facilitating select committee comment on the draft statement of intent and draft work programme by circulating the draft documents to committees, coordinating responses, and providing final comment on the drafts to the Auditor-General. Once comment is received, the Auditor-General is free to take it into account as she sees fit. However, under legislation the Auditor-General is required to indicate in the final version of the annual plan the nature of any changes to the work programme suggested by the Speaker or any committee that are not included in the version presented to the House.

Reviewing the draft accountability documents of the Auditor-General provides Parliament, through its select committees and the Speaker, with a limited ability to influence the proposed work plan of the Auditor-General. It is intended to allow the needs of Parliament to be responded to effectively and appropriately, but in a way that respects the role and independence of the Auditor-General.

**Inquiries**

**Reserve Bank of New Zealand’s monetary policy statements**

By legislation, the Reserve Bank of New Zealand’s quarterly monetary policy statements stand referred to the House of Representatives. The FEC is committed to examining each statement, and initiates inquiries regularly for this purpose. The examinations involve hearing evidence from the Governor of the Reserve Bank and, while the committee is not required to do so, it reports to the House on any such examination.
Reserve Bank of New Zealand’s financial stability reports

In 2008 the Reserve Bank of New Zealand Act 1989 was amended to invite Parliamentary scrutiny of financial stability reports, which are produced by the Reserve Bank six-monthly and comment on the soundness and efficiency of the financial system and other matters associated with the bank’s statutory prudential process. The FEC initiated an inquiry to examine the bank’s financial stability report for the first time in May 2009, and has used its inquiry power to examine each subsequent report. It reports to the House on each examination.
Insurance (Prudential Supervision) Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Insurance (Prudential Supervision) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Insurance (Prudential Supervision) Act 2010, which established a licensing and prudential supervision regime for insurers operating in New Zealand. It would also make a consequential amendment to the Reserve Bank of New Zealand Act 1989.

The amendments proposed in the bill are generally minor and technical in nature. They aim to improve the Act’s effectiveness and ensure a smooth transition to full licensing of insurers in September 2013, by amending provisions that are unnecessary or impose unwarranted compliance costs, and by addressing technical issues.
We note that the Reserve Bank intends a policy review of the Act within five years after September 2013, to consider how well the regime is operating and whether further changes are desirable. This commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amendments.

**Provision of interim financial information**

We recommend an amendment to clause 11(2), amending section 81(2) of the Act, to extend from 3 months to 4 months the period in which interim financial information must be prepared and given to the Reserve Bank. We consider the change appropriate as it would be aligned with the timeframe for annual financial reporting supported by the Commerce Committee in its report on the Financial Reporting Bill.

**Provisional licences**

We recommend amendments to clause 16 to extend the circumstances in which a provisional licence would continue in force. The new circumstances would include situations where an application for a full licence had been declined, or where the insurer had been directed to cease entering into new insurance contracts. Under the Act, provisionally-licensed insurers would not qualify for a full licence if they were in distress management, so the Reserve Bank’s regulatory oversight would cease when provisional licences expire in September 2013. We recognise that it may be desirable for the Reserve Bank to remain involved to oversee the orderly resolution of such a situation, so there are grounds for provisional licences to be extended beyond September 2013.

Changes we recommend to amend section 246(1A) and insert new section 246(1B) would provide for the provisional licence to remain in force in such circumstances, until the Reserve Bank was satisfied that it could be cancelled under section 246(2).

We also recommend the insertion of new subparagraph (v) in section 246(2)(c) to allow the Reserve Bank to cancel a provisional licence that had been extended beyond September 2013 if it considered it appropriate to do so. For example, if liquidation were the appropriate option, the licence might be unnecessary.
Appendix

Committee process
The Insurance (Prudential Supervision) Amendment Bill was referred to the committee on 8 May 2013. The closing date for submissions was 14 June 2013. We received and considered four submissions from interested groups, and heard from two submitters. We received advice from the Reserve Bank of New Zealand.

Committee membership
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Hon Clayton Cosgrove
Hon David Cunliffe
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
Julie Anne Genter replaced Dr Russel Norman for this item of business.
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *Roles, responsibilities, and funding of public entities after the Canterbury earthquakes*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Paul Goldsmith
Chairperson
Briefing on the cost-sharing arrangement between the Christchurch City Council and the Government

Report of the Finance and Expenditure Committee

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Appendix 6
Briefing on the cost-sharing arrangement between the Christchurch City Council and the Government

Recommendation

The Finance and Expenditure Committee recommends that the House take note of its report.

Introduction

The Government and the Christchurch City Council recently agreed on how they will share the cost of the anchor projects envisaged in the Christchurch Central Recovery Plan, and the repair and replacement of the city’s essential horizontal infrastructure. As the agreement was announced just after our hearing with the Minister for Canterbury Earthquake Recovery on the 2013/14 Estimates, we invited the Minister back to brief us about the arrangement. This report summarises the information we received.

Projects and cost sharing

The cost-sharing agreement announced on 27 June 2013 envisages joint investment of $4.8 billion, of which $2.9 billion would come from the Crown and $1.9 billion from the Christchurch City Council. The largest component, repair of horizontal infrastructure, would be split with a commitment of $1.8 billion from the Crown and $1.14 billion from the council. The table below indicates how estimated costs would be split for each project, and who would take the lead role.

<table>
<thead>
<tr>
<th>Project</th>
<th>Crown share including land ($m)</th>
<th>Christchurch City Council share ($m)</th>
<th>Project lead</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Frame</td>
<td>481</td>
<td>0</td>
<td>Crown</td>
</tr>
<tr>
<td>Convention Centre Precinct</td>
<td>284</td>
<td>0</td>
<td>Crown</td>
</tr>
<tr>
<td>Stadium</td>
<td>37</td>
<td>253</td>
<td>Crown</td>
</tr>
<tr>
<td>Metro Sports Facility</td>
<td>70</td>
<td>147</td>
<td>Crown</td>
</tr>
<tr>
<td>Bus Interchange</td>
<td>51</td>
<td>40</td>
<td>Crown</td>
</tr>
<tr>
<td>Avon River Precinct</td>
<td>89</td>
<td>6</td>
<td>Crown</td>
</tr>
<tr>
<td>The Square</td>
<td>5</td>
<td>5</td>
<td>Joint Crown/CCC</td>
</tr>
<tr>
<td>Performing Arts</td>
<td>8</td>
<td>158</td>
<td>CCC</td>
</tr>
<tr>
<td>Central Library</td>
<td>19</td>
<td>60</td>
<td>CCC</td>
</tr>
<tr>
<td>Car Parking</td>
<td>0</td>
<td>70</td>
<td>CCC/Private</td>
</tr>
<tr>
<td>Transport Plan</td>
<td>44</td>
<td>27</td>
<td>Crown/CCC</td>
</tr>
<tr>
<td>Horizontal Infrastructure</td>
<td>1,800</td>
<td>1,140</td>
<td>Crown/CCC</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,900</strong></td>
<td><strong>1,900</strong></td>
<td></td>
</tr>
</tbody>
</table>
Financial risks
We asked the Minister if costs would be capped under the arrangement, or whether there was a financial risk for the Crown that costs might escalate. The Minister said cost escalation is always possible, but he believes the estimates are conservative and allow for contingencies. In his view, a number of the projects might be completed under budget. Under the legal agreement signed by the council and the Ministers of Finance and Canterbury Earthquake Recovery, the funds committed by the council represent the maximum amount it will provide; the parties will have to work within this budget, or find ways of paying for any additional costs.

The Minister told us that the Christchurch City Council considers its balance sheet strong enough to allow it to commit itself to the cost-sharing arrangement, even though its cash position will depend to some extent on the success of its large claim with Civic Assurance, which is currently the subject of dispute arbitration between Civic and its reinsurers. He flagged the dispute as one area of risk, and said that progress in resolving it is being watched closely.

Regarding the largest project, horizontal infrastructure, the Minister said that a lot of work has already been done to explore the extent of the damage and begin repairs, which helps in estimating the overall cost. However, even examining pipes using cameras is not definitive, as a lot depends on how the structure of the sub-soil has been affected. He said it is reassuring that the council has the same interest as the Crown in ensuring that the work is done properly and cost-effectively. For assurance as to probity, the governance structure and arrangements for contracting and reporting are being looked at carefully, with the Auditor-General’s involvement.

Convention centre
The Minister said the Government has taken on the convention centre project, as it considers itself best placed to explore ancillary commercial partnerships with the private sector. The site could accommodate one or two hotels, a retail complex, and restaurant or tour facilities—activities that would profit from users of the venue. He noted that while the Government has bought the land from the council, he does not envisage ownership remaining with the Crown long term. The Government is now exploring commercial partnership options and developing a business case.

We are aware that many convention centres around the world are not commercially viable and require continual subsidies, and asked about the risk that a Christchurch facility, in addition to one in Auckland, might prove to be a drain on ratepayers or the Crown. The Minister said there is a huge international market for conventions, and while Auckland’s 3,500-person facility would be branded as the New Zealand convention centre, large break-out sessions were not uncommon, and a 2,500-person facility in Christchurch would be an attractive option. He said a promotional network is being developed to link Auckland to facilities in Christchurch and elsewhere in the South Island. He added that the approach taken to Auckland’s convention centre, although controversial, allowed the city to have a major facility without the cost; this was what he hoped to achieve in Christchurch.

Business cases
Some of us were concerned to learn that business cases for the anchor projects are only now being developed, after the Government has committed money for the projects. The Minister, however, is of the view that this is the best way to proceed quickly. He said the
plan for the central business district had been developed after wide public consultation, and had determined that a convention centre was a desirable anchor project. He considered it reasonable to decide first on the financing and leadership arrangements before developing a business case, detailed design, and construction timeline.

**Metro sports facility**

The proposed sports facility would be located on the edge of the planned health precinct in the west of the city, which will comprise the hospital, medical school, and innovation centre. Along with swimming pool facilities, indoor netball courts, and a large multi-purpose floor space, it is envisaged that the facility will include a sports mall to accommodate providers of ancillary services, such as doctors and physiotherapists. We heard that the project will shortly be moving into the design stage. The Minister said strong commercial interest has been shown in the health precinct, and the appetite for the sports facility was good. In his view, there was probably also scope for a similar facility in the eastern part of the city.

**Construction timing and resources**

We are particularly interested in projections by the Ministry of Business, Innovation and Employment and the Canterbury Earthquake Recovery Authority (CERA) of the likely demand for labour. Some of us are concerned that without robust projections and sound planning, reconstruction jobs will end up being filled by workers from overseas, which will simply worsen New Zealand’s current account deficit and employment situation.

The Minister told us that the construction timeline for the projects is being finalised, and he expects it to be published reasonably soon. He said long-term planning is important to avoid bottlenecks, but it is complicated to predict the likely demand for resources, be they labour or concrete, at any given time. He stressed that the Government is not trying to run the process by command and control. Rather, he believes the market is working and coming up with innovative solutions; for example, one construction company is using a forestry camp to accommodate Filipino workers on nine-month rotations. He noted that about 25 people a day—about 9,000 a year—have been moving to Christchurch from elsewhere in New Zealand as well as overseas, and they are clearly finding work since unemployment in Christchurch is falling. We sought a breakdown of this figure to gauge the proportion of foreign labour, but the Minister subsequently informed us that he does not have such data.

Some of us consider that allowing the market to fill the labour shortage in the cheapest way, by bringing in labour from overseas, decreases incentives for industry to train the workforce. The Minister pointed out that the Government is encouraging construction workers and tradespeople to move to Christchurch and has increased funding for training; but he said it considers it reasonable to allow the market to use overseas workers to fill temporary shortages.

We asked whether businesses in construction and related trades have been surveyed to gauge their capacity to ramp up production. We were told that the largest firms and industry training organisations have been consulted, but the data gathered was not particularly robust. One reason was double-counting, as people often move between trades. Another issue was the market’s tendency to adapt to the prospect of shortages, finding unexpected solutions that a centrally-planned approach would not necessarily anticipate.
Controlling costs and quality

The Minister told us that the anchor projects would maintain the focus on cost and quality that lay behind the decision to use Fletcher Building as the project manager for the Earthquake Commission’s home repairs programme. The Government procurement unit was also expanding its efforts to secure good prices for bulk purchases; it is now moving on from paint and plastering supplies to wallboard and roofing materials. The Minister added that more broadly the reasons for building supplies apparently costing more in New Zealand than elsewhere in the world were being investigated.

Some of us would like to see Government procurement processes emphasise New Zealand products, and were disappointed by the Minister’s indication that price is the main factor in decisions. Asked whether the procurement unit takes into account the economic value of potential jobs lost in New Zealand from buying overseas, the Minister said he did not think it could be calculated so readily, as jobs would also be lost if cost inflation got out of control.

Governance arrangements

Some of us noted a report in the Christchurch Press that several Christchurch business leaders had written to the Minister expressing concern about the governance of the Christchurch Central Development Unit, which is responsible for the blueprint for rebuilding in the central city, and calling for the establishment of an advisory panel including private-sector commercial property management experience. The Minister said he continues to believe that interposing such a board between himself and the chief executive of CERA would simply slow down the process. While he believed the suggestion was well intentioned, he noted that it was also essential to follow process in the appropriation of public funds, to maintain probity.

Some of us remain concerned about a shortage of commercial property management and negotiation experience in CERA, which risks stalling progress on the anchor projects and reconstruction in general. The Minister said he was confident of CERA’s ability to obtain expertise as required. He also suggested that there were no constraints on business leaders investing their own capital in acquiring land and developing some of the projects envisaged in the plan.
Appendix

Committee procedure
The committee heard evidence from the Minister for Canterbury Earthquake Recovery and
the chief executive of the Canterbury Earthquake Recovery Authority. We met on 7
August and 4 September 2013 to consider the briefing.

Committee members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Hon Clayton Cosgrove
Hon David Cunliffe
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General Inquiry into Aspects of ACC’s Board-level Governance, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Paul Goldsmith
Chairperson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General, Inquiry into decision by Hon Shane Jones to grant citizenship to Mr Yang Liu, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Paul Goldsmith
Chairperson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General Inquiry into the Government’s decision to negotiate with SkyCity Entertainment Group Limited for an international convention centre, February 2013, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Paul Goldsmith
Chairperson
Petition 2011/28 of Roy Reid on behalf of Grey Power Federation New Zealand

Report of the Finance and Expenditure Committee

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Petition 2011/28 of Roy Reid on behalf of Grey Power Federation New Zealand

Recommendation
The Finance and Expenditure Committee has considered Petition 2011/28 of Roy Reid on behalf of Grey Power Federation New Zealand, and recommends that the House take note of its report.

Introduction
We have considered Petition 2011/28 of Roy Reid on behalf of Grey Power Federation New Zealand, requesting

That the House of Representatives urge the Government to protect the interests of current and former residents of Christchurch retirement villages that are on land zoned as red by the Government, by ensuring that the residents receive an additional payment from Government to make up the difference in value between the Occupation Rights Agreement and the 2007 value of their individual units as assessed by a registered valuer, as part of the Government’s offer to settle with the retirement village owners.

Summary of the issue
The petition concerns the residents of three registered retirement villages which were red-zoned following the Canterbury earthquakes (Kate Sheppard Retirement Village, Kate Sheppard Lifecare, and Avonview Retirement Village). The residents were required to find alternative accommodation. The three villages included a total of 194 units, with about 240 residents.

The retirement village residents found themselves in an even more difficult situation than others displaced by the earthquakes, as their legal position (which we outline in the next section) meant that they were not eligible to receive an insurance payout, nor the voluntary offer made by the Crown to property owners in the red zone. Under the terms of their contracts with the retirement village owners, as governed by the code of practice at the time, they were entitled to receive from the owners only the original capital amount they had paid in, less 20 to 30 percent which could be retained by the owners as a “deferred management fee”. The Crown’s red zone settlement offer was made to the village owners.

In essence, the petition maintains that the payments received by these retirement village residents were insufficient for them to afford to purchase alternative accommodation, causing significant hardship, and that their position is inequitable compared with others affected by the earthquakes. The petitioner requests that the Government make up the difference between the amounts the residents received under their contracts, and the Crown’s settlement offer to residents of the Canterbury red zone; the effect would be that they would receive the valuation of their units as at 2007, without any deductions for deferred maintenance. This would put them in the same position as other insured residents of red-zoned properties.
As an alternative, the petitioner has requested in a supplementary submission that if this proposal cannot be agreed to, the Government at least recompense the residents by the amount of the deferred management fee deducted by the village operators. This would rectify what they consider an anomaly in the code of practice prevailing at the time of the earthquakes, and would move closer to the position that applies under the current code, after changes were made in the light of the earthquake experience.

The legal position of retirement village residents

Occupation rights agreement

Residents of retirement villages do not usually own their units, but generally purchase a “licence to occupy” a unit, for a capital sum. Their rights and obligations are set out in an Occupation Rights Agreement (ORA), a contractual document between the resident and the village owner. This contract sets out the initial capital sum the resident must pay for the occupation right, the regular payments they must make for services provided by the village operator—including amounts to cover premiums for insurance of the units, arranged by the operator—and the exit payment to which a resident is entitled when they die or choose to leave the village. This payout is normally a proportion of the original capital payment for the unit, after fixed deductions, which can be 30 percent of the original amount paid in.

The Act and code of practice

Registered retirement villages are governed by the Retirement Villages Act 2003 and its associated regulations, which require the establishment of a Code of Practice setting out minimum requirements for an occupation rights agreement. The code in force at the time of the earthquakes was issued in 2008, after the preceding (2006) code had been set aside by the courts for lack of adequate consultation. As a result of the earthquake experience, the code was amended again in 2012, and came into force in October 2013. These changes in the code are explained further below, as they are of significance for the petitioner’s request.

Deed of supervision

The Retirement Villages Act requires the operator of a retirement village to appoint a statutory supervisor, whose duties and powers are set out in the Act and in a contractual Deed of Supervision entered into with the village operator. They include setting up a trust account in which the capital payments by residents are held, monitoring the village’s financial position, and reporting annually to the residents and the Registrar of Retirement Villages. Where a village operator cannot continue to provide accommodation, the statutory supervisor’s role is to protect the interests of the residents, ensuring that they are paid out as quickly as possible, that the amounts are at least as much as specified in their individual contracts, and that any better provisions in the code of practice are honoured. Those interests of the residents are secured by way of a registered charge over the land in the name of the statutory supervisor.

Red zone compensation offer

Although retirement villages are operated on a commercial basis, the dwellings occupied by the residents are residential buildings for the purposes of the Earthquake Commission Act 1993. Accordingly, the Government’s compensation package to red zone property owners was extended to retirement villages, but was paid to the village owners rather than the residents. This was because, under the Act, the residents were not eligible for the red zone
offer as they were not the legal owners of their units, and so were not “insured residential property owners”.

**Changes to the code of practice**

The origins of the petition lie at least in part with changes made to the Code of Practice for Retirement Villages in 2008, allowing deductions for deferred maintenance to be made in the event that a retirement unit could no longer be occupied as a result of a no-fault event. After the Christchurch earthquakes the code was amended again (with effect from 14 October 2013), effectively restoring the position that had applied before 2008 by providing for the resident to receive in a no-fault exit situation a minimum payout of the original capital sum paid on entering the retirement village, with no deductions. However, this change was not retrospective, so the residents covered by the petition were caught by the temporary gap in the code provisions.

Since October 2013, residents can generally expect to be better compensated financially if a major event happened: if a village were destroyed and the decision made not to rebuild it, the residents should receive back the full amount of their original capital payment.

**Submissions from the petitioner**

Written and oral submissions on behalf of retirement village residents point out that the position they found themselves in after the earthquakes caused considerable emotional and financial hardship. The most vulnerable residents (those in Kate Sheppard Lifecare) were evacuated and relocated to other villages around New Zealand; however, many others were left to find alternative accommodation at very short notice after the February 2011 earthquakes. Village owners were able to accommodate a few residents in other villages they had shares in when it became clear that they had nowhere else to go. The former residents could not claim temporary assistance for rental accommodation, and many were without savings or financial means for seven months until their capital, less deductions, was released from the village trust account. The petitioner says that for many of these people, aged in their 80s, it was a terrifying experience.

The petitioner also claims that residents’ worries were later exacerbated by confusion about announcements concerning the Crown’s voluntary offer to red-zone residents. In early 2012 the Minister for Canterbury Earthquake Recovery indicated that the residents would be covered by the offer, raising their hopes that they would receive the 2007 valuation of their units, but this announcement was subsequently corrected, as the legal situation was that only the retirement village owner could accept any offer and receive payment. Residents were advised by the statutory supervisor that as they were not the insured property owners, they were only entitled to the payments specified in their ORAs.

Submissions on behalf of the residents argue that as their regular payments for the operating costs of the retirement village covered the cost of insuring their units, it seems inequitable for them not to receive the benefit of that insurance.

The petitioner also expresses bewilderment that the industry-agreed 2008 code of practice dropped the crucial clause that had previously specified that “if a residential unit is not replaced following an insured event, the resident will receive the full sum paid to the operator, without any capital or other deductions normally made under the occupation rights agreement”. Had this clause been retained, they note, residents would not have faced the 20–30 percent deduction of a deferred management fee. Moreover, the petitioner points out that changes made to the code as a direct result of the earthquake experience
now mean that in similar circumstances residents would now receive back the full amount of their original capital payment; it therefore seems inequitable that the elderly residents who suffered through the earthquakes are in a lesser, and inadequate, legal position. It should be noted that the code is an industry-agreed minimum code of practice and did not prevent other more favourable terms being contractually agreed in ORAs.

**Evidence from the statutory supervisor**

We received written and oral evidence from Covenant Trustee Services, which was the statutory supervisor for all three villages covered by the petition. We appreciate the detail provided by Covenant about the circumstances of residents in each village, and about the eventual payout arrangements.

Covenant explained the steps it took on behalf of the village residents. We were told that it communicated with all the village residents following the earthquakes, and pushed hard to represent their interests, ensuring that the amounts paid out to them were at least what was specified in their individual occupation rights agreements and the code of practice. Covenant told us that as the statutory supervisor holds an encumbrance on the title to a retirement village unit, it was able to ensure that all residents received what they were entitled to before their capital was released from the trust fund. We were concerned that the procedures and safeguards before the statutory supervisor signed a release of its registered charge appeared uncertain.

Asked to comment on the apparent inequity of the village owners, rather than residents, receiving the benefit of the Crown’s red-zone offer and insurance payouts, Covenant expressed the view that there were no winners out of the earthquakes. While acknowledging that residents had suffered financially, it noted that the owners were left without a business, or land, and were likely to struggle to re-establish their business even after the payouts they received.

**Role in insurance negotiations**

In the course of our hearing with Covenant’s representative, we were concerned to learn that the statutory supervisor could not be involved in the negotiations between the village operators, EQC, and insurers. Apparently this was because the insurers took the view that the statutory supervisor had no “insurable interest” on behalf of the village residents. We agree with Covenant that this was disappointing and unsatisfactory, whether or not the statutory supervisor’s input might have influenced the outcome to the benefit of the residents.

We sought comment from the Insurance and Savings Ombudsman about the position of statutory supervisors in insurance negotiations. The Ombudsman confirmed that a statutory supervisor does not have an insurable interest in retirement village property, and so does not have a right to participate in such negotiations. The Ombudsman does not consider that a legislative change to require their participation would be appropriate. Nevertheless, in view of the hardships experienced by residents following the earthquakes, and the statutory responsibilities of supervisors to represent residents’ well-being and financial interests, the Ombudsman said she is of the view that “the participation of statutory supervisors in some stages of insurance discussions may be beneficial and efficient for all concerned”. She told us “I would encourage insurers and owners to take these matters into account as they determine the best processes for resolving insurance negotiations in a fair and reasonable manner”.

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Response to petition

We sympathise a great deal with the residents on whose behalf this petition is made. It is clear that they have suffered considerable hardship through circumstances outside their control. While this can be said of many Canterbury residents following the earthquakes, we appreciate that the distress was compounded for these elderly people, not just because of their age, but because they found themselves in a situation not foreseen by policy-makers, legal advisers, or parties to ORAs prior to the earthquakes.

We recommend that residents and their supporters or legal advisers be encouraged to participate in any discussions on future industry-agreed codes of practice to ensure that consideration is given to any possible future events.

We recommend that the position of statutory supervisors needs to be clarified so they have standing in any future insurance discussions and negotiations.

We consider it important that prospective residents seek legal advice before entering into an occupation rights agreement, so they understand what their contractual obligations and entitlements would be, including in the (highly unusual) event that the village was destroyed and could not be rebuilt.

We also believe statutory supervisors need to be more active in seeking information from village operators that the insurance they have taken out is sufficient to cover replacement, and regularly monitoring that it remains sufficient.

Some of us believe that these Canterbury residents suffered a relatively worse outcome than most property owners, through no fault of their own. Despite having paid for expensive insurance, they did not get fair compensation for their losses. Some of us believe the Government should consider how additional compensation can be made to them.
Appendix

Committee procedure
Petition 2011/28 was referred to the committee on 26 June 2012.
We met between 18 July 2012 and 2 July 2014 to consider the petition. We received evidence from the petitioners and from Covenant Trustee Services and the Insurance and Savings Ombudsman, and received advice from the Ministry of Business, Innovation and Employment.

Committee members
Paul Goldsmith (Chairperson)
David Bennett
Dr David Clark
John Hayes
Dr Russel Norman
Simon O’Connor
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Hon Kate Wilkinson
Report from the Controller and Auditor-General, Discussion Paper: Managing public assets, June 2013

Report of the Finance and Expenditure Committee

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Report from the Controller and Auditor-General, Discussion Paper: Managing public assets, June 2013

Recommendation

The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General Discussion Paper: Managing public assets, June 2013, and recommends that the House take note of its report.

Introduction

The Auditor-General’s paper considers the state of asset management in the public sector. It draws on information compiled by the office’s auditors from more than 340 public entities with major assets that are used to deliver services to the public. The survey covered assets valued in total at over $214 billion. The project sought an overview of the stock of assets held by the public sector: their value and condition, the arrangements for their maintenance and renewal, and the information reported about them to decision-makers.

The paper did not attempt to provide an audit of asset management practices; the aim was to generate discussion by prompting questions about the management of public assets.

Main findings

We found the discussion paper of considerable interest and value. It raises important issues about the way public assets are being managed to meet New Zealand’s needs for the long term; and we hope the managers of public-sector entities, and Ministers, will consider these issues carefully and act in response.

The information collected by the Auditor-General indicates that most public assets are in good condition to deliver the services required of them, averaging about 3.3 on a scale of 1 to 4. Assets in the health and education sectors were rated lowest, averaging 3.1.

By and large, organisations appear to understand the importance of asset management planning, with management plans in place for 75 percent of assets. However, there are questions as to how well the management plans are being followed: the study found that only about 40 percent of assets are being managed according to plan, the rest to varying degrees of consistency.

We found the data about deferred maintenance particularly worrying. In the Auditor-General’s view, a decision to defer maintenance can be a perfectly sensible choice if a careful assessment shows maintenance work is not needed. We agree, and note that entities could quantify an element of deferred maintenance for about 10 percent of assets. We are concerned, however, that entities do not know whether maintenance has been deferred for a further 40 percent of assets, or cannot quantify the deferral. This indicates that such

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1 A companion discussion paper by the Auditor-General, Insuring public assets, on which we will report separately, records a total of $225 billion of public assets, as a larger number of entities was surveyed.
Deferrals do not result from a considered decision following an assessment of the assets’ condition and the consequences of deferral.

While the survey found—not surprisingly—that the condition of assets on which maintenance has been deferred was slightly lower than for others, their average condition remains acceptable, rating above 2.5 on the scale of 1 to 4. Historical comparisons are not possible, as this was the first such overview of assets across the public sector (previous work focused on specific entities or sectors). The Auditor-General said that the managers and governors of public organisations will need to ensure there is not a trend of deterioration. She also stressed that reporting about assets should make it clear whether maintenance was being deferred, and any consequences for their performance.

**Proposed action**

We believe the report highlights an important area of risk, and must be followed up. We were pleased to hear that the Auditor-General intends to do so through the work of her auditors with individual entities. Any entity that relies on assets to provide public services should follow a clear plan for their maintenance and renewal; if maintenance is deferred, it should only be by a deliberate decision after assessing the likely impact on the quality of the asset, and on the services it helps deliver. We would like to see the State Services Commission provide more leadership and guidance to public entities in this area.

We suggested to the Auditor-General that the information from this exercise be linked to the annual financial review of public-sector entities, as we consider it essential that Ministers be aware of the state of assets in their portfolios, and clearly informed when budgeting for their maintenance or replacement. The Auditor-General welcomed the proposal, noting that it was timely as her office is just commencing the financial review process for the year, and will shortly be writing to Ministers seeking information from the entities for which they are responsible.

For our part, we intend to write to other committees encouraging them to question chief executives during financial review hearings about their entity’s asset management practices, and any deferred maintenance.

**Further information**

We commend the discussion paper, which contains interesting information about New Zealand’s stock of public assets. For example, pages 14 to 15 break down the $214-billion total according to the services the assets provide. Over half ($114 billion) are classed as economic assets, of which $72 billion are for transport and $20 billion for electricity and its distribution. Environmental assets, including conservation land, stormwater, landfills, and flood protection assets, total more than $39 billion. Health assets, taken to include water supply and sewerage assets, total about $23 billion; educational assets more than $18 billion; and social, cultural and heritage assets $11 billion. Protection and security assets total more than $8 billion.

**Natural environmental assets**

Natural capital, consisting of assets such as fish and fresh water, was outside the scope of this study. However, the Auditor-General told us her office recognises that the combination of economic, environmental, and social capital is key to New Zealand’s overall financial sustainability. The office has been trying to encourage discussion about

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2 See, for example, the Controller and Auditor-General’s Discussion Paper: Public sector financial sustainability, May 2013.
ways in which the information available about all of these areas can be combined to show how they link together, for a comprehensive overview.

We have previously indicated to the Auditor-General that we see scope for some useful joint work by her office and the Parliamentary Commissioner for the Environment, and were pleased to hear that they are currently discussing possibilities.
Appendix

Committee procedure
We met on 27 August and 18 September 2013 to consider the report from the Controller and Auditor-General Discussion Paper: Managing public assets, June 2013. We heard evidence from the Controller and Auditor-General.

Committee members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Hon Clayton Cosgrove
Hon David Cunliffe
John Hayes
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *Discussion Paper: Public sector financial sustainability, May 2013*, and has no matters to bring to the attention of the House.

Paul Goldsmith
Chairperson
Report from the Controller and Auditor-General, Annual Plan 2013/14

Report of the Finance and Expenditure Committee

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**Recommendation**

The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *Annual Plan 2013/14*, and recommends that the House take note of its report.

**Introduction**

This report summarises the areas of work the Auditor-General will focus on over the coming year.

We reported to the House in June on the Auditor-General’s draft annual plan, which outlined her office’s proposed work programme for 2013/14. In reviewing the draft plan, we passed on to the Auditor-General comments and suggestions from several other committees; the office has taken them into account in preparing the final plan.

**The office’s work**

The bulk of the office’s work (about 87 percent) is required by statute, and entails annual financial audits of roughly 4,000 public entities. They range from large government departments, SOEs, Crown research institutes, and district health boards, to small schools and tiny cemeteries. Audits also cover subsidiaries of these agencies, which are increasing in number.

The rest of the office’s work involves reporting on public entities’ use of resources, and contributing to national and international good practice. The office’s performance audits, inquiries, and other studies can examine aspects of public-sector management in more depth than a statutory financial audit. The Auditor-General also provides advice to Parliament’s committees regarding financial reviews and Estimates examinations.

**Features of the 2013/14 work programme**

The Auditor-General proposes to focus this year’s work programme on “service delivery”, examining how well the public sector is providing services to the public of New Zealand. The office considers this is appropriate given extensive changes in the shape of the public sector, and in the way services are being delivered.

**Financial audits**

The annual audits of public entities’ financial statements form the core of the office’s work. They also provide the material for the briefings the Office of the Auditor-General provides to Parliament’s committees for their financial reviews and Estimates examinations.

The Auditor-General is required to report to Parliament on the results of the audits. Instead of gathering the full audits of 4,000 entities into a compendium, the Auditor-General produces sector reports, compiling information from the audits in a compact and useful form. In 2013/14 the office proposes to produce sector reports on SOEs, schools,
the social and health sectors, and local government, as well as two volumes on central government.

We concur with the Auditor-General that there is often not a clear understanding of what is entailed in a financial audit, and public expectations can be unrealistic. As the Auditor-General points out, a “clean” audit report does not certify that every aspect of an organisation has been checked and is in order. The key test in audits is materiality: the auditors focus on big items that will affect the financial results, and on control mechanisms; beyond that, indicative samples are checked according to statistical methods, to give a general picture. Strict standards guide audits, but the Auditor-General can then exercise judgement, and ask the auditors to look at certain aspects in more detail.

This year the office will be asking the auditors to pay particular attention to asset management practices and whether public entities have deferred any maintenance of their assets. We are also encouraging committees to ask chief executives about these matters when they conduct their financial review examinations.

The office will also monitor and report on major developments in the recovery from the Canterbury earthquakes, including funding, progress with housing repairs, and procurement processes for rebuilding in the central business district. We will take a close interest in the resulting reports.

We heard that the Auditor-General’s office has been working with public entities over the past several years to help them improve their financial and non-financial reporting, so that value-for-money issues become more apparent. We would welcome further efforts by the office to examine whether results are being achieved in the most cost-effective way.

Performance audits

The office’s performance audits look at aspects of public sector management in more depth than is appropriate within the statutory scope of a financial audit. They evaluate whether public entities are carrying out their activities effectively, efficiently, and without waste; whether they are exercising probity and financial prudence; and whether they are complying with their statutory obligations.

The performance audits proposed by the office for 2013/14 are listed below. This year’s focus being the delivery of services, they will concentrate on public entities’ planning, targeting, and objective-setting for their services; how well they work together to deliver services; how they evaluate the quality and effectiveness of service delivery; and how they assess and improve value for money from services.

- **Delivering services in a digital environment.** The precise focus of this performance audit is still being worked out, but the topic is considered timely because of increasing reliance on technology to deliver public services.

- **Client-focused service delivery.** This performance audit will focus on services delivered by the Accident Compensation Corporation and the Ministry of Social Development. Issues to be examined will include how easy the services are to access and use; how the needs of vulnerable users are served; and the effectiveness of complaints procedures. It will look at specific groups of people who use the services, including Pacific Island communities, Māori, and youth.
• **Service delivery through third parties.** As public and social services are increasingly being delivered through arrangements with parties outside the public service, the Auditor-General will examine how effectively and efficiently the arrangements are working. It will focus particularly on maternity services, at the request of the Health Committee, and on the Whānau Ora programme.

• **Education for Māori educational success.** This will continue a five-year audit programme (2012–2017) looking at how well the education system is serving Māori students. This year it will focus on partnerships and collaboration between agencies, education providers, local iwi, Māori organisations, and parents and other whānau.

• **Local government asset and service-level management.** This audit will examine the lifespan profile of assets in the local government sector, when and where reinvestment is needed, and the adequacy of asset management practices.

• **Auckland Council: review of service performance.** Auckland Council’s legislation requires the Auditor-General to report on the council’s performance; the council funds the work. The office will undertake two reviews, looking at the council’s building consent processes, and Watercare Services Limited’s customer services. We heard that the review of Watercare is expected to be completed by the end of 2013; the review of building consents is more complex, and is likely to take longer.

• **Governance of council-controlled organisations.** The office will report on how well the statutory framework for the governance and accountability of local government subsidiaries is working.

• **Primary Growth Partnerships.** In response to a suggestion by the Primary Production Committee, an audit is planned of the Primary Growth Partnership programmes, which have been running since 2009/10, funded jointly by the Crown and industry. The audit is likely to examine the Ministry for Primary Industries’ oversight of the programmes.

The Auditor-General also intends to follow up recommendations from previous years’ reports, and to issue an overview report on last year’s performance audits, which had the theme “Our future needs”.

We welcome these areas of work, and look forward to the Auditor-General’s reports. Regarding plans to examine the governance framework for local government subsidiaries, we drew attention to some recent instances where council-owned subsidiaries in Canterbury and Wellington have got into financial difficulty, with repercussions for other parties as the statutory guarantee over local authority debt apparently did not apply. The Auditor-General told us she would seek more information about these instances.

**Inquiries**

The office undertakes inquiries in response to public requests; it generally has about 30 open at any time. Two major inquiries under way at present involve the holding company for Dunedin City Council, Delta Holding, and the Kaipara District Council’s Mangawhai sewerage scheme.

The Auditor-General told us she firmly hopes to have the Kaipara inquiry completed by the end of the year. The inquiry has taken some time as the scheme’s 17-year history is complex. The inquiry report will be substantial, in several parts. The first part, looking into the construction of the sewerage system, has been completed and is now being checked.
Another part entails a review by the chair of the External Reporting Board of the audit work carried out on the scheme by Audit New Zealand (part of the Office of the Controller and Auditor-General). To ensure independence, a former Auditor-General of Australia will peer-review this work. We are pleased that efforts are being made to ensure the inquiry process is sound and independent, as previous audits of the Mangawhai scheme have been criticised.

**Other possible inquiries**

We note that the Earthquake Commission’s customer services have attracted criticism, and asked whether an inquiry into these operations was planned. The Auditor-General told us that customer relations are examined in the office’s audit of the commission’s home repairs programme.

Some of us strongly believe the Auditor-General should conduct an inquiry into how Solid Energy got into such a disastrous financial position, since it seems that no official inquiry is otherwise being carried out. The Auditor-General told us her office’s present focus is on Solid Energy’s financial audit. Once that is completed and an audit opinion is issued on the financial statements, she is open to reconsidering whether her office should investigate further.
Appendix

Committee procedure
We met on 21 August and 16 October 2013 to consider the report from the Controller and Auditor-General Annual Plan 2013/14. We heard from the Office of the Controller and Auditor-General.

Committee members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson

Report of the Finance and Expenditure Committee

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Recommendation

The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General Discussion Paper: Commentary on Affording Our Future: Statement on New Zealand’s Long-term Fiscal Position, August 2013, and recommends that the House take note of its report.

Comment

We have considered the report from the Controller and Auditor-General Discussion Paper: Commentary on Affording Our Future: Statement on New Zealand’s Long-term Fiscal Position, August 2013. We met with the Office of the Auditor-General on 4 September 2013 to hear its views.

The discussion paper provides a useful assessment of the Treasury’s statement on the long-term fiscal position Affording Our Future: statement on New Zealand’s long-term fiscal position, July 2013. We value the comments the Auditor-General has provided, and refer to them in our report on the statement itself, which was presented to the House on 17 October 2013. We have no further matters to bring to the attention of the House.
Appendix

Committee procedure
We met on 4 September and 16 October 2013 to consider the report by the Controller and Auditor-General Discussion Paper: Commentary on Affording Our Future. Statement on New Zealand’s Long-term Fiscal Position, August 2013. We heard evidence from the Controller and Auditor-General.

Committee members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
Statement on the long-term fiscal position, July 2013

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Recommendation

The Finance and Expenditure Committee has considered the report from the Treasury *Affording Our Future: statement on New Zealand’s long-term fiscal position, July 2013*, and recommends that the House take note of its report.

Introduction

The Treasury is required by the Public Finance Act 1989 to prepare a statement at least every four years on the long-term fiscal position, covering not less than 40 years. The Act does not specify the content of the statement, requiring simply that the Treasury confirm it has used its best professional judgement about the risks and the outlook, and has disclosed all significant assumptions. The 2013 statement, which covers 48 years to 2060, was presented to Parliament on 11 July. It follows statements in 2006 and 2009.

*Affording Our Future* is available in full and in summarised form on the Treasury’s website [http://www.treasury.govt.nz/government/longterm/fiscalposition/2013](http://www.treasury.govt.nz/government/longterm/fiscalposition/2013), as are numerous background papers supporting the analysis, and major pieces of research commissioned by the Treasury from external sources. The Treasury intends these extensive supporting documents to be read with the statement.

Aim and approach

The statement differs from the Treasury’s other forward-looking reports, such as its regular economic and fiscal updates, as it does not forecast what is likely to happen. Rather, it looks at “what if” scenarios, comparing the effect on Government finances of possible options against a core scenario in which policy settings for spending and revenue stayed the same for 40 or more years. While this assumption is clearly unrealistic, the projections are a useful way of thinking about the future. The aim is to determine what challenges will face future governments, such as those arising from New Zealand’s ageing population, and to provide information about options for responding to them.

The Treasury’s principal “what if” scenario imagines that government expenses revert to their historic average rates of growth from the 2015/16 fiscal year. (This differs from the Government’s actual strategy, which entails holding expenditure below previous rates of growth so as to return the operating balance to surplus.) It assumes tax revenue at 29 percent of GDP, the average of the past 10 years, and any excess expenditure over revenue being financed by borrowing.

Projections and policy options

The main message from the projected scenario is that, in the absence of policy adjustments, spending on New Zealand superannuation and healthcare would grow so much over the next 40-plus years as a result of demographic changes that net government debt would rise dramatically, to 198.3 percent of GDP by 2060. To illustrate the size of the gap needing to be filled from borrowing, the statement compares this spending path against a benchmark
where debt was maintained at 20 percent of GDP, which successive governments have generally viewed as prudent.

The statement discusses some of the ways policies could be changed to close the gap and put New Zealand on a more sustainable fiscal path. Options outlined in the statement include tax measures, such as indexing personal income tax thresholds to inflation, or raising GST; restricting spending growth in areas such as public healthcare to less than their historic rate of increase; and responses to demographic change, such as raising the age of eligibility for NZ Super, and slowing the rate of growth in payments. The statement also discusses some of the consequences and trade-offs entailed in each option, such as implications for social equity and living standards.

The statement does not make any recommendations, but it does emphasise the importance of early decisions and prompt action, whatever policy changes are decided on. It notes that fiscal pressures are already building, and the sooner they are addressed the easier it will be to manage them.

Discussion

We discussed with the Treasury some of the assumptions behind its projections, and the potential implications of various possible policy changes. We note that the background papers accompanying the statement explore these and other policy options in more depth. For example, they look at various tax changes, including different forms of capital gains tax, and at ways the burden of an ageing population could be smoothed across generations. We will continue to explore these papers with interest.

The statement’s modelling works on the assumption that government spending would increase at its historic average rate, whereas current policy is to control spending more tightly. We discussed with the Treasury the implications for its projections if current policies were continued. Two conclusions emerged: there are clear benefits from starting early to control spending, but policy choices and trade-offs will have to be made eventually. Keeping to a prudent fiscal path in the medium term would provide governments with considerably more policy choice to address the inevitable fiscal pressures that will come with demographic change. However, if government spending continued to be reduced as a percentage of GDP, non-welfare spending would be squeezed out as superannuation costs absorbed an increasing proportion of total public spending.

Like the Auditor-General, whose comments we outline later in this report, we would have liked to have seen more sensitivity analysis in the statement, to gauge how outcomes might change in response to alternative policy settings. We understand the Treasury intends to work on this area in future statements.

Public engagement

In developing the statement over the past 18 months, the Treasury sought much wider public involvement than for previous statements. It established a cross-disciplinary panel of experts, including academic economists, journalists, experts in public policy, and former politicians, to contribute to and test its in-house analysis. It also commissioned research from numerous external experts to supplement its own work. It published the research papers and notes from the expert panel’s sessions on the internet, and organised a conference at which drafts of the statement and projections were discussed. It made a particular effort to engage young people, since they will be most affected by New Zealand’s
situation 40 years from now; in 2012 and in 2013 the Treasury organised a competition for high school students about the long-term fiscal challenges.

The Treasury notes that the statement attracted much positive coverage in the media. The Treasury believes there is now better understanding that the projections are not forecasts, and that the issues under discussion are much wider than superannuation, covering all aspects of government services.

We understand that the Treasury is following up the statement’s publication with a speaking tour of universities, and plans to release further articles.

We agree with the Treasury that this long-term fiscal statement provides an important opportunity to inform and engage the public about the long-term issues facing New Zealand. We are pleased that it has made a strong effort to do so, and hope to see public discussion of the issues continue.

**Auditor-General’s commentary**

The Controller and Auditor-General has reviewed the 2013 statement, as the issue of financial sustainability is central to the office’s role. She considers that the Treasury has done a good job with the statement overall, and has presented it in an easily understood and engaging way. The process used to develop the 2013 statement has been a big step up from that of previous years, she notes. It has been much more open, and the published report is more solidly underpinned by 40 research papers and input from a panel of experts.

The Auditor-General expresses some concern that the approach taken in the statement, simplifying the fiscal challenges facing New Zealand into a single projection of net debt to GDP, does not capture the subtleties of and uncertainty about these challenges. She also notes that the projection is particularly sensitive to certain assumptions in the early years; relatively small and gradual changes to revenue, expenditure, or other values could significantly reduce the build-up of net debt. The Auditor-General would have liked to see more use made of sensitivity analysis in the statement to demonstrate the inherent uncertainties, and to draw out some of the subtleties.

The Auditor-General also sees a risk that the financial challenge could be seen as one relating only to health care and superannuation. She notes that a similar report in Australia uses graphs and tables about various social, economic, and environmental indicators to describe the challenges of the next 40 years.

The Auditor-General notes that the Treasury is already planning to improve several aspects of the model, including its ability to run sensitivity analyses.

**Conclusion**

We commend the Treasury on this substantial body of work, and on the efforts it has made to encourage public understanding and discussion of the policy challenges facing New Zealand in the coming decades. We encourage members to review the material on the Treasury’s website.

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Appendix

Committee procedure
We met on 18 September and 16 October 2013 to consider the report by the Treasury
Affording Our Future: statement on New Zealand’s long-term fiscal position, July 2013. We heard
evidence from the Treasury.

Committee members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
Student Loan Scheme Amendment Bill (No 3)

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Student Loan Scheme Amendment Bill (No 3) and recommends by majority that it be passed with the amendments shown.

Introduction
The bill seeks to build on previous changes to the student loan scheme with the aim of encouraging personal responsibility for loan repayments and promoting compliance, particularly by overseas-based borrowers. It would amend the Student Loan Scheme Act 2011 and the Student Loan Scheme Amendment Act 2013 in the following ways:

• making it a criminal offence for borrowers living overseas who are in default on their repayment obligations to knowingly fail, or refuse, to make reasonable efforts to pay

• allowing Inland Revenue to request an arrest warrant for persistent defaulters who attempt to leave the country
• adjusting the method of calculating repayment obligations to speed up repayments from compliant borrowers living overseas
• allowing Inland Revenue to obtain a borrower’s contact details from third parties if sharing of this information is authorised by legislation
• making various technical and remedial amendments to reflect the original intent of the legislation and to align the treatment of student loans with that of other types of tax.

Proposed amendments
This commentary discusses the more important amendments we recommend to the bill. It does not discuss minor or technical amendments. For example, the changes we recommend to clause 6, section 110(4), and clause 8, section 162A(1), would simply clarify the wording of these provisions to ensure they work as intended.

Offence and power of arrest
Much of our consideration, and of the submissions we received, focused on the provisions for Inland Revenue to seek arrest warrants for borrowers who persistently default on their student loan obligations.

These provisions are in clause 8, which would insert new sections 162A and 162B in the Student Loan Scheme Act 2011. Section 162A would make it a criminal offence for a borrower living overseas who was in default of their repayment obligation, and who had been notified of this by Inland Revenue, to refuse to pay or make reasonable efforts to pay. Section 162B would allow the District Court to issue an arrest warrant if it was satisfied that a person who had committed this offence was about to leave New Zealand.

We are aware of concern that the measure would punish borrowers living overseas excessively, and act as a disincentive for them to return to New Zealand. The majority of us, however, consider it an appropriate means of targeting borrowers who have the ability to repay their loans but consistently refuse to do so. We believe the measure sends a clear message to all borrowers that it is unacceptable to renege on loan obligations. We note that the Child Support Act 1991 gives Inland Revenue a similar power to apply for the arrest of liable
parents who fail to meet their child support obligations. The measure has been used sparingly—in only about a dozen cases over the past four years—but has proved effective in getting payment arrangements set up.

We considered carefully how the legislation would operate in practice, and its likely impact on borrowers. Inland Revenue uses several criteria to identify hard-core defaulters, a relatively small number. As well as the amount of their overdue payments, it looks at their repayment histories and the circumstances of their non-payment to decide whether they are deliberately choosing not to pay. It would consider such factors as well as the criteria in the legislation before applying for an arrest warrant. Inland Revenue’s procedures would have allowed borrowers multiple opportunities to discuss their situation and make some arrangement for repayments before this point. Hardship relief is available for borrowers who genuinely cannot afford to pay. The majority of us therefore support retaining the offence and arrest provisions in the bill as introduced.

We recommend the following amendments to ensure the provisions are clear and framed no more broadly than necessary.

In clause 8 as introduced, section 162B(2) sets out the types of order the District Court could make, including “any other order the court thinks fit” (subsection (d)). We consider this catch-all provision overly broad, and recommend amending clause 8 by replacing section 162B(2)(d), and inserting new subsections (aa) and (ab), to specify more clearly the principal types of order that we would foresee a court making under this provision. Under these sections as amended, a court could order the borrower to pay the amount in default, to enter an arrangement to do so, or to provide information to the court. We would envisage the court requesting such information as the borrower’s contact details, or information about their assets, income, or employment status.

For clarity, we recommend amending clause 8, section 162B(5), to remove some ambiguity. We also recommend inserting new section 162B(7) to make it clear that a court would be required to direct the return of any travel documents or tickets once it discharged an order not to leave New Zealand.
Alignment with other legislation

Part 2 of the bill would amend the Student Loan Scheme Amendment Act 2013 to align the definition of “income” for student loan repayment purposes with that used for Working for Families tax credits.

In our report to the House on the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill, we are recommending further changes to the definition of income, to simplify the way company income is calculated under the Working for Families rules. We recommend corresponding changes to the definition of income for student loan repayment purposes in this legislation.

We also recommend altering the definition of “adjusted net income” for student loan repayment purposes to reflect provisions in the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 requiring employees who receive certain non-cash benefits from their employer, such as a motor vehicle, to include them in their income calculations.

To effect these changes, we recommend amending clause 14 and inserting new clauses 15 to 18. They would amend Schedule 3, new Schedule 3, in the Student Loan Scheme Amendment Act 2013.

Minority views

New Zealand Labour Party

Labour supports the general principle that loan borrowers should meet repayment obligations for money they have borrowed from the Crown. This bill does little to achieve that end.

Labour considers the bill to be unnecessarily punitive in nature. We do not believe that the criteria for the arrest warrant discretion to be given to the Commissioner of Inland Revenue is appropriately specified in the legislation. As it stands, the bill turns what is currently a civil matter into a criminal matter, giving the Commissioner powers for which there is neither adequate legal description nor precedent.

In the final analysis, the arrest at border provision amounts to little more than a distasteful gimmick; police have indicated that they do not have the resources necessary to implement it as intended.

No compelling case for expecting increased compliance as a result of the proposed measures has been presented to the committee. A more likely outcome is that a few unfortunate indebted young New Zealanders face a far lower quality of life as a result of the change in the law.
Zealanders will be arrested at the borders when returning for close family funerals. This bill appears to be little more than authoritarian posturing, and as such Labour members are unable to support it in its current form.

Meaningful change to improve student loan repayments from overseas-based borrowers requires looking at options such as repayments based on earnings and negotiated payment agreements, including with third party involvement (parents in particular). Unfortunately the Government has not considered these as part of this legislation. The original aim of the student loan scheme was to improve equity of access to tertiary education, not to turn struggling young New Zealanders into exiled enemies of the state as this bill does.

**The Green Party of Aotearoa/New Zealand**

The Green Party strongly opposes this bill. The Green Party member asserts that this bill is a punitive approach which will be unlikely to have a significant impact on student loan repayments, whereas a flexible, incentive-based approach is likely to be effective. A perverse outcome of this bill is the risk that it will act as a deterrent for expat New Zealanders to return to New Zealand. The Green Party member supports the majority of submitters who have opposed this bill.

Provisions allowing arrest at the border for borrowers not meeting their student loan responsibilities criminalises a group of borrowers unable to meet repayment obligations due to a variety of reasons. Treasury notes “this proposal may have the appearance of the Police acting as debt collection agents for Inland Revenue” which could reduce public confidence in the Police’s role. It has additionally been noted by officials that they do not expect the threat of an arrest warrant to be a particularly effective incentive. Inland Revenue’s new allowance to identify those for whom they believe an arrest warrant needs to be applied has been defined as punitive and unprincipled by the Legislation Advisory Committee. Further, this reform reduces incentives for overseas-based borrowers to return to New Zealand, for fear of arrest, and already is contributing towards confusion for expat New Zealanders considering returning to New Zealand. Lastly, the definition of the offence that the person in default be “notified” is concerning, as this translates to mean the person can be arrested without actually receiving the notification.
Repayment requirements for foreign-based student loan borrowers are enacted with an absence of income information; obligations will instead be based on historic loan balances from when the borrower left New Zealand leading to repayment inequities. This creates the situation where two loan borrowers with different incomes would not correspondingly have equal repayment responsibilities. The Regulatory Impact Statement notes “This creates an inequity whereby two loan borrowers with the same loan balances may have different repayment obligations if one of the borrower’s loan balances was historically higher.” Repayment rates will be unequal, based only on whether one balance was higher historically, which could lead to real hardship for low-earning borrowers. Finally, repayment obligations for overseas borrowers will no longer decrease as they reduce their loan balance, which acts as another disincentive to meet repayment obligations.

The Green Party member supports repayment requirements being income-based and progressive in nature, and having regard for individual circumstances. This bill as drafted could lead to overseas borrowers who are realistically unable to meet repayment obligations, due to current income or other circumstances, facing arrest at the New Zealand border.

The Green Party member questions if the policy objectives will actually be achieved through this bill, and given the concerns and uncertainties raised by officials cannot support it proceeding. The Green Party member notes that the Regulatory Impact Statement says “The impact of this policy on the compliance of overseas-based borrowers is uncertain” and “Officials have also stated that they do not expect the faster recovery of loans from compliant borrowers under this proposal to generate any savings in the short term.” The Green Party member notes with concern that punitive arrest provisions and repayment inequities may risk those borrowers stopping repayments altogether or making fewer repayments. He notes that it could act as an incentive to reduce repayments or a perverse incentive not to return to New Zealand at all.

The Green Party supports incentives as opposed to a punitive approach to the Student Loan Scheme debt challenge. For example, the Green Party member asked officials if any work had been undertaken to negotiate with countries where student loan borrowers are mainly domiciled to arrange income-based loan repayments through
Commentary

Student Loan Scheme Amendment

Bill (No 3)

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tax payments, and found that despite the desirability it had not pro-
ceeded. Another option is greater use of Inland Revenue Department
discretion in negotiating fair and reasonable repayment rates.

New Zealand First Party

New Zealand First agrees that student debts must be repaid but is of
the view that debt recovery measures should be sensible, practical,
and in proportion to the issue.
The bill proposes to enable Inland Revenue to request an arrest war-
rant for borrowers who persistently default on their student loan obli-
gations.
New Zealand First is of the view that such measures are draconian
and are entirely disproportionate to the nature of the offence. The
measures in this bill must be viewed in context. Finance company
directors virtually stole billions of dollars in recent years and ruined
the lives of many, yet in many cases avoided prosecution or serious
penalty. The student loan scheme has already had many unintended
adverse consequences; this bill will create more.
We urge the Government to reconsider the excessive measures pro-
posed in this bill. New Zealand First believes that other measures
must be explored to create real incentives for repayment. The real
solution to the student debt issues is ensuring that there are decent
paying jobs for students to go to after they graduate so that they can
repay their loans without having to go to Australia or elsewhere.
In New Zealand First's view making a group of young New Zealand-
ers outcasts from their own country is not the solution to the problem
of outstanding student debt.
Appendix

Committee process
The Student Loan Scheme Amendment Bill (No 3) was referred to the committee on 27 August 2013. The closing date for submissions was 11 October 2013. We received and considered six submissions from interested groups and individuals. We heard oral evidence from three submitters.

We received advice from the Department of Inland Revenue, the Ministry of Education, and the Ministry of Social Development.

Committee membership
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson

Gareth Hughes replaced Dr Russel Norman for this item of business.
Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to amend various Acts, including the Income Tax Act 2007, the Tax Administration Act 1994, and the KiwiSaver Act 2006. The resulting legislation would confirm the annual rates of income tax for the 2013/14 tax year, and effect the following principal changes:

• Replacing the existing tax rules for New Zealand residents with interests in foreign superannuation schemes. The new rules aim to be simpler and fairer, and to make it easier for people who have not paid tax on their foreign superannuation in the past to comply.
• Changing the tax rules relating to the mining of specified minerals to make them less concessionary and more consistent with those for taxpayers generally.
• Clarifying the rules for Working for Families tax credits.
• Making a number of remedial technical changes to the rules for general and life insurance businesses.
• Addressing a mismatch in the tax rules relating to imputation credits and Australian dividends, to prevent the over-crediting of imputation credits in excess of the tax payable under foreign investment fund rules.
• Refining the rules for the deductions available to holders of bad debt.
• Allowing a company’s minimum financial reporting requirements to be set by Order in Council, if it would not otherwise be required to prepare financial statements following the repeal of the Financial Reporting Act 1993.
• Making it clear that holders of interest-free or low-interest loans cannot claim deductions for interest they have not incurred.
• Granting donee status to three charitable organisations.

Supplementary Order Paper 257
The Minister of Revenue released Supplementary Order Paper 257 to the bill on 25 June 2013. The SOP addresses tax issues arising from the Canterbury earthquakes by proposing amendments to the Income Tax Act 2007 including
• extending the time limit for tax measures introduced to address Canterbury earthquake-specific issues
• extending the availability of depreciation rollover relief.

The Minister wrote to the committee on 25 June 2013 inviting us to include the SOP in our consideration of the bill. We have done so, and are recommending that the amendments proposed in the SOP be incorporated into the bill, with a few adjustments.

Proposed amendments
This commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amend-
ments. For example, our proposed changes to clauses 26 and 29, relating to deductions for bad debt, and to clauses 44 to 52, relating to remedial changes to the taxation of insurance businesses, are largely technical refinements to ensure the rules are clear and work as intended.

**Commencement**

Clause 2 provides for a number of the bill’s provisions to apply retrospectively; we are also recommending the retrospective application of several amendments. We are satisfied that the justification for backdating these provisions is sound, and that taxpayers would not be unreasonably affected.

**Taxation of foreign superannuation**

The bill proposes a much simpler regime for taxing New Zealand residents who receive foreign superannuation. People who migrate to New Zealand, or return after a period overseas, often have superannuation interests in their previous country of residence. The bill would make lump-sum withdrawals from such schemes taxable on receipt, allowing taxpayers to choose one of two calculation methods. Because the current rules are complex, many people are unaware of the tax treatment of these interests in New Zealand, which has contributed to high rates of non-compliance. The bill proposes a simple way for people to remedy their previous position and start afresh under the new regime; a concessionary approach encourages them to do so.

Clause 8 contains the main provisions on foreign superannuation, but numerous other clauses are also relevant. We recommend several amendments to ensure the bill works as intended and avoids unintended consequences, and for clarification and consistency.

**Pensions from trusts and companies**

Clause 6 would insert new section CD 36B into the Income Tax Act 2007, relating to the treatment of distributions from foreign superannuation schemes that are trusts or companies. We recommend amending this clause, with a related amendment in clause 66(1), to include pensions and make it clear that they would be subject to the
general tax rules applying to pensions, rather than treated as dividends or taxed under the trust rules.

Social security schemes
We are recommending several amendments in clause 8 and elsewhere to make it clear that the definition of a foreign superannuation scheme does not include overseas social security schemes. Such schemes make payments similar to New Zealand Superannuation, and we consider it appropriate that they be treated under the normal tax rules that apply to New Zealand pensions, rather than under the foreign investment fund (FIF) rules or under the regime proposed in the bill. This would be consistent with the original intention of the 1976 and 1994 Income Tax Acts, and would correct some ambiguity resulting from the rewriting of the Act in 2004. We recommend making this change retrospective to 1 April 2005, when the rewritten Act came into effect.

The amendments we recommend are to insert new section CF 3(1A)(a) in clause 8, clause 103(51B), and clause 116B amending the Income Tax Act 2004.

Definition of foreign superannuation interest
We recommend amending clause 8 to specify that the regime proposed in the bill would be available only if a person first acquired the rights in a foreign superannuation scheme while they were non-resident. This would avoid a situation in which a person who intended to retire overseas could invest in a foreign superannuation fund while resident in New Zealand, and withdraw the funds once they moved overseas, paying no tax on the fund’s earnings while they were resident in New Zealand, when ordinarily they would be subject to the foreign investment fund rules. This would be inconsistent with the policy intent of New Zealand’s tax rules, and in particular the FIF rules.

Our recommended change would be effected by inserting in clause 8 new sections CF 3(1A)(b)(ii) and CF 3(3)(b), and amending the definition of “FIF superannuation interest” in clause 103(9).
Eligibility for exemption period
The provisions in clause 8 sections CF 3(3) and CF 3(4) are designed to simplify the current rules that allow new migrants who qualify as transitional residents a four-year period in which withdrawals from foreign superannuation schemes are not counted as income. The bill’s provisions would extend the four-year exemption to any taxpayer who acquired an interest in a foreign superannuation scheme while living overseas. This is designed to apply the exemption more fairly, as some people who otherwise qualify as transitional residents do not qualify for the existing exemption, for example if they receive Working for Families tax credits.

We recommend amending these provisions to ensure that the underlying policy intent is achieved; that is, that the same exemption period be available to people whether or not they qualify as transitional residents.

We also recommend consequential amendments in clause 18, new section CW 28B, to ensure that amounts received in this period would not be counted as taxable income.

Assessable period
We consider that some amendments are needed to ensure the legislation works as intended if a person has more than one period of residence for a given foreign superannuation interest; that is, when they have moved back and forth between New Zealand and an overseas country. As introduced, the bill would calculate the assessable period on the basis of the latest period of residence only.

We recommend amending clause 8, section CF 3(5), and inserting section CF 3(5B), to reflect the policy intent that all periods of residence in New Zealand during which a person held a foreign superannuation interest should be aggregated in calculating the assessable period.

Exception for transfers on death or relationship cessation
We recommend amending the provisions in clause 8 relating to the transfer of an interest in a foreign superannuation scheme to another person following a relationship split, or upon death. Under existing law such a transfer is a taxable event; the bill as introduced would retain this treatment with one exception: where the interest was trans-
ferred from one New Zealand resident to another upon death, rollover relief would be provided so the interest was not taxable until the recipient ultimately made a withdrawal.

We consider that the exception proposed would be inconsistent with other parts of the Income Tax Act that deal with property transfers in the event of death or a relationship break-up. The changes we recommend would broadly align the treatment of foreign superannuation interests with other relief provisions in the Act, and should result in less confusion.

Under the amendments we propose, rollover relief would be provided where the transfer occurred as a result of a relationship break-up, or upon the death of the transferor, but only where the transferee was a New Zealand resident and the surviving or former spouse or partner.

The amendments we recommend in clause 8 entail amending sections CF 3(1)(d), CF 3(6)(b)(v), and CF 3(18)(d), and inserting sections CF 3(1A)(b)(ii), and CF 3(1B).

**Formula method**

Clause 8, new sections CF 3(6) to CF 3(15), would establish two alternative methods for calculating the tax on a lump-sum withdrawal from a foreign superannuation scheme. The default would be the schedule method, under which the percentage of the sum withdrawn that would be taxed would depend on the number of years a person had been a New Zealand resident. People would have the option of choosing to calculate their tax using the more complicated formula method; this would tax the actual gains made by the scheme while they were resident in New Zealand, plus an interest charge to recognise that payment of the tax had been deferred until money was withdrawn from the scheme. In calculating the amount of tax deferred, the formula method, as introduced, would assume that the person was on the highest marginal tax rate.

We considered whether it would be fairer to base this calculation on a person’s average marginal tax rate, but concluded that this would be overly complex. Instead, we recommend amending the formula to use the top portfolio investment entity (PIE) tax rate, currently 28 percent, rather than the top personal tax rate. We believe this would reflect better the rate that would have been paid had the funds been
invested in a New Zealand superannuation fund. We recommend amending clause 8, new section CF 3(15)(b), accordingly.

**Relationship to the rest of the Act**
We recommend amending clause 8 by inserting new section CF 3(19) to avoid the possibility of double taxation by making it clear that a person who was subject to the proposed new rules would not also remain liable for their unpaid FIF tax. This is because the proposed rules for taxing lump sums would account for any tax that should have been paid, whether or not it was. However, where a taxpayer had acquired the interest in the foreign superannuation scheme while already a New Zealand resident, they would still be subject to the FIF rules and remain liable for unpaid FIF tax.

**Past withdrawals**
Clause 25 of the bill, inserting new section CZ 21B, would allow people who had made lump-sum withdrawals from foreign superannuation schemes prior to 1 April 2014 but not complied with their tax obligations two options for getting their tax affairs in order: they could choose between applying the law as it was at the time of each withdrawal, or paying tax on 15 percent of the amount withdrawn. The 15 percent option is intended to be a low-cost way for non-compliant taxpayers to square up their outstanding obligations.
We recommend some amendments to clause 25 to ensure that the intention is clear and that the legislation would operate as intended. Under the changes we recommend, taxpayers who chose to use the 15 percent option in subsequent income years would have their 2014/15 income year reassessed so as to apply that concessionary tax rate.

**“Grandparenting” under the FIF rules**
To ensure that taxpayers who have already complied with the FIF rules do not face higher compliance costs, the bill would permit them to continue using the FIF rules rather than requiring them to comply with the new regime. However, the bill as introduced does not make it clear whether this would also apply where a taxpayer had earned no income, or incurred a loss, from the foreign investment fund, in which case no evidence of compliance would be recorded in their tax return.
We recommend amending the definition of FIF superannuation interest in clause 103(9) to make it clear that a taxpayer who had complied with the FIF rules in relation to a foreign superannuation interest, but had earned no income from the foreign investment fund, or incurred a loss, would remain free to use the FIF rules.

Withdrawals from KiwiSaver
Clause 115 of the bill proposes changes to the KiwiSaver Act 2006 to allow taxpayers who transfer from a foreign scheme to a KiwiSaver scheme to withdraw sufficient funds from the KiwiSaver scheme to pay the tax that arises on transfer. We propose a few amendments to these provisions, as discussed below.

Student loan obligations
We note that a student loan repayment obligation may also arise where a portion of a foreign superannuation transfer is counted as taxable income. We consider it appropriate to allow a taxpayer to withdraw funds from KiwiSaver to cover their repayment obligation arising from such a transfer, as well as the tax obligation. We recommend amending clause 115 accordingly, to amend clause 14C(1)(b) in Schedule 1 of the KiwiSaver Act.

Time limit for withdrawals
The bill’s provisions relating to withdrawals from KiwiSaver would require an application for a withdrawal to be made within two years of a transfer from a foreign superannuation scheme. We consider it more appropriate that the two-year period commence when the tax liability arises; that is, after an income tax return has been submitted and the transfer has been assessed as income. We recommend amending clause 115 accordingly, to amend the requirement in clause 14C(3)(a) in Schedule 1 of the Act.

Payment to Inland Revenue
To prevent a person withdrawing funds under this provision but then failing to pay their tax liability, we recommend amending clause 115 to insert clause 14C(4) in Schedule 1 of the KiwiSaver Act, to require the KiwiSaver provider to make the payment direct to the Inland Revenue Department if their systems allow them to do so. Whether or
not the payment was made direct to Inland Revenue, the KiwiSaver provider would be required to notify the Commissioner of Inland Revenue that such a withdrawal had been made.

**UK rules for transfers to foreign schemes**

We are aware of concern about the UK’s “QROPS” rules for transfers of superannuation savings. While transfers to foreign locked-in schemes such as KiwiSaver are allowed without incurring tax, any withdrawal from such a scheme within five years of becoming non-resident in the UK could trigger a surcharge of up to 55 percent. We are concerned about the complexity of the rules and the potential for taxpayers to incur a significant tax liability. We consider it important that people considering making a transfer are made aware of the potential tax obligations, and of how to time the transfer so as to minimise any penalties. We understand that most transfers are made using the services of an agent, and strongly recommend that Inland Revenue undertake a campaign to educate agents and their clients about their options and obligations under the proposed regime.

**Mineral mining**

Clauses 13 and 35, replacing subparts CU and DU of the Income Tax Act 2007, propose a new regime for the taxation of mineral mining. It would be less concessionary than current law, and more in line with the way other businesses are taxed. There would still be some specific provisions to take into account particular features of the mining industry. We agree with the policy intent of tightening an overly concessionary treatment of mineral miners; our consideration focused on whether the proposed regime would lean too far the other way, penalising miners and jeopardising their international competitiveness. The amendments we propose below seek to strike an appropriate balance.

**Treatment of mining land**

The bill treats land acquired for the purposes of mining as revenue account property, so the cost of the land would be deductible when the land was sold, and the proceeds from its sale would be taxable.

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1 Qualifying Recognised Overseas Pension Scheme.
We recommend amending clause 13, section CU 2(1), to make it clear that land acquired away from the permit area, for example for administrative purposes, would not be counted as mining land; the mining land rules would apply only to land that included, or was intended to include, all or part of a permit area or was adjacent to it. We recommend that clause 35, section DU 3(2), be similarly amended.

We also believe it should be made clear that the specific land rules in the bill would apply in preference to general revenue account property rules. To do so, we recommend inserting clause 27B, amending section DB 23.

Prospecting and exploration expenditure

Clauses 13 and 35 would make expenditure on exploration fully deductible, but with provision for deductions to be clawed back if an asset created during the exploration phase, such as a road, was later used in a mine’s development or operation. We consider this a reasonable approach. It recognises that mining requires hefty investment in the exploration phase, remaining more generous than the treatment of some other businesses, which are not always allowed to deduct feasibility expenditure.

We note, however, that the bill as introduced leaves open-ended the period for which a miner is required to keep records of expenditure that might later be clawed back. We consider that this could be onerous and unrealistic, and recommend amending clause 13 by inserting new subsection CU 4(1)(cb) to require records to be kept for the same period required of other taxpayers under the Tax Administration Act 1994, being seven years from the end of the income year to which they relate.

We also recommend amending clause 13, section CU 4(1)(c), so that the claw-back rule would apply only to expenditure incurred after the new rules took effect. This would avoid their retrospective application, which was not intended.

Development and operational expenditure

We recommend changes to the definition of development expenditure in the bill as introduced (clause 35, section DU 12); in some respects we consider it unduly broad, and in others incomplete. The definition is intended to cover expenditure on developing a mine to the point
where commercial extraction can begin, or subsequent expenditure that is capital in nature and therefore appropriate to deduct over the life of the mine. The definition as introduced, however, could also capture expenditure related to the day-to-day operation of a mine after production had commenced. We propose adding a new definition of “operational expenditure” to cover such expenditure, and excluding it from the definition of development expenditure. We recommend amending clause 35 by inserting sections DU 12(3)(ab) and DU 12(4) accordingly.

To accommodate the fact that mining can take place offshore, we recommend amending clause 35, section DU 12(2)(c)(i), by expanding the definition of development expenditure to include vessels.

Rehabilitation expenditure
As introduced, the bill would allow a deduction for rehabilitation expenditure when it was paid; we note that this differs from the general rule, which is to allow a deduction when expenditure is “incurred”, that is, when a legal liability to pay has been taken on. In the interests of avoiding unnecessary compliance costs, we recommend amending clause 35, sections DU 2(2) and DU 2(4), so that rehabilitation expenditure would be deductible when it was incurred.

We also recommend amending clause 35, section DU 13(a), by broadening the definition of “rehabilitation expenditure” to accommodate other legislation that may require rehabilitation work, such as the Conservation Act 1987 and the Historic Places Act 1993.

Depreciation rules
We recommend changing the approach proposed in the bill for the calculation of depreciation on mineral mining.

As introduced, the bill would require the depreciation of a mining asset to be spread over the assumed life of the mine. While it is normal practice for depreciation to be based on the estimated useful life of the income-producing asset, we accept the view that the methods provided for in the bill as introduced would not adequately reflect the nature of the industry, where income tends to be very uneven.

After considering possible alternatives, we recommend amending the bill to allow depreciation to be calculated using a unit of production method, based on proven and probable reserves, provided the miner
produces accounts using international financial reporting standards (IFRS), or otherwise keeps records that would allow this method to be verified. To avoid unnecessary compliance costs for smaller operators, we recommend retaining the methods provided for in the bill as introduced as an option for those who do not keep IFRS accounts.

To effect these changes, we recommend amending clause 35 by inserting sections DU 5B and DU 5C and deleting sections DU 6 to DU 8, and inserting clause 37G, sections EJ 20B to EJ 20E. We note in particular that “proven and probable reserves” would be defined by section EJ 20E(4)(d) in relation to established classification codes recognised under the Crown Minerals (Minerals other than Petroleum) Regulations 2007.

We have also considered whether, for depreciation purposes, expenditure should be related to a permit area, as in the bill as introduced, or to a mine, since a miner may have several mines within a permit area, with different life-spans. A miner could also have a single mine covering several permit areas. The amendments we recommend above, particularly the insertion of clause 37G, sections EJ 20B(6) and EJ 20E(6), would allow miners to use the unit of measure best suited to their actual operations, while limiting the scope for inappropriate allocation of expenses to selected projects with the shortest life. This would mean that the “mine” option would be available only to miners who produce IFRS accounts, if the accounts allowed expenses to be allocated to individual mines.

**Tax credits for mineral miners**

Clause 88, inserting new subpart LU, would create a refundable credit mechanism to allow for the fact that a miner will generally incur rehabilitation expenditure at the end of a mine’s life, when it generates no income to offset the expenditure. We note, however, the potential for “black-hole” expenditure if the depreciation deductions in the final year of a mine’s operation exceeded income derived from the mine in that year. To avoid this unintended result, while ensuring that the credit was not available prematurely (for example, if a mine was mothballed, rather than closed permanently), we recommend amending clause 88, section LU 1(1), to provide for the refundable credit to be tied to the date on which the miner relinquished rights under the relevant permit.
We are also recommending changes in section LU 1(4) to clarify how the credit would be calculated, particularly for trustees and individuals.

**Loss continuity rules**

The bill would retain the existing concessionary departure from normal shareholder continuity rules, which do not allow deductions for losses to be carried over when a company’s ownership structure changes significantly. The retention of this concession is designed to acknowledge that changes in a company’s structure are a common feature of the mineral mining industry between the exploration and development stages, when large amounts of new capital must be raised. We consider this concession appropriate, in combination with existing rules which prevent a mineral mining company from forming a tax group except with other mineral mining companies, thus precluding inappropriate trading of losses between companies. We will, however, expect Inland Revenue to monitor compliance carefully.

We recommend amending clause 80(1B) to make it clear what expenditure the bill’s provisions regarding shareholder continuity would apply to. While the existing Act divides mining expenditure into just two types, exploration expenditure and development expenditure, clause 35 of the bill, if enacted as we recommend, would subdivide the types of spending into prospecting, exploration, development, operating, and rehabilitation expenditure. Our recommended amendment would make it clear that all such types of mining expenditure apart from rehabilitation expenditure would survive a breach of shareholder continuity, not just expenditure on exploration or development. Rehabilitation expenditure is expected to be eligible for a tax credit, rather than being carried forward, and so is not included.

**Canterbury earthquake tax measures**

Tax measures introduced to address issues arising from the Canterbury earthquakes are due to expire at the end of 2015/16. As it has become clear that rebuilding will take longer than initially estimated, SOP 257 proposes to extend the duration of the measures by three
years. We recommend that the SOP be incorporated into the bill with some amendments, which we discuss below.

We note that a further extension of the expiry dates for relief measures beyond 2018/19 is not expected to be needed, but the possibility cannot be ruled out given the uncertainties of Canterbury’s rebuilding. We urge Inland Revenue to announce any further review well in advance of the expiry dates to give taxpayers the certainty they need.

**Deductions for interruption expenditure**

We recommend inserting clause 37BA to replace section DZ 20 of the Income Tax Act relating to deductions for expenditure incurred while income-earning activity was interrupted by the Canterbury earthquakes. This amendment would correct an inadvertent omission from the SOP, extending the life of this relief provision to the end of 2018/19.

**Application for building consent**

While the provisions in the SOP would move the time limit for the tax relief measures to the end of 2018/19, they would still require a person to have applied for a building consent by the end of 2015/16 to qualify. In view of continuing uncertainty about planning and rebuilding in Canterbury, we consider this requirement unnecessarily onerous. We recommend removing the requirement for taxpayers to have applied for building consent by the end of the 2015/16 income year.

To effect this change, we recommend amending clauses 52B and 52C of the SOP as introduced by removing sections EZ 23B(7) and (7B), and amending sections EZ 23BB(9) and (10).

**Transition to new rules for depreciation rollover relief**

Clause 52B, as proposed on the SOP, would amend section EZ 23B of the Income Tax Act 2007, which provides tax relief regarding a person’s income from proceeds of insurance on earthquake-damaged depreciable property. Clause 52C would extend this relief, to recognise the fact that many owners of buildings damaged in the earthquakes will be investing in larger replacement buildings as members of groups of investors. To access relief under new section EZ 23BB, a person would generally be required to meet the same criteria ap-
plying in existing section EZ 23B, but would also need to have an interest in a joint investment company that will acquire replacement property.

We recommend amending clauses 52B and 52C to provide a transition between the two relief provisions, so that a taxpayer who had previously relied on existing section EZ 23B could claim relief under new section EZ 23BB. The new section would take retrospective effect from 4 September 2010, the date of the first Canterbury earthquake. The changes we recommend entail inserting clause 52B(8), section EZ 23B(11)B, and amending clause 52C, sections EZ 23BB(1)(a)(iv) and EZ 23BB(11)(c).

We are also recommending some amendments in clause 52C to clarify the meanings of several terms in the context of new section EZ 23BB.

### Working for Families tax credit rules

The bill proposes various changes to the provisions for Working for Families tax credits to ensure they operate as intended. We have considered ways of simplifying the rules to reduce the difficulty and cost of compliance. We propose some relatively minor changes that would help by reducing compliance costs, and would mean only a small increase in Government spending.

We recommend amendments in clauses 91 and 92, sections MB 4 and MB 7, and the insertion of new clauses 92B and 92C, amending sections MB 8 and MB 9. These sections relate to close companies, trusts, and companies owned by trusts; the changes are designed to rationalise the provisions by aligning the wording and formulae. We understand that Inland Revenue also intends to review the IR215 form and supporting information to try to improve guidance about the income information required from families.
Appendix

Committee process
The Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill was referred to the committee on 12 June 2013. The closing date for submissions was 24 July 2013. Supplementary Order Paper 257 was released by the Minister of Revenue on 25 June 2013 and we called for submissions with a closing date of 7 August 2013. We received and considered 24 submissions from interested groups and individuals. We heard nine submissions. We received advice from the Inland Revenue Department, the Treasury, and our specialist tax advisor, Therese Turner.

Committee membership
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
Julie Anne Genter replaced Dr Russel Norman for this item of business.

Report of the Finance and Expenditure Committee

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Recommendation

The Finance and Expenditure Committee has conducted the financial review of the 2012/13 performance and current operations of the Reserve Bank of New Zealand, and has examined the Reserve Bank of New Zealand’s Financial Stability Report, November 2013. The committee recommends that the House take note of its report.

Introduction

The first part of this report covers the financial review we conducted of the Reserve Bank’s performance in 2012/13 and its current operations, while the second comments on the Reserve Bank’s half-yearly report on the stability of New Zealand’s financial system. Inevitably, there was overlap between the topics, and we suggest the two parts be read together.

Financial review 2012/13

Reserve Bank’s role

As New Zealand’s central bank, the Reserve Bank carries out various functions to maintain a sound and efficient financial system, including oversight of banks, non-bank deposit-takers, and insurance companies, and the management of wholesale payment and settlement systems, domestic liquidity, and foreign reserves. It manages monetary policy under a policy targets agreement with the Minister of Finance, which sets the bank’s inflation target.

Graeme Wheeler replaced Dr Alan Bollard as Governor of the Reserve Bank in September 2012. A new policy targets agreement was signed, which continues to require the bank to keep Consumers Price Index inflation between 1 and 3 percent on average in the medium term, with the added requirement that the bank try to keep average inflation near the 2 percent midpoint. The new agreement also requires the Reserve Bank to include asset prices among the price indicators it monitors, and to have regard to the soundness and efficiency of the financial system when implementing monetary policy. It continues the requirement that the bank seek to avoid provoking unnecessary instability in output, interest rates, and the exchange rate in pursuing its price stability objective.

Financial performance

The Reserve Bank’s operating expenses are financed under a five-year agreement with the Minister of Finance. The current agreement specifies net operating expenditure of $52.7 million for 2012/13; actual net operating expenses for the year were well below this, at $48.3 million. This was $1.3 million (2.8 percent) more than the previous year, reflecting the expansion of the bank’s statutory roles in licensing insurance companies, and in detecting and deterring money laundering and the financing of terrorism.

The Reserve Bank’s main source of income is the interest it receives from its holdings of government bonds and foreign reserve assets. Its profits are volatile as they are affected by interest rate changes, and because the bank does not hedge its foreign exchange reserves, allowing it to intervene if necessary to support the New Zealand dollar.
In 2012/13 the bank’s net income from interest was $260 million. This was $20 million less than the previous year as interest rates in New Zealand and overseas were lower. The bank made a gain of $29 million on its holdings of foreign exchange, compared with a loss of $38 million the previous year; the difference reflects lower foreign exchange rates for the New Zealand dollar at the end of June 2013.

Overall, the Reserve Bank made a profit of $308 million in 2012/13, compared with $118 million in 2011/12. It paid a dividend to the Crown of $175 million. The bank also retained $100 million of realised earnings, in line with its policy of holding sufficient equity to cover the risks entailed in performing its functions.

The Office of the Auditor-General assessed the Reserve Bank’s management control environment and its financial information systems and controls as “very good” in the 2012/13 audit, requiring no improvements.

**Reserve Bank’s tools**

During the year under review the bank developed a set of macro-prudential policy tools for use when needed to build additional resilience into the financial system and to dampen excessive growth in credit and asset prices. The governor noted that lessons from the global financial crisis have led central banks around the world to focus increasingly on measures to counter emerging asset bubbles. In May 2013 the Reserve Bank signed a memorandum of understanding with the Minister of Finance about operating guidelines for such tools. It subsequently announced that it would start to use one of the tools from 1 October 2013: restrictions on high loan-to-value ratio (LVR) lending, in effect a “speed limit” on the amount in new residential mortgages that banks can lend on low deposits.

We discussed with the bank the implications of the measure during both our financial review hearing and our inquiry into the Reserve Bank’s financial stability report, which is covered later in this report.

**The housing market**

**The problem**

The Reserve Bank regularly expressed concern during the year about growing imbalances in the housing market, particularly in Auckland. Strong demand for housing has been fuelled by exceptionally low interest rates, net migration inflows, and banks’ willingness to accept low deposits as they compete for mortgage customers. Coupled with a shortage of housing, this has led to house prices increasing rapidly despite being already high relative to average incomes. In Auckland, prices have increased at an annual rate of 16 percent over the past six months. As the Reserve Bank has explained in successive monetary policy statements and financial stability reports, these developments pose risks for borrowers, for the financial system, and for the economy in general.

It notes that the IMF, the OECD, and the rating agencies agree that house prices are overvalued in New Zealand. With household debt already high (currently 146 percent of average disposable income), the Reserve Bank sees a danger that an external economic shock could trigger a correction in house values, precipitating the situation that arose in several countries during the global financial crisis where many households found themselves owing more than their homes were worth. Highly-leveraged borrowers are most vulnerable in such a scenario, with flow-on risks for the stability of the banking system.
Lending restrictions

To address such risks from the housing market, the Reserve Bank announced in August that with effect from 1 October it will require banks to limit new residential mortgage lending at LVRs of over 80 percent to no more than 10 percent of the dollar value of their new lending for housing. It hopes these “speed limits” will curb demand pressures in the short term, as it will take several years for the supply of housing to increase; it estimates that the restrictions will subtract 1 to 4 percentage points from annual house-price inflation over the next few years.

Some of us are very concerned about the equity implications of the LVR restrictions, believing that, in the absence of a capital gains tax, property speculators and foreign investors will be the likely beneficiaries, while first-home buyers and others who struggle to find the necessary deposit will suffer. The Reserve Bank said the limited evidence available so far does not indicate that first-home buyers are being displaced by investors; a BNZ survey in October indicated lower demand from all kinds of buyers. However, it says it is too soon to gauge the full effect of the measure.

The majority of us, and the Reserve Bank, share concern about the effect the restrictions will have on some prospective home buyers. However, we recognise that the alternatives would be more worrying. If large interest rate increases were needed to cool inflationary pressures, there would be widespread effects on the economy as a whole, probably including further appreciation of the exchange rate. We also consider the measure important to protect vulnerable borrowers, particularly those on lower incomes who are likely to be more highly geared, in the event of another economic shock. We will be watching the effects of the policy closely, and intend to seek an update from the governor when we meet to discuss the Reserve Bank’s monetary policy statement on 12 December.

Housing supply

The Reserve Bank considers that a large part of the problem in the housing market comes from the supply side, with shortages that have built up over many years, often because of regulatory issues and the way land is zoned. The high cost of construction in New Zealand compared with Australia and other advanced economies has also been an important contributor. It notes that about 10,000 houses are estimated to be needed in Christchurch, while in Auckland the shortage is about 20,000 to 30,000 houses.

We asked whether enough is being done to address Auckland’s land supply problems. The Reserve Bank told us it is quite impressed by the efforts being made in Auckland to streamline the council approval process and to work with developers to accelerate planning and consenting. It sees as important the recent launch of the first special housing areas, bringing an initial 6,000 sections onto the market toward the goal under the Auckland housing accord of having 39,000 homes built over the next three years. The Reserve Bank said it remains to be seen how rapidly progress is made to fill the gap in supply, but considers it promising that concrete steps are being taken. Some of us remain concerned that the Government appears unwilling to do more to tackle issues in the housing sector.

We note that some commentators have suggested the LVR restrictions might have the unintended consequence of dampening new housing construction. The Reserve Bank told us it is watching the situation closely. It acknowledged there could be some such effect initially, but said demand for new building appeared to be remaining strong, with 50 percent more consents than there were in 2011. Since our hearing, however, the Reserve
Bank has decided to exempt lending for newly-constructed residential houses or apartments from the restrictions. We understand its decision followed further consultation with the building industry about the practical effect of the restrictions. We are pleased to see the Reserve Bank is monitoring the market and taking steps to ensure that its policy does not constrain an increase in housing supply, which is very much needed. We understand that the change is unlikely to weaken the effectiveness of the restrictions in curbing demand, as high-LVR lending for construction is only about 1 percent of total residential lending, although it finances about 12 percent of residential building activity.

**Adjustment in the housing market**

The Reserve Bank views the LVR restrictions as a temporary measure, and says it will remove them when there is evidence that imbalances in the housing market have abated. Asked what sort of adjustment it is looking for, the Reserve Bank told us it does not want to see house prices falling—this would be undesirable for financial stability, affecting both households and lenders; rather, it would like to see the rate of house price appreciation slowed. It hopes the restrictions will curb demand, to allow time for supply to increase. The governor would not put a figure on an acceptable rate of growth in house prices, but said that average appreciation of 10 percent nationwide was clearly out of line with current CPI inflation of 1.2 percent and the mid-point inflation target of 2 percent. He said the Reserve Bank assesses various measures, including house prices relative to rents, and the ratio of household debt to disposable income, which is very high by both historic and international standards.

**Foreign investment in housing**

The Reserve Bank has commented that foreign buyers are unlikely to be affected by the LVR restrictions. We raised our concern about this, noting that some surveys suggest foreigners make up at least 11 percent of Auckland house buyers. The Reserve Bank said its comment does not mean the restrictions favour foreign buyers; merely that such buyers tend to have more cash available for a deposit. It added that it is unclear what proportion of buyers are foreign investors, since such figures include foreign immigrants and returning Kiwis, nor how much pressure they add to the market, whereas first-home buyers represent a substantial 40 percent of high-LVR lending. The Reserve Bank also noted that in Australia, restrictions on foreign buyers and a capital gains tax appear to have made little difference to property prices.

**Other regions**

We are concerned about the effect of the restrictions on prospective homeowners in regions other than Auckland and Christchurch, where the main problems appear to lie. The Reserve Bank said prices have also been increasing rapidly in several other areas, including Taranaki, Hamilton, Hawkes Bay, Nelson, and Marlborough. It believes trying to tailor the LVR restrictions to specific regions would have created other problems. The bank thinks their bite will be felt most in the regions where price increases have been highest, and that buyers elsewhere may be able to offset the effect of the restrictions through Government measures such as Welcome Home loans.

**Non-bank deposit takers**

Since 2008 the Reserve Bank has been the prudential regulator of non-bank deposit takers (NBDTs), which include finance companies, building societies, and credit unions. During 2012/13 it carried out a review of the effectiveness of prudential arrangements for the
sector, and reported to the Government in September 2013. It also worked toward the licensing of NBDTs under legislation due to come into force in April 2014. Its review concluded that the prudential regime has helped to reduce the risk of failure in the NBDT sector and encouraged sounder management. It has recommended retaining the current supervisory structure, with some adjustments to streamline its operation.

We asked about the rationale for retaining trustees as the front-line supervisors of building societies and credit unions, in addition to the Reserve Bank as regulator. We are aware of concern that this arrangement is inefficient and adds an unnecessary layer of bureaucracy, since these deposit-takers do not carry similar risks to finance companies, most of which collapsed during the global financial crisis. The Reserve Bank told us it sees pros and cons in various possible models, but on balance it sees advantages in keeping the same regime for all institutions in the sector. It noted that building societies and credit unions are not without risk; in particular, they carry a large maturity mismatch, with a lot of on-call deposits against term lending. The Reserve Bank acknowledged there is a trade-off between soundness and efficiency, and said the recommendations in its review seek to strike an appropriate balance.

Money laundering and the financing of terrorism

As a result of recent legislation, the Reserve Bank has taken on the supervision of measures to counter money laundering and the financing of terrorism, and has built its expertise for the role. We discussed the way it undertakes this work, which we see as very important for protecting New Zealand’s international reputation. The bank told us it carries out detailed inspections of banks, non-bank deposit takers, and insurance companies to verify that they have good systems for detecting and reporting any such activities. It undertook to provide us with a list of countries whose controls are inadequate compiled by the international Financial Action Task Force.

Financial Stability Report

The Reserve Bank is required to report twice a year on the soundness and efficiency of New Zealand’s financial system. The following are the main points from its November 2013 financial stability assessment:

- New Zealand’s financial system remains sound. Banks are well capitalised and have strengthened their funding base; there are fewer non-performing loans.
- The main risks to the financial system come from growing imbalances in the housing market, which the Reserve Bank has been taking steps to moderate. Households and banks are both highly exposed to this market.
- The strength of the New Zealand dollar remains of concern, particularly for the tradable sector.
- The New Zealand economy continues to grow quite strongly; GDP growth of about 3 percent is forecast for the coming year, and is expected to be sustained.
- Strong terms of trade are supporting New Zealand’s exports, particularly dairy, but high debt levels in the dairy sector leave farmers vulnerable to any fall in commodity prices or increase in interest rates.
- Growth has slowed in emerging markets, but growth in the major advanced economies is strengthening.
The balance of this report covers the main issues we considered during our examination of the financial stability report and in our discussion with the Governor of the Reserve Bank.

Restrictions on high-LVR mortgage lending

The Reserve Bank sees growing imbalances in the housing market as a major systemic risk for financial stability; to address them, it introduced restrictions on high-LVR mortgage lending in October. The changes were well signalled; banks started to increase premiums for low-equity loans from September, and tightened the availability and terms of pre-approvals for high-LVR loans. The Reserve Bank considers that the restrictions are starting to reduce riskier lending, but notes that it is too early to assess the full effect.

We asked about the risk that banks may try to get around the LVR restrictions, noting that the financial stability report (page 35) pointed out that “regulatory leakage” could undermine the effectiveness of the measure. The report also suggests that the resilience of the financial system could be affected if lenders not subject to the restrictions significantly increased their lending. The Reserve Bank said it would be watching the position closely, but the LVR policy had been designed to reduce the scope for such avoidance, and in its discussions with banks the Reserve Bank had emphasised its expectation that banks would adhere to the spirit of the policy, not just the mechanics, when making lending decisions.

Economic growth and rebalancing

The Reserve Bank will be updating its forecasts for New Zealand’s economic growth in its next monetary policy statement, due for release on 12 December. Currently it estimates that the economy is growing at about 3 percent per annum, faster than nearly all the other OECD economies, and expects this to continue. The main drivers of this growth are New Zealand’s strong terms of trade, which are 25 percent above the average for the 1990s, increases in consumption, investment, and migration, and improving consumer and business confidence. It notes that GDP is growing faster than the 2.25–2.5 percent growth in New Zealand’s “potential output”, the rate at which an economy can grow at full employment without inflationary pressure, and it is starting to see such pressure building. The bank has signalled that it is likely to increase the official cash rate in 2014 in response.

New Zealand appears to be ahead of other developed economies in recovering from recession. While this is encouraging, it is also problematic as far as the exchange rate is concerned. With other developed economies unlikely to raise interest rates over the next 12 months, an increase here could lead to further appreciation of the New Zealand dollar, putting our traded goods sector under more pressure. We asked the Reserve Bank what this will mean for efforts to rebalance New Zealand’s economy and reduce external debt. The governor told us that higher interest rates tend to put upward pressure on the exchange rate, but they also slow the rate of demand growth; the net result depends on the balance between the two effects. He added that the high exchange rate is also because of very strong commodity prices for New Zealand’s exports, particularly dairy, with New Zealand’s terms of trade at present close to a 40-year high.

New Zealand’s current account deficit remains a concern; it is currently the second highest in the OECD. The Reserve Bank notes that the current account deficit has been a persistent problem for three decades, reflecting the long-standing imbalance between the country’s rates of savings and investment. It is projecting further deterioration in the current account deficit over the next few years because of the sizeable investment needed for reconstruction in Canterbury, and the planned investment in house construction under
the Auckland housing accord. The financial stability report says this situation underscores the need for the improvement in private savings over recent years to continue, along with continued restraint in Government spending.

**External risks**

We note that the measures being taken by the Reserve Bank to cool the housing market are designed to protect against the risks to financial stability that could be precipitated by an economic shock. We explored with the Reserve Bank what it perceives to be the main external risks. We heard that the bank sees the biggest risk as the potential for disorderly slowing of the economy of China, which is now New Zealand’s largest trading partner. Its growth has recently abated from the 10 percent average of the past 30 years to about 7 percent; the bank hopes this rate can be sustained. After such a period of rapid growth, issues to do with bad debts in the banking system, rapid growth in house prices, and the quality of regulation could cause disruption in China’s economy.

Other potential triggers which could cause financial stress for New Zealand include further instability in Europe, a sharp increase in interest rates as many economies move to tighten monetary policy, or disruption resulting from negotiations in the United States over the public debt ceiling.

**The insurance market**

The Reserve Bank is responsible for prudential supervision of the insurance industry. Following the enactment of a new prudential regime in 2010, it has been working with insurers to ensure they comply with the requirements; the three-year process for full licensing was completed on schedule in September 2013, with 99 companies now licensed.

We asked the Reserve Bank whether it considers the efficiency of insurance companies in its scrutiny of them, as we are aware of concern, particularly among Canterbury residents, that insurance companies are gouging the victims of the earthquakes. We were told that the bank’s prime concerns are the safety, solvency, and risk of insurance companies, but it also considers their efficiency; in its view the key is to ensure the industry remains open to competition and new entrants. Claims in Canterbury have been especially complex because of the need to apportion damage among multiple earthquakes, and between two assessors: the Earthquake Commission and private insurers.

**Changes resulting from the earthquakes**

Given this country’s reliance on overseas companies for reinsurance, we are interested in changes the Canterbury earthquakes have brought about in the insurance market, and in New Zealand’s perceived risk profile. We heard that after some initial reluctance from reinsurers to write new policies, most companies have come back into the market. The main result of the earthquakes has been a large increase in the cost of reinsurance, which has flowed through to higher premiums for households generally.

It seems to us that the earthquakes have caused a structural shift in the insurance market, with higher premiums likely to persist. We would be concerned if this led people to opt not to insure, or to under-insure as home replacement cover is replaced by sum-insured policies. As well as increasing the risk borne by householders, we consider that such developments may also affect the riskiness of banks’ mortgage portfolios. The Reserve Bank told us it is watching the situation closely and consulting banks. It noted that New Zealanders have traditionally had a high level of insurance cover compared with other
countries. It may diminish somewhat, but it is still too soon to gauge the extent of any change. We see it as reassuring that the Reserve Bank is monitoring the competitiveness of the industry.

The banking sector

New Zealand’s banks are performing well; their profitability has recovered nearly to the levels prevailing before the global financial crisis, thanks to a reduction in non-performing loans, and stable interest margins. Credit growth has been increasing gradually, but banks have been able to meet this demand without increasing their reliance on overseas funding, as retail deposits have continued to grow strongly, boosted by earthquake insurance payouts.

Exposure to fossil fuel industry

We asked about the exposure of Australasian banks to the oil and gas industry. Some of us are concerned about the risk that banks exposed to investments in fossil fuel industries could be put under stress if climate change resulted in oil and coal fields being shut down, forcing assets to be written off. The Reserve Bank said New Zealand’s major banks have little exposure to the oil and gas industry. Most such investment in New Zealand has been funded through project financing, generally by overseas syndicates, rather than through domestic banks. While Australian banks are more exposed to the industry, the Reserve Bank does not see cause for concern about such risks.
Appendix A

Committee procedure
We met on 13 November and 12 December 2013 to consider the financial review of the Reserve Bank of New Zealand, and the Reserve Bank of New Zealand’s Financial Stability Report, November 2013. We heard evidence from the Governor of the Reserve Bank, and received advice from the Office of the Auditor-General and from our independent specialist adviser, Brendan O’Donovan.

Committee members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson

Evidence and advice received
Memorandum from Brendan O’Donovan, Committee Adviser, dated 13 November 2013.
Office of the Auditor-General, Briefing on Reserve Bank of New Zealand, dated 13 November 2013.
Organisation briefing paper, prepared by committee staff, dated 11 November 2013.
Reserve Bank of New Zealand, responses to committee questions.
Appendix B

Corrected transcript of hearing of evidence 13 November 2013

Members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Denis O’Rourke
HV Ross Robertson
Jami-Lee Ross
Phil Twyford
Andrew Williams

Witnesses
Graeme Wheeler, Governor
Grant Spencer, Deputy Governor, Head of Financial Stability
Toby Fiennes, Head of Prudential Supervision

Goldsmith All right, thank you. Welcome to the committee, Governor, and to your
team. We’re very pleased to have you. We’ve got kind of a double header
this morning, with the financial review and the financial stability report.
Inevitably, there will be a lot of overlap between the two discussions, so I
won’t be too officious in trying to separate the two. But, in general, if we
can devote the first hour to a review of last year’s performance, and then
you can talk a little bit about the report today in the second hour. So maybe
if you could summarise the financial review aspects first, that’d be great.

Wheeler Well, thanks very much indeed, chairman. I must say we did anticipate quite
a lot of overlap. [Introductions] In many respects, the outlook for the
economy is positive. The economy is growing faster than nearly all the 34
OECD economies. The expansion looks sustainable. It’s driven by high
terms of trade, strong consumption and investment, increased migration,
and rising consumer and business confidence.

Two of the major concerns relating to the economy are the strength of the
New Zealand dollar, which creates difficult headwinds for export and
import substitution industries, and the housing market, which is the main
threat to the financial system—risks associated with the growing imbalances
in the housing market, in particular. The Reserve Bank board met nine
times during the year and provided valuable insight into the bank’s
activities. The board concluded that monetary policy is being operated within the requirements set out in the policy targets agreement and that it is comfortable with the bank’s processes in relation to developments relating to financial stability.

The annual report discusses the main goals of the bank, the measures of success, and the main priorities for 2012-13 and the outcomes. The bank’s current 5-year funding agreement extends through to June 2015. Spending for the last financial year involved an increase of $1.2 million, or 2 percent, over the previous year, and this helped to finance new responsibilities, which included the licensing of insurance companies and the implementation of measures for anti-money-laundering. The bank reported an annual profit of $308 million for the financial year and paid a dividend to the Crown of $175 million. So thanks very much, chair.

Goldsmith  Who are we going to start with?

Clark  Can I just start off, because I’m unable to stay. The question of the—I just want to go straight to the LVRs and the restrictions you’ve put in place. I’ve had concerns raised with me by people fairly close to the action in Auckland, saying that they have some significant equity concerns in respect of the changes that have been made. They say that without a capital gains tax and other measures, the observable behaviour is that, yes, there is some impact on housing prices, but they’re also noticing that while first-home buyers are being shut out of the market in increasing numbers, speculators are effectively coming in and buying properties cheaper than they otherwise could, further entrenching inequalities and essentially putting out of reach housing for New Zealanders who, a generation ago, might have considered that they could have a chance to own their own home and have a stake in society. Have you done measurement around that? Have you got a view on where that’s heading? I guess that’s my first question.

Wheeler  Can I just get clarity on what the question is? Because you’ve talked about capital gains tax, you talked about speculators, so—

Clark  The point is that the impact of the policy is that it shuts some people out of the market. It’s been called by some commentators a pretty crude tool, and the Opposition parties, for their part, I think, have been clear that they think that the Reserve Bank’s been put in a corner and forced to take some measures because the Government hasn’t been willing to tackle issues in the housing sector. I’m trying not to put a political overlay on that—that’s quite hard to do in that situation. But, essentially, I want to get to the equity issues that are coming out of that policy and get a sense of your take on that. Are there equity issues arising, and would [Interruption]—sorry, I was asked for clarification. Would other measures be able to address those, potentially?

Wheeler  Well, we can understand why some borrowers are disappointed, but our responsibility in the central bank is to look at the risks to the financial system and to the broader economy. What we have is a housing market which is very buoyant in many parts of the country. Many people would say, including the IMF and the OECD and the three international rating
agencies—they would say, and we would agree with them, that house prices are overvalued, and this poses a systemic risk to the financial system. So we felt in the Reserve Bank that we needed to address this.

If you look at the experience of other advanced economies, and many of them have got higher per capita incomes than New Zealand, and if you look at the experience over the last three decades, then you’ve seen significant house price adjustments in many of those economies. And, you know, that’s caused often very considerable damage to the financial sector. It’s caused huge damage at times to household balance sheets, because households basically—you’re sitting there with negative equity. Let’s say you’re a low-equity borrower, and your equity is wiped out, then it can take years of cutting back consumption to build the savings up in terms of your household equity. But these adjustments have enormous cost to the economy, and we became concerned that New Zealand is sitting there with high levels of household debt—currently around 146 percent of disposable income. In essence, this just created too many risks for the New Zealand economy to have house prices taking off again, if you like.

We saw what happened in 2003-07—it was the most rapid house price appreciation in the OECD. We didn’t want to see that happen again. So we know the damage that house price adjustments, when they occur, can cause the financial system, can cause the economy, and what it can do to the balance sheets of those who are most exposed, which is first home owners.

What we had was a situation where the banks were competing very aggressively for first-home buyer lending, if you like, and high LV lending was comprising about a third of their lending. We felt that we really needed to try and address this problem. Part of the problem—a big part of the problem—is housing shortages. We felt that it would just take years, potentially, for this equilibrium to be corrected through supply side measures alone. So we felt we had to do something on the demand side to try and reduce the—

Clark Can I just ask what measures have you got for the success or otherwise of the policy you’ve implemented, as opposed to, I mean, other trends, such as, say, more overseas buyers coming into the market and so on, which will also have a different impact. You know, if there’s an impression that housing becomes cheaper, relatively, to buy as an investment for an overseas speculator, for want of a better term, that can have a different impact on the whole market. How are you measuring the effectiveness of the LVR policy?

I mean, I know that bank lending is significantly down, and, you know, the reports we’re getting back is they’re being very conservative first off because they don’t want to lose their licence, and there are a whole lot of equity issues arising from that, as well. People have previously been homeowners who are now divorced, and, because their equity’s lower than it was, despite a regular job and a history of paying, they can no longer get into a home. Those hard-luck stories come to MPs in their offices, I’m sure, around the country. I wonder if you can comment on that—measures.
Spencer Can I just say about the issue of investors versus first-home buyers—there was this proposition that first-home buyers moved out, or high LVR borrowers moved out, and that investors would come in. You know, there’s not a lot of strong evidence as yet, but certainly the anecdotes we’ve had have not supported that hypothesis, and it’s also not being supported by the BNZ survey which was taken in October, which showed a reduction of interest of all buyers, including first-home buyers but also including investors. So I don’t think there’s any strong evidence that somehow—

Clark What evidence do you have, because I’m certainly getting lots of strong messages that that is the case, and I guess I’m asking what evidence and measures you’ve got to back up the story.

Spencer Well, the evidence we have so far does not support the proposition of investors effectively taking over the market. That does not appear to be what’s happening. But you are right. It’s early days and there’s still experience to come in.

Ross Thank you, governor. I just want to continue with the LVR topic. You mentioned supply a bit earlier, and you highlighted the fact that the tools that you have are demand-based and you’re tackling demand. But can you talk us through the concerns you have with the supply of housing and land supply. How big of an issue do you believe the land supply problem is? What are your views on policies that are being implemented to try to address land supply?

Wheeler Well, I think the supply side issue, particularly housing shortages and the availability of land, is a big part of the story. I mean, if you take Christchurch, the shortage of housing seems to be of the order of 10,000 houses. If you listen to the Auckland regional authorities, then they would say the housing shortage is somewhere between 20,000 and 30,000 houses. So that’s a huge part of the story. Given that you’ve got an economy with strong growth at this point in time, and you have low interest rates, there is very significant demand for housing. But you then have coupled with this the considerable shortage of housing that’s been built up for many, many years, often because of regulatory issues and particularly in terms of zoning of land, and also there are issues around the cost of building compared with, say, the cost of building in other advanced economies in particularly Australia, for example.

Moving on those supply issues is extremely important. The measure that was introduced just recently, in terms of the 6,000 sections coming in under the recently announced move by the Auckland authorities, I think is extremely important, but we need a lot—

Ross This is the housing accord between the Government and the council?

Wheeler Well, the housing accord is for 39,000 houses over 3 years, and that has a big step up of 17,000 houses in the third year. So releasing these sections to make them available for building is enormously important. Looking at the issues of why the cost of building in New Zealand is more expensive than it is across the Tasman, for example, is also extremely important.
Ross Can I make the assumption that your bank would have done a range of
analysis of local government plans and what’s going to be available in terms
of land supply in the future? The Auckland Council, just touching on
Auckland because that’s where my electorate is, is going through quite a
long-term process of looking at land availability. Are you confident that
enough work and enough land are proposed to be opened up to address
some of the land supply problems in the Auckland region?

Wheeler I am not an expert on that issue, but what I would note is that the accord
has an objective of 39,000 houses. It’s a big step up, as I say, in the third
year in particular. New building consents in Auckland are running, at this
point, at around 5,600 to 5,700 so there’s still quite a lot of work to be done
there. But let me ask Grant.

Spencer I would say that we’re quite impressed with the efforts that have been made
in Auckland to accelerate the planning, consenting process, with the
establishment of the special housing areas and the reorganisation within the
council to bring disparate parts of the council involved in the planning
process together, to try to streamline the approval process, working with
developers. So I think concrete actions are being taken. It remains to be
seen how quick the response will be to that. But it’s very clear that action is
being taken and I think it’s looking promising to get some response, or an
improved response, over what we’ve seen in the past.

Ross Moving slightly to the side, in terms of the whole housing and land supply
issue, I accept the comments that Mr Clark raised. There are some concerns
up there about LVRs and what impact they can have on people. But a
bigger concern would be if we were to be one of the first nations in the
world to start raising interest rates. Can you talk us through the wider
economic problems we would face as a country if you had to start using
some of the other demand-related tools, such as raising interest rates? How
would that have an impact on our economy, in the context of other nations
having very low interest rates as well?

Wheeler As I mentioned in the opening comments, the economy is growing pretty
strongly and our forecasts that we prepared for the Monetary Policy
Statement in September suggest that the economy might grow at around 3
percent or thereabouts next year. We will be reviewing those forecasts in
the next couple of weeks, as part of the preparation for the December
Monetary Policy Statement.

But given that potential output growth, which is essentially the rate at which
an economy can grow at full employment without inflationary pressures, for
example, we think that potential output growth is probably somewhere
around 2.25 or maybe 2.5 percent—so if you’re growing faster than
potential output growth, then you will tend to generate inflation pressures,
and we’re starting to see inflation pressures starting to pick up, in terms of
the last quarterly increase in the CPI. But a lot of that was seasonal factors,
in terms of vegetables and oil prices and things like that.

But it does mean that we’re likely to be putting up interest rates, starting
sometime next year, and the concern would be that the interest deferential
between New Zealand and many of the other advanced economies will widen because it’s quite likely that most of the advanced economies, or certainly the major economies, are unlikely to raise short-term rates over the next 12 months and the concern is that that could increase pressure on the exchange rate and put the traded goods sector under more pressure.

But you can also say that we’ve signalled that in our Monetary Policy Statements, and how much of that is simply anticipated and built into expectations. But the risk would be mainly on the exchange rate side.

Ross You have also signalled that if you did not undertake the LVR restrictions that you’ve put in place, for a range of reasons, some of which are political—if you didn’t put those in place, then you would be raising interest rates a lot sooner than you are now expecting to. Is that right? And all of those problems associated with that could come about sooner.

Wheeler Well, we have said that there’s a relationship, if you like, between LV ratios, in terms of constraining demand, and what would be the same impact of an increase in interest rates in constraining demand in the housing sector, so we’ve done some analysis on that, and that’s been important work.

But in essence we’re moving on the LV front because we have responsibilities under the Act, in terms of financial stability, and we believe that there really are systemic risks to the financial sector associated with these increases in house prices, particularly at a time when there are these supply shortages and it’s going to take time for that supply side to work its way through.

Goldsmith OK. We’ll come to Shane Jones.

Jones Kia ora. Firstly, from time to time a number of us pop over and get briefings, and I would like to thank you, Mr Governor—

Wheeler Thank you.

Jones —for allowing MPs to come over and get briefings about rather obscure matters, such as insurance. But I am on page 7 of your document here.

Goldsmith You’re on the next hour’s document, but that’s all right.

Jones It’s in the context of what we’re talking about. Basically you point out that demand is well ahead of supply, and we’ve got house price inflation, and presumably part of what you’re doing is not only increasing the robustness of our banking system, but you’re trying to get your hand around the throat of house price inflation. By what percentage do you want house prices in Auckland to drop?

Wheeler I wouldn’t put an exact number on it, in that sense. But what I would say is as follows: as I mentioned in my comments before, house price inflation in New Zealand was the most rapid amongst the 34 OECD countries from 2003 to 2007. House prices in Auckland, the median house price in Auckland is currently 26 percent above the peak of 2007 and the house prices are increasing currently at an annual rate of 16 percent. Now, inflation is around 1 percent. So that’s the major concern.
Jones So can you give me a figure, though, because I think you’re being very bold and your decision about LVRs has obviously been influenced by your experience of seeing the meltdown in the United States of America, quite apart from your statutory role in New Zealand, and your boldness has created quite a lot of white water. But you are the independent Governor of the Reserve Bank, so having made this decision, what level of house price reduction would you like to see to improve the robustness of banking and to draw off the fears you have and the anxieties you talk about every week—too much priciness in house prices in Auckland.

Wheeler As I say, I wouldn’t put an exact number on it, but what I would say is that the analytical work that we did around these LV ratios basically suggested that—

Jones Well, if you can’t have a number, how will we ever a sense as to when the LVR has achieved the objective which naturally you’ve determined, and because you’re not responsible to the public—politicians are responsible to the public—how will we ever know you have arrived at the point where this intervention has kicked a goal for you, if you can’t give us a sense as to: “This is the house inflation figure at the moment, and this is what I, as the independent Governor, not responsible to the public, would like to see it come down to.”?

Wheeler Let me put it this way. If we have inflation currently around 1.2 percent at an annual rate, then we have an objective under the policy targets agreement of maintaining inflation over the medium term of the order of 2 percent, then you wouldn’t want to see house prices for the county as a whole growing at around 10 percent, as they are at present. You would want to see a figure much closer over time, much closer to the level of consumer price inflation.

Jones OK. The other question—it is also in the document, and it is very, very good. Basically on page 35 you’ve talked about regulatory creep or leakage, should I say. What I love about reading these documents—I’ve got three degrees and I still need to turn to the new version of the English language when I hear you guys and read you guys. But anyhow, on page 35, Mr Governor, it says: “In respect of LVR restrictions, leakage could involve avoidance activity by the regulated banks.” Which banks do you fear are going to try and game you on LVR?

Wheeler When we’re talking about regulatory leakage, it’s the risk of financial disintermediation that could occur.

Jones I’m reading out what you put out here, and this is the only public forum we have. I have got a right to ask this question, Mr Chairman. In respect of LVR restrictions, regulatory leakage could involve avoidance activity by the regulated banks, including activities designed to game.” Now, which banks do you fear are gaming you?

Spencer This is a concern with any policy, a concern that we don’t want to see leakage that would undermine the policy. We’ve put various conditions in the handbook standards in the regulation to try and minimise that leakage,
and so far we think that has been quite effective. One of the things we put in there was a requirement that the banks not only enter into the letter of the restriction, but also the spirit. We’ve had various discussions with them about, you know, products or activities that might be regarded as inconsistent with the spirit of the regulation. I must say that to date we’ve been encouraged by the response of the banks in terms of entering into the spirit of the restrictions, and not trying to game them. So we’ve been happy with the banks’ response to this point.

Jones OK. Thank you for the answer. I was just surprised to see it so overtly stated. We assume that you have a problem—that the banks are beginning to game you, or you wouldn’t have put that in here.

Spencer No, it was more in terms of a risk that that might happen.

Jones My final point, and then I will hand it over to others, is that recently there has been a lot of talk about a potential default if the Congress, Mr Governor, don’t get their affairs in order, etc. Could you share with us what effect you might see that having on New Zealand, in the event that the American Congress have another bout of instability—it’s referred to in your document—and have a punt at what you think it might mean for us here in New Zealand if it did go pear-shaped.

Wheeler If the US Government did default, it would be an extraordinary situation and so I don’t believe there is a major risk at all that the US Government would default. The Government got shut down, as you know, for the best part of 2 weeks or more and there’s a lot of sensitivities on the GOP and the Democrats side in the House about the level of debt in the economy, particularly the level of public sector debt. But for an administration to actually default on its liabilities would be an extraordinary situation for a country which is 20 percent of world output. If that did happen, and it wasn’t rectified basically immediately, and I couldn’t envisage it happening, then the consequences would be pretty well what you would expect.

Jones So when I see on page 15 you’re just warning us that it represents just one of the risks that you have to be mindful of, in the sense that a default on Treasury bonds represents, on page 15, a significant tail risk if the debt ceiling is not increased permanently. Basically you’re saying you don’t see that debt ceiling being either static or decreasing.

Wheeler I think we could see some quite rocky times in the run-up to the next presidential election and perhaps with the Senate elections in mid-term, you know, it’s unclear to me that having been through what happened with the shutdown of the Government that there would be an appetite to go through that again in January or February.

Jones OK. Thank you very much.

Goldsmith We will come to Russel Norman first.

Norman I have some questions that are probably more related to the annual report, but seeing as we are on the LVR thing, maybe we should just continue down that path, for continuity’s sake, so I do have a few questions about the LVR.
Just following up on Mr Jones’ question, the answer that you gave essentially was that let’s say a 2 percent growth in housing prices would be a reasonable one if the target is one of 3 percent, so the mid-point is 2 percent, so growth in house prices around 2 percent might be a reasonable one, rather than 10 percent.

Wheeler I don’t think I said that, chairman.

Goldsmith Closer to.

Wheeler I said something closer to the 2 percent.

Norman But what you didn’t address in Mr Jones’ question was that he was asking to what extent house prices should come back. That was actually his question. A lot of what you talk about is the problem of the growth in the past and the imbalances that that has produced, which suggests that you think they should come back to some degree, and you didn’t address that part of his question, I don’t believe.

Wheeler Well, part of the issue is whether we have a housing sector which is overvalued in terms of historic experience and international experience. And the sorts of measures you might look at would be household debt relative to household disposable income, or it might be house prices relative to rents, those sorts of things. When people have done that analysis, we in the bank, but also the international institutions, they’ve found that house prices are significantly overvalued.

Now the OECD, for example, in a recent publication in essence said that, if you take house prices relative to disposable income—and that ratio’s around about 4½ at the moment, but in the early 90s that was around 2½. The OECD did some analysis and said that the current ratio, which is 4½ or thereabouts, relative to the historic average in New Zealand is 20 percent higher. So one doesn’t want to see a significant adjustment in house prices happening quickly because that would be—by that I mean just simply house prices falling. That would pose significant—

Norman Nominal terms, you mean?

Wheeler Nominal and real, in nominal terms, yes. Then that would pose significant risks to the financial sector, etc. What one wants to do is to slow down the rate of house price appreciation, and our measures are basically trying to affect the demand for housing while the supply side can come into balance, into much better balance.

Norman So, just to be clear on that, what you would like is to see house price rises slower than rises in income in order to change the ratio of income versus house prices. Is that correct?

Wheeler Well, we’re saying that that measure is too high at the moment, house prices relative to disposable income, that that multiple of 4½ is a high one by historic standards and by international standards. And over time we would like to see that lower.

Norman OK. Just on another issue related to the LVRs. I have the minutes from your May meeting in Whangarei. You may remember the May meeting up in
Whangarei. In it you talk about the LVR and the board discussed issues relating to elements of the housing market that may not be affected by LVR limits, such as foreign buyers. So, what the minutes appear to be saying here is that the LVR limits won’t affect the foreign buyers. Can you explain to me why that’s the case, if this is correct? I’m happy to pass the minutes over to you to have a look at.

Spencer Well, that comment, I guess—the implicit assumption there and their understanding is that a lot of foreign buyers in the Auckland market are not particularly highly geared. In other words, a lot of them have quite a lot of cash and therefore LVR restrictions may have less of an impact upon that group. But there’s still a lot of uncertainty as to how significant that group is in terms of putting pressure on the market.

Norman So, according to the BNZ study, 11 percent of buyers are offshore in the Auckland market. And that study probably under-reports because it relies on real estate agents self-reporting, who have a vested interest in under-reporting because it’s such a sensitive issue. But if that’s an accurate number it means that that 11 percent of demand won’t be affected by the LVRs. Is that the fair conclusion to be drawn from that?

Spencer I would think that’s a reasonable assumption, yes.

Norman Can you see that from the point of view of the average person, that they may think that a measure which is introduced which is having significant effect on first-home buyers’ access to the housing market but has no effect on foreign buyers in the housing market may seem to have elements of inequity around it?

Spencer Firstly I’d say that foreign doesn’t equate to investor. So there’s still an investor segment that’s domestic that will be influenced by the LVR restrictions, albeit they take up a smaller proportion of first-home buyers. As we know, first-home buyers we estimate 40 percent by LVR lending, but the other 60 percent is all those other groups.

Norman So if you were to say, well, that one of your objectives is to deal with the demand side, your argument is, in the short term, while the supply side is sorted out in the medium term. I think that’s a fair characterisation of your argument. Another way to affect the demand side would be to place some constraints on the foreign buyers if they are, say, 11 percent of the market. It is a significant proportion. And yet so far you’ve been unable to apply any constraints on the foreign buyers into the housing market, because the LVRs don’t impact the foreign part of demand. Is that correct?

Wheeler I think whether the 11 percent is right or wrong, I’m not sure. If you look at the analysis that I saw, albeit it was a while back, looking at to what extent do people living offshore own the housing stock as opposed to flows, that percentage was much, much lower. But on the flows, you would expect, given the buoyancy in the market, that the flows percentage would be higher than the stock percentage. I think that would be a fair assumption.

I think it’s probably a fair assumption that people buying from overseas, be it Australia or be it Europe or in Asia, many of them probably don’t have to
go through the banking system to the same extent. But that’s true for the bulk of people buying houses in New Zealand; they don’t, in essence, get caught by the LV restrictions because at its peak it was affecting basically about 30 percent of bank lending.

Norman: But the LV restrictions apply to flows rather than stock, so a like-with-like comparison should be with flows, not stock.

Wheeler: The flows will be higher than the stocks. I agree with that.

Norman: So, if we are looking at demand from offshore it is the current demand and the current flow that we should be looking at in order to compare like with like.

Wheeler: Correct. And we don’t know whether the 11 percent is the right figure or not, as we say.

Spencer: The key factor here is that our aim is not just to reduce demand for housing in Auckland. I mean, the aim is to reduce risk in the system, and that’s why these restrictions are based on loan-to-value ratios. If we do have an incident or a shock in the market, those are the loans that are going to be damaged the most, and they’re going to damage the system the most.

Goldsmith: Could I just follow up on that? In the first 20-odd years of an independent Reserve Bank the focus was absolutely on inflation, and in the last few years you’re talking a heck of a lot more about the housing market, partly because inflation seems to be under control. But there’s been a very significant shift in what the Reserve Bank has been talking about, and an increase in housing market. And I presume that is a response to the financial crisis and the problems in the US housing market and so on. Can you just—taking that 20-year view—briefly tell us why it is so important that these financial stability issues are taken seriously and what the consequences are of getting it wrong, so we can understand just why you’ve had this significant change in focus?

Wheeler: There was a debate. The central bankers in many countries get together for a conference in Jackson Hole every year. There was quite a significant debate, I think it was in 2005, about the buoyancy of house prices in many economies, especially the US. The Federal Reserve System had a view that—and this was Chairman Greenspan’s view—in essence, central banks can do very little about emerging asset bubbles, in essence. That view, I think, got substantially reconsidered in the aftermath of the global financial crisis. That damage associated with rapid build-up in housing market or house prices, substantial overvaluations, and considerable leverage in the financial system—that when the correction comes, it can do massive damage to people’s lives, to the financial sector, and to the broader economy.

The debate intensified about what are potential measures that central banks can do to try and address some of these risks to the financial system and to the broader economy associated with these rapidly rising asset prices, in particular housing markets. That is when an increased focus went on the macro-prudential tools. Things like loan-to-value ratios have been around
for a long time. I mean, there are 25 countries that have used loan-to-value ratios in some way that we are aware of, but amongst central bankers the belief developed that, really, central banks just couldn’t sit by and let these risks to the financial system and the broad economy just intensify and have all the potential outcomes if they collapsed.

Goldsmith When we talk about equity, who were the primary losers out of the situation that we saw in the United States, where there was a bubble, there was a massive correction, and the economy as a whole was thrown into serious problems? My sense is—and it’s a leading question—that it is the lower income and the poorer part of society that suffered most from that happening. Is that right?

Wheeler Yeah, and it’s not just the United States. You’ve seen major house price corrections over 30 or 40 years in advanced economies. In fact, we have a table listing a number of the countries where that has occurred in the past three decades. Yeah, the greatest adjustment and effect on people’s balance sheets and their lives are those that are the most highly leveraged in the economy. In California, for example—I mean, house prices in America were adjusted in five states in a huge way. One was California, another was Florida, another was Michigan, Arizona, and Colorado. You saw house price corrections of the order of up to 60 percent in a lot of those states. A lot of the lending that had been taking place in California was interest only lending. You know, what it did was when the crunch came, you had basically 25 percent of America’s 45 million mortgage holders basically having negative equity. A number of them walked away from their houses and gave the keys to the banks, but others just simply had to cut back their consumption, cut their living standards dramatically, and this lasted for several years and is still carrying on to try and build up their equity in their houses.

Bennett Just following on from what Russel was going on about with his questions—I think he effectively was looking at some kind of restriction on overseas buyers. I think that’s where he was getting to. I think the point you raised was that it’s actually to protect the purchaser as well from the difficulties that can come in if you’re on an interest only or you don’t have enough equity to hit it downtime. What do other countries like—I understand Australia has a limit, doesn’t it, on overseas buyers. Has that achieved the purpose that Mr Norman was talking about—that he was inferring that such a policy would achieve? Have they had a slowing of their property markets in places like Sydney and that, which are comparable to Auckland?

Wheeler In terms of the measures in Australia—perhaps maybe Grant does or someone else knows the details. The challenge we have got in the housing market to supply-side and demand-side imbalances, etc. is that if you look at the Sydney market or the Melbourne market or the market in London, you start seeing house price increases that are starting to become quite significant compared with the underlying rates of inflation. In many respects, we’re sort of ahead of them in the financial cycle and in the economic cycle. As I say, the economy is growing faster than economies in
those countries—faster than the UK, faster than Australia. By and large, my guess is they will face increasing house price pressures in those economies, irrespective of what they might have done by way of a capital control.

Bennett So the things like capital gains tax, limiting overseas buyers—they are not working or stopping or changing the flow? It is a natural flow that really the economy goes through in those sorts of cities and modern, world-class cities. You’re going to have that pressure, and really what you’re saying is what you try to do with your LVRs was actually protect the buyer in a situation where they could get themselves into difficulty by overstretching to get into the market. Is that sort of fair?

Spencer Yeah, I think in Australia, the view there is that capital gains have not really had a big impact on property cycles over time, nor have the restrictions on foreign purchase of properties, which were essentially in the nature that foreigners have to buy off the plan. You can’t buy existing houses, or you have to get approval for existing houses, so there’s a lot of ways they can get around that. The view is that those restrictions make very little difference.

Bennett And also, with net migration—one of the things we talked about earlier—coming in our favour, it would be very difficult to identify a migrant from an investor in that situation as well, wouldn’t it?

Spencer Yes, well, particularly with the increase in net migration, a lot of it is fewer Kiwis leaving and more Kiwis actually coming home who have been away, so they have obviously all the rights.

Bennett Just with the LVR, is there anything, when you brought that in, that was unusual or different or something that was unexpected that, looking back on it now, you look back and think that was a consequence where you hadn’t anticipated or to that level? Are there any lessons that you would learn out of that process that you think could be tweaked, or some things you need to be aware of that are pitfalls in the system going forward?

Spencer Not as yet. I mean, it is early days, because they only started on 1 October. There’s a lot of adjustments that we’ve yet to see. So it’s probably too early to make that call. There may well be events that happen over the coming months that are unexpected but at this point, we haven’t really seen any surprises, as such.

Wheeler Just on that, perhaps, if I could elaborate, we telegraphed these moves in many respects in the on-the-record speaking that we had been doing in the lead up to the introduction of these measures. We’d given a number of speeches. We’d also been talking with the bankers association. We’d been talking with the chief executives of the banks—also with the chairs of the boards of a number of the banks, so these were pretty well telegraphed within the industry and I do not think at this point we have had any real surprises.

Goldsmith OK, we’ll go to Andrew Williams and then we’ll come back to Russel Norman.
Williams  Governor, in your earlier introduction you referred to the Auckland and Canterbury markets being somewhat overheated and the need to move on the LVRs to try and contain that. What is your response, though, to the fact that outside of the 1.9 million - odd people who live in Canterbury and Auckland, there are in excess of 2 million other New Zealanders who live in the likes of the Waikato and Bay of Plenty, where house prices increased by 2.3 percent in the last year; in Manawatū and Wanganui at 2.2 percent; Hawkes Bay at 2 percent; Northland at 1.25 percent; and Southland at 0.5 percent?

In those areas, you will agree, the real estate chain is very dependent on people entering the market so that others can move along the chain and move up to their next level of house and that sort of thing. If in areas such as Southland, Northland, Hawkes Bay the market is affected to such an extent that there is no level of entry—affordable entry—for many people on low to middle incomes, do you feel that you are taking a sledgehammer to clobber an Auckland and Canterbury problem and maybe to a lesser extent perhaps Queenstown and Nelson, but other areas of New Zealand are going to significantly suffer?

And when you look at a situation where the average house price in New Zealand is now at $385,000—a little bit less in many of those provinces—but where people now on average in New Zealand will be required not just to raise $38,500, a 10 percent deposit, but $77,000, can young people moving into the workforce with young families honestly in many of these provinces think that they can start raising $50,000, $60,000, or $70,000 to try to get entry into the market?. And if you feel in the next number of months that this is really adversely affecting the likes of Gore, the likes of Timaru, the likes of Hastings, the likes of Gisborne, will you move quickly to address it?

Wheeler  We thought about whether we should introduce regional LVR ratios, if you like, and we decided not to, partly because of the administrative difficulties associated with that, but also because wherever you draw the ring-fence, wherever you put the border's edge or the boundary, the pressures will spill over outside that boundary. You’re right, that there are parts of the country, and significant parts of the country, where house prices are either flat or they have been declining, even. But there are other parts of the country outside of Auckland and Christchurch where house prices are increasing somewhere between 5 and 8 percent on the data that I have been looking at recently. And they are in a number of areas in the North Island, in particular, Taranaki, Hamilton, Hawkes Bay, even, Nelson-Marlborough, Otago Lakes. So it’s not just Auckland and Christchurch. I mean the housing pressures in terms of price increases have spread outside those regions.

Now where will most of the LV impact likely take place? We think it’ll be where demand for housing has been the strongest. We think it’ll affect mainly—but surely not at all completely, but mainly—the Auckland region. That will be where its primary effect is. People in other parts of the country, in some of the areas that you describe, may well be able to benefit from the
exemptions that we have provided. We haven’t stopped LV lending as, in fact, most regulatory authorities that have introduced LV ratios have introduced moratoria. They just simply said no, you cannot borrow unless you have a deposit of X percent, whatever X might be.

We didn’t want to go to that extent. We wanted to introduce a reduction in the amount of high LV lending and therefore we introduced the speed limit. But we also introduced exemptions around that, so the speed limit’s 10 percent, but the exemptions add another 5 percent. So for example it’s quite possible that some of the first-home buyers in the regions you talk about may well benefit from Welcome Home Loans, for example. But most of this effect, we believe, will be hitting the Auckland market.

Norman If we’ve moved on from LVRs, I wanted to ask about the non-bank deposit takers review. I have a particular interest in the credit unions and the building societies, and, as I understand it, there has been support from that review that the trustee arrangement isn’t necessary for the credit unions and the building societies, because that is one of the problems with the credit unions is that they have got these layers of bureaucracy on top of them, including the trustee arrangement. I’m just wondering whether the Reserve Bank has formed a view about that.

Spencer Well, we did consider that and there were submissions along those lines, but you can’t differentiate across the non-bank deposit takers. We want a model that works reasonably well across the sector, even though that’s made of finance companies, building societies, credit unions. So, you know, there are pros and cons of the different models. We looked at the current model that we have and essentially our recommendation is that the broad structure—the current structure—would be retained, but that it would be improved and made more targeted, streamlined, more efficient in light of the experience we’ve had over the past 5 years.

Yeah, we acknowledge that there are some groups, such as the credit unions who would prefer a different model. They would prefer, say, just to be supervised by the Reserve Bank and not have the trustees involved. But our broad conclusion was to modify the existing regime, which retains the trustees in the front-line supervisor role with ourselves as regulator.

Norman Just following up on that, the credit unions and building societies have a very different risk profile to the finance companies. So it seems to me a bit unfair to dump them all in the same pot, non-bank deposit takers, and say we’re going to regulate them all the same. Surely they should be regulated on the basis of their prudential risk rather than on the basis that they’re just the odd ones on the side, because, as I understand it, your review did describe the credit unions and building societies as bank-like in many respects, so there is a logic to regulating them direct from the Reserve Bank rather than having the trustee approach, which applies to the finance companies. Aside from the issue about whether that worked with the finance companies, why not just regulate them in a bank-like manner?

Spencer Well, actually, you know, as things have panned out in recent years with the demise of so many finance companies, most of that sector is now building
societies and credit unions. So there’s less disparity in that sense between the risky finance companies; you know, there’s only one or two finance companies in the overall net. But, yeah, they’re financial institutions, so they’re bank-like in a sense, but there is this alternative model, which uses elements of the past structure that was in place in terms of many of the deposit-type instruments, essentially being debenture been raised, where funds are being raised under a trust deed, which brought the trustees into this game in the first place.

So that’s our on-balance assessment. But let me ask Mr Fiennes if he has anything to add in this regard.

Fiennes Not much to add there. I think one reason we came to that conclusion is that credit unions, building societies, and finance companies essentially do the same sort of business in that they take deposits from the public and lend it out and there’s nothing that could give principle to distinguish between the different business models. But in practice credit unions do this quite differently, in that they provide transaction-type services, but there still needs to be a certain type of protection and a certain type of prudential supervision regulation of financial deposit takers. That was the on-balance reading we took.

Norman Isn’t it the case that credit unions and building societies went through the GFC pretty much intact, whereas the finance companies all fell over and so there is a quite different kind of business structure that we’re talking about. They actually operate under different legislation as well, so that does change the risk profile and hence shouldn’t that be the criterion for how you regulate their risk profile?

Spencer Well, it’s true that if you have a riskier institution, they will tend to get more attention and they will be more affected by the capital requirements, etc. that are required under the prudential regime. But, you know, credit unions and building societies do carry risk; they are not risk-free institutions. They need to be within the net. In particular, those types of institutions do tend to have quite a significant maturity mismatch on their books in terms of the maturity of their funding—a lot of on-call deposits versus term lending, mortgages, etc. So these institutions do carry risks and they need to be within the net, the prudential net.

Goldsmith Can I follow up with a supplementary on that. Are you confident that you have beefed up the prudential regime and non-bank deposit takers in insurance? There’s always the risk that you make the regulatory burden too high. You make it difficult for new entrants and smaller players. Are you confident you’ve got the line right there, so that we still have the ability to have new competition, new people bubbling up, and keeping both of those areas competitive?

Norman Less red tape. Sorry, I was trying to clarify. I’m sure Paul was concerned about red tape constraining competition.

Goldsmith You’re always balancing those two things.
Spencer It’s true to some extent, that sort of soundness efficiency type trade-off. In the insurance sector you had some small operators, some potentially risky small operators, some who were using New Zealand as a base to service the Australian market and other markets, and as a result of our new regime basically they have dropped out of the system, closed down, moved off, and I would not say that’s a bad thing.

So, from a soundness point of view, that’s been a plus. But potentially there’s a bigger, initial hurdle to get into the industry if you’re a new player, and that’s, I guess, to some extent unavoidable, but in the insurance sector we have 99 companies, so there’s some pretty good competition there. But that’s a trade-off that we face.

Wheeler What you’re looking for is an efficient sector and also a market, in essence, that’s contestable and competitive. So in the insurance sector you had, I think, from memory, about mergers, acquisitions, exits from the industry, they probably totalled about 50 to 60 organisations. If you look in recent years, particularly since 2007, we’ve introduced four new banks into New Zealand, in terms of Heartland, Co-op, the Bank of India, and the Bank of Baroda. So you will get these adjustments in terms of efficiencies, shakeouts, but so long as you have a contestable market, that’s tremendously important.

Hayes At the outset you said, as I recall, the bank ran a profit of $308 million, presumably on the back of currency trading. You gave the Government $175 million. What happens to the other $133 million?

Norman TAB.

Spencer Retained earnings, so, building capital.

Goldsmith Very good.

Twyford Governor, you’ve talked about the risk of a future sharp correction, and that seems to me to be quite an upping of the ante, from the language that we’ve heard from you more recently, and I wondered if you could explain what you mean by that. What is the risk? How much is the risk? What do you mean by sharp pressure? And are you saying that people are at risk of losing their shirts?

Goldsmith We’ve had a long discussion over the LVRs in the previous hour.

Twyford But have you discussed this particular aspect?

Goldsmith Indeed. But if you could maybe just briefly address that question, because we would like to cover some other areas as well.

Norman I reckon we tire him out, and in the last half an hour we ask the really hard questions.

Wheeler It’s a bit of a Colombo act, isn’t it. I was just looking for it. It’s figure 2.4 on page 7, which has corrections in house prices since 1970 that have occurred in advanced economies. If you look at most of those economies, per capita income is higher than New Zealand’s, certainly for the advanced economies,
and these have taken place over the last 30 years. In some of these cases there have been more than one incident within these economies.

What could cause an adjustment here? What could do great damage to the economy and to the financial sector and to the housing sector? The biggest risk, my guess, would be around China. China’s growth has slowed from 10 percent on average, which is what it has been for the last 30 years, and the issue is can it continue to grow at 7 percent or thereabouts. That’s a long discussion and I’m happy to have it outside the room at some point or unless people are interested; I have a number of thoughts on China.

But one of the things that I was reading recently was a report by Fitch, which is one of the rating agencies, which in essence said that if you look at the housing exposure, or the lending exposure if you like, in the US banking system, it totals roughly around US$15 trillion and it has taken the American banking system 235 years to get there.

The Chinese banking system, which includes the formal banking system and the shadow banking system, has got to a delta of US$14 trillion in 5 years.

So there are significant risks around, I think, the Chinese banking system in terms of the bad debts in the banking system—potentially the quality of regulation. You have seen rapid house price increases in China, over several years. You’ve seen several bursts of it. At the moment the monetary authorities are trying to bring it in. But China is now our biggest trading partner. So the biggest potential risk, I think, is probably around China.

Twyford Can I just ask a follow-up to that. You’ve talked about being willing to consider an exemption around new builds if the data justifies that. Warwick Quinn from the Registered Master Builders Federation was this morning talking about unintended consequences of LVRs, basically saying that one of the things that is putting the frighteners on new builds at the moment is that every decision to do a new build is based on kind of a chain of transactions, and all you need is one first-home buyer or one high LVR borrower in the chain somewhere to withdraw, and that has a knock-on effect down the line. He was putting that up as an argument for the fact that actually the consequences of LVRs on new builds could be much greater than was previously thought.

Wheeler There may be some immediate impact from the LVR restrictions, and we are watching the situation quite closely. But if you take high LVR lending on new house construction, it’s roughly $60 million to $80 million a month. Now that’s about 2 to 3 percent of our total banking system lending on housing, which is around $3 billion a month, so it’s 2 to 3 percent.

We expect the demand for new housing to remain strong, for several reasons. The market price of housing is running ahead of the building costs in Auckland and Christchurch. So that’s one reason.

The second, if you look at annual consents for new building, they’re running at 50 percent higher on an annual basis than when they were in the trough in 2011. If you take the month of October, the new building
consents were amongst the highest for the year—in fact, it was the third-highest month.

So there is strong demand for new housing. The LVR restrictions could have some immediate impact while banks make their adjustments to get to within the 10 percent. We will watch the situation closely, but at this point we think demand for new building is still very strong.

Goldsmith Committee members, we have a report from our committee adviser, Brendan O’Donovan, in relation to the Financial Stability Report. We could break for 10 minutes and clear everybody out and have 10 minutes with Brendan. We have got a hard copy and we could just continue. My preference would be just to continue, but if there is a strong desire to—[Interruption] We’ll carry on.

Jones I want to change tack and get a sense from Grant or yourself, Mr Governor, how does the Reserve Bank feel about—and I’m talking about insurance here. Is there anything that we should know or intelligence that you’ve picked up in relation to the reinsurance market? I’m sure they now look at New Zealand with a different risk profile. You’re supervising, which I’ll come to in a moment, existing players. What observations would you share with us, after all, we ourselves as a nation State are reliant on reinsurers, the Zurich Res of this world.

Spencer I think that after the Canterbury earthquakes there were some reinsurers who felt a bit hurt at large claims and backed off the New Zealand market to some extent, which involved unwillingness to back new policies with new customers with some companies. This partly reflected the higher reinsurance premiums. But we did see some reinsurers coming in to fill the gaps. That was the initial period of 2011. More recently, I think, most of the main companies have adjusted and come back into the market, and most of those players who were there pre-Canterbury are still there, in terms of the big, global reinsurers. But one thing that has changed for sure is the cost of reinsurance, which has increased substantially and that’s the main driver of the increase in insurance premiums for housing generally.

Jones The sense that I certainly get is that there’s obviously been a structural shift to a higher level of cost. What are the implications if more and more Kiwis decide not to insure?

Spencer Well, New Zealand is starting from a pretty high rate of insurance. Comparing internationally, we’re up there in terms of being a highly insured country. You’re right, the possibility of that is that this may diminish somewhat—I think it’s a bit too early to tell. The other complicating factor is the fact that it’s the shift that we now have from replacement insurance to sum insured as policies roll over. That may affect it as well.

Jones Just as an anecdote, I’ve been doing quite a lot of visits around the regions, and these are old buildings that I’m referring to. But it struck me as quite worrying the number of people who have basically told me “To hell with it, because I just don’t have the cash-flow to meet the $50,000 insurance bill
and I’ll take my chances, etc.” That strikes me as quite worrying, for us as a country, doesn’t it? Or each fool to their own desserts?

Spencer Well, it’s a choice that companies and individuals make about whether they self-insure or insure in the market, and how much risk they want to take on themselves. You’re right—people make those choices. But at this point, I think it’s a bit too early to say that there’s going to be any significant reduction in the level of insurance in the country.

Jones Has there been much static between the cost of insurance and, obviously, the requirement by the banks on borrowers to make sure that you’re insuring to cover the mortgage that I’m giving you at an increasingly expensive rate, for a house that’s vastly inflated which, according to the governor, is going to come down to somewhere around 2 percent inflation growth each year? We need a bit more in Kaitaia than that, Mr Governor. It might be right for these fullas in Kohimarama.

Spencer With the move to sum insured, the banks have been asked questions—OK, are people really going to have enough insurance, or are they going to become under-insured and therefore affect the bank’s risk?

Jones That is my point, yes.

Spencer That is something they’re watching closely. But I don’t think there’s been any significant increase in that risk to date.

Hayes So how do you decide if there’s market value failure in the insurance sector?

Spencer Well, at the end of the day, different countries do have different levels of insurance cover. We want to see a sound insurance system and an efficient insurance sector. I think we have that at present—

Jones It can be improved, and help is on its way.

Goldsmith Presumably no Government department or Reserve Bank can change the effects of large earthquakes, which have fundamentally changed the cost structures of what we’ve had to do.

Wheeler Chairman, let me introduce Toby Fiennes, who’s the head of Prudential Supervision, and Bernard Hodgetts who is the head of the macro-financial department, who have joined us.

Goldsmith Thank you. Are there any further questions?

Jones Yes, I just want to finish off insurance before we move on, if you don’t mind. I would say that—and I’ll repeat it again—it was a very good briefing that we did have, but when we’re dealing with the public, there’s a sense that the insurers, and they may have failed to convey the right messages, but there’s a sense that the insurers have gouged the victims, etc., of Christchurch. That’s No. 1, and No. 2 is, rather than recover their losses, they’ve ramped everything up to an increasingly high and unrealistic level. When you’re doing your prudential work, are you looking for evidence that a competitor’s not as competitive as it should be, that it’s not as efficient as it should be, or are you looking at just issues to do with solvency, and that kind of statistical indicator regime?
Spencer Safety, solvency, and risk are our prime concerns for the banks and for insurance companies. That is our main game. But we do have an eye to efficiency, and efficiency is our mandate, as well. As Graeme said, the key is to ensure that the sector continues to be contestable, that new entrants are coming and going. So that’s a factor, as well. But in Christchurch, you know, there’s definitely been a hugely complex claims process going on. The unusual things are the multiple quakes and the involvement of two assessors, being the EQC and the insurance company, and trying to apportion between EQC and the company, trying to apportion between the four, five, six different events, has just added hugely to that complexity, particularly in those areas where there’s been ground damage, the TC3 areas, etc.

Jones Well, it is reassuring to hear that you are going to look at efficiency and competitiveness, because if the solvency thing is so burdensome, it actually obstructs new players coming into the market, and I’d hate to see a sort of ossification or hardening up of the current players. Perhaps it is just our curse. We live in the shaky isles. Every one and a half to two generations, the taxpayer is going to have to meet the costs of rebuilding a major part of New Zealand’s infrastructure.

Goldsmith Indeed.

Norman Just going back to the issue of rebalancing, which we’ve canvassed a bit before. But it’s particularly in light of your comments that we’re leading the financial cycle—I understand what you’re saying there—which means we’re most likely to lead the tightening phase of the cycle, as well. If we’ve already got the second-worst current account deficit in the OECD and a seriously overvalued dollar, which is one of the contributors to it, by leading the cycle in terms of interest rates, the effect will be to make that problem worse, will it not?

Wheeler The current account deficit and the level of external debt, which is, I think, behind your question, is something that has been a significant problem for New Zealand for the past 30 years, at least. If you look back over the last three decades, the current deficit has been in the order of 5 percent of GDP. So it’s very significant. That current account deficit basically reflects the difference between the level of savings in the economy and the level of investment. If you look out over the next 2 years, you see, based on our forecasts, at least, strong investment growth. A lot of that is tied up with the reconstruction of Canterbury, which peaks in calendar 2015 and 2016, but also you’ll see strong investment if the numbers in the accords start to eventuate. You’ll see that on the housing side. And you’ve got an economy where consumer and business confidence is at very high levels. So you’re likely to see strong investment. The issue is what happens to savings. In household savings, the data’s often pretty ropey, but household savings have been increasing since the global financial crisis, but the issue is will they continue to increase? So our projections—and the other issue is what happens to the Government’s fiscal position, what happens to dissaving by the Government? Our projections suggest that the current account deficit is
likely to deteriorate over the next 2 years, mainly because the improvement in savings won’t be sufficient to finance the improvement in investment.

Norman But if you’re leading, or New Zealand’s leading, the world in terms of tightening, won’t that—I mean, we’ve discussed this before—add pressure on the exchange rate, which deals with the problem of the imbalances in the New Zealand economy that we’ve talked about—a systemic problem—that it will make it worse if we’re tightening ahead of the rest of the world into next year?

Wheeler It has two effects, really. One is if you increase interest rates, then it might put further upward pressure on the exchange rate, and, therefore, affect the traded goods sector—your exports and your imports substitution. But increasing interest rates also slows down the rate of demand growth in the economy, and potentially the demand for imports to some degree. So there’s a price effect and there’s an absorption effect, if you like.

Goldsmith I’ll just throw in a supplementary on that. When we’re looking in that context of leading into an area of potential tightening, how big a factor is Government fiscal policy? We’ve currently got a Government that’s committed to getting back to surplus and constraining Government spending. Contrast would be another Government that decided this was the time for a significant spend up—

Jones Keynesian.

Goldsmith A Keynesian approach of postponing a return to surplus for, you know, a longer period. How much of a difference would that make to the overall mix?

Wheeler Well, if you saw a strong burst—that’s if you saw a strong burst—in Government spending or an expansion of the fiscal deficit, you’d be saying to yourself: “Well, look, the economy”—to take our forecast for next year—“is growing at 3 percent.” We’ll be revising those, as I say, in the next 2 weeks or so. But if you say that the rate of potential output growth, which I talked about before, might be of the order of, say, 2¼ or 2½, and if you find the Government sector is increasing demand in the economy by running a bigger deficit, then it will put further pressure on the central bank in terms of its interest rate response and potentially will put further upward pressure on the exchange rate.

Goldsmith So the best thing we can do in terms of potential interest rates for next year is to hold the current course, which is to return to surplus, as has been indicated by the Government?

Wheeler I think reducing the level of Government dissaving—so, therefore, moving into, say, surpluses, if that’s the outcome—would be helpful for our current account deficit and would be helpful for interest rates, in a sense.

Bennett Just with the exchange rate that’s been talked about as well, hasn’t that sort of in recent times been a factor of commodity prices, as well? So, you know, it’s easier to say the exchange rate’s going to go up if we do this and the exchange rate’s going to go down if we do that. The reality is that the
exchange rate’s really tracked our commodity prices and what people view our biggest exports are worth on the world market at the moment, isn’t it?

Wheeler Yeah, it’s a very good point. You know, if you take the terms of trade, they’re close to a 40-year high. They’re basically 25 percent above the average of the 1990s. So the terms of trade and a demand particularly for agriculture and especially dairy products is an important part of the story—a very important part of the story, in fact.

Norman So in spite of record terms of trade, we’re still running a record current account deficit. Does that concern you?

Wheeler It’s not a record current account deficit. We’ve been in some pretty tough territory in about 2006 and 2007.

Norman In terms of the rest of the world, we’re second-worst in the OECD.

Wheeler Yeah, we’re second to Turkey at the moment. But, you know, if you ask me whether this is a perpetual problem and say that it would be far better if New Zealand could overcome its current account deficits and reduce its level of external debt, then I would agree with you.

Robertson The issue of money laundering—I am sure you’ve heard anecdotal complaints, as I have as a constituency member of Parliament. Looking at the bank’s supervisory role under the anti-money-laundering regime, I’m just wondering how you will undertake your supervisory role, because we have an international reputation, something that we wish to protect. I’m wondering how you’ll undertake your role, what are the areas that you will focus on, and which other nations should New Zealand be wary of?

Wheeler Let me ask Toby to offer some comment.

Fiennes Sure. You’re absolutely right. One of the prime reasons for doing the AML job is to maintain our international reputation. How we do that? The key thing we do is we go on-site, we visit banks, we visit non-banks and insurance companies, and we verify, basically, that they have good systems in place so that they can detect and report money laundering when they see it. They are fairly detailed inspections. Key things we look for are that they know their customers, that they know their customers’ business, and that they can detect when any activity on a customer’s account is out of line with what would be expected.

Robertson You haven’t answered the last part of the question.

Fiennes Which countries should we be wary of?

Robertson Yes.

Fiennes Well, there’s a list that the Financial Action Task Force maintains of countries whose money-laundering controls are inadequate and don’t come up to the international mark. I can’t give you the full list here, but we can provide it to you.

Robertson Yes, I think that’d be most appropriate.
Twyford Back to LVRs, if you don’t mind. The Real Estate Institute said a few days ago that there’s been a noticeable fall-off in interest from first-home buyers, with investors taking advantage of less competition to purchase properties—

Goldsmith We have covered all these questions in the last hour.

Twyford I just wondered, governor, whether or not you would—I know that the distributional consequences of LVRs are not your prime concern; it’s properly a matter for the Government. But would you acknowledge that there are distributional effects specifically that more space in the market’s being made available to speculators and investors, as opposed to first-home buyers?

Spencer When I answered this question previously, I referred to the evidence we have, which is not very solid. But what we do have suggests that the participation of investors in the market—in the Auckland market is diminished, as well as participation of first-home buyers. So it hasn’t been a matter of simple substitution with investors coming in to take place of the first-home buyer. That evidence was from the BNZ survey taken a couple of weeks after the beginning of the restriction.

Twyford Jonno Ingerson from QV last week was saying that they believe, looking at the data that they’ve got, that, in fact, LVRs may have more impact proportionately in the provinces than in Auckland and Canterbury, where almost all the house price inflation is taking place. His rationale was that the demand is so pent up and so intense in Auckland and Canterbury that pulling high LVR borrowers out of the market won’t have much effect because there’s so many other people ready to step into the holes that they leave. Do you have any comments on that?

Spencer Well, I would tend to disagree with that because the high LVR lending has been more concentrated in Auckland. We don’t have exact numbers on that. That’s essentially the story we get from the banks. Because house prices are more pressured in Auckland, relative to income—so buyers tend to be harder pressed, so they stretch further. They tend to run higher debt service ratios, higher LVRs. Therefore, we expect that the restriction will have a greater impact in Auckland than in other parts of the country—even though, of course, you’re starting from a higher rate of house price inflation in Auckland than in other parts. But we think there will be a greater impact there because that’s where there’s more pressure.

Twyford And in relation to the comments you make and the report on pressure on homeowners in relation to their mortgage payments, are you talking specifically about a risk of negative equity for homeowners?

Spencer That is the worst case. If you get a very high LVR borrower who’s up, you know, 95 percent or so, then if you have anything more than a 5 percent reduction in house prices, they get into negative equity. So our action will reduce the likelihood of borrowers getting into that situation.

Twyford You are saying it’s a real risk currently, is how I read your work—
Spencer Well, we’ve not said we don’t think that there’s an imminent likelihood of
the housing market falling. We think, you know, it’d take a significant shock
that something that we’re protecting against—the potential for shock, say,
an international shock, say, with China turning down, the impact that that
might have on our export prices and on our asset prices generally in New
Zealand, which would then potentially generate the situation you’re talking
about. But we don’t see it as an imminent threat. We’re trying to head off or
reduce the risk of that possibility in the face of an external shock down the
track.

Wheeler Debt servicing costs will increase, one would expect, just given the fact that
interest rates are likely to increase.

Norman So this is a slightly different issue. So Angel Gurria gave a climate change
speech a few weeks ago at the London School of Economics. He talked
about stranded assets. So because you can’t burn all the oil and carbon that
the reserves that we’ve currently found, if we could take the climate science
seriously, the result is that we’re going to end up with a bunch of stranded
assets—these oilfields and coalfields that can’t be burnt. And then there’s
the issue about what will be the impact on those companies that are
exposed to it. So AMP Capital has done an analysis of the ASX 200 and the
NZX 250, and said about 15 percent of the companies in those indexes are
highly exposed to the problem of stranded assets and unburnable carbon, as
it’s called, with the AMP Capital analysis. Has the Reserve Bank looked at
what will be the exposure of the Australasian banks if we run into a
situation where a lot of the investments in fossil fuels become unburnable
because, as Angel Gurria says, it’s better to have stranded assets than a
stranded planet was his language, which means that a lot of these oil and
coal companies, the real value of them is significantly less than they are
currently listed at. That will help have a kind of cascading effect on those
that are investing in them. Have you given any consideration to the
exposure of the Australasian banks to that kind of problem?

Spencer Well, we haven’t really looked at that issue. But I would say, I mean, there’s
not a huge exposure of New Zealand banks to the oil and gas industry. I
mean, even thinking about the Australian banks and you think about the
major investment projects that are going on at present or actually have been
going on in recent years, most of those have been funded by project
financers, through project financing, through syndicated deals, etc., largely
from offshore, rather than being funded by the Australian big four domestic
banks. In that sense, if that theory has substance then I wouldn’t be too
cconcerned that the Australian banks have a massive exposure to that
industry, even though that industry is a major part of the Australian
economy.

Wheeler It sounds an interesting speech. We’ll certainly look at it.

Norman It’s a great speech. So it’s a kind of quantity issue. You’re saying how
exposed are they to these fossil fuel companies, and then what is the
genuine risk in terms of them suffering some kind of depreciation or writing
down of the value of their underlying assets.
Goldsmith  Members, we’ve had a pretty full discussion. I think we’ve covered most of the bases.

Jones    It’s been like cricket. We tried to bowl, but the governor, following in the footsteps of earlier governors, has been belting it all over the place.

Wheeler  I believe we won with three balls to go today.

Goldsmith Thank you very much for coming and for your time. We appreciate it immensely.

conclusion of evidence
Briefing on free trade talks with Russia

Report of the Foreign Affairs, Defence and Trade Committee

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Briefing on free trade talks with Russia

Recommendation

The Foreign Affairs, Defence and Trade Committee received a briefing from the Minister of Trade and the Ministry of Foreign Affairs and Trade on free trade talks with Russia, and recommends that the House take note of its report.

Introduction

Free trade talks have been taking place between New Zealand and Russia since 2010.

There is a commercial advantage to New Zealand in negotiating a free trade agreement with Russia, which has significant potential as a trading partner because of its high volume of agricultural imports, but the negotiations will not be without potential difficulties. The proposed free trade agreement is a strategic move, and New Zealand might not see tangible commercial results for five to ten years. However these results would be highly beneficial; and it is important to be amongst the first, if not the first, to enter into such an agreement.

Recently, differing views have become apparent among internal Russian bodies with an interest in this area. In the most recent round of APEC talks, in Vladivostok in November 2012, New Zealand was hoping that President Putin would exercise his authority to resolve the differences decisively; however he did not feel he had enough information to make the decisions required. This was disappointing; New Zealand needs to remain persistent to gain any traction in these circumstances.

Advantages

Russia is not a poor country; it is one of the largest importers of dairy, meat, and grocery products in the world, and the largest of butter and beef. Russia has been a major importer of New Zealand produce in the past, although it is now a more modest trading partner. Current indications are that Russia will overtake Germany by 2050 as the largest economy in Europe. There is a commercial advantage to New Zealand in negotiating a bilateral agreement with Russia, rather than rely on its recent accession to the World Trade Organisation, particularly where it comes to beef. The WTO’s most favoured nation provisions regarding beef are tailor-made for Brazil, and the ministry was unable to negotiate out of that. A bilateral agreement would be designed with New Zealand conditions in mind.

New Zealand would also gain economically in other ways by exporting to Russia under the more favourable conditions that a free trade agreement would provide, for example being able to sell technology to Russia.

Timetable for negotiations

Because Russia represents such a large potential market for New Zealand products, it is important that New Zealand negotiate a free trade agreement with Russia before our trade competitors conclude agreements that might operate to our detriment. There are 29 other parties seeking trade agreements with Russia, and although Russia has made a commitment to completing negotiations with New Zealand first, this will still require persistence on New Zealand’s part; after many meetings with Russia about free trade, the negotiations are
still some way from conclusion. This is not necessarily a matter for concern; such negotiations are invariably prolonged, New Zealand’s free trade agreement with China taking four years to negotiate for example. The Minister said there is no timetable for these talks to be concluded.

**Potential difficulties**

**Agricultural access**

Agricultural access remains a major sticking point in the negotiations. New Zealand’s principled insistence on removing tariffs and other direct barriers to trade is creating delays, even though a very generous timetable was proposed.

Difficulties have also arisen because of the Russian expectation that agricultural cooperation will be directed at government level, whereas New Zealand can only encourage and help facilitate investment by companies to, but cannot require or direct it. Some companies have already begun investing in Russia, but on a very small scale considering the potential a more developed Russian agricultural sector would represent for New Zealand farm technology and expertise. For this potential to be fully realised, an agreement would be needed; the Minister cited the example of China, where large New Zealand exporters are already deriving benefits from the free trade agreement negotiated with that country.

**Customs Union**

Part of New Zealand’s agreement to launch this deal was prepared willingness to negotiate with the Customs Union between Russia, Belarus, and Kazakhstan. It is accepted that New Zealand cannot pick and choose which members of an existing trade group it deals with, and it is not in bilateral negotiations with the individual parties. New Zealand is also seeking labour and environment outcomes for the protection of human rights.

**Potential areas of cooperation**

**Agricultural development assistance**

New Zealand’s help with agricultural development may make an agreement more attractive, but it is not central to the Russians’ decision for or against free trade with New Zealand. When the final decision is made, however, the offer of assistance here may become important.

Agricultural development assistance might confer mutual advantage to the partners in an agreement. The investment in and sale of New Zealand technology would be economically advantageous to us, while contributing to Russia’s economic development by assisting with the return to agricultural use of large areas of unproductive land that were previously farmed.

**Eurasian Commission**

New Zealand is prepared to sign an agreement with the Eurasian Commission, a new institution that is trying to reconstitute the supply chain of the former Soviet Union. The Russians want this institution to have standing, and our endorsement, as signalled by the signing of the agreement on letterhead, would be welcome.

**Conclusion**

We thank the Minister for his detailed and frank discussion with us, and look forward to the progress of the free trade agreement.
Appendix

Committee procedure
The committee met between 29 November 2012 and 31 January 2013 to consider this briefing.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch

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Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Agreement between the Government of New Zealand and the Government of the Independent State of Papua New Guinea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and recommends that the House take note of its report.

The committee supports the double taxation agreement and has no matters to bring to the attention of the House. The national interest analysis for the agreement is appended to this report.
Appendix A

Committee procedure
The international treaty examination of the Agreement between the Government of New Zealand and the Government of the Independent State of Papua New Guinea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income was referred to the committee on 10 December 2012. We met on 31 January 2013 to consider the agreement.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis

Double Tax Agreement with Papua New Guinea

1 Executive summary


1.2 Double tax agreements (DTAs) are bilateral international treaties that are principally designed to encourage growth in economic ties between countries. They do this by reducing tax impediments to cross-border services, trade and investment. The negotiation of, and giving of effect to, DTAs is authorised by section BH 1 of the Income Tax Act 2007. New Zealand has 37 DTAs in force, primarily with New Zealand’s major trading and investment partners.

1.3 Although Papua New Guinea is not currently a major trading and investment partner, the key factor that led to negotiations with Papua New Guinea was the identification of significant opportunities for New Zealand tax residents in the large mining and petroleum projects currently being undertaken in Papua New Guinea. In particular, a multi-billion-dollar ExxonMobil-led liquid natural gas project will take over 30 years. The initial (US$15 billion) phase of the project involves construction of gas production, processing and storage facilities, together with over 700 kilometres of pipelines to connect the facilities. As a consequence of this investment, almost every sector of Papua New Guinea’s economy is growing.

1.4 New Zealand companies are operating at a disadvantage compared with Australian companies that are competing for those same business opportunities. This is because Australia has had a DTA with Papua New Guinea since 1989. Under that DTA, Australian companies can structure their affairs to minimise or eliminate their tax obligations to the Papua New Guinea Government. Papua New Guinea’s income taxes are complex and significant. (Taxes on companies typically aggregate to at least 48%, compared to 28% in New Zealand.) Reducing tax obligations to the Papua New Guinea Government will provide a number of practical advantages to New Zealand businesses in areas such as profit impact, compliance costs, cash flow, the ability to make competitive tenders, and the pass-through of imputation credits to shareholders.

1.5 As in all negotiations, the New Zealand DTA with Papua New Guinea represents a compromise between the starting positions of both countries. However, only one compromise made by New Zealand in the Papua New Guinea DTA is of any potential significance. That compromise relates to New Zealand’s agreement to Papua New Guinea’s request for a tax sparing mechanism to be included in the treaty. Tax sparing provisions were once a common feature of DTAs between developed and developing countries. The developed country would agree to provide a tax credit for tax deemed to be paid in the developing country, but not actually paid because of a tax exemption intended to attract foreign investment. New Zealand stopped providing tax sparing provisions some years ago,
The tax sparing mechanism agreed with Papua New Guinea therefore represents a concession. However, recent changes to New Zealand’s international tax rules mean that tax sparing is now a relatively minor issue for New Zealand. Additionally, the mechanism will apply only in circumstances agreed to between the two Governments in an exchange of letters, and it is not expected that the mechanism will ever be invoked. The mechanism will terminate after a ten-year period.

2 Nature and timing of the proposed treaty action


2.2 The proposed treaty action is to bring the Papua New Guinea DTA into force through an exchange of diplomatic notes that confirm the completion of the respective constitutional and legal requirements for entry into force by each country, pursuant to Article 26 of the Papua New Guinea DTA.

2.3 Before the treaty action is taken, the Papua New Guinea DTA must successfully undergo Parliamentary treaty examination, in accordance with Parliament’s Standing Order 394, and must successfully be given the force of law in New Zealand by an Order in Council made pursuant to section BH 1 of the Income Tax Act 2007.

3 Reasons for New Zealand becoming Party to the treaty

General reasons for New Zealand’s conclusion of double tax agreements

3.1 New Zealand began entering into double tax agreements (DTAs) in 1947, and currently has a network of 37 DTAs in force, predominantly with New Zealand’s main trading and investment partners.

3.2 DTAs are bilateral international treaties that are principally designed to encourage growth in economic ties between countries. DTAs do this by reducing tax impediments to cross-border services, trade and investment. Some impediments to cross-border economic activity can be addressed unilaterally. For example, New Zealand generallyrelieves double taxation by unilaterally allowing tax residents who derive foreign-sourced income to credit foreign tax paid against their New Zealand tax liability. New Zealand also unilaterally reduces withholding taxes on certain forms of inbound investment. However, unilateral solutions cannot address all of the issues that arise from cross-border activity. Moreover, the country applying unilateral measures must then bear the full cost of the relief. DTAs address these problems by facilitating bilateral solutions. DTAs enable a wider range of issues to be addressed than is possible unilaterally, and also enable the parties to a DTA to share the cost of providing relief.

3.3 DTA networks make an important contribution to the expansion of world trade and to the development of the world economy, which are key objectives of the Organisation for Economic Co-operation and Development (OECD). Internationally, the OECD has therefore assumed a leading role in promoting the use of DTAs. In particular, the OECD has produced a Model Tax Convention, and a comprehensive commentary, for member and non-member countries to use as a basis for concluding DTAs. As a member of the
OECD, New Zealand is subject to an express recommendation issued by the OECD Council in 1997 for all member countries:

1. to pursue their efforts to conclude bilateral tax conventions … with those member countries, and where appropriate with non-member countries, with which they have not yet entered into such conventions …

2. when concluding new bilateral conventions or revising existing bilateral conventions, to conform to the Model Tax Convention, as interpreted by the Commentaries thereon.

3.4 At a practical level, DTAs are complex technical documents that provide an interface between two, often conflicting, tax systems. The key stakeholders in cross-border economic activity generally favour DTAs for the following reasons:

**Taxpayers.** A primary concern for any taxpayer contemplating entering into commercial activity in another jurisdiction is that they must comply with the tax and other legal obligations of two separate jurisdictions. This can be perplexing, and obtaining professional advice or tax rulings can be costly and time consuming. Unique issues also arise from cross-border activities, ranging from complex matters such as transfer pricing disputes, to more mundane considerations such as whether taxes paid in the other jurisdiction are creditable against home jurisdiction tax. DTAs help alleviate many of these problems. They establish a framework for the taxation of cross-border activity and establish a mutual agreement procedure for resolving tax disputes.

**Investors.** Investing across an international border always involves risk. Tax laws are often complex and can change suddenly. DTAs assist investors by specifying the maximum rates of tax that can be applied to dividends, interest and royalties. These “headline” rates reduce compliance costs for investors by making it easier to determine the after-tax returns on potential investments. The tax rates are “locked in” by the treaty, which means that investors can make business decisions with confidence. To encourage greater inward investment, governments can unilaterally reduce their taxation of investment income. However, lowering tax rates in a bilateral treaty setting ensures that the rates are also reduced on a reciprocal basis by the treaty partner. This provides benefits to domestic investors.

**Governments.** As double taxation distorts business decisions and generally hinders cross-border economic activity, most jurisdictions unilaterally relieve double taxation of their tax residents. (For example, New Zealand tax legislation provides a general tax credit mechanism.) However, in the absence of a DTA, a jurisdiction bears the full cost of relieving double taxation itself. DTAs allow the cost of relieving double taxation to be shared. They do this by allocating taxing rights between the jurisdictions concerned, on the basis of internationally accepted principles as set out in the OECD Model Tax Convention. Additionally, most countries tax their residents on income earned worldwide. International cooperation between tax authorities is therefore needed to enable tax authorities to verify that income earned in other countries is reported correctly by tax residents. DTAs facilitate this by authorising the exchange of tax-related information (such as

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1 The recommendation follows similar OECD Council recommendations that have been in place since before New Zealand joined the OECD.
tax records, business books and accounts, bank information and ownership information). The exchanged information assists tax authorities to detect and prevent tax evasion and tax avoidance. This is a key benefit of DTAs for governments.

Specific reasons for the double tax agreement with Papua New Guinea

3.5 New Zealand generally only enters into DTAs with countries with which it has an existing or potential significant economic relationship. However, DTAs can also be entered into to exploit a particular opportunity or to address particular taxation problems.

3.6 Until recently, Papua New Guinea would not have been categorised as an existing or potential significant economic partner for New Zealand. In the year to December 2011, New Zealand’s merchandise exports to Papua New Guinea amounted to NZ$217 million, and New Zealand imports from Papua New Guinea were NZ$13 million. Investment statistics are not available, but investment in either direction is not thought to be high.

3.7 However, recent international investment in Papua New Guinea has changed that country’s economic outlook and has opened significant opportunities for New Zealand business interests.

3.8 Papua New Guinea’s economy is now strong (real GDP grew by 8.9% in 2011 and the IMF projects growth of 7.7% in 2012), as a result of confidence generated by large mining and natural gas projects. The most high-profile of these is a multi-billion-dollar ExxonMobil-led liquid natural gas (LNG) project. The initial (US$15 billion) phase of the project involves the construction of gas production, processing and storage facilities, and over 700 kilometres of pipelines to connect the facilities.

3.9 The foreign investment is resulting in increased Government spending and increasing demand across a range of sectors, including food and beverage, technology and communications services. Therefore, in addition to direct engagement in the Papua New Guinea mining and petroleum projects, there are a range of spin-off opportunities in the Papua New Guinea market (which is still relatively unsaturated in many product and service areas). An influx of expatriate workers is, for example, fuelling a property and construction market that is currently returning landlords around 30% per annum on investment.

3.10 Specific opportunities are opening for New Zealand companies in the renewable energy sector, particularly in hydro energy, with additional (but more limited) scope for commercial engagement in geothermal energy. Papua New Guinea’s electric power demand is currently increasing at a rate of 10% per annum (in contrast to the previous average annual increase of 2-3% for the past 20 years) and this increased demand is expected to continue for the next six years. This unprecedented increase in demand is putting pressure on generation capacity, the maintenance of existing plant, energy efficiency and new developments. A number of major hydro-electric plants are planned. These developments offer significant opportunities to New Zealand companies, as New Zealand has experience in developing these forms of renewable energy.

3.11 In general, New Zealand is well known and well regarded in Papua New Guinea, and New Zealand’s commercial presence is being sought by businesses and the Government.

3.12 New Zealand companies are operating at a disadvantage compared with Australian companies that are competing for those same business opportunities. This is because Australia has had a DTA with Papua New Guinea since 1989. Under that DTA, Australian
companies can structure their affairs to minimise or eliminate their tax obligations to the Papua New Guinea Government. Papua New Guinea's income taxes are complex and significant. (Taxes on companies typically aggregate to at least 48%, compared to 28% in New Zealand). Reducing tax obligations to the Papua New Guinea Government provides a number of practical advantages in areas such as profit impact, compliance costs, cash flow, the ability to make competitive tenders, and the pass-through of imputation credits to shareholders.

4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

4.1 As a bilateral instrument, the Papua New Guinea DTA necessarily involves a trade-off between advantages and disadvantages to New Zealand. On balance, however, entering into the Papua New Guinea DTA is expected to be in New Zealand's overall interests.

Advantages of the treaty entering into force

4.2 The advantages to New Zealand of the Papua New Guinea DTA entering into force can be summarised as follows:

- The DTA can be expected to foster all forms of bilateral economic activity (such as services, trade and investment). This will benefit New Zealand in terms of employment and business opportunities and offshore earnings. As noted below in section 8: Costs, DTAs can generally be expected to give rise to a prima facie revenue cost. However, in the case of Papua New Guinea, these costs are expected to be negligible.
- For New Zealand business interests, the DTA will reduce the cost of importing capital.
- For investors in both jurisdictions, the DTA will reduce compliance costs and provide the certainty of low headline withholding tax rates, locked in by the treaty.
- For investors, businesses and taxpayers from both jurisdictions, the DTA will provide safeguards such as a mutual agreement procedure, which will facilitate the resolution of tax disputes (including disputes in complex areas such as transfer pricing).
- For taxpayers engaged in certain short-term income-earning activities in the other jurisdiction, the DTA will reduce compliance costs and provide cash flow advantages by eliminating the need to pay tax in that jurisdiction and then claim that tax against their tax liability in their home jurisdiction.
- For New Zealand, the DTA will provide an equitable framework for sharing the cost of relieving double taxation between the two jurisdictions.
- In some circumstances, New Zealand will no longer need to provide credits for foreign tax paid.
- For tax authorities, the exchange of information mechanism will assist in the detection and prevention of tax evasion and tax avoidance. The mechanism will also be a general deterrent against evasion and avoidance activity, and will further reduce the opportunities available to residents to escape legitimate New Zealand tax.
4.3 In 2011, the Global Forum on Transparency and Exchange of Information for Tax Purposes concluded a review of New Zealand’s legal and administrative frameworks for tax information exchange, and recommended that New Zealand should continue to develop its exchange of information network. The Papua New Guinea DTA will help New Zealand to meet this recommendation.

4.4 A final advantage of the Papua New Guinea DTA is that New Zealand and Papua New Guinea share many treaty policy positions. As a result, New Zealand was able to secure all of its key negotiating positions. The Papua New Guinea DTA therefore represents a good precedent for New Zealand in future negotiations with other countries.

Disadvantages of the treaty entering into force

4.5 As noted above, DTAs offer bilateral solutions to problems that are difficult or impossible to solve unilaterally. However, a potential downside to DTAs is that those solutions are then locked in place by the treaty and are difficult and costly to change. This can create difficulties if treaty provisions need to be changed urgently. Practical experience indicates that in genuine cases, treaty partners are usually amenable to making necessary changes. However, in extreme cases, if the treaty partner were to refuse to cooperate, the treaty could need to be terminated.

4.6 A second general disadvantage of DTAs is that they typically give rise to an up-front revenue cost. This is because DTAs lower withholding tax rates on investment income and allocate taxing rights between the two jurisdictions. The allocating of taxing rights means that New Zealand will lose the ability to tax some income streams that it previously could tax (this applies on a reciprocal basis). However, as noted below in section 8: Costs, in the case of Papua New Guinea, the prima facie revenue costs are expected to be negligible.

4.7 A third general disadvantage of entering into DTAs is that costs will need to be incurred in administering the exchange of information provisions of the DTA. If a treaty partner makes requests for information under a New Zealand DTA, New Zealand will incur costs in complying with those requests. However, New Zealand already has exchange of information arrangements with 55 other jurisdictions (including 37 DTAs and 18 Tax Information Exchange Agreements) and has systems in place for administering those arrangements. The costs of providing information to Papua New Guinea under the Papua New Guinea DTA will therefore be marginal.

4.8 As noted above, New Zealand and Papua New Guinea share many treaty positions, and New Zealand was therefore able to secure all of its key negotiating positions. However, as is usual in negotiations, both sides were required to make some compromises from their starting positions. Only one compromise made by New Zealand in the Papua New Guinea DTA is of any potential significance. That compromise relates to New Zealand’s agreement to Papua New Guinea’s request for a tax sparing mechanism to be included in the treaty. Tax sparing provisions were once a common feature of DTAs between developed and developing countries. The developed country would agree to provide a tax credit for tax deemed to be paid in the developing country, but not actually paid because of a tax exemption intended to attract foreign investment. New Zealand stopped providing tax sparing provisions some years ago, for tax policy reasons. The tax sparing mechanism agreed with Papua New Guinea therefore represents a concession. However, recent changes to New Zealand’s international tax rules mean that tax sparing is now a relatively minor issue for New Zealand. Additionally, the tax sparing mechanism will apply only in circumstances agreed to between the two Governments in an exchange of letters, and it is
not expected that the mechanism will ever be invoked. The mechanism will automatically terminate after a ten-year period.

**Advantages of the treaty not entering into force**

4.9 It is an option not to have a DTA with Papua New Guinea. In that case, the disadvantages identified above will not arise.

**Disadvantages of the treaty not entering into force**

4.10 If the Papua New Guinea DTA does not enter into force, New Zealand business interests will continue to operate at a competitive disadvantage with Australian firms that do have the protection of a DTA. It is likely that the Government would be strongly lobbied by those New Zealand business interests.

**5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms**

**Summary of key legal obligations**

5.1 DTAs do not impose requirements on taxpayers. The Papua New Guinea DTA will not (and cannot) require the imposition of a tax that is not already imposed under domestic law. The obligations that DTAs impose are on the respective New Zealand and Papua New Guinea Governments.

5.2 When income is derived from one jurisdiction (the source jurisdiction) by a tax resident of the other jurisdiction (the residence jurisdiction), both countries typically impose tax on that income. DTAs primarily relieve such double taxation by allocating taxing rights. The key allocation of taxing rights in the Papua New Guinea DTA is as follows:

- Business profits of an enterprise will be taxable only in the jurisdiction in which the enterprise is resident, unless profits are derived through a permanent establishment in the source jurisdiction. In that case, the profits may also be taxed in the source jurisdiction. (Article 7 refers.) The term “permanent establishment” is generally defined in the Papua New Guinea DTA as meaning a fixed place of business through which the business of an enterprise is wholly or partly carried on. However, this general rule is supplemented by a number of clarifications and deeming rules which follow New Zealand’s preferred formula, and which will ensure that New Zealand can continue to impose tax on significant business activities such as natural resource exploration or exploitation. (Article 5 refers.)

- Investment income (dividends, interest and royalties) may generally be taxed in both jurisdictions. However, the amount of withholding tax that can be imposed by the source jurisdiction is limited to 15% for dividends (Article 10 refers) and 10% for interest and royalties (Articles 11 and 12 refer). The limitation does not apply if the dividends, interest or royalties are derived in connection with a permanent establishment in the source jurisdiction. In addition, interest will be exempt in the source jurisdiction if derived by the Government of the other State.
• Income from independent personal services will be taxable only in the jurisdiction in which the individual performing the services income is resident, unless (i) the individual has a fixed base in the source jurisdiction, or (ii) the income derived by the individual for performing the services exceeds US$10,000 in any twelve-month period, or (iii) the individual is present in the source jurisdiction for the purpose of performing the services for more than six months in any twelve month period. In such case, the services income may also be taxed in the source jurisdiction. (Article 14 refers.)

• Income from dependent personal services will be taxable only in the jurisdiction in which the employee is resident unless the employee is present in the source jurisdiction for more than six months in a twelve-month period or the employer is a resident of the source jurisdiction (or is non-resident but the employee’s remuneration is borne by a permanent establishment in the source jurisdiction). In that case, the employment income may also be taxed in the source jurisdiction. (Article 15 refers.)

• Pensions will be taxable only in the jurisdiction in which the recipient is resident. (Article 18 refers.)

5.3 A number of exceptions to the above rules also apply. These include:

• Income from real property (referred to as “immovable property” in the Papua New Guinea DTA) will always be taxable in the jurisdiction where the property is situated. (Articles 6 and 13 refer.)

• Profits of an enterprise from the operation of ships or aircraft in international traffic will be taxable only in the jurisdiction in which the enterprise is resident. However, profits from domestic carriage by ship or aircraft will always be taxable in the source jurisdiction. (Articles 8 and 13 refer.)

• Directors’ fees will always be taxable in the jurisdiction in which the company paying the fees is resident. (Article 16 refers.)

• Income from the activities of entertainers and sportspersons will always be taxable in the source jurisdiction. (Article 17 refers.)

• Salaries and wages for services to a Government of one jurisdiction will generally be exempt from tax in the other jurisdiction. (Article 19 refers.)

5.4 Where the allocation of taxing rights permits both jurisdictions to tax an item of income, the Papua New Guinea DTA will require New Zealand to relieve double taxation of its residents by allowing a credit for the tax paid in Papua New Guinea. (Article 22 refers.) This is consistent with the unilateral relief mechanism that already applies under New Zealand domestic law. The obligation also applies reciprocally, so Papua New Guinea must allow its residents a credit for New Zealand tax paid.

5.5 In addition to the above obligations, New Zealand will be required to comply with various administrative requirements imposed by the Papua New Guinea DTA. These are as follows:
• Mutual agreement procedure. New Zealand must comply with the procedures for settling disputes set out in the mutual agreement procedure article of the Papua New Guinea DTA. (Article 23 refers.) This is discussed below, in the section Dispute resolution.

• Exchange of information. As discussed, the Papua New Guinea DTA includes an Article that provides for the exchange of tax-related information between tax authorities, for the purpose of detecting and preventing tax evasion and tax avoidance. New Zealand will be required to respond to requests for information from Papua New Guinea. If Inland Revenue receives a valid request, and if it does not already hold the requested information, it must use its information-gathering powers to obtain the information. Inland Revenue can similarly request information from Papua New Guinea. (Article 24 refers.)

Dispute resolution

5.6 The Papua New Guinea DTA establishes a “mutual agreement procedure” for resolving disputes. Under this procedure, a taxpayer who considers that they have been taxed incorrectly under the treaty, including in transfer pricing cases, can approach their local tax authority under Article 23 to invoke a mutual agreement procedure. If the tax authority considers the case to be justified, and is unable to resolve the case through its own actions, it must approach the tax authority of the other jurisdiction to seek a bilateral resolution. This bipartisan approach is particularly appropriate in the tax treaty context because a single issue will generally affect a person’s tax position in both jurisdictions. The mutual agreement procedure is not a true disputes resolution mechanism, as the two sides are only obliged to “endeavour” to reach resolution. However, the taxpayer remains free to pursue a case through the courts (including if they do not agree with the decision reached under the mutual agreement procedure).

5.7 The mutual agreement procedure also authorises the tax authorities of the two jurisdictions to collectively resolve any difficulties or doubts about the correct interpretation or application of the Papua New Guinea DTA.

Reservations

5.8 The Papua New Guinea DTA does not allow parties to make a reservation upon ratification.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

6.1 Subject to the successful completion of the Parliamentary treaty examination process, the Papua New Guinea DTA will be incorporated into domestic legislation by Order in Council pursuant to section BH 1 of the Income Tax Act 2007. Section BH 1 authorises the giving of overriding effect to DTAs by Order in Council. However, the override relates only to tax matters, and applies only in respect of the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993.

6.2 The override of the Inland Revenue Acts is necessary to give effect to the core provisions of the Papua New Guinea DTA, which may provide relief from tax that would otherwise be imposed under domestic law. The override of the Official Information Act is necessary to ensure that confidential communications with the other jurisdiction do not have to be disclosed. The override of the Privacy Act is necessary to ensure that
information regarding natural persons can be exchanged according to the terms of the treaty.

6.3 Article 26 of the Papua New Guinea DTA provides for the agreement to be brought into force through an exchange of diplomatic notes between the Contracting States. The Papua New Guinea DTA will enter into force on the date of the last of these notes. New Zealand will be able to notify Papua New Guinea that all procedures required by domestic law have been completed once the Order in Council has entered into force, which will be 28 days after its publication in the New Zealand Gazette.

6.4 Thereafter, the provisions of the Papua New Guinea DTA will have effect from various dates, according to the terms of the DTA. In New Zealand, the provisions relating to withholding taxes will generally take effect 2 months after the date of entry into force. The provisions relating to other taxes will have effect for income years beginning on or after 1 April in the calendar year following the year in which the DTA enters into force.

6.5 As an alternative to the above Order in Council mechanism, the Papua New Guinea DTA could be given legislative effect by means of the enactment of a dedicated statute. However, this option would unnecessarily increase the amount of primary tax legislation, and is therefore not preferred.

### 7 Economic, social, cultural, and environmental costs and effects of the treaty action

7.1 No social, cultural or environmental effects are anticipated.

7.2 As noted elsewhere in this National Interest Analysis, the overall economic effects of the Papua New Guinea DTA are expected to be favourable to New Zealand. This is because the Papua New Guinea DTA can be expected to encourage growth in economic activity, and to assist Inland Revenue to detect and prevent tax evasion and tax avoidance. It is not possible to quantify the economic benefits but, overall, the benefits are expected to outweigh the costs.

### 8 The costs to New Zealand of compliance with the treaty

8.1 DTAs constrain New Zealand from taxing certain income and limit the rate at which tax on dividends, royalties and interest can be imposed, and therefore typically can be expected to result in some prima facie reduction of New Zealand tax.

8.2 This potential upfront revenue cost is typically offset by other factors. For example, there will be an offsetting effect to the New Zealand tax base from the reduction of tax in the other country, and the reduced need for New Zealand to allow foreign tax credits. There will also be some revenue gains from the expected reduction in tax evasion and tax avoidance resulting from the DTA exchange of information provisions.

8.3 Data limitations prevent officials from accurately estimating the actual revenue cost of the Papua New Guinea DTA. However, due to the limited existing trade and investment flows between Papua New Guinea and New Zealand, any reduction of New Zealand tax is expected to be negligible.

8.4 The tax sparing provisions of the DTA are not expected to give rise to specific costs. The provisions will apply only in circumstances agreed to between the two Governments in an exchange of letters. Furthermore, the provisions will terminate after a ten-year period.

8.5 In general, as discussed above, DTAs are also expected to give rise to favourable economic benefits, such as increased cross-border services, trade and investment. Again,
officials cannot quantify the economic benefits of the Papua New Guinea DTA but, overall, the benefits are expected to outweigh the costs.

8.6 The exchange of information provisions of the Papua New Guinea DTA will result in some administrative costs for Inland Revenue, arising from the need to respond to requests for information from Papua New Guinea. Based on previous experience, the numbers of requests are not expected to be significant. If requests are received, Inland Revenue already has efficient systems in place for administering the exchange of information provisions of New Zealand’s other 37 DTAs and 18 Tax Information Exchange Agreements, and the additional costs will be marginal.

8.7 Compliance costs for New Zealand businesses are expected to be reduced under the Papua New Guinea DTA. This is because New Zealand businesses will have clear guidance about when they will be liable for tax on activities in Papua New Guinea, in line with internationally recognised norms.

9 Completed or proposed consultation with the community and parties interested in the treaty action

9.1 The Treasury, and the Ministry of Foreign Affairs and Trade, were consulted about the terms of the Papua New Guinea DTA and the content of this extended National Interest Analysis, and agree with its analysis and conclusions.

9.2 New Zealand Trade and Enterprise was consulted in the lead-up to the negotiations, and supported the proposal to conclude a DTA with Papua New Guinea.

10 Subsequent protocols and/or amendments to the treaty and their likely effects

10.1 The Papua New Guinea DTA does not expressly set out the process for amendment of the agreement, and no specific amendments are currently anticipated. However, New Zealand will consider any future amendments on a case-by-case basis. Future amendments will be subject to New Zealand’s normal domestic approvals and procedures for DTAs.

11 Withdrawal or denunciation provision in the treaty

11.1 Under Article 27 of the Papua New Guinea DTA, after the expiry of five years from the date of entry into force, either party may terminate the agreement by giving notice of termination through diplomatic channels. Article 27 generally follows the approach used in New Zealand’s other DTAs.

12 Agency Disclosure Statement

12.1 Inland Revenue has prepared this extended national interest analysis (NIA). Inland Revenue has analysed the issue of implementing the new DTA between Papua New Guinea and New Zealand, and the legislative and regulatory proposals arising from that implementation. As part of that process, Inland Revenue considered the option of not entering into the treaty. Inland Revenue is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis. The policy aligns with the Government Statement on Regulation.

12.2 The allocation of taxing rights under the Papua New Guinea DTA is consistent with the New Zealand negotiating model, which in turn is based on the OECD’s Model Tax Convention. The revenue cost to New Zealand as a result of the allocation of taxing rights under the DTA is expected to be negligible.
12.3 The tax sparing mechanism agreed with Papua New Guinea represents a potential risk. The mechanism will apply only in circumstances agreed to between the two Governments in an exchange of letters. The mechanism therefore has a potential cost to New Zealand. The tax sparing mechanism could be seen as potentially creating a precedent that may lead to other developed countries seeking a similar provision. However, that precedent already exists. (Eight of New Zealand’s existing DTAs contain tax sparing provisions.) Moreover, the mechanism will terminate after a ten-year period.

12.4 An Order in Council will be required to give the new DTA effect in New Zealand law. The Order in Council will override the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993; this is authorised by section BH 1 of the Income Tax Act 2007 and is necessary to give effect to the terms of the new DTA.

12.5 The Ministry of Foreign Affairs and Trade, and the Treasury, have been consulted about the terms of the Papua New Guinea DTA and the content of this extended NIA, and no concerns were raised. The proposal also has the support of Trade and Enterprise New Zealand.

12.6 Inland Revenue’s view is that the policy options considered will not impose additional costs on business interests; nor impair private property rights, market competition, or the incentives for business to innovate and invest; nor override fundamental common law principles.

Matt Benge
Assistant Deputy Commissioner, Policy Development
Policy Advice Division
Inland Revenue

16 October 2012
International treaty examination of the Third Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Report of the Foreign Affairs, Defence and Trade Committee

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Third Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and recommends that the House take note of its report.

The committee supports the double taxation agreement and has no matters to bring to the attention of the House. The national interest analysis for the agreement is appended to this report.
Appendix A

Committee procedure

The treaty was referred to the committee for examination on 10 December 2012. We met on 31 January 2013 to consider it.

Committee members

John Hayes (Chairperson)
Hon Phil Goff
Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis


Executive Summary


2. Exchange of information provisions are designed to enable tax administrations to assist each other in the detection and prevention of tax evasion and tax avoidance. For example, a tax administration which wishes to confirm that a particular taxpayer has correctly reported income earned in a foreign jurisdiction, or which is investigating a suspected tax avoidance structure, can request relevant records (business books and accounts, bank information, ownership information, and other tax related information) from the other country. If the requested tax authority does not itself hold the information, it is required under the DTA to use its information gathering powers to obtain the information and to forward it to the requesting country.

3. The Third Protocol updates exchange of information provisions of the 1976 double tax agreement between New Zealand and Malaysia, to take into account international developments in the prevailing international standard for exchange of information. In particular, the updated provisions will now prohibit interference by bank secrecy laws. New Zealand does not have bank secrecy laws. Malaysia does not have bank secrecy laws generally, but it has established the Island of Labuan as an international finance centre which is protected by bank secrecy laws.

4. The Third Protocol will facilitate more effective exchange of information between New Zealand and Malaysia, by enabling Inland Revenue to request and obtain information that previously may have been unobtainable by view of Malaysia’s bank secrecy laws.

Nature and timing of proposed binding treaty action


6. The proposed binding treaty action is to bring the Third Protocol into force through an exchange of diplomatic notes that confirm the completion of the respective constitutional and legal requirements for entry into force by each country, pursuant to Article 2 of the Third Protocol.
Reasons for New Zealand to become a Party to the treaty

7. The purpose of the Third Protocol is to update the Exchange of Information Article in their 1976 DTA with New Zealand to the new international standard for full and unrestricted exchange of information.

Double tax agreements (DTAs) are bilateral international treaties that are principally designed to encourage growth in economic ties between countries. DTAs encourage growth in economic ties by reducing tax impediments to cross-border trade and investment. More specifically they provide greater certainty of tax treatment, eliminate double taxation, reduce withholding taxes on cross-border investment returns, and exempt certain short-term activities in the host state from income tax.

8. For tax administrations, the Exchange of Information Article of a DTA is a key feature. It enables tax authorities to assist each other in the detection and prevention of tax evasion and tax avoidance. For example, a tax administration which wishes to confirm that a particular taxpayer has correctly reported income earned in a foreign jurisdiction, or which is investigating a suspected tax avoidance structure, can request relevant records (business books and accounts, bank information, ownership information, and other tax related information) from the other country. If the requested tax authority does not itself hold the information, it is required under the DTA to use its information gathering powers to obtain the information and to forward it to the requesting country.

9. DTA provisions generally override domestic law. However, DTA Exchange of Information Articles typically contain a proviso that “In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation … to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State”. This proviso is included for sound reasons (principally to protect the rights and safeguards accorded to persons under domestic law). However, it leaves open a loophole that countries can exploit by introducing legislation that blocks the effective exchange of information in key areas. Because of the above proviso in our DTAs, the Exchange of Information Article is then defeated in that it cannot override such domestic legislation.

10. In recent years, the importance of effective exchange of information has received increasing international attention. This has resulted in concerns being raised, in particular, with regard to bank secrecy rules and domestic tax interest rules. “Bank secrecy” laws prohibit the disclosure of bank information to revenue and other regulatory authorities. “Domestic tax interest” laws prohibit a tax authority from using its information gathering powers in response to requests for information from a DTA partner unless that tax authority itself has an interest in obtaining that information.

11. In response, in 2003, the OECD updated the Exchange of Information Article in its model tax convention to specifically override bank secrecy and domestic tax interest rules. The 2003 wording of the OECD Exchange of Information Article is now referred to as “the new international standard for full and unrestricted exchange of information”.

12. Malaysia does not have general bank secrecy laws, but it has established the Island of Labuan as an international finance centre which is protected by bank secrecy laws. However, Malaysia has now agreed to update the Exchange of Information Article in their 1976 DTA with New Zealand to the new international standard for full and unrestricted exchange of information.
Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

13. The Third Protocol will enable New Zealand tax officials to request tax records, business books and accounts, bank information, and ownership information from Malaysia, in particular, from the Island of Labuan. Access to this previously unobtainable information will enhance Inland Revenue’s ability to detect and prevent tax avoidance and tax evasion. Any reduction in tax avoidance or tax evasion will be beneficial to New Zealand in financial, fiscal and economic terms.

14. New Zealand does not have bank secrecy or domestic tax interest rules. Therefore there is not expected to be any change in respect of Malaysian requests for information from New Zealand. No disadvantages to New Zealand from entering into the Third Protocol have been identified.

15. It is an option for New Zealand to retain the current Exchange of Information Article in the Belgian DTA. That is, continue to only exchange information with Malaysia on a limited basis. However, this will reduce New Zealand’s ability to detect and prevent tax avoidance and tax evasion.

16. On balance, it is in New Zealand’s interest to enter into the Third Protocol with Malaysia.

Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

17. The Third Protocol will not impose any specific obligations on New Zealand in addition to those that already exist under the Exchange of Information Article of the DTA. The sole impact of the Third Protocol is to obtain additional obligations from the Malaysian Government to provide a greater range of information to New Zealand than is currently the case.

18. The dispute settlement mechanisms that are currently in place for the Malaysian DTA will also apply to the Third Protocol.

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

19. Subject to the successful completion of the Parliamentary treaty examination process, the Second Protocol will be implemented domestically by means of an overriding Regulation.

20. Section BH 1(3) of the Income Tax Act 2007 authorises the making of an Order in Council to give the provisions of a DTA overriding effect in relation to the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993. The override of the Inland Revenue Acts is necessary to give effect to the terms of the Protocol, given that it requires New Zealand to provide information it holds to foreign jurisdictions which is forbidden under those Acts. The Official Information Act is overridden to ensure that communications with other states during negotiations are not disclosed. The Privacy Act is overridden to ensure that information can be exchanged regarding natural persons under the exchange of information provisions of the DTA.

21. After the Order in Council has entered into force, New Zealand will notify Malaysia by diplomatic note that all of its domestic constitutional and legal procedures for entry into
force of the Third Protocol are complete. Malaysia will likewise notify New Zealand by
diplomatic note when it has completed its domestic constitutional and legal procedures for
giving effect to the Third Protocol. The Third Protocol will enter into force on the date of
the receipt of the last notification. Its provisions will then have effect for requests made on
or the date of entry into force with regard to tax years beginning on or after 1 January
following entry into force.

Economic, social, cultural and environmental costs and effects of the treaty action
22. No social, cultural or environmental effects are anticipated. Any economic effects are
expected to be favourable, as noted above.

The costs to New Zealand of compliance with the treaty
23. No costs are anticipated.

Completed or proposed consultation with the community and parties interested in the
treaty action
24. The Ministry of Foreign Affairs and Trade and the Treasury have been consulted and
concur with the terms of the Third Protocol. No private sector consultation has been
entered into.

Subsequent protocols or amendments to the treaty and their likely effects
25. No future protocols are anticipated. New Zealand would consider proposed
amendments on a case by case basis and any decision to accept an amendment would be
subject to the normal domestic approvals and procedures.

Withdrawal or denunciation provision in the treaty
26. It is intended that the Third Protocol remains in force as long as the Malaysian DTA is
applicable.

27. Either party may terminate the Malaysian DTA by giving notice of termination, through
diplomatic channels, on or before 30 June in any calendar year, in accordance with Article
25 of the Malaysian DTA.

Agency Disclosure Statement
28. Inland Revenue has prepared this extended national interest analysis. It has undertaken
an analysis of the issue of implementing the Third Protocol that amends the DTA between
New Zealand and Malaysia, and the legislative and regulatory proposals arising from that
implementation. It has considered all other relevant options in that process. Inland
Revenue is of the view that there are no significant constraints, caveats or uncertainties
concerning the regulatory analysis.

29. The Third Protocol amends the DTA between New Zealand and Malaysia by updating
the exchange of information Article of the DTA to bring it in line with international
norms. To the extent that costs arise from implementing the Third Protocol, they will be
limited to administration costs. However, given that the DTA already includes exchange of
information provisions (albeit a more restricted version), no additional costs are
anticipated.

30. An Order in Council is required to implement the Third Protocol into New Zealand
domestic law. The Order in Council will override the Inland Revenue Acts, the Official
Information Act 1982 and the Privacy Act 1993; this is authorised by section BH 1 of the Income Tax Act 2007 and is necessary to give effect to the terms of the Third Protocol.

31. Inland Revenue notes that the form of the Third Protocol and national interest analysis is consistent with previous protocols concluded by and national interest analyses prepared by New Zealand. The amendment made by the Third Protocol to the exchange of information Article of the DTA is consistent with the approach adopted in other DTAs and Protocols that New Zealand has signed since 2004.

32. Inland Revenue is of the view that the policy options considered will not impose additional costs on businesses; impair private property rights or market competition; adversely impact the incentives on businesses to innovate and invest; or override fundamental common principles.

Dr Craig Latham  
Group Manager  
Policy Advice Division  
Inland Revenue

3 August 2012
International treaty examination of the Agreement between the Government of New Zealand and the Government of Niue on the Exchange of Information with Respect to Taxes

Report of the Foreign Affairs, Defence and Trade Committee

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Agreement between the Government of New Zealand and the Government of Niue on the Exchange of Information with Respect to Taxes

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Agreement between the Government of New Zealand and the Government of Niue on the Exchange of Information with Respect to Taxes, and recommends that the House take note of its report.

On 29 August 2012, New Zealand signed the agreement between the Government of New Zealand and the Government of Niue on the Exchange of Information with Respect to Taxes.

Under this agreement, New Zealand and Niue can request information from each other with the aim of detecting and preventing tax avoidance and evasion. Such agreements are used to establish a mechanism for facilitating the exchange of information when a comprehensive tax treaty may not be appropriate.

Niue has historically been recognised as a tax haven by the Organisation for Economic Co-operation and Development (OECD), and in spite of its having repealed all the legislation which led to this designation with effect from 2006, Niue still appears on some countries’ tax haven blacklists. Niue is seeking to conclude exchange of information agreements with other countries to demonstrate that it is not in fact a tax haven any longer, and in the hope that it will be removed from blacklists. As New Zealand is Niue’s largest economic partner, its first approach was to New Zealand.

We asked the Inland Revenue Department (IRD) what benefits the agreement would confer, for both parties. We heard that it is largely beneficial to Niue, in its efforts to improve its international standing. The agreement will have minimal benefits for New Zealand, as we will be unlikely to need to request much tax information from Niue.

There is an inherent danger in such an agreement in that any personal and financial information exchanged passes out of New Zealand’s hands. Strict provisions governing the disclosure and use of the information are enshrined in the treaty. The IRD also told us that both jurisdictions have laws to protect the information, which meet the international standards imposed and monitored by the Global Forum on Transparency and Exchange of Information in Tax Matters (the global forum), a multilateral framework for global transparency and exchange of information in tax matters among OECD and non-OECD economies. Should information be mishandled, New Zealand can report it to the Global Forum. New Zealand could also withdraw from the treaty.

We asked the IRD if we were entering into an agreement that could be difficult to administer in practice because of Niue’s lack of robust administration and history of on-going border problems. They replied that some dangers remained, but pointed out that as a member of the global forum New Zealand has an obligation to enter into information exchange agreements with any other forum members that request them. We heard that the
global forum is perceived internationally as a success, and that it is in New Zealand’s overall interests to commit itself to the treaty.

The national interest analysis for the treaty is appended to this report.
Appendix A

Committee procedure
The treaty was referred to the committee for examination on 2 October 2012. We met on 31 January 2013 to hear evidence and consider it. We heard evidence from the Inland Revenue Department.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis

Agreement between the Government of New Zealand and the Government of Niue on the Exchange of Information with Respect to Taxes

Executive summary


2. The Niue TIEA establishes a mechanism by which tax officials from New Zealand and Niue (the Contracting Parties) can request tax-related information from each other (such as business books and accounts, bank information, and information on the ownership of legal entities), for the purpose of detecting and preventing tax evasion and avoidance.

3. A tax information exchange agreement (a TIEA) is a form of tax treaty designed to establish exchange of information arrangements with jurisdictions, such as tax havens, with which it may not be appropriate to enter into a more comprehensive form of tax treaty. To date, New Zealand has entered into 18 TIEAs with tax havens, and additional TIEAs are under negotiation.

4. Niue was identified as a tax haven in a list published in 2000 in a report by the Organisation for Economic Co-operation and Development (OECD). Niue has now repealed the key legislation that led to it being identified as a tax haven, but has found that in practice it is difficult to lose the tax haven “tag”. Many countries still consider the 2000 OECD list of tax havens to be definitive. For example, Niue has been added to an OECD country’s tax haven blacklist as recently as 2010 (even though the last of Niue’s tax haven legislation was repealed in 2006).

5. Niue is currently taking steps to address the tax haven perception. Among other things, Niue has requested TIEAs from a number of countries, to demonstrate its commitment to transparency and exchange of information. In view of the close historical, constitutional and economic ties between our two countries, New Zealand was one of the first countries that Niue approached.

6. TIEAs are specifically designed to assist tax authorities detect and prevent tax evasion and tax avoidance. Any reduction of tax evasion or avoidance will give rise to revenue gains for New Zealand. However, Niue is no longer a tax haven, and the risk of New Zealand residents evading or avoiding New Zealand tax through the use of legal structures and transactions involving Niue is very low. Therefore, the actual benefit to New Zealand in revenue terms from entering into the Niue TIEA is likely to be minimal.

Nature and timing of proposed binding treaty action

7. On 29 August 2012, New Zealand signed the Agreement between the Government of New Zealand and the Government of Niue on the Exchange of Information with Respect to Taxes (the Niue TIEA). The proposed treaty action is to bring the Niue TIEA into force through an exchange of diplomatic notes confirming that Niue and New Zealand have
completed their respective constitutional and legal requirements for entry into force, pursuant to Article 12 of the TIEA.

8. Before the exchange of diplomatic notes (and subsequent to satisfactory completion of the Parliamentary treaty examination process), the Niue TIEA will need to be incorporated into domestic legislation by an Order in Council, pursuant to section BH 1 of the Income Tax Act 2007. The making of the Order in Council is expected to be completed early in 2013.

9. On entry into force, the Niue TIEA will apply prospectively as follows:

- for criminal tax matters, the Niue TIEA provisions will apply from the date of entry into force; and
- for all other matters, the Niue TIEA provisions will apply to taxable periods beginning on or after 1 January following the date of entry into force or, where there is no taxable period, to all charges to tax arising on or after 1 January following the date of entry into force.

**Reasons for New Zealand to become a Party to the treaty**

10. New Zealand has been entering into bilateral exchange of information arrangements in double tax agreements (DTAs) since 1947, and into TIEAs since 2007. A DTA is a comprehensive form of tax treaty that is generally preferred for use with major trading and investment partners. A TIEA is a more appropriate form of treaty for jurisdictions, including tax havens. To date, New Zealand has concluded 55 DTAs and TIEAs (made up of 37 DTAs and 18 TIEAs). To be effective, a country’s network of exchange of information treaties needs to be as wide as possible. The negotiation of additional DTAs and TIEAs is therefore an on-going facet of New Zealand’s tax policy work programme.

11. Exchange of information is a critical tool for tax authorities worldwide in the detection and prevention of tax evasion and tax avoidance. For example, when investigating the tax affairs of a particular taxpayer, Inland Revenue acting on its own can have difficulty verifying whether the taxpayer has reported their income-earning and financial activities correctly for tax purposes, when these activities are conducted outside New Zealand’s territorial borders. Exchange of information provisions in tax treaties with other jurisdictions will enable Inland Revenue to request a treaty partner tax authority to use its information-gathering powers to obtain the necessary information and forward that information to us.

12. However, although concluding a TIEA with Niue is consistent with New Zealand’s efforts to keep widening its network of exchange of information treaties, the Niue TIEA was entered into predominantly for other reasons.

13. Niue was identified as a tax haven in a list published in an OECD report in 2000. At that time, Niue operated an “offshore financial centre” that included preferential banking, insurance, company, partnership and trust regimes (available only to non-residents, and ring-fenced from Niue’s domestic economy). Niue subsequently abolished its offshore financial centre and repealed all of the related legislation, and from the end of 2006 should no longer have been considered to be a tax haven. However, many countries still consider

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1 The list of tax havens was included in the OECD’s report: “Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practices”.
the 2000 OECD list of tax havens to be definitive. Other countries appear to be concerned that Niue could re-establish its offshore financial centre at any time. This has made it difficult for Niue to escape its tax haven “tag”. For example, as recently as 2010, an OECD country added Niue to its country blacklist of tax havens.

14. Niue is currently taking steps to show that it does not pose any risk to the international community. In particular, Niue has joined the Global Forum on Transparency and Exchange of Information (the Global Forum), and has submitted itself for peer review by that organisation. The first phase of that review is currently in progress. However, peer reviews conducted by the Global Forum focus on the effectiveness of a jurisdiction’s exchange of information treaties, and Niue does not yet have any exchange of information treaties in place. The Global Forum’s initial report on Niue is therefore likely to be very negative. (Global Forum reports are published, and the Global Forum also reports annually to the G20 on the outcome of its peer reviews. The G20 has threatened to deploy sanctions against non-complying jurisdictions.)

15. These developments mean that Niue urgently needs to conclude TIEAs or other exchange of information treaties. As Niue’s most significant economic partner, and due to our historic and constitutional ties, New Zealand was one of the first countries that Niue approached to seek a TIEA. Niue is currently also enacting implementation legislation that will enable it to enter into and give effect to TIEAs.

16. Because Niue is no longer a tax haven, New Zealand is unlikely to need to make many requests for information to Niue under the Niue TIEA. However, the close constitutional ties between New Zealand and Niue mean that the continuing perception of Niue as a tax haven raises reputational issues for New Zealand. Assisting Niue to improve its international standing, by entering into TIEAs and thereby demonstrating a commitment to exchange of information, is in New Zealand’s overall interests.

17. Alternative options, other than entering into a TIEA, have been explored. However, no feasible non-regulatory options have been identified. It is not a realistic option for New Zealand to decline to enter into the TIEA. This is because there is now an international expectation that countries will enter into exchange of information treaties when asked by another country. This expectation has been codified into the Terms of Reference used by the Global Forum in its country peer reviews. New Zealand is also subject to Global Forum peer review, and therefore is subject to this requirement.

18. A possible alternative treaty option would be for both New Zealand and Niue to sign an existing OECD multilateral treaty (the Convention on Mutual Administrative Assistance in Tax Matters) that provides for exchange of information in tax matters, amongst other things. The New Zealand Government is currently considering the option of signing the OECD multilateral treaty. New Zealand officials have also proposed to Niuean officials that they recommend to their Government that Niue signs the multilateral treaty.

19. For the reasons given above, Niue effectively needs to conclude exchange of information treaties as quickly as possible. The multilateral treaty would generally assist Niue in this regard. Signing, however, would give rise to other implications for Niue such as an on-going requirement to pay a fee of around 5,000 euros per annum and potentially provide for some additional forms of assistance in tax matters. Due to such
AGREEMENT BETWEEN NEW ZEALAND AND NIUE ON THE EXCHANGE OF TAX INFORMATION

20. Note that, if New Zealand and Niue were to both sign the OECD multilateral treaty, after having already signed a TIEA, the fact that there would then be two exchange of information treaty arrangements in place would not create problems. The same issue would also arise in respect of other New Zealand DTAs and TIEAs. In practice, information could be exchanged under either treaty instrument.

Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

21. TIEAs are specifically designed to assist tax authorities to detect and prevent tax evasion and tax avoidance. Any reduction of tax evasion or avoidance will give rise to revenue gains for New Zealand. However, Niue is no longer a tax haven, and the risk of New Zealand residents evading or avoiding New Zealand tax through the use of legal structures and transactions involving Niue is very low. Therefore, the actual benefit to New Zealand in revenue terms from entering into the Niue TIEA is likely to be minimal at best.

22. Although the Niue TIEA will not bring the revenue benefits that are generally anticipated from TIEAs, there will be other benefits for New Zealand. The advantages can be summarised as follows:

- As described above, the close constitutional ties between New Zealand and Niue mean that there will be general reputational benefits for New Zealand if Niue can improve its international standing.

- Assisting Niue to start building its own TIEA network can be expected to generally improve the effectiveness of Niue’s tax system. Tax system improvements in Niue will reduce pressure on the New Zealand Government to provide budgetary assistance to Niue. These improvements will also be consistent with other recent New Zealand Government initiatives to help Niue improve the effectiveness of its tax system and build capacity in its tax administration.

- Pacific Island jurisdictions, by virtue of their relatively close proximity to New Zealand, are often perceived by other OECD member countries to be in New Zealand’s “sphere of influence”. The TIEA with Niue will extend New Zealand’s growing network of DTAs and TIEAs in the Pacific region, and demonstrate our commitment to establishing exchange of information arrangements with our closest neighbours. This will send a good signal internationally.

- The Niue TIEA represents progress by New Zealand in widening its network of exchange of information treaty arrangements.

23. The only identifiable disadvantage for New Zealand in concluding a TIEA with Niue is that Inland Revenue will incur administrative costs in responding to any requests for information from Niue, which will not be subject to the usual offset by revenue gains to New Zealand from reduced tax evasion and tax avoidance by New Zealand residents. However, given Niue’s circumstances, such requests are likely to be minimal, and it is unlikely that requests would involve more complex areas such as transfer pricing. If requests are received, Inland Revenue has streamlined systems already in place for
AGREEMENT BETWEEN NEW ZEALAND AND NIUE ON THE EXCHANGE OF TAX INFORMATION

responding to requests under its 55 other exchange of information arrangements, and additional costs will be marginal.

**Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms**

24. The Niue TIEA will impose a reciprocal obligation on each Contracting Party to provide, upon request, information that is foreseeably relevant to the administration and enforcement of taxes. As noted above, Niue is unlikely to make many requests for information from New Zealand, and those it may make are unlikely to relate to complex issues such as transfer pricing. If valid requests are received, under the Niue TIEA Inland Revenue will be obliged to use its information-gathering powers to obtain the requested information, on a timely basis, and to forward that information to Niue.

25. The Contracting Parties will be required to maintain strict confidentiality regarding any information received regarding a request. Such information may be disclosed only to authorised persons, and may be used only for specified purposes (principally, the administration and enforcement of the domestic tax laws of the respective Contracting Party, see Article 8).

26. Reservations are not provided for under the Niue TIEA.

27. Article 11 of the Niue TIEA provides that any difficulties or doubts arising as to the interpretation or application of the TIEA are to be resolved, if possible, by mutual agreement between the competent authorities (for New Zealand, the Commissioner of Inland Revenue or his or her authorised representative; for Niue, the Secretary of Finance or the Secretary’s authorised representative). The Parties may also decide on other forms of dispute resolution.

**Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation**

28. Subject to the successful completion of the Parliamentary treaty examination process, the Niue TIEA will be implemented into New Zealand domestic law by Order in Council, in accordance with section BH 1 of the Income Tax Act 2007. Section BH 1 authorises the giving of overriding effect to DTAs and TIEAs\(^3\) by Order in Council. That is, the Order in Council may specify that the provisions of the agreement will have effect notwithstanding any provision of the Inland Revenue Acts, the Official Information Act 1982 or the Privacy Act 1993 – although only in relation to tax matters.

29. When the Niue TIEA is signed, officials will arrange for an Order in Council to be made, and for the other steps for entry into force to be undertaken. This includes New Zealand notifying Niue by diplomatic note that all of its domestic constitutional and legal procedures for entry into force of the Niue TIEA are complete. Niue will likewise notify New Zealand when its own procedures are complete. It is expected that this process will be completed before the end of 2012.

30. There are no other viable regulatory options for implementing the obligations in the agreement.

\(^3\) Despite the reference to DTAs, the agreements to which the section relates are those that have been negotiated for any one or more of the purposes listed in the section. The facilitation of exchange of information is a listed purpose. Therefore, the TIEA falls within the ambit of section BH 1.
Economic, social, cultural and environmental costs and effects of the treaty action

31. No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

The costs to New Zealand of compliance with the treaty

32. If requests for information are received from Niue under the Niue TIEA, New Zealand will incur administrative costs in complying with those information requests. As noted above, such requests are likely to be minimal and limited to non-complex matters. In addition, streamlined and effective mechanisms for dealing with exchange of information requests have already been established for New Zealand’s existing DTA and TIEA network. The administrative costs of responding to requests from Niue are therefore expected to be marginal.

33. All costs arising to Inland Revenue as a result of the operation of the Niue TIEA will be met within existing baselines.

Completed or proposed consultation with the community and parties interested in the treaty action

34. The Ministry of Foreign Affairs and Trade, and the Treasury, have been consulted and agree with the proposed treaty action. Further, the concept of TIEAs in general has been canvassed in the Government’s published policy work programmes.

Subsequent protocols and/or amendments to the treaty and their likely effects

35. No future amendments are anticipated. New Zealand will consider any proposed amendments to the Niue TIEA on a case by case basis, and any decision to accept an amendment would be subject to the usual domestic approvals and procedures.

Withdrawal or denunciation provision in the treaty

36. Article 13 of the Niue TIEA provides that either Contracting Party may terminate the Niue TIEA by giving six months’ written notice through the diplomatic channel. The Niue TIEA may only be terminated by either of the Contracting Parties three years after it has entered into force. The Contracting Parties will remain bound by the confidentiality provisions contained in Article 8 of the Niue TIEA even after it has been terminated.

37. Any decision by New Zealand to terminate the Niue TIEA would be subject to the usual domestic approvals and procedures.

Agency Disclosure Statement

38. Inland Revenue has prepared this extended national interest analysis. It has undertaken an analysis of the issue of implementing a TIEA between New Zealand and Niue, and the legislative and regulatory proposals arising from that implementation. It has considered all other relevant options in that process. Inland Revenue is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis.

39. An Order in Council is required to implement the Niue TIEA into New Zealand domestic law. The Order in Council will override the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993; this is authorised by section BH 1 of the Income Tax Act 2007 and is necessary to give effect to the terms of the Niue TIEA.
40. Inland Revenue notes that the form of this TIEA and national interest analysis is consistent with that of a number of previous TIEAs and national interest analyses prepared regarding other TIEAs concluded by New Zealand.

41. The advantages of the Niue TIEA to New Zealand, as noted, will likely be minimal. However, the Niue TIEA will assist Niue enhance both its international standing and the effectiveness of its tax system, which is generally in New Zealand’s interests (given our close historic and constitutional ties, and New Zealand’s provision of economic support to Niue). No costs are expected to arise from the Niue TIEA, and no risks have been identified.

42. Inland Revenue is of the view that the policy options considered will not impose additional costs on businesses; impair private property rights or market competition; adversely impact the incentives on businesses to innovate and invest; or override fundamental common principles.

Dr Craig Latham
Group Manager
Policy Advice Division
Inland Revenue

3 August 2012
Report from the Controller and Auditor-General, New Zealand Defence Force: The civilianisation project, January 2013

Report of the Foreign Affairs, Defence and Trade Committee

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Report from the Controller and Auditor-General, New Zealand Defence Force, The civilianisation project, January 2013

Recommendation
The Foreign Affairs, Defence and Trade Committee has considered the report from the Controller and Auditor-General, New Zealand Defence Force: The civilianisation project, January 2013, and recommends that the House take note of its report.

Overview
In 2010 Government invited the New Zealand Defence Force to save $350–400 million for operational expenditure annually from 2014/15. Funds so generated would be redistributed within the NZDF.

The Controller and Auditor-General’s report focuses on one of several NZDF projects intended to achieve these savings—the civilianisation project—which was initially expected to save $20.5 million per year by re-designating 1,400 military positions as civilian roles.

The performance audit report concluded that the project had achieved only partial success; it estimates that the project will realise only $14.2 million in annual savings, and only 600 military positions will be civilianised. The report was also critical of the NZDF for embarking on the civilianisation project before it had determined how many military staff it would need from 2015, and because the project was executed in a way that lowered morale and increased attrition, reducing the force’s capacity.

Majority view
The National Party members note the civilianisation project has been the focus of the committee’s 2010/11, and 2011/12 financial review and the 2012/13 Estimates examinations of the NZDF. During these examinations, many of the issues that the Auditor-General raises in her report were discussed in detail.

The National Party members note that the NZDF has acknowledged that the civilianisation project had been damaging, that it broke the implied moral contract senior leaders have with serving personnel to look after their interests in return for their service, and that the uncertainty the project caused has contributed to low morale and high attrition. In the committee’s most recent financial review the Chief of Defence told us that progress toward the overall savings target of $350–400 million is progressing well, and that attrition had now slowed to an acceptable rate.

The committee intends to monitor these matters closely in the results of the NZDF’s Ongoing Attitude Survey, which we regularly receive.

Given our detailed knowledge of the civilianisation project, National Party members do not believe any further action is necessary regarding the contents of this report.
Labour and Green Parties minority view

The Auditor-General’s damning report on the Defence Force’s efforts to meet the Government’s demands for up to $400 million in cuts requires the attention of the Select Committee. The Auditor-General is scathing about the inadequacy of the policies pursued and the serious damage done to the Defence Force. This demands accountability on the part of the Minister, and he should appear before the Committee to answer questions that he failed to answer during the last Estimates hearings.

As the transcript of those hearings records, the Minister could not answer whether the drop in personnel in the Defence Force of over 1,000 people last year was a deliberate effort to achieve cost savings or was inadvertent. We know now that the Defence Force’s decision to convert 1,400 military positions into civilian positions was done without their or the Government knowing how many staff were required for the Defence Force to do its job properly—that is in itself astonishing. We know as a result of the Auditor-General’s report that that decision, in fact, would have left the NZDF with 1,618 fewer military staff than it required to properly carry out its role. We have found out that with record attrition rates of over 21 per cent and the lowest ever morale in the records of the NZDF that the military lost far more staff than was intended. The Minister needs to explain why his oversight of this process was so inadequate.

The Minister and the Defence Force must answer why “NZDF chose a course that led to a drop in morale and an increase in attrition resulting in reduced capability” (Auditor-General’s report p. 4).

The committee needs to ask why the Minister and Chief of Defence Force denied at the Estimates hearing that there was a reduction in capability when the Auditor-General has found that there has been one. An explanation is required as to why warnings around the consequences of the policy by the Army and the Navy early on in the process were ignored. We should demand an explanation as to why the letters sent to personnel who were being made redundant were so crass and offensive in the manner of their wording.

It may be that the findings of the committee would be intensely embarrassing to the Government. However, in a parliamentary democracy the select committee holds responsibility for oversight of policy and policy failure, and learning the lessons so mistakes will not be repeated. For the majority on the committee to stand in the way of our exercising that role is absolutely to renege on its democratic and good governance responsibilities.

It is important that the Minister and Chief of Defence Force appear before the Committee as soon as possible. Previous testimony is not in itself sufficient; it is necessary for them to appear once again, as a result of the findings of the Auditor-General’s report.
Appendix

Committee procedure
The committee met on 21 and 28 February 2013 to consider the Report from the Controller and Auditor-General, *New Zealand Defence Force: The civilianisation project, January 2013*.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
International treaty examination of the International Monetary Fund 2008 Voice and Participation Reforms and of the International Monetary Fund 2010 Quota and Governance Reforms

Report of the Foreign Affairs, Defence and Trade Committee

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International Monetary Fund 2008 Voice and Participation Reforms and International Monetary Fund 2010 Quota and Governance Reforms

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted the international treaty examinations of the International Monetary Fund 2008 Voice and Participation Reforms and of the International Monetary Fund 2010 Quota and Governance Reforms, and recommends that the House take note of its report.

The majority of us support these reforms and have no matters to bring to the attention of the House. The national interest analysis for these governance reforms is appended to this report.

Green Party minority view

The Green Party opposes this treaty for the reasons it advanced during the readings.
Appendix A

Committee procedure
The international treaty examinations of the International Monetary Fund 2008 Voice and Participation Reforms and of the International Monetary Fund 2010 Quota and Governance Reforms were referred to the committee on 22 February 2013. We met on 28 February and 14 March 2013 to consider these reforms.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis

Executive Summary

The International Monetary Fund 2008 Voice and Participation Reforms (the 2008 Reforms) and the International Monetary Fund 2010 Quota and Governance Reforms (the 2010 Reforms) (collectively the Governance Reforms) were agreed to by the Board of Governors of the International Monetary Fund (IMF) on the 28th of April 2008 and the 15th of December 2010 respectively. Both of these reforms are treaties which amend the IMF’s Articles of Agreement of the International Monetary Fund (the Articles of Agreement) – the main ‘constitution’ of the IMF.

The IMF is one of the two Bretton-Woods institutions set up after World War II to help rebuild the shattered post-war economy and to promote international economic cooperation. The IMF was conceived primarily as a supervisory institution to promote international monetary cooperation and facilitate the growth of international trade. This is achieved through maintaining monetary exchange stability and assisting member countries who are experiencing balance of payments problems. The IMF also plays a significant advisory role in attempting to prevent instability in the global financial system. This is important to New Zealand: as a small, open economy New Zealand benefits heavily from a stable and prosperous global economy.

Nature and timing of the proposed treaty action

In 1961 New Zealand ratified the Articles of Agreement, which are contained in Schedule 1 of the International Finance Agreements Act 1961. The Articles of Agreement are the IMF’s core constitutional document.

The Governance Reforms will amend the Articles of Agreement to make the IMF more legitimate and relevant to the 21st Century Economy. In particular, the reforms make changes to the IMF’s voting share structure in order to enhance the participation and voice of emerging market and developing countries, and realign members' shares with their relative weight and role in the global economy.

To illustrate the practical effect of the quota reforms, under the current quota system, China is the tenth largest shareholder in the IMF despite being the second largest economy in terms of GDP. In Korea’s case, their quota share is half that of Australia, even though they are approximately the same size economically. The reforms will adjust China’s quota so they are the sixth largest shareholder behind the United Kingdom. Korea’s quota will double under the reforms to be above that of Australia.

It is proposed that New Zealand accept the Governance Reforms by depositing Instruments of Acceptance. New Zealand will deposit the Instruments of Acceptance with the United States of America, which is the depositary for the IMF’s Articles of Agreement.

The 2008 Reforms are already in force, having entered into force for all IMF members on March 3 2011. The 2010 Reforms will enter into force for all IMF members, in accordance
with Article XXVIII(a) of the Articles of Agreement, when three-fifths of IMF members (representing 85% of voting share) have formally accepted these amendments to the Articles of Agreement. The 2010 Reforms will enter into force three months after the IMF has formally communicated that the requirements of Article XXVIII(a) have been met, unless a shorter period is specified in the communication. Major countries that have already accepted the 2010 Reforms include Australia, China, Japan, Korea, Russia, Spain, and the United Kingdom.

3 Reasons for New Zealand to amend the Agreement

The main reason for New Zealand to accept the Governance Reforms is that the reforms amend the IMF’s Articles of Agreement to make the IMF more legitimate and representative of its members. The reforms increase the voice of emerging and developing economies, taking into account the greater role that these countries now play in the global economy compared to when the Articles of Agreement were first written over half a century ago.

The Governance Reforms also make the IMF more representative by requiring all members of the IMF’s Executive Director to be elected (currently, the five largest members of the IMF are able to appoint an Executive Director each), making the IMF more democratic.

In the IMF, countries are grouped together into constituencies, where they share an office and appoint IMF-funded advisors to represent their interests. Each constituency elects an Executive Director to represent them at the IMF Executive Board. The Governance Reforms allow larger constituency offices at the IMF to appoint a larger number of higher-level representatives. As the constituency office that New Zealand belongs to is quite large, this will allow New Zealand’s constituency office to be more effective.

The Governance Reforms make a number of minor technical changes that will allow the IMF to more effectively carry out its lending operations, hence improving its effectiveness as a lender of last resort and as a bastion against financial market instability.

Accepting the Governance Reforms will reaffirm New Zealand’s commitment to the IMF and to the need for international financial organisations to be representative.

4 Advantages and disadvantages to New Zealand of the Amendments entering into force and not entering into force for New Zealand

The main reason for New Zealand to accept the Governance Reforms is because New Zealand has a vested interest as a member of the IMF to make sure that the organisation is able to act legitimately and credibly on the global stage. A more legitimate IMF is advantageous to New Zealand as it fits with New Zealand’s strong commitment to multilateralism and democratic global entities. It is also advantageous because a more legitimate IMF means that the organisation will be able to more effectively fulfil its purpose of global economic and financial market stability – something which is highly important for New Zealand given its small size and reliance on trade with other countries.

Although the amendments will result in a small decrease in New Zealand’s voting power at the IMF, this change is inconsequential given the already small amount of voting shareholding that New Zealand holds. At the same time, the amendments will provide many emerging and developing economies with a more appropriate level of voice in the strategic direction of the organisation.
Overall, since the advantages of the Governance Reforms outweigh the minimal disadvantages, New Zealand should accept the Governance Reforms.

5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

No additional legal obligations will be imposed on New Zealand by the Governance Reforms.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

Amendments to the International Finance Agreements Act 1961 are required to implement the Governance Reforms because the Schedules to this Act contain the IMF Articles of Agreement. The International Finance Agreements Amendment Bill, which is currently before the House, will result in the required amendments once it has passed.

No further changes to legislation or regulations are required to implement the Governance Reforms.

7 Economic, social, cultural and environmental costs and effects of the treaty action

There are no economic, social, cultural or environmental costs arising from the Governance Reforms.

8 The costs to New Zealand of compliance with the treaty

There are no direct financial implications to New Zealand from these treaty actions. However, the IMF has separately agreed to an increase in the quotas (or membership subscriptions) that members pay as part of the 14th General Review of Quotas. This increase is tied to the 2010 Governance Reforms, and will not come into effect until the reforms have been accepted by the requisite majority of member countries. Consequently, although New Zealand will need to separately accept the quota reforms for them to be binding on us, our acceptance of the 2010 Governance Reforms is part of a step of actions that will eventually lead to a financial implication for New Zealand. Our quota increase requires us to contribute an additional SDR 90 million (or NZ $170 million) and hold an additional SDR 270 million (or NZ $510 million) as a contingent liability. This was agreed to in Budget 2011 and Budget 2012, and is in Budget forecasts to be paid out in the 2012/13 financial year.

9 Completed or proposed consultation with the community and parties interested in the treaty actions

The Ministry of Foreign Affairs and Trade has been consulted on the proposal to accept the Governance Reforms. The Department of Prime Minister and Cabinet was informed of this National Interest Analysis.

10 Subsequent protocols and/or amendments to the treaties and their likely effects

There are no other amendments to the Articles of Agreement that are currently contemplated.
11 Withdrawal or denunciation provision in the treaties

Article XXVI of the Articles of Agreement allows for any member to withdraw from the Fund at any time by transmitting a notice in writing to the Fund at its principal office. This equally applies to the Articles of Agreement as amended by the Governance Reforms.
International treaty examination of the Protocol to Amend the Convention signed at Paris on the 22nd of November 1928 Relating to International Exhibitions

Report of the Foreign Affairs, Defence and Trade Committee

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Protocol to Amend the Convention signed at Paris on the 22nd of November 1928 Relating to International Exhibitions

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted the international treaty examination of the Protocol to Amend the Convention signed at Paris on the 22nd of November 1928 Relating to International Exhibitions, and recommends that the House take note of its report.

The national interest analysis for the protocol is appended to this report.
Appendix A

Committee procedure

The international treaty examination of the Protocol to Amend the Convention signed at Paris on the 22nd of November 1928 Relating to International Exhibitions was referred to the committee on 8 March 2013. We met on 14 March 2013 to consider the agreement.

Committee members

John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis

International Convention Relating to International Exhibitions

Executive Summary

1. Accession to the International Convention Relating to International Exhibitions (“The Convention”) would enable New Zealand to participate as a member of the Bureau International des Expositions/International Exhibitions Bureau (BIE). The BIE votes on candidate countries seeking to host international exhibitions, for example the Shanghai World Expo.

2. New Zealand membership of the BIE would place us ‘inside the tent’ for decision making regarding the hosting of future international exhibitions. It would enhance opportunities for New Zealand’s influence over and participation at these events.

3. The benefits of BIE membership can be achieved with minimal cost to New Zealand through accession to the Convention.

4. Hosting of the next major international exhibition, the 2020 World Expo will be decided during voting at the BIE General Assembly this November. For New Zealand to be able to participate in this process and have influence in what will be a major exhibition year we would be required to have membership status of more than six months. To achieve this, the Parliamentary Treaty Examination Process will need to be completed in time for the Instrument of Accession to be deposited by the end of April 2013.

5. There is no requirement for implementing legislation associated with accession of the Convention.

Nature and timing of the proposed treaty action

6. The Convention was concluded on 22 November 1928 in Paris. It entered into force on 17 January 1931. The Convention is open to accession by any State which is a member of the United Nations (Article 35). New Zealand acceded to the Convention in 1950 but denounced its accession in 1976.

7. The Convention was amended by Protocols in 1948, 1966 and 1972, and by Amendments in 1982 and 1988. These amendments concerned the duration and frequency of exhibitions, and procedures for accession and ratification of the Convention and membership of the BIE.

8. New Zealand proposes to complete binding treaty action by depositing an Instrument of Accession with the Secretary General of the International Exhibitions Bureau after Parliament has considered the Convention in accordance with Standing Order 394. The Convention will enter into force for New Zealand on the date the Instrument of Accession is deposited.
9. Hosting rights for the 2020 World Expo, the next major exhibition year, will be voted upon at the BIE General Assembly provisionally scheduled to take place from 26 – 27 November in Paris. Under the Rules of Procedure of the BIE, only Member States that have been party to the Convention for six months or more are granted voting rights. Therefore, for New Zealand to be able to participate in the voting the Parliamentary Treaty Examination Process will need to be completed in time for the Instrument of Accession to be deposited by the end of April 2013.

10. Consistent with the constitutional status of Tokelau, any ratification by New Zealand of the Convention will not extend to Tokelau unless Tokelau requests New Zealand to do so on the basis of consultation.

**Reasons for New Zealand becoming Party to the treaty**

**Background**

11. The Convention provides a framework to oversee World Exhibitions (for example the 2010 Shanghai World Expo) which are held every five years as well as other International Exhibitions and Horticultural Exhibitions.

12. The Convention establishes the BIE which votes on candidate countries seeking to host exhibitions on an annual basis at the BIE General Assembly. Membership of the BIE comprises Parties which have acceded to the Convention.

13. There are currently 163 Member States of the BIE including Australia as well as 8 Pacific Island Countries. The BIE Secretariat is hosted in Paris.

**Key reasons for taking treaty action**

14. New Zealand has not hosted an exhibition under the BIE framework and we are unlikely to do so in the future due to the high costs involved (for example, the costs to China for hosting the Shanghai World Expo were estimated to be over US$ 50 billion). We have, however, participated in a number of them with particular success dating back to Osaka (1970) Brisbane (1988), and more recently Aichi (2005) and Shanghai (2010).

15. Currently, New Zealand is not a member of BIE. This means that we cannot vote on hosting and this also restricts us from taking up other opportunities. For example, our Shanghai World Expo Commissioner-General Phillip Gibson was unable to accept an invitation by China to join the Shanghai onsite Expo Steering Committee due to our non-membership of the BIE. While we had a successful experience in Shanghai, being on the Steering Committee could have assisted with logistics and leveraging exposure to New Zealand’s site.

16. There is a strong case for New Zealand acceding to the Convention both to demonstrate engagement in the governance of these major exhibitions and to play a role in influencing future opportunities for New Zealand participation at international exhibitions.

17. Hosting for the 2020 World Expo will be accorded during a vote at the BIE General Assembly in November to one of the five following countries/cities:

- Dubai, United Arab Emirates
- Ayutthaya, Thailand
PROTOCOL TO AMEND THE CONVENTION OF 1928 RELATING TO INTERNATIONAL EXHIBITIONS

- Ekaterinburg, Russia
- Izmir, Turkey
- Sao Paulo, Brazil.

18. If the 2020 World Expo is successfully managed and should New Zealand consider that participation was warranted, it could provide an excellent opportunity to ‘tell New Zealand’s story’ and leverage trade promotion as we seek to lift our ratio of exports to GDP to 40% by 2025.

Advantages and disadvantages to New Zealand of the Treaty Action

Advantages

19. Accession will enable New Zealand to participate as a member of BIE which votes on candidate countries seeking to host international exhibitions including the 2020 World Expo which will be determined in November 2013 at the BIE General Assembly.

20. Accession will place New Zealand ‘inside the tent’ for future international exhibitions organised by countries thereby maximising the opportunities for New Zealand’s participation in and influence over these events.

21. Accession demonstrates New Zealand’s engagement in the governance arrangements of international exhibitions.

Disadvantages

22. Given the low cost involved, there are no major disadvantages of membership.

23. There is a risk that joining the BIE may generate an increased expectation that New Zealand participate in an international exhibition where we judge that our interests are more marginal (for example due to the poor organisation of the host country or funding shortfalls). We assess this ‘increased expectation’ risk can be managed. Many countries are selective in relation to those expos in which they participate. New Zealand has in the past managed this risk having not participated in all international exhibitions under the BIE framework. For example, we have declined an invitation from Milan to participate in the 2015 World Expo.

24. On the basis of the above assessment, the advantages of accession to the Convention outweigh any disadvantages.

Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

25. As a Member of the BIE New Zealand would be obligated to pay an annual subscription fee to the Secretariat. The calculated annual fee would be in the region of 1000 Euros (based on 2013 calculated annual contribution). This equates to approximately $NZ1600.

26. There are no other legal obligations associated with acceding to the Convention.

27. The Convention provides for disputes to be resolved by negotiation. If the negotiations do not lead to a resolution, the matter is then subject to arbitration, with the
arbitrators to be nominated by each Party to the dispute, and an additional arbitrator to be nominated by those arbitrators. Their decision is binding.

28. Reservations to the Convention are permitted in respect of these arbitration provisions. Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation.

29. The Convention only places an obligation to pay an annual fee on New Zealand. There is therefore no requirement for implementing legislation or other such measures. Economic, social, cultural and environmental costs and effects of the treaty action.

30. BIE membership would facilitate opportunities for New Zealand’s possible participation in international exhibitions organised under the framework of the Convention. As with past international exhibitions in which New Zealand has successfully participated, possible future participation in these events would provide good opportunities to showcase New Zealand’s economic, social cultural and environmental landscape to an international audience.

The costs to New Zealand of compliance with the treaty

31. New Zealand would be obligated to pay an annual subscription fee to the BIE Secretariat. The calculated annual fee would be in the region of 1000 Euros (based on 2013 calculated annual contribution).

32. Other costs would be to our Embassy in Paris which would be required to service the two main General Assemblies and other liaison with the Secretariat. The Embassy in Paris believes it can absorb a minimal level of new work associated with this accreditation, relying on guidance from Wellington.

Completed or proposed consultation with the community and parties interested in the treaty action

33. The following Government agencies have been consulted and their views incorporated into this paper: Ministry of Business, Innovation and Employment New Zealand Trade and Enterprise and the New Zealand Customs Service. Subsequent protocols and/or amendments to the Treaty and their likely effects.

34. Amendment to the Convention may be proposed by any Contracting Party and are subject to the approval of four-fifths of the Contracting Parties or to the approval of all Contracting Parties depending on the provision being amended. The Convention also contains a procedure for Governments to enter into reservations to amendments. The General Assembly decides whether to admit reservations or not on the basis of whether they are conducive to the protection of established positions with regard to international exhibitions (reservations to be allowed) or create privileged positions (reservations to be rejected).

Withdrawal or denunciation provision in the Treaty

35. Article 37 of the Convention allows a Contracting Government to denounce the Convention by notifying the Government of the French Republic in writing. Such denunciation takes effect one year after its receipt. New Zealand used this provision to denounce the Convention in 1976.
PROTOCOL TO AMEND THE CONVENTION OF 1928 RELATING TO INTERNATIONAL EXHIBITIONS

Lead Agency: Ministry of Foreign Affairs and Trade
Date: 21 February 2013.
International treaty examination
of the Convention between
Japan and New Zealand for the
Avoidance of Double Taxation
and the Prevention of Fiscal
Evasion with Respect to Taxes on
Income

Report of the Foreign Affairs, Defence
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Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and recommends that the House take note of its report.

New Zealand has a current double taxation agreement with Japan, but it is 50 years old and needs to be updated.

The new agreement aims to reduce tax barriers for New Zealand businesses with operations in Japan, making it easier for them to return profits made in Japan to New Zealand. The profits will be paid out to New Zealand shareholders or re-invested in the New Zealand economy. The arrangement is reciprocal, so it also reduces taxes on Japanese businesses in New Zealand. Although New Zealand will forgo about $3 million in tax revenue per year, the agreement encourages foreign investment, to an extent that is however hard to quantify.

We heard that New Zealand’s total investment in Japan is worth approximately $3.7 billion, and Japan’s in New Zealand just over $8 billion.

We asked if the Inland Revenue Department thought that the prospect of paying less withholding tax in New Zealand would make Japanese companies more inclined to invest. We heard that withholding tax is quite often passed on to the New Zealand business involved. One of the main benefits of the agreement is that it provides investment certainty: for example, a Japanese investor wanting to invest in New Zealand could refer to the text of the agreement instead of having to compare two sets of legislation to find out the tax implications.
Appendix A

Committee procedure
The treaty was referred to the committee for examination on 22 February 2013. We met on 21 and 28 March 2013 to hear evidence and consider it. We heard evidence from the Inland Revenue Department.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis

Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Executive summary

1 The Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and its accompanying Protocol (collectively known as “the new DTA”) has been negotiated to replace the existing Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (“the existing DTA”), signed in Wellington on 30 January 1963. The existing DTA with Japan is New Zealand’s oldest double taxation agreement (DTA) and has some major gaps and deficiencies compared to modern DTAs.

2 Japan is New Zealand’s fourth largest trade and investment partner. The Japan DTA is therefore an important treaty in New Zealand’s overall DTA network.

3 Since 2008, New Zealand has sought to enhance the competitiveness of its DTA network by negotiating new DTAs that reduce withholding tax rates with its major trading partners and modernise its most important treaties (starting with Australia, the United States, Singapore, Hong Kong and Canada). The new DTA with Japan is the next major step towards implementing this strategy.

4 The main objective of these new DTAs is to reduce tax barriers to New Zealand businesses that expand offshore. However, because DTA provisions are reciprocal, they also reduce New Zealand taxes on foreign investment into New Zealand. For this reason, the new DTA with Japan has an estimated revenue cost to New Zealand of $3 million per year. This reflects the fact that there is twice as much Japanese investment in New Zealand than New Zealand investment in Japan. DTAs will generally give rise to favourable economic benefits (such as a potential increase in trade and investment) that can be expected to offset such fiscal costs.

5 It is proposed that the new DTA be incorporated into domestic legislation through an Order in Council. The new DTA will then be brought into force through an exchange of diplomatic notes. The new DTA will enter into force on the date of the later of the two notes.

Nature and timing of the proposed treaty action

6 The Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and its accompanying Protocol (collectively known as “the new DTA”) was signed in Tokyo on 10 December 2012. It was signed in English and Japanese, with both texts having equal authenticity. The English text of the new DTA is attached at Annex 1.

7 Subsequent to satisfactory completion of the Parliamentary treaty examination process, in accordance with Standing Orders 394 to 397, the new DTA will be incorporated into domestic legislation through an Order in Council.
In accordance with Article 31 of the new DTA, the new DTA will then be brought into force through an exchange of diplomatic notes, confirming the completion of all necessary domestic procedures for entry into force in each country. The new DTA will enter into force on the date of the later of these notes.

As each provision of the new DTA comes into effect in accordance with Article 31, the equivalent provision of the existing DTA will cease to have effect. The existing DTA will terminate once all of its provisions cease to have effect.

Like other DTAs, the new DTA will not apply to the Cook Islands, Niue or Tokelau.

**Reasons for New Zealand becoming party to the treaty**

Japan is New Zealand’s fourth largest trade and investment partner.

The Japan DTA is therefore one of the most important treaties in New Zealand’s overall DTA network. It is important for New Zealand to maintain a competitive DTA network in order to retain and grow internationally competitive companies. The existing DTA with Japan is New Zealand’s oldest DTA and has some gaps and deficiencies compared to modern DTAs.

**Ensuring New Zealand remains a competitive place to do business**

Since 2008, New Zealand has sought to enhance the competitiveness of its tax treaty network by negotiating new DTAs that reduce withholding tax rates with its major trading partners, and modernising our most important treaties (starting with Australia, the United States, Singapore, Hong Kong and Canada). The new DTA with Japan is the next major step towards implementing this strategy.

A major objective of these new DTAs is to reduce tax barriers on New Zealand businesses that expand offshore. In particular, the new DTA with Japan provides for a 0% rate on certain dividends. This helps to remove an artificial impediment to the repatriation of foreign profits.

This change can be shown by considering the effects on a New Zealand business which sells products through a subsidiary in Japan. Currently, under the existing DTA, any profits earned by the Japanese subsidiary will be subject to a 15% withholding tax rate when a dividend is paid back to the New Zealand parent company. Under the new DTA, the Japanese tax on this dividend will reduce to 0%. This will make it more efficient to return the income back to New Zealand, where it can be reinvested or paid out to shareholders.

**Importance of a modern DTA**

The new DTA will replace an existing DTA with Japan. The existing DTA was signed in 1963 and has some major gaps and deficiencies compared to modern DTAs (for example it does not include interest or royalties Articles, which are two of the most important Articles in modern DTAs). The existing DTA is very different to New Zealand’s other DTAs and uses an old style of drafting that can be difficult to apply and interpret. The new DTA will address these issues and provide taxpayers with the level of certainty and protection that they expect from a modern DTA.
Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Advantages to New Zealand of the new DTA

16 The advantages can be summarised as follows:

Outbound investment

- As explained in the previous section, the new DTA will enhance the competitiveness of New Zealand’s overall DTA network. Along with other international tax settings, this helps New Zealand to retain and grow internationally competitive businesses.
- The new DTA reduces tax barriers to New Zealand businesses that invest into Japan. In particular, it provides for a 0% rate on certain dividends, which helps to remove an artificial impediment to the repatriation of foreign profits.

Inbound investment

- The new DTA will also make it easier for Japanese investors to invest into New Zealand by reducing compliance costs and “headline” rates of withholding tax. Compared to domestic law, DTA settings are “locked in” which provides certainty for long-term investments. Updating the DTA to modern treaty practices makes it easier for investors to understand how the DTA will apply, and ensures consistency with other DTAs.
- Despite these benefits, the new DTA with Japan is not expected to have a large impact on levels of inbound investment. This is because New Zealand already has some existing measures in its domestic law that reduce withholding taxes on certain forms of foreign investment.
- These existing measures reduce the cost of agreeing to lower withholding taxes on dividends and interest under a DTA. For example, because New Zealand provides exemptions and tax credits for imputed dividends (where the company has already paid 28% New Zealand tax on its profits), the cost of reducing withholding tax on dividends is limited to a small number of unimputed dividends. On interest, the cost of reducing withholding taxes is limited to related party loans, as a 2% approved issuer levy already applies to loans from unrelated parties.
- However, there are still some cases where the new DTA will make a difference, by going beyond the reductions available in domestic law. For example, under the new DTA, the rate on related party interest will be reduced from 15% to 10%, and the rate on royalties will be reduced from 15% to 5%. These rates will bring the Japan DTA into line with New Zealand’s other major DTAs.

Disadvantages to New Zealand of the new DTA

18. The disadvantages can be summarised as follows:

Revenue cost

- For the reasons given in the previous paragraph, the new DTA with Japan has an estimated revenue cost to New Zealand of $3 million per year. However, DTAs generally give rise to favourable economic benefits (such as some expected increase in trade and investment) that can be expected to offset such fiscal costs.

Administrative obligations
• The new DTA provides for assistance in collecting taxes imposed by the other country. Inland Revenue will incur some costs if a request for assistance in collection is made by the Japanese Revenue. However, New Zealand has entered into such arrangements in a number of its treaties and has a well-established system to deal with any requests. It is expected that any cost incurred will be marginal. Further, the arrangement is reciprocal, which means that New Zealand will be able to make a request to the Japanese Revenue for assistance to collect taxes in Japan on behalf of New Zealand.

• There are some general disadvantages to concluding a DTA (for example the “locked-in” nature of a treaty or the costs incurred in administering the exchange of information provisions). These disadvantages are less relevant when renegotiating an existing DTA, as many of these disadvantages will already have been absorbed by New Zealand. Therefore, apart from the reduction in revenue and marginal increase in administration costs as discussed previously, there are no new disadvantages created as a result of the new DTA.

19 New Zealand has the option not to enter into the new DTA with Japan. This would mean that the existing DTA would continue to apply, although it is out-of-date compared to modern treaty practice and New Zealand policy developments. In particular, the high withholding tax rates on dividends, interest and royalties would continue to apply.

20 Compared to the existing DTA, the new DTA has only minimal disadvantages and significant benefits for New Zealand. It is therefore in New Zealand’s interest for the new DTA to enter into force.

**Obligations which would be imposed on New Zealand by the treaty**

21 The new DTA will not impose any requirements on taxpayers. Instead it requires the governments of Japan and New Zealand to restrict their taxing rights on a reciprocal basis. It also requires tax authorities to assist each other by exchanging tax information and by collecting taxes if requested by the other tax authority. The new DTA will not require the imposition of any tax that is not already imposed under domestic law.

22 Where income is derived from one country (the country of source) by a tax resident of the other country (the country of residence), the country of residence generally retains taxing rights under the new DTA. The main impact of the DTA is to restrict the ability of the country of source to tax the income in certain circumstances. Where both countries are permitted to tax the income, the DTA requires the country of residence to provide a credit for the tax imposed by the country of source. For example, if a royalty payment is made between Japan and New Zealand, Japan’s taxing right would be limited to a 5% withholding tax and, when New Zealand taxes the payment, New Zealand would provide a tax credit for the 5% of Japanese tax paid.

23 The key provisions of the new DTA are summarised in the following table. In some cases, the allocation of taxing rights is similar or identical to the existing DTA, but in other cases there is no equivalent provision in the existing DTA.

*Key provisions of the new DTA*
<table>
<thead>
<tr>
<th>Type of income</th>
<th>Relevant article in the new DTA</th>
<th>Is there a similar provision in the existing (1963) DTA?</th>
<th>New DTA allows source country to tax?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business profits</td>
<td>Articles 5 and 7</td>
<td>✓</td>
<td>Only if business income is connected to a permanent establishment in the source country (e.g. a fixed place of business such as a branch office).</td>
</tr>
<tr>
<td>Income from services</td>
<td>Article 5(5)</td>
<td>✓ but only for independent services (self-employed people)</td>
<td>Only if the services are performed in the source country for more than 183 days in a 12-month period.</td>
</tr>
<tr>
<td>Income from natural resources</td>
<td>Article 6</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Income from international ships and aircraft</td>
<td>8</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Dividends</td>
<td>10</td>
<td>✓</td>
<td>Source country tax is limited to 15% of the dividend or 0% if the dividends are paid to a company that owns at least a 10% shareholding and meets certain other conditions</td>
</tr>
<tr>
<td>Interest</td>
<td>11</td>
<td>✓</td>
<td>Source country tax is limited to 10% of the interest payment or 0% if paid to a bank or the other government. In the case of NZ-sourced interest, the 0% rate also requires AIL to be paid by the NZ borrower (this is consistent with NZ’s existing domestic law)</td>
</tr>
<tr>
<td>Royalties</td>
<td>12</td>
<td>×</td>
<td>Source country tax is limited to 5% of the royalty payment.</td>
</tr>
</tbody>
</table>
### Double Taxation and Fiscal Evasion Convention Between Japan and New Zealand

<table>
<thead>
<tr>
<th>Alienation of property</th>
<th>13</th>
<th>✗</th>
<th>✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment income</td>
<td>14</td>
<td>✗</td>
<td>✓ if employment is performed in the source country and certain other criteria are met.</td>
</tr>
<tr>
<td>Director’s fees</td>
<td>15</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Entertainers and Sportspeople</td>
<td>16</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Pensions</td>
<td>17</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Government service</td>
<td>18</td>
<td>✓</td>
<td>Can only be taxed by the Government of which the person is an employee.</td>
</tr>
<tr>
<td>Payments to students</td>
<td>19</td>
<td>✓</td>
<td>Payments from a foreign government are not taxable in the country where the student is studying</td>
</tr>
<tr>
<td>Income derived through a silent partnership</td>
<td>20</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Other income (not previously mentioned)</td>
<td>21</td>
<td>✗</td>
<td>✓</td>
</tr>
</tbody>
</table>

#### Non-discrimination

24 Article 25 of the new DTA prevents a country from applying tax laws which discriminate on the grounds of nationality, situs of an enterprise, ownership of capital, and (in limited circumstances) residence. This is a very common treaty DTA provision that is not expected to apply in practice. However, there is a remote risk that a taxpayer may attempt to use the non-discrimination provision to challenge a legitimate tax measure which protects the New Zealand tax base. To minimise this risk, the Protocol to the DTA explicitly excludes from the scope of the non-discrimination rule certain elements of New Zealand’s existing tax rules that would be most vulnerable to a legal challenge. Being reciprocal in nature, the non-discrimination provision will help to protect New Zealand businesses operating offshore from any potential discrimination under Japan’s tax system.

#### Administrative requirements
As is the case with the existing DTA, both countries will have to comply with various administrative requirements imposed by the new DTA. These include a general requirement to eliminate double taxation by giving credits for overseas tax paid (Article 24), complying with the mutual agreement procedures set out in the new DTA (Article 26), and complying with the arrangements for the exchange of information (Article 27).

The new DTA also authorises the New Zealand and Japanese tax authorities to assist each other in the collection of taxes (Article 28). The existing DTA did not contain any similar provision. New Zealand only includes this in DTAs with countries where the provision can be expected to give rise to real benefits. This is likely to be the case with Japan.

**Differences with other recent DTAs**

In most respects the DTA with Japan is consistent with New Zealand’s other recent DTAs with major trading partners. However the new DTA with Japan does depart from these other recent DTAs. These differences are explained below.

**10% ownership threshold for dividend exemption (Article 10)**

New Zealand has negotiated DTAs with Australia, the US and Hong Kong which provide a zero percent withholding tax rate on dividends paid by subsidiaries to parent companies. In these DTAs the zero percent rate applies when the parent owns at least 80% of the subsidiary (and certain other conditions are met). A 5% withholding tax rate applies to companies that own between 10% and 80% of the dividend-paying company. A 15% rate applies to all other dividends.

The DTA with Japan relaxes these ownership thresholds so that a dividend exemption applies when a company owns 10% or more of the dividend paying company. There is no 5% rate in the DTA with Japan. Instead, all other dividends are taxed at a 15% rate.

The new rates with Japan are likely to be a favourable precedent for New Zealand. The fiscal cost to New Zealand should be minimal as under domestic law New Zealand already provides an exemption for imputed dividends paid to non-residents who own at least 10% of a New Zealand company. On the upside, New Zealand companies will be able to benefit from a reciprocal reduction in foreign taxes on dividends that they receive from significant offshore investments.

**A broader arbitration provision (Article 26)**

One of the benefits of DTAs is that they provide for taxpayer disputes to be resolved through “mutual agreement” by the revenue authorities in both countries. The mutual agreement procedure provides a quick and satisfactory outcome in almost all cases. However, it does require co-operation between the countries party to the treaty. If the revenue authorities are unable to reach agreement, the taxpayer may be left with no alternative but to go to court, possibly in both countries.

To address this shortcoming, there is an international trend for countries to include in their DTAs a facility for taxpayers to request mandatory arbitration of cases that are still unresolved after 2 years. This provides a strong incentive for revenue authorities to resolve mutual agreement cases in a timely fashion.
New Zealand has thus far only agreed to include arbitration in its DTA with Australia. In that DTA, arbitration is limited to questions of fact (although there is scope for New Zealand and Australia to agree to extend arbitration to other issues, in the future).

The new DTA with Japan would be the second time New Zealand has agreed to include an arbitration provision, but unlike with Australia, the provision with Japan is not limited to questions of fact, so it potentially has wider application.

In practice, arbitration is unlikely to be triggered. In New Zealand’s experience, very few cases have been brought by taxpayers under our DTAs, and almost all of these have been settled within 2 years.

**Reservations**

The treaty does not allow either country to make a reservation.

**Measures which the Government could adopt to implement the treaty action**

Subject to the successful completion of the Parliamentary treaty examination process, the new DTA will be incorporated into domestic legislation by Order in Council pursuant to section BH 1 of the Income Tax Act 2007. Section BH 1 authorises the giving of overriding effect to DTAs by Order in Council. The overriding effect is limited to the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993. The override of the Inland Revenue Acts enables the provisions of the new DTA to provide relief from tax that would otherwise be imposed under domestic law. The override of the Official Information Act is necessary to ensure that confidential communications with the other contracting state are not required to be disclosed. The override of the Privacy Act is necessary to ensure that information regarding natural persons can be exchanged according to the terms of the treaty.

The only alternative to an Order in Council for implementing a DTA would be by the enactment of a dedicated statute. This is not preferred as it would unnecessarily increase the amount of primary tax legislation.

**Economic, social, cultural and environmental costs and effects**

No social, cultural or environmental effects are anticipated.

As noted in this NIA, the overall economic effects of the new DTA between New Zealand and Japan are expected to be favourable. The new DTA will enhance the existing investment and trade relationship by ensuring that the arrangements governing double taxation between New Zealand and Japan are up-to-date and provide the levels of certainty and protection that taxpayers expect from a modern treaty.

Compliance costs for New Zealand businesses are expected to be reduced as a result of the treaty action. This is because New Zealand businesses will have clearer and more up-to-date guidance about when they will be liable for tax on activities in Japan, in line with internationally recognised norms. The same will also be true for Japanese businesses operating in New Zealand.

The new DTA with Japan is expected to have an estimated revenue cost to New Zealand of $3 million per year. This is due to the fact that the DTA reduces New Zealand’s ability to tax interest, royalties and unimputed dividends paid by New Zealand companies to Japanese investors. The reciprocal nature of the DTA means that there are some
offsetting revenue savings from Japan reducing its taxes on payments to New Zealand investors. This means that more income can be taxed in New Zealand, but there is still an overall cost as there is twice as much Japanese investment in New Zealand than there is New Zealand investment in Japan.

43 Officials expect that any additional revenue cost (outside the reduction in the withholding tax rates) will be minimal because the new DTA is a replacement of an existing DTA, and the allocation of taxing rights generally remains the same between the new DTA and the existing DTA.

44 It has been noted above that Inland Revenue could incur some administrative costs because Japan will be able to request New Zealand to collect Japanese taxes in certain circumstances. While these costs cannot be quantified precisely, they are expected to be small. New Zealand has entered into such arrangements in a number of other DTAs and has a well-established system to deal with any requests. In addition the reciprocal nature of the arrangement is means that any costs incurred will likely be offset by benefits accruing to New Zealand from the ability to ask Japan to collect taxes on our behalf.

Consultation

45 The Ministry of Foreign Affairs and Trade, and the Treasury, have been consulted about the terms of the new DTA and the content of this extended NIA, and those agencies agreed that implementing the DTA would be in New Zealand’s interest.

46 On 29 June 2012, Japan and New Zealand announced that officials had reached an agreement in principle on the text of a new DTA. Businesses and tax practitioners have welcomed this development but, consistent with international practice, officials have not publicly disclosed or consulted on any specific details of the new DTA.

Subsequent protocols or amendments to the treaty and their likely effects

47 No further amendments are anticipated at this time. New Zealand will consider future amendments on a case-by-case basis. Any amendments to the new DTA will be subject to the normal domestic approvals and procedures. Although there is no amendment clause in the new DTA, amendment would be subject to the usual requirements of the Vienna Convention on the Law of Treaties.

48 An accompanying Protocol forms an integral part of the new DTA and will be signed at the same time. Countries often prefer clarifying provisions and departures from their standard treaty model to be located in an accompanying Protocol.

Withdrawal or denunciation provision in the treaty

49 Under Article 32, either country may terminate the new DTA after the DTA has been in force for at least 5 years. A country must give at least 6 months’ notice that they wish to terminate the DTA.

50 In such an event, the new DTA will cease to have effect for withholding taxes on interest, dividends and royalties from 1 January in the year following the year in which the notice of termination is given. The provisions for other taxes would cease to have effect for income years beginning on or after 1 April in the year following the termination notice for New Zealand, and 1 January for Japan.
Agency Disclosure Statement

51 Inland Revenue has prepared this extended national interest analysis (NIA). It has undertaken an analysis of the issue of implementing the new DTA between Japan and New Zealand, and the legislative and regulatory proposals arising from that implementation. As part of that process, it has considered the option of not entering into the treaty. Inland Revenue is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis. The policy aligns with the Government Statement on Regulation.

52 The Ministry of Foreign Affairs and Trade, and the Treasury, have been consulted about the terms of the new DTA and the content of this NIA, and those agencies agreed that implementing the DTA would be in New Zealand’s interest. On 29 June 2012, Japan and New Zealand announced that officials had reached an agreement in principle on the text of a new DTA. Businesses and tax practitioners have welcomed this development but, consistent with international practice, officials have not publicly disclosed or consulted on any specific details of the new DTA.

53 Inland Revenue is of the view that the policy options considered will not impose additional costs on business; nor impair private property rights, market competition, or the incentives for business to innovate and invest; nor override fundamental common law principles.

Dr Craig Latham
Group Manager
Policy Advice Division
Inland Revenue
2 November 2012

Supplementary information:
New Zealand-Japan cross-border investment and trade

Japan is New Zealand’s fourth largest investment partner. The following table illustrates the average stock of NZ investment into Japan and Japanese investment into New Zealand during the period 2007 to 2011.
The darker portion of the bar chart shows direct investment, which comprises debt and equity in companies in which the investor has a 10% or greater shareholding. Direct investment from New Zealand into Japan averaged $60 million between 2007 and 2011. Direct investment from Japan into New Zealand averaged $2.14 billion in the same period.

Total investment comprises the dark and the light portions of each bar. Total investment from New Zealand into Japan averaged $3.66 billion over the period. Total investment from Japan into New Zealand averaged $8.13 billion in the same period.

Japan is also our fourth largest trading partner. In the year to June 2011, total bilateral trade between New Zealand and Japan was worth $6.34 billion. Exports to Japan in this period were worth $3.45 billion. Top exports include aluminium, with 19 percent share, wood (13 percent), dairy products (12 percent), fruit and nuts (9 percent) and meat (9 percent). In the same period, New Zealand’s imports from Japan were worth NZ$2.7 billion. Vehicle imports from Japan make up almost half of all Japanese imports. Other imports include machinery, with 16 percent share, mineral fuels (7 percent), electric machinery (6 percent) and rubber (3 percent).
Petition 2011/59 of Margaret Millin on behalf of Nine Kiwi Social Studies Class, Sacred Heart Girls College, Hamilton

Report of the Foreign Affairs, Defence and Trade Committee

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Petition 2011/59 of Margaret Millin on behalf of Nine Kiwi Social Studies Class, Sacred Heart Girls College, Hamilton

Recommendation

The Foreign Affairs, Defence and Trade Committee has considered Petition 2011/59 of Margaret Millin on behalf of Nine Kiwi Social Studies Class, Sacred Heart Girls College, Hamilton, and recommends that the House take note of its report.

Introduction

We have considered Petition 2011/59 of Margaret Millin on behalf of Nine Kiwi Social Studies Class, Sacred Heart Girls College, Hamilton, requesting that the House urge the Government to take all possible steps to help bring an end to child labour throughout the world and, where known, ban the importation of goods made using child labour, and note that 431 people have signed a petition supporting this request.

We sought evidence from the Ministry of Foreign Affairs and Trade as to what steps New Zealand is taking on the international stage to prevent child labour.

Response

The ministry’s response noted that the Government regards child labour as a very serious matter, and approaches the issue through international organisations, free trade agreements, and consumer awareness.

International organisations

We were informed that New Zealand is actively involved in international organisations that deal with child labour, such as the International Labour Organisation and the United Nations. New Zealand has supported and been involved in key international agreements and statements, such as the ILO Convention 182 Concerning the Worst Forms of Child Labour, the International Programme for the Elimination of Child Labour, and the United Nations Convention on the Rights of the Child. New Zealand is also party to agreements aiming to reduce or eliminate forced and compulsory labour, and has ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

The ministry told us that the Government has considered banning products produced by forced or child labour. But this would be difficult to implement because parts of goods may be made by different producers, and it can be difficult to obtain reliable information about their production history.

Free trade agreements

The Government’s position is that the International Labour Organisation is the right forum for making international commitments and setting benchmarks to address child labour, not free trade negotiations. New Zealand’s free trade agreements do however integrate labour provisions which reaffirm the principles agreed to by international organisations.
The ministry told us that in cooperation with other parties, New Zealand is in regular communication on labour issues and establishes cooperative capacity-building projects to facilitate the sharing of effective approaches to dealing with this issue.

If a third party has verified concerns about the use of child labour in the production of goods imported into New Zealand, it is likely that New Zealand importers would also be concerned and would seek assurances from their suppliers. The Government might also bring this to the attention of the foreign government concerned.

**Consumer awareness**

Consumer awareness can also influence importers and retailers. The ministry told us that the Government encourages the voluntary efforts of New Zealand businesses that seek to support better labour standards in the production of the goods they are selling.

**Conclusion**

We note the Government’s approach to improving international labour standards through international organisations, free trade agreements, and consumer awareness.

We have no other matters to bring to the attention of the House.
Appendix

Committee procedure
The petition was referred to us on 14 May 2013. We received evidence from the Ministry of Foreign Affairs and Trade.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
International treaty examination of the Protocol to the 2007 World Wine Trade Group agreement on requirements for wine labelling: Concerning alcohol tolerance, vintage, variety and wine regions, Brussels, 22 March 2013

Report of the Foreign Affairs, Defence and Trade Committee

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Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Protocol to the 2007 World Wine Trade Group agreement on requirements for wine labelling: Concerning alcohol tolerance, vintage, variety and wine regions, Brussels, 22 March 2013, and recommends the House take note of its report.

We note that the ratification of the protocol would not in any way affect New Zealand’s ability to place alcohol health warnings on wine bottles.

We have no other matters to bring to the attention of the House. The national interest analysis for the agreement is appended to this report.
Appendix A

Committee procedure
The treaty was referred to the committee for examination on 3 May 2013. We met on 16 May, 30 May, and 13 June 2013 to consider it.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis

Protocol to the 2007 World Wine Trade Group agreement on requirements for wine labelling: Concerning alcohol tolerance, vintage, variety and wine regions, Brussels, 22 March 2013

Executive Summary

The Protocol to the 2007 World Wine Trade Group Agreement on Requirements for Wine Labelling, Concerning Alcohol Tolerance, Vintage, Variety and Wine Regions will provide for significantly simpler and more favourable labelling rules in New Zealand’s export markets, likely to save the New Zealand wine industry millions of dollars annually\(^1\) and generate significant new marketing opportunities in the US market.

There will be no changes to legislation or regulation as a result of signing and ratifying this treaty and it will have no discernable effect on imported wine sold in New Zealand. It is proposed that New Zealand sign and ratify this treaty.

Date and nature of proposed treaty action

It is proposed that New Zealand:

(a) sign the Protocol to the 2007 World Wine Trade Group Agreement on Requirements for Wine Labelling Concerning Alcohol Tolerance, Vintage, Variety and Wine Regions (the Protocol) on 22 March 2013; and

(b) ratify the Protocol by depositing an instrument of ratification with the Government of the United States as depositary by the end of June 2013.

Reasons for New Zealand Becoming a Party to the treaty

1. Background

The World Wine Trade Group (WWTG) was initiated in 1998 by a group of countries that share a common interest in international wine trade, particularly on barriers to trade faced by the participants. The European Union (EU) approach on wine labelling was a prime driver for the formation of the WWTG. The founding members of the WWTG are New Zealand, Australia, Canada, the United States, South Africa, Argentina and Chile. Georgia joined the WWTG in 2010. Mexico, Paraguay, Bolivia, Brazil, Uruguay and China have attended meetings as observers and some of these countries (Brazil, China and Mexico) continue to show an interest in the group.

2. The WWTG provides a regular forum for a transparent and direct dialogue with like-minded Governments and industry on wine regulation, trade concerns and higher level trade policy matters. From early on, there has been an interest in facilitating greater trade between WWTG members, which has led to the negotiation of treaties on the mutual acceptance of winemaking practices signed in 2001, and on requirements for labelling.

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\(^1\) Estimate by New Zealand Winegrowers
signed in 2007. The WWTG members also signed a MOU on Requirements for Certification in 2011, removing any routine requirements for certification of wine. These instruments have considerably simplified the process for exporters wishing to sell wine in WWTG markets, without requiring significant changes to New Zealand regulations.

3. Wine is New Zealand’s fastest growing primary export. Over the period of New Zealand’s membership of the WWTG, New Zealand wines went from around NZ$100m in 1998 to hit the NZ$1bn mark in 2009\(^2\). New Zealand wines have retained their value throughout the global recession and export sales volumes have continued to grow, with total exports reaching NZ$1.2bn in the year to October 2012. The diversification, in particular into WWTG markets has provided a robust basis for growth in the industry. WWTG markets now represent around 60% of our exports by value, up from a quarter in 1998\(^3\).

4. The 2007 Agreement on Requirements for Wine Labelling (the 2007 Agreement) allowed grape wine exporters to sell wine into WWTG markets without having to substantially redesign their labels for each market. Under the 2007 Agreement four common elements: product name, volume, alcohol content, and country of origin are deemed to comply with an importing member’s requirements if they are placed in a single field of view. In addition it was agreed that while Parties could require mandatory information be specified on the container, they could not restrict where it was placed on the label\(^4\) (provided it isn’t on the cap or base).

5. During negotiations towards the 2007 Agreement, it became necessary to set aside several elements – namely vintage; variety; wine region and alcohol tolerance – on which rigid national labelling requirements, notably in the United States, made consensus impossible. However Article 13 of the 2007 Agreement requires Parties to engage in further discussions with a view to concluding an additional agreement covering those elements.

6. New Zealand assumed the chair in April 2012 and began work on drafting an agreement text (in the form of a Protocol to the 2007 Agreement) for discussion between the Members. Members initialed a document signaling the conclusion of negotiations in Auckland on 9 November 2012.

7. Key reasons why New Zealand should take the proposed treaty action:

   • The Protocol will have no practical effect on wine sold in New Zealand. New Zealand will not need to change any regulations or legislation to ratify the Protocol.

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\(^2\) Statistics provided by the New Zealand Winegrowers

\(^3\) Statistics from Global Trade Atlas [www.qtis.com](http://www.qtis.com) accessed 15 Jan 2013

\(^4\) With the exception that Parties can specify that certain items of information must appear adjacent or in a certain proximity to one another.
The Protocol will provide substantial simplification of labelling standards for exporters sending grape wine to the United States, and will ensure predictability in the Canadian market and other WWTG markets about the nature of future regulations on labelling. Overall the industry expects the Protocol to save exporters millions of dollars per annum in reduced labelling costs. The ratification of the Protocol would not in any way affect New Zealand’s ability to place alcohol health warnings on wine bottles or packaging.

The Protocol is consistent with New Zealand’s favoured approach to such treaties, promoting mutual acceptance of standards and definitions on region, variety, vintage and alcohol tolerance.

The Protocol provides the additional reassurance for New Zealand consumers through establishing minimum standards for vintage, variety and region claims on imported wine. The 2007 Agreement, which is built upon by this Protocol, specifies that all information on a wine label must be “clear, specific, accurate, truthful and not misleading to the consumer”. This is consistent with New Zealand’s Fair Trading Act.

The Protocol is a high quality trade-facilitating agreement which will enhance the cohesion of the WWTG and set a clear benchmark for other countries that may be developing regulations affecting wine labelling. New members to the WWTG will be required to sign up to this Protocol, potentially providing improved access to markets such as Brazil and Mexico.

8. The policy objectives the Government wishes to achieve by taking the treaty action:

Promoting the export-led growth of the New Zealand wine industry is consistent with the Business Growth Agenda. This aims to promote growth in exports to provide enhanced jobs and productivity which will in turn enhance New Zealanders’ wellbeing and standard of living.

The Protocol will encourage a better more trade-facilitating approach to wine regulation around the world to support this growth, including though an up-front improvement in regulatory conditions in the United States – a key market for New Zealand wine.

9. Major and like-minded parties to the treaty:

All signatories to the 2007 Agreement have expressed an intention to become Parties to the Protocol and are taking steps towards signature of the Protocol at the WWTG meeting in March. The United States is still in the process of ratifying the 2007 Agreement, but had indicated a firm commitment to become a full Party to the Protocol once the necessary regulatory changes are effected.

Advantages and Disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

10. The advantages to New Zealand of signing and ratifying the Protocol are:

(a) The Protocol will simplify the export and sale of New Zealand Wines in WWTG markets. For the most part, wine labelled in accordance with the current New Zealand regulations governing the production of wine (the Wine Specifications
Notice 2006) will be able to be sold in all WWTG markets without further impediment.

(b) New Zealand wines produced from multiple grape varietals (e.g. Cabernet, Sauvignon and Merlot) will no longer need to show the names and percentages of every single varietal on the label when sold in the United States, provided they list the varietals making up 85% of the wine and provided they are listed in order of their proportion in the wine. This will bring the United States practice into line with New Zealand standards for varietal labelling, significantly simplifying exports to the United States.

(c) New Zealand wine producers will be able to use the names of New Zealand wine regions that do not correspond to a political boundary when selling wines in the United States. This includes some commonly used regions which currently either cannot be used (e.g. in the case of Marlborough’s “Southern Valleys”), or whose legal status is questionable (e.g. where a NZ region is comprised of a number of political subdivisions). Some regions, for instance Waipara, may be used on the basis they constitute a “delimited area”, but are subject to a number of restrictions. While the benefits cannot be easily estimated, this outcome will allow greater flexibility and legal certainty to New Zealand exporters in marketing niche wines.

(d) The Protocol will also provide certainty that wine regions can be used in future in all WWTG markets, including markets such as Canada where the federal Government does not currently regulate regional labelling for imported wine, but may wish to develop regulations in future.

(e) The Protocol allows for labelling with up to three wine regions provided they are within the same country. Previously multiple region labels were only possible for the United States market if those regions were contiguous or if they were wholly contained within larger regions.

11. There are no significant disadvantages to New Zealand from signing and ratifying the Protocol, as it introduces trade facilitating measures in New Zealand’s export markets and does not require New Zealand to make any changes to domestic regulations. The signature of the Protocol could be perceived by the European Union to further widen the gap between ‘old’ and ‘new world’ wine producers, but equally it will further strengthen and enhance the cohesion of the WWTG members who represent a large and growing proportion of the global production and consumption of wine. The advantages to this action clearly outweigh any minor issues which might arise as a result of that perception.

**Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms**

Legal obligations imposed on New Zealand by the treaty action:

12. Article 4.1(a) of the Protocol would impose an obligation to accept the importation and sale of wine from Parties whose labelled alcohol content is accurate within a tolerance of +/− 1% alc/vol. New Zealand would not be obliged to accept the wine if the label on the bottle does not indicate the alcohol content in the correct taxable category or if it is otherwise not in compliance with the laws of the exporting country. The applicable standard, developed by Food Standards Australia New Zealand (FSANZ), currently states that the alcohol content may vary by as much as +/− 1.5% meaning that New Zealand is already able to fulfill this obligation.
13. Article 4, paragraphs 2—4 of the Protocol would oblige New Zealand to accept the importation and sale of wine from Parties which is labelled with vintage, varietal or wine region claims provided that it meets the various stipulations set out in the Protocol. These include:

(a) The imported wine must comply with the exporting Party’s laws, regulations and requirements regarding labelling of vintages, grape varieties and wine regions (Article 4, sub–paragraphs 2(a)I, 2(b)I, 3(a)I, 3(c)I and 4(a)I);

(b) For single grape varietal claims, 75% of the wine must be composed of grapes of that varietal (Article 4.2(II)). Similarly for claims of a single wine region, 75% of the grapes must be grown in that region (Article 4.3(a));

(c) Vintage claims must be based on 85% content from grapes grown in that year (Article 4.4(a));

(d) For multiple varietal or multiple wine region claims, 85% of the wine must be composed of grapes of the named varietals or regions, and they must be listed in descending order of their proportion in the wine (Article 4 sub–paragraphs 2(b) and 3(c));

(e) For wines claiming a grape varietal or varietals and a wine region, 75% or 85% respectively must be derived from grapes of the named varietal or varietals which are grown only in that region (Article 4.2(c)).

14. New Zealand does not currently regulate claims of vintage and region for imported wines, other than to require under the Fair Trading Act 1986 that such claims must not be misleading or deceptive, must not make false or misleading representations, or be likely to mislead or deceive the average New Zealand consumer of wine. Changes to the Fair Trading Act in the Consumer Law Reform Bill that is expected to be passed in 2013 also include that a person must not make an unsubstantiated claim. New Zealand food safety regulations stipulate for varietal claims that the wine must be composed of at least 75% of the named variety, This regulation is expected to be superseded by the new Food Bill which is currently before Parliament. The Food Bill will not introduce any measures which prevent New Zealand from complying with the Protocol.

15. Under Article 4.3, New Zealand would be obliged to accept the importation and sale of wines labelled with wine regions that are either (a) states, provinces, territories or similar administrative or political subdivisions; (b) delimited grape growing areas; or (c) grape growing regions or localities as defined in the exporting Party’s laws, regulations, or requirements (defined in Article 1(g)). This is unlikely to present any difficulties for New Zealand since New Zealand law does not currently restrict geographical claims other than requiring they meet the requirements of the Fair Trading Act 1986 as noted in 14 above. The law of passing off also provides an additional means that can be used to prevent misrepresentation but would also not pose any issues in respect of the Protocol. In the event that New Zealand decides to bring into force the Geographical Indications (Wines and Spirits) Registration Act 2006, it would be necessary to ensure that WWTG members’ ability to use wine regions on labels under the terms of the Protocol was not impacted by the registration of identical terms as geographical indications.

Reservations

16. The Protocol does not prohibit states from entering a reservation to the Protocol. None of the negotiating States have indicated an intention to make a reservation to the Protocol. New Zealand does not intend to enter any reservation to this Protocol.
Dispute Settlement Mechanism

17. The dispute settlement mechanism of the 2007 Agreement has been incorporated into and made part of the Protocol under Article 3. This mechanism provides that members may seek consultations relating to the provisions of the Protocol if they feel another Party is not compliant. Parties are obliged to endeavor to resolve such disputes bilaterally before reverting to a council of the Parties which can make recommendations about whether there has been a breach of an obligation, and how the dispute should be resolved. Where a breach is not rectified within one year of the council’s recommendation the complainant may be able to suspend certain obligations towards a Party found in breach.

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

18. It is not necessary for the Government to adopt any new measures to implement the Protocol as the obligations above are consistent with existing obligations on wine sold in New Zealand as contained in New Zealand’s Fair Trading Act 1986, and in New Zealand’s food safety regulations and standards.

Economic, social, cultural and environmental costs and effects of the treaty action

19. The Protocol will enhance the ability of the New Zealand wine industry to diversify and grow its export trade, providing enhanced employment and productivity benefits to the New Zealand economy. There are unlikely to be any direct cultural or environmental implications from ratifying the Protocol since it will not change the way wine is treated in the domestic market.

The costs to New Zealand of compliance with the treaty

20. There are unlikely to be any significant costs of compliance with the Protocol, since it will not change the way imported wine is treated in the domestic market.

Completed or proposed consultation with the community and parties interested in the treaty action

21. Throughout the drafting, negotiation and legal verification of the Protocol, the Ministry of Foreign Affairs has consulted closely with the Ministry for Primary Industries, Ministry of Business, Innovation and Employment, and New Zealand Winegrowers, all of whom strongly support the signature and ratification of the Protocol. In addition consultation has been undertaken with New Zealand Customs, the Ministry of Consumer Affairs and the Commerce Commission all of whom agree with the recommendations contained in this national interest analysis.

Subsequent protocols and/or amendments to the treaty and their likely effects

22. There are no obligations created in the Protocol to engage in future negotiations. However the WWTG continues to discuss a number of issues, including minimum residue limits for agrichemicals, sustainability labelling and analytical requirements all of which could form the basis for future agreements in the WWTG.

23. The procedure for amendment in the 2007 Agreement has been incorporated into and made part of the Protocol under Article 3. It is not currently envisaged that there would be any amendments to the Protocol, which would in any case require the agreement of all Parties.
Withdrawal or denunciation provision in the treaty

24. The procedure for withdrawal in the 2007 Agreement has been incorporated into and made part of the Protocol under Article 3. Under that procedure a Party may withdraw by written notice to the Depositary. Withdrawal would take effect six months after the date the notification is received.

Prepared by: Ministry of Foreign Affairs and Trade
Date: January 2013
International treaty examination of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Amended by the 2010 Protocol

Report of the Foreign Affairs, Defence and Trade Committee

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Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Amended by the 2010 Protocol

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Amended by the 2010 Protocol, and recommends that the House take note of its report.

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters authorises the tax authorities of the signatory countries to assist each other regarding the exchange of information, unpaid tax recovery, and service of documents. It provides a means of significantly increasing New Zealand’s ability to detect and prevent tax avoidance and evasion without the cost and resources that would be required for a bilateral agreement. New Zealand is one of 54 countries that have signed the convention. New Zealand has existing tax treaties with 27 of the signatory countries.

We note that as a signatory, New Zealand has some mechanisms available to avoid working with particular countries should it wish. It can oppose other countries’ entrance into the convention, and it can also refuse information requests, for example on human rights grounds. There are also safeguards in the convention: a country does not have to comply with a request if it is at a variance with that country’s law, for example, or if the request will lead to discrimination.

We have no other matters to bring to the attention to the House. The national interest analysis for the convention is appended to this report.
Appendix A

Committee procedure
The international treaty examination of the Multilateral Convention on Mutual Administrative Tax Matters, Amended by the 2010 Protocol, was referred to the committee on 14 June 2013. We met on 1 August and 8 August 2013 to consider the agreement, and we heard evidence from the Inland Revenue Department.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
National Interest Analysis

Executive summary

1. New Zealand signed the Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol (the Convention) on 26 October 2012. Once the Convention enters into force for New Zealand, it will enable Inland Revenue to engage in the following forms of cooperation on tax matters with the tax authorities of other signatory countries:
   - exchange of information;
   - assistance in recovery of tax; and
   - service of documents

2. Exchange of information treaty arrangements enable tax authorities to assist each other in the detection and prevention of tax evasion and tax avoidance. In the absence of exchange of information arrangements, tax authorities is more limited in verifying whether activities and income conducted or derived offshore have been correctly reported for tax purposes. New Zealand has been entering into exchange of information arrangements bilaterally in double tax agreements (DTAs) since 1947 and in tax information exchange agreements (TIEAs) since 2008. Fifty-five DTAs and TIEAs have been signed to date. New Zealand therefore has considerable experience in administering exchange of information treaty provisions.

3. Similarly, assistance in recovery treaty arrangements enable tax authorities to assist each other in recovering unpaid taxes from absconding taxpayers. In the absence of exchange of information arrangements, tax authorities generally cannot recover unpaid taxes from a person who resides offshore. New Zealand has been entering into assistance in recovery arrangements bilaterally in DTAs since 2004 and currently has five such arrangements in force.

4. Assistance in the service of documents is essentially intended to support assistance in recovery, by ensuring that documents such as notices of assessment or reminders actually reach the taxpayer concerned. New Zealand has no experience in this form of assistance. However, international experience indicates that, in practice, service of documents is of itself successful in resulting in payment of unpaid tax.

5. In 1988, the Convention opened for signature by member countries of the Organisation for Economic Co-operation and Development (OECD) and of the Council of Europe. In 2010, the Convention was amended to enable any country (not just OECD or Council of Europe member countries) to sign. This development means that there are clear advantages to OECD member countries signing the Convention – in particular, networks of assistance arrangements can be extended without the time-consuming and expensive process of negotiating and bringing into force bilateral DTAs and TIEAs. Signing the Convention will also demonstrate New Zealand’s commitment to tax cooperation.
6. Signing the convention will require New Zealand to contribute to the OECD’s annual costs of maintaining a coordinating body to oversee the Convention. The OECD advises that the annual contribution is approximately 5,000 euros per annum. This cost will be met by Inland Revenue from within existing baselines.

7. The text of the Convention is attached as Annex A. A schedule of the countries that have signed the Convention to date is attached as Annex B.

**Nature and timing of the proposed treaty action**

8. The Convention was signed by New Zealand on 26 October 2012. After completing all domestic procedures for the ratification, New Zealand will deposit with the Secretary-General of the OECD\(^1\) an instrument of ratification expressing its intention to be bound by the provisions of the Convention. The Convention will enter into force for New Zealand three months after the deposit of the instrument of ratification. The procedures relating to signature, ratification and entry into force are set out at Article 28 of the Convention.

9. Before ratification, the Convention must go through the Parliamentary treaty examination process and must be incorporated into New Zealand domestic law (by means of an Order in Council made pursuant to section BH 1 of the Income Tax Act 2007).

10. Given that the Inland Revenue Acts\(^2\) are currently drafted in contemplation of bilateral tax treaties, some minor legislative amendments may need to be made to provisions of those Acts to ensure that they will operate correctly in the context of a multilateral treaty.

11. It is expected that these steps will be completed, and that the Convention will enter into force for New Zealand, by mid-2013.

**Reasons for New Zealand becoming party to the treaty**

**International developments**

12. The OECD website describes the Convention as follows: “The Convention facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion.” Three forms of cooperation in tax matters can be established under the Convention:

- exchange of information;
- assistance in recovery of tax; and
- service of documents.

13. In the absence of a treaty for cooperation in tax matters, tax authorities are generally constrained by the international principle that countries do not assist each other in the enforcement of tax laws. The New Zealand courts have confirmed that this principle

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\(^1\) Pursuant to Article 2(3) of the Convention, the Secretary-General of the OECD is one of two official depositaries. The other is the Secretary-General of the Council of Europe.

\(^2\) The Inland Revenue Acts are the Acts administered by Inland Revenue. They are listed in a schedule to the Tax Administration Act 1994.
applies in New Zealand. The secrecy provisions of the Tax Administration Act 1994 also effectively limit cooperation on tax matters with other jurisdictions unless authorised by a treaty.

14. However, New Zealand, like most countries, taxes its residents on their worldwide income (that is, on all income, whether derived from New Zealand or elsewhere). Globalisation has increasingly removed many of the obstacles to cross-border exchanges of goods and services and to the movement of persons, technology and capital. Residents therefore have considerable scope for conducting business and other income-earning activities in other jurisdictions. The particular benefit of a treaty for cooperation in tax matters is that it empowers tax authorities to ensure that their residents are correctly reporting all worldwide income and activities, and to facilitate improved collection of unpaid tax from absconding taxpayers.

15. Most developed countries, and many developing countries, have therefore for many years been building networks of treaty arrangements that provide for cooperation between tax authorities. The OECD has taken a lead role internationally in promoting such cooperation, and in developing treaty mechanisms and guidelines to ensure that the cooperation is effective. The traditional instrument promoted by the OECD for this purpose is the (bilateral) double tax agreement (DTA). However, DTAs are complex technical agreements that deal with a wide range of tax issues other than cooperation, and they are time-consuming, resource-intensive and expensive to negotiate, bring into force and maintain.

16. In 1988, the OECD and Council of Europe jointly developed the Convention as a multilateral alternative for OECD and Council of Europe member countries. However, it was largely ignored at the time, for a number of reasons, including the fact that OECD and European countries already had substantive networks of bilateral DTAs in place between them, and bilateral DTAs tended to be preferred because they provided a range of benefits in addition to tax cooperation. In addition, assistance in recovery provisions generally only started featuring in DTAs from 2003, and so in 1988 they were relatively novel (particularly for non-European Union countries). Many countries (including New Zealand) preferred to see how well the multilateral approach to tax cooperation worked for other countries before committing themselves to it.

17. International concerns over lack of exchange of information have been building for some time. Because DTAs are generally only appropriate for major trading and investment partners, and the Convention was only open to signature by OECD and Council of Europe member countries, the OECD in 2001 developed the tax information exchange agreement (TIEA). It was intended that this instrument, which, unlike a DTA, deals only with exchange of information, could be used to establish bilateral cooperation arrangements with jurisdictions such as tax havens. However, a number of jurisdictions, including tax havens, were generally reluctant to enter into such agreements.

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4 Section 81 of the Tax Administration Act 1994 imposes the requirement to maintain secrecy. Section 86 of the Act contains the exception for treaty authorisation.
5 The OECD’s “Model Tax Convention on Income and on Capital” forms of the basis of most DTAs entered into worldwide, and the OECD has also produced a comprehensive commentary with a view to ensuring uniform interpretation and application of DTA provisions. The UN has also produced a model tax convention. However, apart from a few departures that give a more favourable allocation of taxing rights to developing countries in some key areas, the UN model largely adopts the OECD model tax convention.
18. The international concerns over lack of exchange of information were brought to a head by the recent global financial crisis. At the same time as governments faced declining tax revenue, many found themselves bailing out financial institutions that had been using schemes involving unregulated offshore finance centres to deprive those very governments of tax revenue. In addition, a number of scandals broke in the media that revealed significant levels of tax evasion by (often high-profile) individuals using international finance centres. A key contributing factor in these problems was lack of exchange of information in tax matters by the jurisdictions in which those international finance centres were located.

19. This resulted in an intense international focus on requiring a change of stance from international finance centres, tax havens and other jurisdictions that had previously refused to cooperate on exchange of information. The G20 led this action. G20 leaders made clear statements that they will deploy sanctions against non-complying jurisdictions. In addition, the G20 established an international organisation, the Global Forum on Transparency and Exchange of information for Tax Purposes (the Global Forum), to conduct peer reviews of countries to ensure compliance. In response, virtually all international finance centres, tax havens and other “secrecy” jurisdictions have now committed to what is known as the “international standard for transparency and exchange of information in tax matters”.

20. Building appropriate treaty networks is a key aspect of implementing the international standard. However, building treaty networks on a bilateral basis can be a time-consuming, resource-intensive, expensive and (particularly for smaller jurisdictions) onerous process. This has renewed interest in the Convention as a means for countries to quickly establish and/or expand their treaty networks. In 2010, the Convention was updated to ensure that it reflects the latest developments to the international standard, and it was also opened to signature by all countries (not just OECD and Council of Europe member countries). The OECD has requested all of its member countries to sign the Convention as quickly as possible. This would send an appropriate signal about the commitment of all OECD member countries to the international standard. It would also ensure that non-OECD jurisdictions that sign the Convention can be assured of establishing a wide network of assistance arrangements with developed countries at a single stroke. A total of 38 countries (including 24 OECD member countries) have signed the Convention to date, with many more expected to sign. Australia signed the Convention in November 2011.

New Zealand’s position

21. Inland Revenue has long experience in administering bilateral treaties for cooperation in tax matters, but has no previous experience in entering into multilateral tax conventions as these are unusual internationally. The Legal Division of the Ministry of Foreign Affairs and Trade, which advises on and oversees all New Zealand treaty actions, has therefore been closely consulted in respect of, and agrees with, the proposal for New Zealand to sign the Convention.

22. Reflecting New Zealand’s experience in administering treaty arrangements for cooperation in tax matters, Inland Revenue has a very active exchange of information work programme. We have been entering into exchange of information arrangements since 1947 (and have signed 37 DTAs and 18 TIEAs) and into assistance in recovery arrangements since 2004 (with five arrangements currently in force – four in DTAs and another in a stand-alone bilateral tax recovery convention). These treaty provisions are all administered by Inland Revenue.
23. Reflecting the general international experience, Inland Revenue has found exchange of information provisions to be critical to its efforts to detect and prevent tax evasion and tax avoidance. A number of court decisions have examined and upheld key aspects of New Zealand’s exchange of information policy and practice. Both internationally and in New Zealand, assistance in recovery provisions have proven to be very effective in ensuring that absconding taxpayers pay unpaid taxes.

24. However, cooperation treaties can be concluded only with jurisdictions that are willing to engage in such cooperation. Inland Revenue therefore strongly supports the international initiatives to ensure other countries’ full compliance with the international standard. In general, signing the Convention is one way in which New Zealand can demonstrate its commitment and support to those international efforts.

25. Conversely, failure to sign the Convention may send a signal that New Zealand does not support the current international initiatives to promote exchange of information and other forms of cooperation. Only ten OECD countries (including New Zealand) are yet to sign the Convention. If it does not sign the Convention, New Zealand risks being seen as unsupportive of the international approach to countering tax evasion and tax avoidance.

26. A key practical benefit for New Zealand of ratifying the Convention is a reduction in the future resource and administrative costs of having to negotiate new bilateral treaties or update existing ones. More specifically:

- **Where New Zealand has no existing DTA or TIEA**
  Of the 38 countries that have signed the Convention to date, 14 are countries with which we do not currently have a DTA or TIEA. Becoming party to the Convention will therefore significantly expand New Zealand’s network of assistance arrangements. As other countries sign the Convention, our network will continue to expand accordingly.

- **Where New Zealand has an existing DTA**
  In respect of those countries that have signed the Convention, and with which New Zealand already has a DTA in place, in 18 cases New Zealand can ensure that its existing exchange of information arrangements in those DTAs are upgraded to the latest international standard (given that the Convention represents the most up-to-date and prescriptive wording).

- **Where New Zealand has no existing assistance in recovery arrangements**
  Given that only a limited number of New Zealand’s DTAs, and none of its TIEAs, provide for cooperation in tax matters other than in the form of exchange of information, New Zealand can effectively update those existing treaty agreements to include assistance in recovery and service of documents without any need to negotiate amendments.

27. Note that where New Zealand already has exchange of information and/or assistance in recovery under an existing bilateral treaty, the OECD multilateral treaty will in some cases result in a second exchange of information and/or assistance in recovery mechanism. However, this duplication of mechanisms in place would not create problems. In practice, information could be exchanged under either treaty instrument.
Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Exchange of information

28. In the absence of exchange of information, Inland Revenue is more limited in investigating commercial and financial transactions conducted in other jurisdictions and to verify whether taxpayers are correctly reporting income-earning activities conducted in those jurisdictions. Exchange of information arrangements in a treaty enable Inland Revenue, when auditing or investigating the tax affairs of a particular taxpayer, to request information from the tax authority of the treaty-partner jurisdiction. The requested tax authority is then obliged under the treaty to use its information-gathering powers to obtain the requested information and to provide it to Inland Revenue.

29. Any information that is foreseeably relevant to the tax enquiry can form the subject of the request, but in practice the three most common forms of requested information are:

- accounting information (such as books of account, contracts and invoices);
- financial information (such as bank account transactions); and
- ownership information (that is, information on the legal and beneficial ownership of commercial and legal entities).

30. Given the personal and commercial nature of much of the information held by tax authorities, strict secrecy rules typically apply to ensure that such information is not divulged to the wider community.\(^6\) Exchange of information arrangements override such secrecy rules but contain within themselves a number of safeguards to ensure that exchanged information is only disclosed to authorise persons, and is only used for authorised purposes.

31. As noted above, Inland Revenue has a long history (over 60 years) of applying exchange of information treaty arrangements in practice. It currently has signed 55 treaty arrangements for exchange of information, and a number of court decisions have confirmed key aspects of Inland Revenue’s exchange of information policy and practice. Inland Revenue has a very active exchange of information programme, and it therefore now has considerable experience to draw upon in evaluating the benefits of exchange of information. That experience clearly shows that exchange of information is an effective tool in the detection and prevention of tax evasion and tax avoidance. It also shows that the benefits of being able to obtain information from other countries far outweigh the costs of complying with the reciprocal treaty obligation to obtain and provide information to other countries.

32. Given the growing importance of exchange of information internationally, treaty arrangements between developed countries have developed to encompass forms of exchange of information other than on request. Such other forms of information exchange include:

- automatic exchanges (in which tax authorities agree to provide certain generic types of information such as non-resident withholding tax deducted from interest payments):

\(^6\) Inland Revenue, as noted above, is subject to comprehensive secrecy rules pursuant to section 81 of the Tax Administration Act 1994.
spontaneous exchanges (in which a tax authority will pass on information uncovered during an investigation that it considers of interest to the other tax authority):

- the conduct of simultaneous tax examinations (in which, for example, two tax authorities will investigate the affairs of a multi-national company at the same time, and share the information discovered):

- and industry-wide exchanges.

33. Taxpayers who are intent on undertaking tax evasion or tax avoidance can generally be expected to attempt to exploit gaps in the network. Therefore, it is clear that the wider the network of exchange of information arrangements that a country has in place, the more effective it will be in defeating tax evasion and tax avoidance. As noted above, of the 38 countries that have signed the Convention to date, 14 are countries with which New Zealand does not have existing exchange of information arrangements. Signing the Convention will therefore enable New Zealand to widen its network by a factor of around 25 percent, without having to undertake separate negotiations with individual countries. As additional countries sign the Convention, the New Zealand network will continue to expand.

34. The international focus on exchange of information during the last decade resulted in the OECD updating its standard wording for treaty provisions, to ensure that they are sufficiently prescriptive so as to operate effectively. The new standard OECD wording was then adopted by the United Nations (UN). When the Convention was amended in 2010, to open it up for signature by all countries, the wording of the exchange of information provisions was also upgraded to the latest OECD and UN wording. A particular advantage for New Zealand in signing the Convention is that, even where bilateral exchange of information arrangements are already in place under a DTA, in 18 of those cases the arrangements will be updated to the international standard without any need to negotiate amendments to DTAs.

35. The only identifiable disadvantages of signing the Convention are that New Zealand will be required to respond to requests for assistance from other countries and will be required to contribute annually toward the OECD’s cost of maintaining a co-ordinating body to oversee the Convention. The OECD advises that this cost is around 5,000 euros per annum.

36. In respect of the first of these items, Inland Revenue already has 55 exchange of information treaty arrangements, has considerable experience in processing requests made under those arrangements, and has efficient systems in place. The administrative costs of processing additional requests under the Convention are therefore expected to be minimal.

37. In respect of the annual contribution, the cost will be met by Inland Revenue from within existing baselines. For New Zealand, the on-going annual cost is expected to be offset by on-going benefits in terms of reduced tax evasion and tax avoidance and improved collection of unpaid taxes. In addition, signing the Convention will provide an upfront benefit to New Zealand from the reduced need to negotiate and give effect to DTA amendments and TIEAs in respect of mutual assistance.

**Other forms of assistance**

38. Assistance in recovery provisions enable a tax authority to ask the tax authority in a treaty-partner country to use its debt-collection powers to collect unpaid tax from an
absconding taxpayer. For example, New Zealand already has assistance in recovery provisions in place in its DTA with Australia. If a New Zealand taxpayer moves to Australia and leaves behind an unpaid tax debt, Inland Revenue can ask the Australian Taxation Office to use its debt-recovery powers to collect the debt on our behalf and to remit the payment back to New Zealand.

39. Assistance in recovery provisions have some history within the European Union, but for most countries only began being commonly adopted within the last ten years (usually in DTAs). New Zealand entered into its first assistance in recovery arrangement in 2004 and now has five such arrangements in place. Because this form of assistance is relatively novel, it has taken some time to build up experience of this arrangement working in practice. The experience gleaned to date, both from the operation of New Zealand’s assistance in recovery provisions and as generally advised by other countries, is that it works very well in practice. In many cases, writing to an absconding taxpayer to advise that assistance in recovery provisions will be invoked has proven to be sufficient by itself to elicit immediate payment. When the provisions are actually invoked, the process of collecting the unpaid tax has worked extremely well.

40. Assistance in the service of documents is essentially intended to support assistance in recovery. It can be used to ensure that documents such as notices of assessment or reminders actually reach the taxpayer concerned. This ensures that enforcement steps are not taken against a taxpayer who is genuinely ignorant of the tax claim. New Zealand has no experience in this form of assistance. However, international experience indicates that, in practice, service of documents is of itself successful in resulting in payment of unpaid tax.

41. A key advantage of signing the Convention is that New Zealand, which currently has only a modest network of assistance in recovery arrangements, and no service of documents arrangements, can significantly widen its network without any need to renegotiate amendments to existing DTAs.

42. The only identifiable disadvantage of signing the Convention is that New Zealand will be required to respond to requests for assistance from other countries. Again, Inland Revenue has experience in processing such requests and has efficient systems in place. In addition, as noted above, international and New Zealand experience to date is that large numbers of requests do not need to be made. The administrative costs of processing additional requests under the Convention are expected to be marginal and will be met by Inland Revenue within existing baselines.

Wider (international) considerations

43. New Zealand is an OECD member country. Although there is no legal obligation on New Zealand to support OECD initiatives, in this case New Zealand does strongly support the initiative to promote cooperation between tax authorities. (It is in New Zealand’s overall interests that other jurisdictions, which have traditionally opposed effective exchange of information, will enter into exchange of information arrangements with us.) The act of signing the Convention will provide a positive signal of that support to the international community.

44. The advantages outlined above for the treaty entering into force outweigh the identified disadvantages. Accordingly, it is in New Zealand’s overall interests to enter into the treaty.
45. The obligations that will arise under the Convention will fall on Inland Revenue. The Convention will not give rise to obligations for taxpayers or for other Government agencies.

46. The key obligation that will be imposed on Inland Revenue under the Convention will be to respond to requests for assistance from other signatory countries as they arise. In the case of a request for information, if Inland Revenue does not already hold the information, it will be obliged to use its information-gathering powers to obtain and forward that information to the treaty-partner country in a timely manner. Similarly, for assistance in recovery requests, Inland Revenue will be obliged to use its debt-recovery powers to collect unpaid tax debt and to forward the payments to the treaty-partner country. Service of documents likewise involves an obligation on Inland Revenue to use its powers to ensure that tax notices and legal documents are served on relevant taxpayers.

47. As noted, Inland Revenue already has considerable experience in all forms of exchange of information and has in recent years been building experience in assistance in recovery. As a result, efficient systems for responding to incoming requests for assistance have been developed. Therefore, although entering into treaty arrangements for cooperation in tax matters gives rise to obligations on New Zealand to respond to incoming requests, the administrative costs imposed on Inland Revenue when responding to those requests have not been onerous. The additional obligations that would arise from signing the Convention are expected to be minimal.

48. A subsidiary obligation that will arise under the Convention is for Inland Revenue to maintain strict confidentiality in respect of the information that it may obtain under the exchange of information provisions of the treaty. Such information may only be disclosed to authorised persons, and only for authorised purposes. This obligation already applies to Inland Revenue under domestic law (section 81 of the Tax Administration Act 1994).

49. The exchange of information is the core form of assistance established under the Convention and cannot be reserved against. The other forms of assistance – assistance in recovery and service of documents, set out in Article 30(1) – can be reserved against, but I understand that in practice very few countries are entering such reservations. New Zealand does not intend to make any significant reservations at the time of ratification.

50. The Convention does not contain a dispute-resolution provision.

51. Signature of the Convention by New Zealand will not give rise to obligations to or in respect of the Cook Islands, Niue or Tokelau.

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

52. As is currently the case for DTAs and TIEAs, the provisions of the Convention will need to be given the force of law in New Zealand.

53. Section BH 1 of the Income Tax Act 2007 authorises the making of an Order in Council that ensures that assistance arrangements in a DTA will have effect despite anything in the Inland Revenue Acts or in certain other prescribed Acts. (Such an override is necessary, for example, to ensure that Inland Revenue’s strict secrecy provisions do not become an obstacle to the exchange of information.) The reference to “double tax
agreement” in section BH 1 expressly extends to other bilateral treaties, such as TIEAs (by virtue of its definition). However, section BH 1 does not contemplate (and therefore may not authorise) entering into arrangements for assistance in tax matters in a multilateral context.

54. A review is currently being undertaken to determine whether section BH 1 needs to be amended to enable it to apply to the Convention. Options being considered are (i) whether to extend the section BH 1 Order-in-Council-making power to ensure that it applies to the Convention, or (ii) to expressly refer to the Convention in section BH 1 without any need for a subsequent Order in Council. Other consequential amendments to other aspects of the Inland Revenue Acts may be needed to ensure that the Convention’s provisions will continue to work correctly.

Economic, social, cultural and environmental costs and effects of the treaty action

55. No social, cultural or environmental effects are anticipated.

56. The overall economic effects are expected to be favourable. The Convention will enhance Inland Revenue’s ability to detect and prevent tax evasion and tax avoidance and to collect unpaid tax from absconding taxpayers.

The costs to New Zealand of compliance with the treaty

57. The Convention will not impose any fiscal costs on New Zealand or compliance costs on taxpayers, other than an annual contribution to the OECD’s cost of maintaining a coordinating body to oversee the Convention. The OECD advises that the annual contribution is approximately 5,000 euros per annum. This cost will be met by Inland Revenue from within existing baselines.

58. The Convention will also give rise to administrative costs for Inland Revenue, in complying with requests for assistance by other countries. However, as noted, New Zealand has experience in dealing with such requests and has efficient systems in place. The additional administrative costs from requests that will arise under the Convention are expected to be marginal and will be met by Inland Revenue from within existing baselines.

Subsequent protocols and/or amendments to the treaty and their likely effects

59. As noted above, the Convention was amended by the OECD in 2010 (to open it to signature by all countries, and to upgrade the wording of the exchange of information provisions to the latest international standard). No further protocols are envisaged.

Completed or proposed consultation with the community and parties interested in the treaty action

60. The Treasury and the Ministry of Foreign Affairs and Trade have been consulted and agree with the proposed treaty action.

Withdrawal or denunciation provision in the treaty

61. Article 31 of the Convention provides that any party may, at any time, denounce the Convention by means of a notification addressed to one of the depositaries. (The official depositaries are the Secretaries-General, respectively, of the OECD and of the Council of Europe.) Denunciation becomes effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the depositary.
62. Any party that denounces the Convention remains bound by the obligation to maintain confidentiality in respect of all information that it has received from treaty-partner countries.

**Agency disclosure statement**

63. Inland Revenue has prepared this extended national interest analysis. It has undertaken an analysis of the issue of implementing the Convention, and the legislative and regulatory proposals arising from that implementation. It has considered all other relevant options in that process, including the option of not signing the Convention. Inland Revenue is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis.

64. New Zealand has long experience in administering bilateral treaty arrangements for cooperation in tax matters, but has no previous experience in entering into multilateral tax conventions as these are unusual internationally. The Legal Division of the Ministry of Foreign Affairs and Trade, that has expertise in respect of multilateral treaties and which advises on and oversees all New Zealand treaty actions, has therefore been closely consulted in respect of, and agrees with, the proposal for New Zealand to sign the Convention.

65. Signing the Convention will result in a requirement for New Zealand to contribute annually toward the OECD’s cost of maintaining a co-ordinating body to oversee the Convention. The OECD advises that this cost is around 5,000 euros per annum. This cost will be met by Inland Revenue from within existing baselines. For New Zealand, the ongoing annual cost is expected to be offset by on-going benefits in terms of reduced tax evasion and tax avoidance and improved collection of unpaid taxes. In addition, signing the Convention will provide an upfront benefit to New Zealand from the reduced need to negotiate and give effect to DTA amendments and TIEAs in respect of mutual assistance.

66. There is a question whether and specific legislative amendment in respect of the implementation of a multilateral treaty is needed. DTAs and TIEAs are implemented into New Zealand domestic law by Order in Council; this is authorised by section BH 1 of the Income Tax Act 2007. The Order in Council provides that the DTA and TIEA provisions will override the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993; this is necessary to give effect to the terms of the DTA or Protocol. The provisions of the Convention will similarly need to be implemented into New Zealand domestic law. A review is currently being conducted to determine whether section BH 1 will also enable an Order in Council to be made in respect of the Convention. If not, a legislative amendment will first need to be made to section BH 1.

67. Inland Revenue is of the view that the policy options considered will not impose additional costs on businesses; impair private property rights or market competition; adversely impact the incentives on businesses to innovate and invest; or override fundamental common principles.

Dr Craig Latham
Group Manager
Policy Advice Division
Inland Revenue
3 August 2012
International treaty examination of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation

Report of the Foreign Affairs, Defence and Trade Committee

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International treaty examination of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation, and recommends that the House take note of its report.

Introduction

The Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation is a legally binding international trade agreement. It is a comprehensive agreement which covers all items of existing trade, and provides for the eventual removal of all tariffs and quotas. It contains “most favoured nation” clauses to ensure New Zealand benefits from any future trade agreement that the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu enters into, and an air transport agreement which removes restrictions on the number of daily flights between New Zealand and third markets. Initial duty savings are projected to be approximately $40 million, increasing to $80 million after four years. The New Zealand Institute of Economic Research’s economic analysis suggests that the agreement could add as much as $500–600 million to New Zealand’s gross domestic product.

Submissions

Most of the submissions we received represented New Zealand’s major exporting industries, which were very supportive of the agreement, and the opportunities it will bring to develop our trade with the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. Submitters representing major dairy, red meat, and horticulture exporters said that the agreement’s phased elimination of trade barriers is hugely beneficial to their industries. The agreement will afford opportunities for the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in areas such as manufacturing and services.

Dairy industry submitters noted the agreement phases out the current tariffs of between 5 and 20 percent on trade valued at USD$242 million, leading ultimately to annual savings exceeding USD$20 million annually once tariffs are completely eliminated. Most of these savings will be gained immediately upon the agreement’s entry into force.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu is a key market for New Zealand’s red meat sector, importing approximately NZD$208 million worth of products in the year to December 2012. The current tariffs on beef and sheep meat exports are 6 and 15 percent respectively, and amount to approximately NZD$18 million per year.
The agreement will phase out these tariffs within two years for beef and four years for sheep meat.

Horticulture submitters noted the immediate elimination of a 20 percent tariff on New Zealand apple exports of about NZD$21 million once the agreement enters into force.

Submitters were pleased that deals were reached to phase in coverage of liquid milk and fresh deer velvet, which are both sensitive products, even if little trade in these products can begin immediately; we heard that this is preferred to not including these products at all.

One submitter expressed concern about the implications of the state contracting a private-sector employee, who could potentially have a conflict of interest in the negotiations, to conduct them on its behalf, and that the agreement could constrain New Zealand’s ability to act in its national interest because of its obligations under the agreement. We note that all of New Zealand’s negotiations with the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu are conducted on the premise that it is an economic entity. In these circumstances it was appropriate that the negotiations were not carried out by the Ministry of Foreign Affairs and Trade, but by a private sector negotiator with relevant skills and experience. This is not considered to be a precedent for the future.

We asked whether the agreement would become futile if further dairy contamination scares were to threaten New Zealand’s “100% Pure” brand, and heard that all dairy businesses understand the importance of product integrity. We heard that the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu has not been affected by the recent contamination scare.

We wish to thank all those involved in the negotiations for their efforts in achieving such a comprehensive, high-quality agreement. We would also like to thank the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu authorities for their willingness to enter into such an agreement, and we look forward to the opportunities it will create for the benefit of our two countries.

We have no other matters to bring to the attention to the House. The national interest analysis for the agreement is appended to this report.

**Green Party minority view**

The Green Party opposes the agreement as it has opposed previous free trade agreements of the same kind that have come before the committee.

The nature and structure of recent free-trade agreements are flawed. The fundamental premise on which they rest—comparative advantage among national economies within an open global economy—is flawed when the global economy has an ecological overshoot of 50 percent.

The Government contends that “one of the aims of New Zealand’s trade agreements is to ensure that the outcomes contribute to sustainable development and environmental objectives, consistent with the government’s 2001 policy framework.” In our judgement the analysis of regulatory, product, structural and scale effects on these environmental objectives is not conclusively proven.

The agreement is the product of an unusual, almost weird, political arrangement. The negotiating partner is not a sovereign state. The New Zealand negotiator was not a public official. The agreement was not signed by a New Zealand public official. Such a practice may be without precedent in New Zealand.
AGREEMENT BETWEEN NEW ZEALAND AND THE SEPARATE CUSTOMS TERRITORY OF TAIWAN

In particular, the New Zealand Government, acting on behalf of the state, contracted an individual from the commercial sector as negotiator, and a commercial entity as signatory. The potential for conflict of interest unavoidably arises. It is not clear that a proper tender process was put out by the Government before an appointment was made, notwithstanding the fact that this committee has raised the matter in principle over the past year.

A majority of the committee judges the unusual arrangements to be appropriate to the situation of Taipei, but it raises issues that have not been dealt with satisfactorily. If such a practice is to recur, there may be a need for protocols to ensure full transparency over early declarations of any conflict of interest.
Appendix A

Committee procedure
The international treaty examination of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation was referred to the committee on 11 July 2013. The closing date for submissions was 1 August 2013. We received and considered 11 submissions from interested groups and individuals. We heard eight submissions.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis

Executive summary

(i) Background

New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as “Chinese Taipei”) signed the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (ANZTEC) and an Air Transport Agreement (ATA) in Wellington in July 2013.

Negotiations on ANZTEC were commenced in May 2012 following the completion of independent Feasibility Studies and a Joint Study by the New Zealand Commerce and Industry Office in Taipei and the Taipei Economic and Cultural Office in Wellington. These studies concluded that a high quality economic cooperation agreement (ECA) between the two parties was feasible, and would bring significant benefits to both sides.

Three rounds of formal negotiation and one technical intersessional meeting were held in Wellington and Taipei and negotiations concluded substantively in Wellington in September 2012.

This National Impact Analysis (NIA) assesses ANZTEC and ATA from the perspective of their impact on New Zealand and New Zealanders. The NIA does not seek to address the impact of the agreements on Chinese Taipei.

(ii) Reasons for New Zealand to become a party to the agreements

The principal gains for New Zealand in entering into the ANZTEC and the ATA are:

• Increased access and improved quality of access for New Zealand trade and investment, and liberalised air services arrangements, which will contribute to growth, jobs and higher living standards;

• The establishment of a framework through ANZTEC for resolving trade and investment issues in the future;

• The establishment of a framework through ANZTEC for discussing, cooperating and resolving issues on trade and labour, and trade and environment;

• The establishment of a framework through ANZTEC for discussing, and cooperating on indigenous peoples’ issues;

• The support provided by ANZTEC to New Zealand’s wider trade policy interests in strengthening economic integration in the Asia-Pacific and multilaterally; and

• ANZTEC’s contribution to raising the commercial profile for New Zealand companies in Chinese Taipei.

(iii) Advantages and disadvantages to New Zealand in becoming a party to the agreements
Advantages

New Zealand will benefit from the removal over time of tariffs on 100% of New Zealand’s current exports to Chinese Taipei. Once the agreement is fully implemented, this will equate to an estimated annual duty saving of NZ$75.8 million\(^1\) based on current trade.

For New Zealand goods exports that meet the required rules of origin, market access gains include:

- On entry into force, tariffs on 44% or NZ$432.5 million of New Zealand’s current exports to Chinese Taipei will be eliminated, with an estimated annual duty saving to New Zealand exporters of NZ$40.3 million.
- Virtually all New Zealand dairy exports and all New Zealand apple, cherry and wine exports will be duty free on entry into force.
- All duties on New Zealand beef exports to Chinese Taipei (worth NZ$120.3 million in 2011) will be eliminated over two years, with an estimated annual duty saving to New Zealand of NZ$8.7 million.
- All duties on New Zealand kiwifruit exports to Chinese Taipei (worth NZ$73.8 million in 2011) will be eliminated over three years, with an estimated annual duty saving to New Zealand of NZ$14.7 million.
- By the end of the first four years 98.7% of current exports to Chinese Taipei will be duty free.
- By the end of eight years 99.5% of current exports to Chinese Taipei will be duty free.
- By the end of 12 years, all tariffs on liquid milk and fresh deer velvet will be eliminated. Over this 12 year transitional period New Zealand will enjoy specific tariff quotas with expanding volumes and duty free treatment within the quotas. New Zealand exporters of liquid milk and deer velvet will still have access to Chinese Taipei’s WTO global tariff quota arrangements.
- A transitional specific tariff quota (CSTQ) has been established for New Zealand fresh deer velvet exports to Chinese Taipei. The initial quota level is set at 1,000 kilograms and expands to 3,750 kilograms by year 11 of the agreement. All trade occurring within the tariff quota is duty-free and tariffs on all exports of fresh deer velvet will be eliminated by year 12. Improved access to this market increases the small number of New Zealand velvet export markets, diversifying risk for our exporters.
- A transitional CSTQ has also been established for New Zealand liquid milk exports to Chinese-Taipei. The initial quota volume is 5,500 tonnes, more than 100% of current New Zealand liquid milk exports to Chinese Taipei. All trade occurring within the tariff quota is duty-free and tariffs on all exports of liquid milk will be eliminated by year 12 of the agreement.
- For both liquid milk and fresh deer velvet, New Zealand exporters will retain the right to also trade under Chinese Taipei’s WTO global tariff quotas.

\(^1\) Based on Chinese Taipei import statistics for 2011.
The model for evidencing origin is based on New Zealand’s preferred approach of self-certification by the exporter. Unlike other models, this does not impose extra costs for exporters.

New Zealand will benefit from a high quality cross-border trade in services outcome which builds on the commitments made by Chinese Taipei in the WTO General Agreement on Trade in Services (GATS). In particular, Chinese Taipei has agreed to additional commitments on trade distorting domestic regulations.

Investment rules have been agreed, which are designed to promote investment flows between New Zealand and Chinese Taipei. New Zealand investors will benefit from the agreed protections to investment, while the agreement still allows the New Zealand government the right to regulate for legitimate purposes.

ANZTEC includes services and investment market access commitments based on New Zealand’s preferred negative list format that exceed Chinese Taipei’s commitments under the GATS, provide new market access opportunities for New Zealand businesses in the education sector, and safeguard the competitive position of New Zealand businesses relative to businesses from other countries in the future. The ratchet mechanism incorporated into the agreement also means that Chinese Taipei’s commitments can only be liberalised, except in the relatively limited situations where specific exceptions to the ratchet were included.

New Zealand will benefit from provisions to facilitate the movement of business people in Chinese Taipei.

This is the first time that an agreement of this type includes substantive chapters on trade and labour, trade and environment, and indigenous people. ANZTEC includes a commitment to immediate liberalisation of 132 products deemed to support green growth and sustainable development objectives. It will support efforts in the WTO and APEC processes to liberalise goods of this nature.

The ATA removes restrictions on the frequency of flights between destinations in New Zealand and destinations in Chinese Taipei, and at intermediate and beyond points.

ANZTEC contains measures relating to customs procedures and cooperation, sanitary and phytosanitary measures, and technical barriers to trade that enhance New Zealand’s WTO rights and which should reduce barriers to doing business with Chinese Taipei.

ANZTEC retains New Zealand’s WTO rights under the WTO to take action against unfairly traded imports from Chinese Taipei and contains a prohibition against export subsidies for use between the Parties.

ANZTEC makes existing arrangements on intellectual property legally binding and reinforces our rights under the WTO TRIPS Agreement. It allows for appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions and folklore.

ANZTEC gives New Zealand exporters access to the Chinese Taipei government procurement market.

ANZTEC makes possible official co-productions between New Zealand and Chinese Taipei in film or television.
In the area of investment New Zealand will benefit from high quality rules, including around the right to regulate, and an Investor-Party Dispute Settlement mechanism. This builds in additional transparency requirements to recently adopted free trade agreements and is subject to the mutual consent of the disputing parties.

ANZTEC includes a number of noteworthy features:

- It covers all items of existing trade.
- It contains the strongest outcomes on trade and labour, and trade and environment in any agreement negotiated by New Zealand.
- It avoids special safeguard mechanisms on any agricultural product.
- The rules of origin, with minor exception, were of New Zealand design.
- The tariff quota regime is transitional in nature, provides in-quota imports with duty free treatment, and is administered in a way that is transparent and aims to minimise administrative burden on exporters.
- A credible list of environmental goods has been agreed.
- The services and investment chapters are based on a negative list.

Disadvantages

While remaining New Zealand tariffs applied on imports from Chinese Taipei are low (the current trade weighted tariff for Chinese Taipei imports is 2.3%) the removal of these tariffs will reduce revenue by an estimated NZ$2.6 million per year\(^2\). The removal of these tariffs will also expose New Zealand industry to increased competition from Chinese Taipei imports.

Chinese Taipei was unwilling to agree the liberalisation of rice in this agreement. It has agreed to grant New Zealand the same liberalisation as it may negotiate with other parties in the future (MFN). New Zealand does not export rice.

(iv) **Obligations under ANZTEC**

Key new obligations for New Zealand under ANZTEC include:

- The eventual elimination of tariffs on all goods originating from Chinese Taipei, with up to a four year phase out period on some goods
- Consultation mechanisms on labour, environment, technical barriers to trade, sanitary and phytosanitary measures, customs procedures and indigenous peoples
- New co-production arrangements for film and television
- Enhanced domestic regulation rules, restricting potentially trade distorting measures
- New “negative list” commitments on national treatment, most-favoured-nation, local presence, market access, senior management and boards of directors, and performance requirements obligations for service suppliers and investors from Chinese Taipei, which go beyond New Zealand’s commitments in the GATS.

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\(^2\) Based on actual duties collected on imports from Chinese Taipei in 2011.
Obligations in a number of other areas of ANZTEC are fully consistent with existing New Zealand law and practice. ANZTEC does not prevent New Zealand from taking measures it deems necessary to fulfil its obligations to Māori under the Treaty of Waitangi, or to support creative arts of national value.

(v) **Obligations under the ATA**

The ATA removes restrictions on the frequency and regularity of service provided by the designated airlines of the other Party.

(vi) **Economic, social, cultural and environmental effects**

**Economic effects**

ANZTEC is expected to have an overall positive effect on the New Zealand economy, with gains to GDP, trade and welfare.

ANZTEC is expected to deliver economic benefits through the removal of tariffs and the reduction of other impediments to trade and investment between New Zealand and Chinese Taipei over time. The tariff reductions alone are estimated to be worth NZ$75.8 million a year to New Zealand once the agreement is fully implemented. It is expected that actual gains will be greater as tariff reduction in Chinese Taipei is likely to increase demand for New Zealand goods in that market. Publicity about these tariff reductions is also likely to increase exporter interest in this market.

**Social effects**

ANZTEC is not expected to have any discernible negative social effects in New Zealand. It is expected to increase employment in export industries. No negative impact on employment is expected as the level of tariff protection against imports from Chinese Taipei is so low. This agreement is the first of its type that New Zealand has negotiated that contains a dedicated chapter on trade and labour.

**Cultural effects**

Reflecting the unique connection between the indigenous people of Chinese Taipei and New Zealand Māori, ANZTEC includes a Chapter on Indigenous people’s cooperation. This increases opportunities for cultural and economic interaction between Māori and the indigenous peoples of Chinese Taipei. The film and television co-production chapter likewise increases the scope for cooperation and collaboration between the New Zealand and Chinese Taipei screen industries. ANZTEC contains safeguards to ensure that there are no negative effects on New Zealand cultural values including Māori interests.

**Environmental effects**

The ANZTEC is not expected to have any discernible negative effects on the environment in New Zealand that cannot be managed using existing policy and regulatory frameworks. Its provisions are intended to promote sustainable development and enhance environmental performance in both countries.

(vii) **Costs**

One-off costs associated with negotiating and implementing ANZTEC, incurred in the 2011/12 and 2012/13 financial years are estimated to amount to NZ$500,000. This has been funded from the Trade Negotiations Fund. One off costs for setting up the ANZTEC website, leveraging activities and road-shows to maximise the benefit of ANZTEC to exporters are estimated at
$150,000. There will be on-going costs in terms of travel and staffing to meet the new obligations agreed in ANZTEC. These are expected to be covered from the baselines of the agencies involved. A number of the obligations agreed in ANZTEC will replace or can be combined with activities that were part of the relationship prior to the negotiation of ANZTEC.

(viii) Subsequent Protocols and/or amendments to the agreements and their likely effects

ANZTEC and the ATA include general provisions for review and amendment subject to the agreement of the parties and subject to the completion of domestic legal procedures.

(ix) Implementation

Legislative and regulatory amendments are required to align New Zealand’s domestic regime with rights and obligations created under ANZTEC – in particular those relating to tariffs and rules of origin.

(x) Consultation

The Joint Study, preparation and negotiating phases of ANZTEC and the ATA involved extensive consultation between the negotiating team and stakeholders in New Zealand.
1 Nature and timing of proposed agreement actions

The Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (ANZTEC) and the Air Transport Agreement (ATA) between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu were signed in Wellington in July 2013. For both Agreements, entry into force is subject to the domestic legal procedures of both parties and will occur in a date specified in the exchange of notes between the Parties notifying each other that their respective domestic procedures are complete. Both Parties hope to have completed necessary procedures in time for the Agreements to enter into force by 1 December 2013 (TBC).
2 Reasons for New Zealand becoming a party to the agreements

2.1 Background to the agreements

While New Zealand and Chinese Taipei do not enjoy formal diplomatic relations, New Zealand’s one China policy allows the full pursuit of trade, economic and cultural links with Chinese Taipei. Accordingly, Chinese Taipei has for a number of years been an important market for New Zealand goods and services exporters. Its import regime, like a number of others in North Asia, was heavily protected against imports of agricultural, fisheries and forestry products.

Major liberalisation occurred in 2001 when Chinese Taipei joined the WTO as the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. Over the years considerable work has been done analysing the potential impact of a bilateral trade liberalisation agreement and assessing potential interest in such an agreement from the Chinese Taipei authorities. In the meantime New Zealand has negotiated a Free Trade Agreement with China and a Closer Economic Partnership with Hong Kong.
3 Advantages and disadvantages to New Zealand

3.1 Advantages to New Zealand entering into ANZTEC

3.1.1 Trade in goods

The goods deal negotiated covers all items of current trade. It would see approximately 69% of the current value of New Zealand trade fully liberalised on entry into force ({EIF}), 98.7% within four years and 99.5% within eight years. As 25% of our trade is currently tariff free, an additional 44% of New Zealand trade would have tariffs eliminated on{EIF} of the agreement. This is an estimated annual duty saving of NZ$40.3 million. Products that will have tariffs eliminated on{EIF} include key export items: virtually all New Zealand dairy products, apples, cherries and wine. Beef exports to Chinese Taipei will be duty free in two years and duties on kiwifruit exports to Chinese Taipei will be eliminated over three years.

Liquid milk and deer velvet are particularly sensitive items for Chinese Taipei. Seven tariff lines in those areas (worth 0.5% of New Zealand’s trade with Chinese Taipei) will be subject to transitional tariff quotas and all tariffs on these items will be fully eliminated in 12 years. During the transitional 12 year period New Zealand will have tariff quota access, with expanding volumes and duty free treatment within the quotas. New Zealand exporters will retain access to Chinese Taipei’s WTO global tariff quota arrangements.

Tariffs on rice products will be applied in accordance with Chinese Taipei’s WTO commitments, provided that Chinese Taipei gives New Zealand equivalent treatment should it grant preferential treatment to any other country.

No agricultural products will be subject to any special agricultural safeguard measures under this agreement. The Parties have also agreed not to introduce or maintain any export subsidy on any agricultural good destined for the other Party (Article 6).

3.1.2 Cross-border trade in services

The Cross-Border Trade in Services chapter contains high quality framework obligations on trade in services.

ANZTEC includes new rules relating to domestic regulation of a standard higher than has been reached in the WTO or in any of our earlier trade agreements. Based on provisions that both parties support in the WTO Working Party on Domestic Regulation, these rules will provide greater certainty and transparency for New Zealand service suppliers. They will also help to prevent domestic regulation being used as a barrier to trade.

3.1.3 Investment

Up until now, New Zealand has not had international legal rules in place between safeguarding the interests of New Zealand investors in Chinese Taipei. The ANZTEC establishes a set of rules based on international best practice intended to facilitate investment flows and provide for the protection of investment.

The ANZTEC includes a high quality investment chapter that encourages free and open flows of investment between New Zealand and Chinese Taipei and guarantees minimum protections to investments. These include rules on non-discrimination, nationality requirements imposed on senior managers and boards of directors of foreign companies and trade distortive performance requirements, designed to assist foreign investors to enter the market and compete. There are also rules designed to protect investments from
expropriation without compensation, or arbitrary or unfair conduct by a Party, and establishing requirements on the ability to transfer capital related to an investment.

The investment chapter also includes an Investor-Party Dispute Settlement (IPDS) mechanism which is along the lines of the outcomes in New Zealand’s recent trade agreements with China, Malaysia and ASEAN. This mechanism can be used by investors to resolve disputes arising under the Chapter with Chinese Taipei, where Chinese Taipei consents to having a claim brought against it. IPDS can be a useful alternative mechanism to other party-to-party approaches. The IPDS rules provide for enhanced transparency procedures compared to existing trade agreements.

The investment rules and IPDS mechanism include safeguards intended to protect the Government’s regulatory prerogatives and to minimise the government’s exposure to inappropriate expropriation claims.

3.1.4 Cross-border trade in services and investment market access

New Zealand’s only existing commitments on services and investment from Chinese Taipei are through the WTO General Agreement on Trade in Services (GATS). However, these only cover services sectors (rather than investment more broadly, such as investment in manufacturing, mining and land) and are set out in a positive-list which is inherently less liberal than New Zealand’s preferred negative list approach.

ANZTEC includes commitments on services and investment market access in New Zealand’s preferred negative list format. This format required Chinese Taipei to list commitments it did not wish to make, rather than the ones it did, resulting in legal certainty, greater transparency, a high level of ambition and a future-proofed outcome, compared to other formats.

The ratchet mechanism incorporated into the agreement also means that Chinese Taipei is required to automatically extend the benefit of any future liberalisation of a measure listed in Annex I to New Zealand. The liberalisation becomes the new level of commitment in ANZTEC and cannot be taken away from New Zealand service suppliers – even if the measure is repealed or made more restrictive in the future. Under the ratchet mechanism Chinese Taipei’s commitments can only be liberalised, except in the relatively limited situations where specific exceptions to the ratchet were included. Chinese Taipei took relatively few exceptions to the ratchet, meaning that it has made a high level of commitment. These exceptions apply to:

- social services
- rights or preferences granted to minorities with social or economic disadvantages
- issues relating to indigenous peoples
- games of luck and chance
- ground-handling and hangar services
- financial services commitments made in international agreements; and
- existing restrictions on services and investment by persons of a non-Party.

Outside of these exceptions, and subject to the existing restrictions listed in Chinese Taipei’s schedule, Chinese Taipei has made commitments to New Zealand in all services and investment sectors which are subject to the ratchet (liberalise only) mechanism. These
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are New Zealand’s first international commitments from Chinese Taipei on non-services investment and build upon Chinese Taipei’s commitments under the GATS.

*Services*

New market access opportunities in respect of:

- Primary education services
- Secondary education services

New air transport-related commitments on:

- Specialty air services
- Ground-handling services
- Airport operation and management services

Early harvest of Chinese Taipei’s Doha Offer on *maritime transport services* and *maritime auxiliary services*

Commitments building on Chinese Taipei’s GATS commitments, including in the following areas:

- **Professional services:**
  - medical and dental services
  - services provided by midwives, nurses, physiotherapists and para-medical personnel
  - other

- **Real estate services**

- **Other business services:**
  - services incidental to hunting
  - services incidental to fishing
  - services incidental to energy production Investigation and security services

- **Distribution services:**
  - other

- **Financial services:**
  - settlement and clearing services for financial assets
  - advisory and other auxiliary financial services
  - other

- **Health related social services:**
  - social services
  - other

- **Recreational, cultural and sporting services:**
• entertainment services
• sporting and other recreational services
• other
• Internal waterways transport
• Road transport services:
  • passenger transportation
  • freight transportation
  • rental of commercial vehicles with operator
  • supporting services for road transport services

Non-services
ANZTEC is the first agreement between New Zealand and Chinese Taipei covering investment in non-services sectors. All commitments are new.

There are full commitments on manufacturing.

There are commitments, subject to existing restrictions, including in the following areas:
• Agriculture, forestry and fisheries
• Mining
• Electricity, gas and water
• Land and property

Education
Particularly noteworthy were the improved commitments New Zealand was able to secure from Chinese Taipei in respect of education services. Chinese Taipei has committed to liberalise its education sector to provide for further New Zealand involvement. In particular, Chinese Taipei agreed to liberalise its existing restriction on the operation of international schools on a for-profit basis for New Zealand investors. With respect to local primary and secondary schools, Chinese Taipei also agreed to liberalise its existing restrictions on foreign investment in primary and secondary schools to allow New Zealand investors to invest in existing not-for-profit schools.

3.1.5 Temporary entry of business persons
The agreement includes a high quality chapter on Temporary Entry of Business Persons aimed at facilitating the movement of business persons engaged in trade and investment and establishing streamlined and transparent procedures for applications made by business persons.

There is a requirement that applications for immigration formalities are processed expeditiously and that within fifteen working days of making an application for temporary entry, business persons must be either information of a decision, or informed when a decision will be made. Any fees imposed for the processing of an immigration formality must be reasonable and based on the approximate cost of services rendered.
Each party under ANZTEC makes specific commitments relating to the movement of business persons. Chinese Taipei’s schedule contains commitments that go beyond its commitments in GATS. The schedule contains the following commitments on the temporary entry and duration of stay for particular categories of business persons on the following basis:

- business visitors for a period not exceeding 90 days
- intra-corporate transferees for a period of initial stay up to a maximum of three years that may be renewed for one-year periods indefinitely
- installers or servicers for a period not exceeding 90 days
- independent professionals, subject to economic needs tests, for a period not exceeding one year.

These commitments on independent professionals are not included in Chinese Taipei’s GATS commitments or in any of its existing trade agreements. Chinese Taipei also provided a specific exemption for New Zealand lawyers to provide “fly in, fly out” services for periods of less than 30 days when entering Chinese Taipei as an independent professional.

ANZTEC obliges Chinese Taipei to publish all relevant information about its immigration requirements in respect of the categories of business persons covered by its schedules of commitments. Any changes to these regulations must be published promptly.

3.1.6 Rules of origin

ANZTEC provides trade-facilitating rules of origin built on New Zealand’s preferred approach of “Change in Tariff Classification”. The majority of the product specific rules (PSRs) adopted were of New Zealand design. These rules are based on those of the New Zealand-China, AANZFTA and NZ-Malaysia FTAs. Some alternative PSRs were agreed for a few non-sensitive product lines (rice, rice products and some synthetic textile products). For synthetic textiles (HS 54), the technical discussions were guided by our textile industry feedback.

There is no requirement for a third party to issue Certificates of Origin. The model for evidencing origin is based on New Zealand’s preferred approach of self-certification by the exporter. Unlike other models, this does not impose extra costs for exporters.

3.1.7 Customs cooperation and procedures

The Customs Chapter is in line with the approach followed by New Zealand in other recent trade agreements, such as China, AANZFTA and Malaysia. The customs chapter builds on existing bilateral customs cooperation to enable the early resolution of any issues affecting the movement of trade across borders.

3.1.8 Trade remedies

The Trade Remedies chapter retains both Parties’ ability to use trade remedies in accordance with World Trade Organisation (WTO) rules on anti-dumping, countervailing measures and safeguards. It also enhances transparency in the administration of trade remedy actions through cooperation and consultation.

3.1.9 Sanitary and phytosanitary (SPS)
The SPS chapter sets in place a mechanism and measures to improve communications and consultation, and establishes a framework in which trade access issues and their justification can be addressed in an objective and scientific manner.

3.1.10 Technical barriers to trade (TBT)

The TBT Chapter affirms the Parties’ existing rights and obligations in the WTO TBT Agreement and builds on these by promoting cooperation and collaboration to build strong institutional relationships inter alia to resolve specific trade concerns and to manage risks associated with imported products more effectively and efficiently. It also encourages Chinese Taipei to recognise the competence of New Zealand’s regulatory approaches, standards and conformity assessment infrastructure. The Chapter also establishes a mechanism for the negotiation and conclusion of sector-specific arrangements on mutually agreed terms. This is a “WTO-plus” provision that future-proofs the Chapter.

3.1.11 Competition policy

The Competition Chapter provides a principles-based approach to substantive provisions on competition law and provisions for competition policy cooperation. It encourages cooperation between the Parties through the exchange of information. Consistent with New Zealand’s approach to competition chapters in trade agreements, commitments in the competition chapter are not subject to dispute settlement.

3.1.12 Electronic-commerce

The chapter on Electronic Commerce reaffirms the importance of electronic commerce and its contribution to economic growth and the need to avoid barriers to its use and development.

3.1.13 Intellectual property

This chapter promotes the importance of intellectual property rights in fostering trade between New Zealand and Chinese Taipei. The chapter incorporates the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and both Parties reaffirm their commitments to TRIPS. It also recognises the need to achieve a fair balance between the rights of intellectual property rights holders, the legitimate interests of users and the wider interest of the public with regard to the protected subject matter. The chapter provides for adequate protection and enforcement of intellectual property rights and also retains flexibility to deal with issues related to the protection of genetic resources, traditional knowledge and folklore.

3.1.14 Government procurement

ANZTEC gives New Zealand exporters increased opportunities to compete for contracts in Chinese Taipei’s government procurement market. The Government Procurement chapter text includes binding obligations on non-discrimination and national treatment, a range of transparency obligations, and procedural requirements for contracts valued at or above SDR 130,000 (approximately NZ$244,000) for goods and services and SDR 5 million (approximately NZ$9.4 million) for construction services. This puts New Zealand suppliers on equal footing with suppliers from members of the WTO Government

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3 Thresholds are expressed in IMF Special Drawing Rights (SDRs). The conversion from SDRs to New Zealand dollars may change periodically with currency fluctuations.
Procurement Agreement (GPA) in respect of government contract opportunities with central government agencies.

### 3.1.15 Legal and institutional issues

The legal and institutional provisions include party-to-party dispute settlement mechanisms that are simple, effective, and flexible in line with the principles and guidelines of the WTO Dispute Settlement Understanding and with New Zealand’s best practice in trade agreements. The chapters also include appropriate general provisions, review mechanisms and general exceptions including the Treaty of Waitangi and creative arts exceptions, in line with previous New Zealand trade agreements.

### 3.1.16 Trade and labour, trade and environment

ANZTEC includes chapters on Trade and Labour, and Trade and Environment. This is the first time such chapters have been included in the body of New Zealand’s trade agreements (in the past they have been covered by side arrangements or agreements) and ANZTEC represents the strongest outcome that New Zealand has achieved in these areas to date. In the Trade and Environment text there are provisions on Voluntary Market Mechanisms and an article on liberalising trade in Environmental Goods and Services that includes a list of 132 environmental goods. This is likely to be the first time in any bilateral trade agreement that an environmental goods list has been agreed. On voluntary market mechanisms, both Parties have agreed to encourage the development and use of flexible and voluntary mechanisms to protect natural resources and the environment and to encourage those developing or applying voluntary environmental standards (such as labelling) to do so in a transparent way that does not create unnecessary barriers to trade. The inclusion of this issue is similarly ground-breaking. Both issues were priorities for New Zealand.

### 3.1.17 Air transport

The Air Transport Services Chapter incorporates a new “open skies” ATA which removes restrictions on the frequency of flights between destinations in New Zealand, destinations in Chinese Taipei and destinations in other parts of the world.

### 3.1.18 Film and TV co-production

ANZTEC provides for the possibility of official co-productions between New Zealand and Chinese Taipei in film or television. The chapter includes principles covering: approval; contributions; entitlement to benefits; rules of participation and engagement in a co-production; government facilitation; functioning of the agreement; and implementing arrangements for the guidance of the competent authorities.

### 3.1.19 Cooperation on indigenous issues

In light of the unique connection between Indigenous People in Chinese Taipei and New Zealand Māori ANZTEC includes a chapter on Indigenous Cooperation. The chapter builds on the previous non-legally binding 2004 arrangement between NZCIO and TECO on indigenous cooperation. It seeks to enhance the cultural and people-to-people links between the indigenous people of Chinese Taipei and New Zealand Māori as well as expand and facilitate trade between the two groups.
3.2 Disadvantages to New Zealand entering into ANZTEC

Any trade agreement involving reciprocal tariff removal, while providing better access for exporters, can create adjustment costs for domestic producers. Domestic producers are likely to face increased competition from imports as foreign suppliers take advantage of reduced protection at the New Zealand border. However, the tariff phase-outs on 29 lines, in industry sectors most sensitive to imported products from Chinese Taipei, will occur over four years.

3.2.1 Reduction in tariff revenue

While remaining New Zealand tariffs on Chinese Taipei are low (the current trade weighted tariff for Chinese Taipei imports is 2.3%) the removal of these tariffs will reduce revenue by an estimated NZ$2.6 million per year. The removal of these tariffs will also expose New Zealand industry to increased competition from Chinese Taipei imports. However, tariffs on the 29 product lines identified as being sensitive to New Zealand industry will be phased out over four years. Tariffs on these lines range from 5-10% and trade in these products was worth 2.5% (in value terms) of Chinese Taipei’s trade with New Zealand.

3.2.3 Exclusion of rice and rice products

Chinese Taipei was unwilling to agree the liberalisation of rice in this agreement. It has agreed to grant New Zealand the same liberalisation as it may negotiate with other parties in the future. New Zealand does not export rice.

3.3 Disadvantages to New Zealand entering into the ATA

The Agreement does not include seventh freedom cargo rights, wet-leasing of aircraft and cabotage.

3.4 Comment

Given the significant economic and trade facilitating advantages detailed in 3.1.1-3.1.19 above and the limited disadvantages outlined in 3.2-3.3 the Government has concluded that the advantages of ANZTEC and the ATA outweigh the disadvantages and that entering into the Agreements is the best policy option for New Zealand.

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4 Based on actual duties collected on imports from Chinese Taipei in 2011.

5 Seventh freedom rights allow a foreign airline to provide international services between two airports without having to originate or terminate these services in its home territory.

6 Wet-leasing involves the provision of an aircraft together with fuel and a crew.

7 Cabotage involves the carriage by a foreign airline of domestic passengers or cargo.
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4 Legal obligations which would be imposed on New Zealand by ANZTEC and an outline of the dispute settlement mechanism

ANZTEC provides for the liberalisation of trade between New Zealand and Chinese Taipei with the objectives of encouraging expansion and diversification of trade; eliminating barriers to trade and facilitating the movement of goods and services; and substantially increasing investment opportunities.

The key obligations that New Zealand will assume in each chapter of ANZTEC are set out below. Also included in this Section are the obligations arising from the ATA.

4.1 Initial provisions

The Preamble and Chapter 1 of ANZTEC confirm that the agreement builds on the rights and obligations of the Parties in the WTO and shall be interpreted in accordance with the rules of interpretation applicable to the WTO Agreement.

4.2 Trade in goods

New Zealand is required to eliminate its customs duties (tariffs) on goods originating from Chinese Taipei in accordance with the phase-out schedule in Annex 1 Part A of ANZTEC, and may not increase existing customs duties.

ANZTEC imposes obligations, consistent with WTO requirements, to accord national treatment8 (Article 2), to ensure that all fees and charges are limited in amount to the approximate cost of services rendered, and that any non-tariff measures do not represent any unnecessary obstacles to trade (Articles 4 and 5).

There is provision for consultation and discussion of any issues arising pursuant to the chapter (Article 7).

4.3 Rules of origin

ANZTEC sets out rules for determining whether goods traded between the parties qualify as originating goods and therefore qualify for bilateral tariff preferences.

There are three avenues through which goods can qualify for preferential tariff treatment (Article 2):

- The goods are wholly obtained or produced in New Zealand or Chinese Taipei.
- The goods are produced entirely in New Zealand or Chinese Taipei exclusively from originating materials from one or both of the Parties.
- The goods are produced in New Zealand or Chinese Taipei using third-party inputs.

ANZTEC uses a change of tariff classification (CTC) approach to determine origin. Under the CTC approach, a good will qualify for preferential tariff treatment if all third party inputs used in its production have undergone a specified change of tariff classification. Annex 2 to ANZTEC details the precise form of CTC that will apply to a particular good.

For some products there are regional value content (RVC) rules. Under the RVC approach, a good will qualify for preferential tariff treatment provided the value of originating inputs is equal or greater than the specified RVC value of that good. For certain products there is an optional RVC requirement, which allows producers to choose which rule best suits their

8 National treatment means that foreigners and locals should be treated equally i.e. that imported and locally-produced goods should be treated equally after the foreign goods have entered the market.
particular business model, and also allows for origin conferring transformation where the structure of the Tariff Schedule does not provide for an appropriate CTC rule.

For any good to qualify for the tariff preferences, it must be consigned directly between the two Parties (Article 9). If transported through a third party, the good must not enter into the trade or commerce there or undergo any operation there other than unloading and reloading, repacking, or any operation required to preserve them in good condition or to transport them to the importing Party.

Importers wanting to make a claim for preferential tariff treatment under ANZTEC may do so based on:

- a written or electronic declaration of origin
- a written or electronic certificate of origin, or
- other evidence to substantiate the tariff preference.

4.4 Customs procedures and cooperation

ANZTEC involves a range of commitments on trade facilitation and customs cooperation. These commitments fall within current policy settings and include:

- Ensuring customs procedures and practices are predictable, consistent, and transparent (e.g. providing customs valuations, using internationally accepted tariff classifications, and providing advanced rulings) (Articles 4, 5 and 6) to ensure efficient administration and the expeditious clearance of goods.

- Encouraging the use of international best practice on customs and facilitating the use of automated systems, express consignments and providing for the electronic submission of import requirements in advance of the arrival of the goods, to expedite the procedures for the release of goods (Articles 7, 8 and 9). In the normal course of events, Customs administrations in both parties are required to release originating products within 48 hours of arrival (Article 9).

- Encouraging customs cooperation and providing for contact points and consultations to discuss any issues which might arise (Articles 12, 13 and 14).

- Publishing customs laws and administrative procedures (Articles 15 and 16).

4.5 Trade remedies

ANZTEC does not affect New Zealand’s rights to apply anti-dumping, countervailing and global safeguard measures for trade with Chinese Taipei, consistent with WTO rights and obligations (Article 1).

A party taking a global safeguard action must exclude imports of originating goods from the other party if such imports do not cause or threaten to cause serious injury (Article 2).

ANZTEC provides for consultation between contact points on any matter arising from the implementation of the chapter (Article 3).

4.6 Sanitary and phytosanitary measures

ANZTEC maintains existing rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).
It also provides for the development of mechanisms to allow parties to enhance implementation of the SPS Agreement, including the development of Implementing Arrangements to determine and recognise the equivalence of each other’s SPS measures (Articles 5 and 8).

ANZTEC ensures that import checks applied to imported animals, animal products, plants and plant products or related goods are based on risk and carried out without delay and in the least trade restrictive manner. If import checks reveal non-conformity with the relevant standards the actions of the importing Party should be proportionate to the risk involved. If the exporting requests and both Parties agree, testing of the preserved sample may be carried out in a process agreed by the Parties.

There are specific procedures outlined in the chapter concerning verification of systems and notification of SPS-related changes by either side (Articles 9 and 13). The chapter also sets out a mechanism to seek an explanation of and consultations on any SPS measure affecting trade (Article 16).

4.7 Technical barriers to trade

The Technical Barriers to Trade (TBT) chapter incorporates Articles 1-9 of the WTO Agreement on TBT and maintains New Zealand’s existing rights and obligations under the TBT Agreement (Article 3.4) including the right to adopt or maintain technical regulations necessary to ensure national security, the prevention of deceptive practices and the protection of human health or safety, animal or plant life or health or the environment.

The key provisions of the TBT Chapter include:

- A commitment to cooperate to ensure that international standards, guides and recommendations on technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade (Article 5).

- A commitment to apply the same or equivalent procedures and criteria to conformity assessment bodies located in the other Party as in its own jurisdiction (Article 6.1).

- A Party may refuse to accept conformity assessment results from a conformity assessment body provided it can substantiate the refusal and that this is not inconsistent with the TBT Agreement and ANZTEC (Article 6.8).

- Any conformity assessment fees imposed by a Party must be limited to the approximate cost of services rendered (Article 6.12).

- Commitments to enhance transparency and information exchange between the Parties (Article 8), facilitate technical discussions (Article 9), and establish a Committee on TBT to intensify joint work on technical regulations, conformity assessment procedures and standards (Article 10).

4.8 Competition

The Competition chapter includes a commitment to promote competition and to seek to ensure that the design of trade and competition policies and the implementation of domestic laws give due weight to their effects on competition (Article 2). The competition chapter encourages cooperation and information exchange by the Parties in the area of competition policy (Article 7) and requires them to consult on particular anti-competitive practices adversely affecting trade or investment between the Parties (Article 8). The chapter also recognises that certain exemptions may be necessary to achieve other
legitimate policy objectives (Article 4). Both Parties must ensure that private rights of action (the right of a person to independently seek redress from a court or independent tribunal for injury to its business or property caused by the violation of competition laws) are available to persons of both New Zealand and Chinese Taipei. The Competition Chapter is not subject to the dispute settlement mechanism.

4.9 Electronic commerce

ANZTEC establishes principles for the conduct of e-commerce between the Parties. The Electronic Commerce chapter includes commitments to:

- promote the efficient functioning of e-commerce by developing open regulatory frameworks and providing a predictable and simple legal environment for e-commerce (Article 2.1.a).
- ensure that regulations and the development of regulations affecting e-commerce are transparent (Article 2.1.b)
- maintain privacy protection laws and consumer laws relating to e-commerce (Article 2.1.d.i)
- ensure the protection of intellectual property rights, while enabling the application of e-commerce and business innovation (Article 2.1.d.iii)
- work towards the implementation of initiatives to provide for paperless trading (Article 3)
- maintain the current practice of not imposing customs duties on electronic transmissions between the Parties (Article 4).

The chapter also provides for consultation on any policies or decisions which may impact adversely on e-commerce aspects of trade (Article 5). The Electronic Commerce Chapter is not subject to the dispute settlement mechanism (Article 6).

4.10 Intellectual property

ANZTEC reaffirms each Parties’ commitments to the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both are Parties. It also incorporates the TRIPS Agreement (Article 3). Each Party must maintain transparent intellectual property regulations, efficient and non-discriminatory enforcement mechanisms and access to expeditious remedies, in accordance with TRIPS obligations (Article 3.5). The chapter establishes contact points (Article 4), facilitates cooperation (Article 5) and provides a mechanism for consultation between the Parties (Article 8). ANZTEC also recognises both Parties’ right to establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore (Article 6). ANZTEC also recognises that geographical indications may be protected through a trade mark system and provides grounds for opposing or cancelling the registration or designation of a geographical indication.

4.11 Government procurement

The commitments in the Government Procurement chapter are consistent with New Zealand’s existing Government Procurement Policy and the Mandatory Rules for Procurement by Departments. No new obligations are created and, therefore, no new measures are required to implement the chapter.
ANZTEC provides that, where procurements are valued at or above the specified thresholds (Annex II) those government entities covered by ANZTEC (Annex I) must afford national treatment (Article 5) and follow certain procedures that provide for open and selective tendering (Articles 9-14) except in certain circumstances (Article 15). The thresholds are SDR 130,000 (approximately NZ$244,000) for the procurement of goods and services and SDR 5 million (approximately NZ$9.4 million) for construction services.

New Zealand has committed 24 of the 31 central government entities already obliged to conduct their procurement in accordance with the New Zealand Government Procurement Policy and the Mandatory Rules for Procurement by Departments. New Zealand has committed all goods and services procured by those entities except services relating to the procurement of research and development, public health, education, and welfare services. The Government Procurement chapter does not apply to commercial sponsorship arrangements.

Chinese Taipei has committed the central entities, goods, services and construction services contained in its final offer in the WTO Agreement on Government Procurement.

4.12 Investment

The investment rules in ANZTEC are designed to facilitate and protect investments. Rules designed to facilitate investment flows include the following, which are subject to specific reservations or exemptions in the services and investment schedules of the ANZTEC (see section – Services and Investment Market Access):

- National treatment: Chinese Taipei investors and investments in New Zealand are entitled to non-discriminatory treatment compared to domestic investors and investments “in like circumstances”.

- Most-favoured-nation treatment: Chinese Taipei investors and investments in New Zealand are entitled to non-discriminatory treatment compared to other foreign investors and investments “in like circumstances”. This means that Chinese Taipei investors receive the benefits of any better treatment which New Zealand provides to other foreign investors, subject to certain reservations and exceptions (for example, better treatment of investors under an existing trade agreement would not have to be extended).

- Performance requirements: Chinese Taipei investors and investments may not be subject to a range of trade and investment distorting performance requirements, such as requirements to purchase goods produced in New Zealand or to relate domestic sales to export earnings, whether absolute or in order to receive an advantage.

- Senior management and boards of directors: Chinese Taipei investments in New Zealand may not be required to appoint persons of a particular nationality to senior management positions, or to appointment persons of a particular nationality or residency to their board of directors.

These are supplemented by rules designed to protect investors and investments from conduct to which investors in foreign countries can be exposed. These include the following rules:

- Transfers: Limitations on the circumstances in which restrictions can be imposed on the transfer of a Chinese Taipei investor’s capital out of New Zealand.
• Expropriation and compensation: The New Zealand Government can only expropriate or nationalise a Chinese Taipei investor’s property in New Zealand for a public purpose, in a non-discriminatory manner, on payment of compensation, and in accordance with due process.

• Minimum standard of treatment: Chinese Taipei investments in New Zealand must be treated in accordance with the customary international law minimum standard of treatment which requires fair and equitable treatment and the provision of full protection and security.

4.13 Cross-border trade in services

ANZTEC seeks to facilitate the expansion of cross-border trade in services, improve the efficiency and transparency of the Parties service sectors and competitiveness of export trade and work towards progressive liberalisation. The agreement also recognises each party’s right to regulate and introduce new regulations and to provide and fund public services, in a manner that gives due respect to government policy objectives.

The following general rules are included in the Cross-Border Trade in Services Chapter, which are subject to specific reservations or exemptions in the services and investment schedules of ANZTEC (see section – Services and Investment Market Access):

• National treatment: where applicable, Chinese Taipei services and service suppliers operating in New Zealand are entitled to non-discriminatory treatment compared to domestic services and service suppliers.

• Most-favoured-nation treatment: where applicable, Chinese Taipei services and service suppliers operating in New Zealand are entitled to non-discriminatory treatment compared with services and service suppliers of a non-party “in like circumstances”. This means that Chinese Taipei service suppliers receive the benefits of any better treatment which New Zealand provides to service suppliers of other countries, subject to certain reservations and exceptions (for example, better treatment of service suppliers under an existing trade agreement would not have to be extended to Chinese Taipei service suppliers).

• Market access: where applicable, Chinese Taipei service suppliers wishing to operate in New Zealand are entitled to access the market without limitation on the number of service suppliers, value of the service transaction, number of service operators, total quantity of service output, total number of persons employed in a service sector or that a service supplier may employ, or the type of legal entity or joint venture which a service supplier may provide a service.

• Local presence: in most cases New Zealand cannot require a Chinese Taipei service supplier to establish a local presence (for example, set up a representative office) or be a resident, as a condition for supplying their service in New Zealand.

New Zealand’s market access, national treatment, local presence and MFN treatment commitments in ANZTEC go beyond New Zealand’s existing WTO commitments. However, none of these new commitments go beyond New Zealand’s current regulatory environment or policy settings.

These general obligations are supplemented by rules, including:
• Domestic regulation: New Zealand has made commitments on how it will make and administer any measures affecting trade in services. While these commitments are of a higher standard than previous trade agreements, they do not go beyond New Zealand’s current regulatory settings. Subject to some exceptions in New Zealand’s annexes, these commitments include:
  • administering measures in a reasonable, objective and impartial manner
  • maintaining independent or objective and impartial judicial, arbitral or administrative tribunals or procedures
  • ensuring that qualification requirements and procedures, technical standards and licencing requirements and procedures do not constitute unnecessary barriers to cross-border trade in services
  • ensuring authorities following procedural requirements where authorisation is required for a service or an examination is required for a licencing or qualification requirement
  • ensuring that licencing fees and qualification fees are reasonable, transparent and commensurate with the administrative costs incurred.

• Recognition: while New Zealand is not required to extend any recognition of education, experience, requirements, licences or certification granted in a non-Party to Chinese Taipei, New Zealand must afford Chinese Taipei the adequate opportunity to negotiate similar arrangements.

• Monopolies and exclusive service providers: New Zealand has made commitments in relation to monopoly service suppliers (and in some cases, exclusive service suppliers) acting in accordance with the market access, national treatment, most-favoured-nation and local presence obligations under the chapter.

4.14 Cross-border trade in services and investment market access

ANZTEC includes commitments on services and investment market access in the form of a negative list which allows each party to list reservations to the market access, national treatment, local presence, MFN treatment obligations, senior management and boards of directors and performance requirements obligations. This is the first time that New Zealand has concluded an agreement with a joint services and investment negative list.

The first part (Annex I) sets out existing measures (laws, regulations, decisions, procedures etc) that restrict the access of foreign service suppliers and investors – for example, by imposing quotas that restrict market access and/or caveat national treatment. These reservations are subject to the so-called “ratchet” clause. This means that New Zealand is required to automatically extend the benefit of any future liberalisation of a measure listed in Annex I to Chinese Taipei. The liberalisation becomes the new level of commitment in ANZTEC and cannot be taken away from Chinese Taipei service suppliers – even if the measure is repealed or made more restrictive in the future. Unless specifically reserved against, Annex I reservations are also subject to the MFN obligation.

The second part of the schedule (Annex II) lists sectors and activities that are exempted from the market access, national treatment, MFN treatment, senior management and boards of directors, performance requirements and/or local presence obligations. The “ratchet” clause does not apply to any measure captured by one of these reservations.
New Zealand’s Annex I reservations include:

- Financial reporting requirements on foreign companies.
- Registration of patent attorneys.
- Telecom shareholding.
- The acquisition of licences or management rights to use the radio frequency spectrum.
- Marketing and distribution services relating to certain statutory marketing organisations.
- Licensing of air transport enterprises of the purpose of providing international air services as a New Zealand airline.
- Air New Zealand shareholding.

In Annex II New Zealand reserves the right to adopt or maintain any measure relating to sectors including:

- Social services established for a public service covering childcare, health, income security and insurance, public education, public housing, public training, public transport, public utilities, social security and insurance and social welfare.
- Water, including the allocation, collection, treatment and distribution of drinking water.
- The sale and devolution of state-owned enterprises and assets.
- New Zealand’s overseas screening regime including a $20 million threshold; categories that trigger screening; criteria used for assessing applications.
- Protected areas including land and water, set up for heritage management purposes, public recreation, and scenery preservation, and species owned or protected under enactments by the Crown.
- Animal welfare, and the preservation of plant, animal and human life and health and in particular food safety of domestic and exported food, animal feeds, food standards, biosecurity, biodiversity, and certification of the plant or animal health status of goods.
- Measures in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone, and issuance of maritime concessions in the continental shelf.
- Provision of publicly funded legal services.
- Provision of fire fighting services, excluding aerial fire fighting services.
• Research and development services carried out by publically-funded tertiary institutions or Crown research institutes for public purpose and testing and analysis services.
• Fishing and activities on foreign fishing vessels.
• Nuclear energy.
• Preferential co-production arrangements for film and television productions.
• Promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films.
• The holding of shares in the co-operative dairy company arising from the amalgamation under the Dairy Industry Restructuring Act 2001.
• Export marketing of fresh kiwifruit under the Kiwifruit Industry Restructuring Act 1999 and Regulations.
• Cooperative dairy company and quota allocation schemes for rights to export agricultural products, agricultural and export marketing.
• Statutorily protected educational terms and titles.
• Financial services limited to WTO GATS obligations.
• Adoption services, hospital services, maternity and midwife services.
• Gambling, betting and prostitution services.
• Cultural heritage of national value; including ethnological, archaeological, historical, literary, artistic, scientific or technological heritage, as well as collections of museums, galleries, libraries, archives and other heritage collecting institutions; public archives; library and museum services; and services for the preservation of historical or sacred sites or historical buildings.
• Maritime and port services.
• Public health or social policy purposes with respect to wholesale and retail trade services of tobacco products and alcoholic beverages.

New Zealand’s cross border trade in services and investment commitments are consistent with existing policy settings, and other free trade agreements adopting a negative list format that New Zealand has entered into. However, the commitments in respect of services go beyond New Zealand’s commitments under the WTO General Agreement on Trade in Services (GATS).

4.15 Temporary entry of business persons

There is a requirement that applications for immigration formalities are processed expeditiously and that within fifteen working days of making an application for temporary entry, business persons must be either information of a decision, or informed when a decision will be made. Any fees imposed for the processing of an immigration formality must be reasonable and based on the approximate cost of services rendered.

Each party under ANZTEC makes specific commitments relating to the movement of business persons. New Zealand’s schedule is consistent with current New Zealand policy
settings and contains the following commitments on the temporary entry and duration of stay for particular categories of business persons on the following basis:

- Business visitors for a period not exceeding in aggregate three months in any calendar year.
- Intra-corporate transferees for a period of initial stay up to a maximum of three years for senior managers (provided they have been employed by their employer for at least 12 months prior to their proposed transfer to New Zealand) and specialists.
- Installers or servicers for periods not exceeding three months in any 12-month period.
- Independent professionals, subject to economic needs tests, for a period up to a maximum of twelve months. New Zealand's commitments for independent professionals cover a significantly broader range of services sectors than its GATS commitments.

4.16 Air transport services

The Chapter incorporates the ATA and aims to create opportunities for air transport services between and beyond the Parties’ flight information regions and ensure the highest degree of safety and security in transport services. The chapter encourages promotion between competent authorities to establish arrangements facilitating exchange of information, mutual recognition of safety regulatory certification and/or processes, and trade in civil aviation-related goods and services.

If any dispute arises, the Parties must endeavour to settle it by consultations. Otherwise, the Chapter outlines the process for dispute settlement and notes that any disputes arising from the chapter or the ATA will be governed by the provisions in the Dispute Settlement Chapter and that any arbitrators appointed must have specialised knowledge of, or experience in air transport services.

4.17 The ATA between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu

To give effect to the Parties’ desire to create opportunities for air transport services the ATA sets out process for designation and authorisation of airlines to operate scheduled services on agreed commercial air routes, and revocation and suspension of authorisation. It also outlines the traffic rights of airlines designated by both Parties including rights to uplift/discharge passengers, cargo and mail either separately or in combination at all points on the agreed commercial air routes in the Route Schedule except for purely domestic air carriage, known as cabotage (Article 4).

The Agreement also sets out obligations relating to Aviation Safety and Security including that Parties must recognise as valid licences and certificates of airworthiness and competency issued or validated by the other Party (Article 6) and that Parties must provide upon request all necessary assistance to each other to prevent threats to aviation security (Article 7).

There are also provisions to enhance commercial opportunities, and set out processes for cooperative marketing arrangements and leasing arrangements. On the basis of reciprocity, some aviation related items are exempted from taxes, duties, fees and charges (Article 11). The Parties are to allow designated airlines to determine pricing and capacity based on commercial considerations in the market place (Article 12-13).
Upon request by either Party, consultations will take place within sixty days from the date of the other Party receiving the request. Any dispute is to be settled according to the provisions in the Dispute Settlement Chapter of ANZTEC.

4.18 Trade and labour

The Trade and Labour Chapter aims to promote the common aspiration that free trade and investment should lead to jobs with terms and conditions that adhere to internationally recognised fundamental labour principles (Article 1). ANZTEC includes commitments for Parties to recognise in its laws: freedom of association and recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. There are also commitments to ensure that the Parties do not weaken their labour laws or enforcement of those laws in a manner affecting trade and that a Party’s labour laws are not set or applied for trade protectionist purposes (Article 2).

There is an undertaking to cooperate on mutually agreed labour issues, including through the interaction and involvement, as appropriate, of government, industry, educational and research institutions of each Party. The Chapter sets out potential areas of cooperation and certain modes of cooperation. Any cooperative activities agreed are to take into account each Party’s needs, priorities and available resources. Resourcing is to be decided on a case by case basis (Article 4). The Chapter also establishes contact points to facilitate communication between the Parties and sets out the process for meetings between the Parties. A meeting of the Parties, comprised of senior labour officials or other persons selected by each Party, is to take place within the first year after entry into force, and subsequently as agreed by the Parties (Article 3).

Should any issue arise in relation to the implementation of this Chapter, a Party may request consultations with the other Party through the contact point. The completion of consultations is to be decided between the Parties but should not exceed 180 days (Article 5).

4.19 Trade and environment

This chapter aims to enhance the capacities and capabilities of the Parties to address trade-related environmental issues including through cooperation. The Parties respect each other’s right to enforce their own environmental laws and regulations and reaffirm their commitments to fulfil their international environmental obligations. Key commitments under ANZTEC include: not weakening environmental laws in a manner affecting trade; ensuring that a Party’s environmental laws, regulations and policies and practices are not used for protectionist purposes, and promoting public awareness of environmental laws and regulations (Article 2); and a commitment to eliminate tariffs on the list of 132 environmental goods Annexed to the Chapter (Article 3).

To address the issue of non-government actors implementing mechanisms contributing to environmental protection, each Party is to encourage businesses and non-governmental organisations to use and develop flexible and voluntary mechanisms in a manner that is transparent and does not create unnecessary obstacles to trade (Article 5).

ANZTEC encourages cooperation between the Parties through various means. Any cooperative activities must take into consideration each Party’s environment priorities, needs and available resources. There is provision for the involvement of non-government sectors and other organisations in these cooperative activities (Article 6).
As with the Trade and Labour Chapter, this chapter establishes contact points and a meeting of the parties which is to take place within the first year after entry into force and subsequently as mutually agreed (Chapter 7). Should any issue arise in relation to the implementation of this Chapter a Party may request consultations through its contact point. The Parties are to decide the timeframe for completion of consultations, which are not to exceed 180 days.

4.20 **Film and television co-production**

ANZTEC provides for official co-production films and television programmes between the Parties to be recognised as domestic productions and fully entitled to the benefits available to domestic productions. This chapter sets out the process for approval of projects, contribution and participation requirements (Articles 3, 4 and 6), and also provides for the approval of co-productions involving non-Parties (Article 5). It also sets out requirements in relation to making up to first-release print, location filming, soundtrack, acknowledgments, and credits (Articles 7-10). For the purpose of making or promoting a co-production film or television programme, each Party undertakes to permit natural persons of the Parties and co-producing non-Parties to enter and remain in their jurisdiction (Article 11) and there is also provision, in accordance with legislation, for technical equipment to enter temporarily, free of import duties and taxes, for the making of official co-productions.

The Chapter also establishes a Film and Television Mixed Commission to review the operation of the Chapter and to make any proposals necessary to improve its effectiveness. The Mixed Commission is to be convened (physically or by teleconference) within six months of a request by either of the Parties.

Annexed to this chapter is an implementing arrangement which sets out in more detail the approvals process under Article 3.

4.21 **Cooperation on indigenous issues**

The chapter sets up a process for annual meetings between Chinese Taipei’s Council of Indigenous Peoples and Te Puni Kōkiri as well as a mechanism for the promotion and facilitation of the exchange of experiences, development of direct contacts, and personnel exchanges.

4.22 **Transparency**

ANZTEC’s transparency chapter contains obligations that ensure that each Party publishes or makes available its laws, regulations, procedures and administrative rulings of general application (Article 2). Each Party commits to providing impartial administrative proceedings and reviews and appeals in accordance with its law (Articles 3 and 5). ANZTEC provides for notification and information exchange should any proposed or actual measure materially affect the operation of ANZTEC or substantially affect the other Party’s interests (Article 5). Contact points are also established to facilitate communications between the Parties (Article 4).

4.23 **Dispute settlement**

The Dispute Settlement chapter provides a mechanism for the resolution of disputes between Chinese Taipei and New Zealand relating to the application or interpretation of ANZTEC.
The dispute settlement mechanism provides effective, efficient and transparent processes to settle any disputes arising. This ensures that New Zealand is able to pursue a matter to arbitration should it consider that Chinese Taipei has not acted in accordance with obligations under ANZTEC. Conversely, New Zealand may also be held to account if Chinese Taipei considers that New Zealand has not fulfilled its obligations.

Each Party must allow adequate opportunity for consultation to resolve any disputes (Article 5) and may agree to alternative dispute resolution through good offices, conciliation or mediation (Article 6). The chapter also allows for Parties to select the WTO as a forum for dispute settlement, rather than the ANZTEC dispute settlement process, but once that selection is made the Parties must stick to their choice of forum. If the ANZTEC mechanism is chosen, the chapter sets out a process for the establishment of an arbitral tribunal, its functions, proceedings, termination of proceedings and reports of the arbitral tribunal (Articles 7-12). The findings and rulings of the arbitral tribunal are final and binding on the Parties (Article 13) and the Parties must comply immediately with the findings and rulings or within a reasonable period of time (Articles 13 and 14).

4.24 Institutional provisions

ANZTEC’s Institutional Provisions Chapter sets out how the implementation of ANZTEC will be overseen by a Joint Commission comprising of delegations from New Zealand and Chinese Taipei. The Joint Commission will consider any matters relating to the implementation of ANZTEC; review the general functioning of ANZTEC; consider any proposal to amend ANZTEC or its annexes; supervise the work of all ANZTEC Committees and working groups; and consider any other matters in relation to ANZTEC’s operation.

There is also provision to adopt procedures for the transposition of Tariff Schedules and technical revisions to the Product Specific Rules Schedule to accommodate periodic amendments to the Harmonised System (Article 3).

The Joint Commission is to meet within a year of entry into force and annually thereafter or as mutually agreed by the Parties. A general review will take place within two years of entry into force and then at least every three years, unless the Parties agree otherwise (Article 5).

4.25 General provisions

The General Provisions Chapter confirms that nothing in ANZTEC derogates from any rights and obligations of New Zealand or Chinese Taipei under the WTO Agreement, or any other agreement to which either are Party. It also provides that, in the event of any inconsistency between ANZTEC and any other agreement to which both Parties are party, the Parties must immediately consult with each other with a view to finding a mutually satisfactory solution (Article 3). Where ANZTEC refers to or incorporates any other international agreement, it must apply it in the same way to any amendments or successor international agreements to which the Parties are party, unless otherwise agreed (Article 4).

The chapter also stipulates that any cooperative activities envisaged or undertaken under ANZTEC are subject to the availability of resources and the domestic law and policies of the parties.

4.26 General exceptions
Provided that such measures are not used for disguised trade protectionist purposes, ANZTEC will not prevent New Zealand from taking measures (including environmental measures) necessary to protect human, animal or plant life or health. This also applies to measures relating to the conservation of living and non-living exhaustible natural resources, to prevent the adoption or enforcement by a Party of measures necessary to protect that Party’s works or specific sites of historical or archaeological value, or to support creative arts of significant value to that Party.

ANZTEC will also not prevent New Zealand from taking any actions necessary to protect its essential security interests or to respond to a serious balance of payments and external financial difficulty.

Taxation measures are excluded from ANZTEC except to the extent they are covered by the WTO Agreement or the expropriation provisions in the Investment Chapter. Any tax agreement between the Parties (i.e. the Agreement Between the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income) relating to the avoidance of double taxation takes precedence over ANZTEC (Article 5).

ANZTEC will not prevent New Zealand from taking measures for prudential reasons, including for the protection of investors and other owed a fiduciary duty by a financial service supplier, or to ensure the integrity and stability of the financial system (Article 4).

Provided that such measures are not used for disguised protectionist purposes, there is also a general exception to ensure that ANZTEC will not prevent New Zealand from adopting measures necessary to fulfil its obligations to Māori under the Treaty of Waitangi.
5 Measures which the Government could or should adopt to implement the agreement actions

A small number of legislative (including regulatory) amendments are required to align New Zealand’s domestic legal regime with certain rights and obligations under ANZTEC and thereby enable New Zealand to ratify the Agreement.

No legislative (including regulatory) changes are required by the Air Services Agreement.

The following legislative changes have been identified as being required:

- An amendment to the Tariff of New Zealand to enable the application of preferential tariff rates to goods imported under ANZTEC.
- Amendments to the Customs and Excise Regulations 1996 to implement the agreed rules of origin.

It has been proposed that the New Zealand-Chinese Taipei Economic Cooperation Bill (if required) be included in the 2013 Legislative Programme with priority.

The Bill (if required) would need to be passed before the end of October 2013 if the Agreement is going to enter into force on 1 December 2013 (tbc).

A comprehensive communication plan is in place to notify the business community, media and other stakeholders of how to benefit from and comply with ANZTEC and the ATA.

The plan includes:

- An ANZTEC website – also accessible through the websites of the New Zealand Commerce and Industry Office, the Ministry of Foreign Affairs and Trade, and New Zealand Trade and Enterprise – containing detailed information on the text of the ANZTEC, and ATA, information on the trade relationship and information on doing business with Chinese Taipei.
- NZCIO and its advisors are undertaking a series of “roadshows” throughout New Zealand to explain details of ANZTEC and the ATA.
- Various agencies (such as Customs) updating their websites to include guidance on trading under ANZTEC.
6 Economic, social, cultural and environmental costs and effects of the agreement actions

6.1 Economic effects

ANZTEC and the ATA are expected to have an overwhelmingly positive impact on the New Zealand economy.

Trade is an important factor in driving our national economic performance. Changes in trade can impact on the economy – for example, by affecting levels of prices, income or employment. Trade also affects macroeconomic performance in terms of the dynamics of the economy’s growth, stability and distribution. Extensive economic research has demonstrated that trade and growth are positively related, and an economy’s openness to trade has been linked to the explanation of differences in the economic growth rate of countries.

The direct impact of trade liberalisation on economic growth may be described as the “static” effects. These include the gains derived from:

- lowered tariff and non-tariff barriers in export markets generating higher export returns and volumes
- domestic tariff liberalisation generating efficiency gains from a better allocation of resources, cheaper consumption and competitive effects.

The quantitative impact of ANZTEC’s tariff and non-tariff barrier reductions are considered below.

Aside from these “static” effects, ANZTEC is expected to achieve a number of “dynamic” impacts. These are harder to quantify but may be greater than the “static” impact.

The “dynamic” effects range from the impact of improved transparency, cooperation in areas such as Technical Barriers to Trade, Sanitary and Phytosanitary Measures, the new dispute settlement mechanisms, and the publicity associated with ANZTEC. This is big news in Chinese Taipei and has seen extensive coverage accorded to New Zealand and the goods and services New Zealand exports to Chinese Taipei. The Agreement will also send a useful signal to New Zealand exporters that trading with Chinese Taipei and investing there, or receiving investment from there, will have no negative impact on trade and economic relations with the People’s Republic of China. There is anecdote that suggests that prior to the negotiation of ANZTEC some New Zealand businesses were reducing emphasis on Chinese Taipei out of concern that their operations there might be putting at risk opportunities on the Chinese mainland.

The “static” impacts are much easier to quantify. They include:

- the estimated annual duty saving on New Zealand exports of NZ$40.3 million on ANZTEC entering into force
- the estimated annual NZ$8.7 million in duty saved on New Zealand beef exports after tariffs are removed over two years
- the estimated annual NZ$14.7 million in duty saved on New Zealand kiwifruit exports after these are liberalised over three years
• when all products are fully liberalised, New Zealand exports will benefit to the tune of NZ$75.8 million a year based on current trade. The impact of these tariff reductions is likely to be larger as New Zealand exports to Chinese Taipei can be expected to grow as tariffs are lowered.
• for deer velvet and liquid milk, increased duty-free access for limited tariff quota volumes during a 12 year implementation period, followed by the full elimination of all tariffs on these products.
• New Zealand will benefit from Chinese Taipei expanding its commitments in services, particularly in financial services, education, professional services and services ancillary to aviation
• all new services will automatically be traded without restriction
• New Zealand will benefit from the provisions to facilitate the movement of business people into Chinese Taipei
• ANZTEC gives New Zealand access to Chinese Taipei’s government procurement market.

6.2 Social effects

ANZTEC and ATA are expected to have overall benefit to New Zealand socially. No negative social effects are anticipated.

Because New Zealand’s tariffs on imports from Chinese Taipei are so low, the removal of these tariffs is unlikely to have any negative impact on employment in New Zealand. Conversely the better returns expected on exports to Chinese Taipei, and the expansion in exports that is likely to result should boost employment opportunities in New Zealand.

This is the first agreement of its type that New Zealand has negotiated that contains a dedicated chapter on trade and labour.

6.3 Immigration

ANZTEC will require no changes to New Zealand immigration policy.

6.4 Cultural effects

Culture is an important element of ANZTEC. It contains provisions allowing film and television co-production and it encourages increased cooperation between Māori and the indigenous people of Chinese Taipei.

ANZTEC contains safeguards that ensure that there are no adverse effects on New Zealand cultural values including Māori interests.

ANZTEC incorporates the full range of exceptions in respect to trade in goods and trade in services provided under the WTO through Article XX of GATT 1994 and Article XIV of GATS. These exceptions cover measures necessary for the protection of public morals and those imposed for the protection of treasures of significant artistic, historic or archaeological value to the Parties.

In addition, subject to the same provisos as in the WTO that such measures are not used for trade protectionist purposes, ANZTEC also provides general cultural exceptions covering:
• protection of national works and items or specific sites of historic or archaeological value
• support for creative arts of national value (including performing arts, visual arts and craft, literature, film and video, language arts, and indigenous traditional practice and contemporary cultural expression).

Provided such measures are not used for trade protectionist purposes, ANZTEC also gives successive New Zealand governments the right to adopt measures they deem necessary in relation to Māori, including fulfilment of the Treaty of Waitangi obligations. Furthermore, interpretation of the Treaty of Waitangi is not subject to ANZTEC dispute settlement provisions.

ANZTEC also recognises the right of each party to establish measures to protect genetic resources, traditional knowledge and folklore consistent with international obligations.

6.5 Environmental effects

New Zealand has long recognised the links between trade and the environment. One of the aims of New Zealand’s trade agreements is to ensure that the outcomes contribute to sustainable development and environmental objectives, consistent with the government’s 2001 policy framework. The ANZTEC includes provisions that recognise the important role that trade liberalisation can play in supporting environmental improvements and the role that improved environmental performance can play in underpinning economic development.

Key environmental outcomes of the ANZTEC are:
• ANZTEC is the first agreement of its type negotiated by New Zealand that has a substantive Chapter on Trade and Environment. This contains some key commitments on the setting, administration and enforcement of each party’s environmental laws, regulations and policies.
• This is likely to be the first time in a bilateral agreement that two WTO members have agreed to liberalise trade in environmental goods and services, and the first time a list of environmental goods has been agreed.
• The outcome on voluntary market mechanisms, which addresses the issue of private sector activities in the regulatory space which might inhibit trade, such as the use of environmental standards, is similarly ground breaking.

Given the links between trade and the environment, trade agreements can affect sustainable development in a number of positive and negative ways, principally through:

6.5.1 Regulatory effects

Existing environmental policies and standards can, in principle, be affected by trade agreements. International experience related to these regulatory effects is that any potentially negative effects of trade agreements on such policies can be avoided through careful application of provisions in trade agreements. In particular, negotiations on trade agreements should be approached in a fashion that does not undermine the ability of governments to pursue appropriate and effective environmental policies.

The ANZTEC, as with New Zealand’s recent other trade agreements, does not inhibit the New Zealand government’s ability to regulate for environmental protection. Its general
exceptions are consistent with those provided for in international legislation (GATT and GATS). These exceptions apply across all aspects of the ANZTEC, and allow both governments to introduce measures necessary to protect human, animal or plant life or health, and to conserve exhaustible natural resources, provided these measures are not applied in a manner that constitute an arbitrary or unjustifiable discrimination or a disguised restriction on trade or investment. The provisions on cooperation provide an avenue for enhanced dialogue and engagement on environmental matters.

The ANZTEC will not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided they are applied to meet a legitimate objective and are not implemented in a discriminatory fashion. New Zealand has a suite of relevant existing legislation that is designed to address any potential adverse environmental outcomes of economic activity, including the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Ozone Layer Protection Act 1996, the Soil Conservation and Rivers Control Act 1941, the Energy Efficiency and Conservation Act 2000, the Climate Change Response Act 2002, the Biosecurity Act 1993, the Conservation Act 1987, the Crown Minerals Act 1991, the Fisheries Act 1996, Part IIIA & B of the Forests Act 1949 (amended 1993), and the Wildlife Act 1953. Voluntary initiatives such as the Clean Streams Accord and the New Zealand Packaging Accord act alongside and support this legislative framework, and New Zealand also encourages multinational firms to promote environmental management systems through its support of the OECD’s Guidelines on Multinational Enterprises.

6.5.2 Product effects

Trade liberalisation under the ANZTEC is likely to lead to a change in the mix of products that New Zealand exports and imports. This change in the composition of trade can have both positive and negative environmental effects.

The liberalisation of trade in environmental goods and services – a rapidly growing export sector for New Zealand – under ANZTEC will deliver both pure economic and sustainable development benefits. More generally, trade liberalisation results in a more efficient use of resources, and the additional income that is generated by trade liberalisation can also be used – at least in part – to invest in new technology and production processes that can have positive environmental outcomes.

At the same time, changes in the composition of New Zealand’s imports that arise from ANZTEC’s trade liberalisation provisions may present a possible increase in biosecurity risk. There could potentially be an increase in the amount of environmentally sensitive or hazardous items brought into New Zealand. These risks will need to be carefully monitored, but New Zealand’s existing framework of environmental laws, regulations policies and practices are designed to address any such change in the risk profile of imported goods.

6.5.3 Structural effects

Structural effects relate to the ways in which trade liberalisation can affect the production of goods and services that have environmental effects. If trade liberalisation leads to a shift in resources away from environmentally-damaging production processes or techniques (such as over-production or land degradation associated with primary production), these structural effects are likely to be a net positive for the environment. Negative structural effects can occur if domestic policy settings are not sufficiently robust to deal with a
potential increase in the production of goods and services resulting from trade liberalisation that may damage the environment.

The ANZTEC is unlikely to have any discernible negative structural effects, given the degree of structural reform that New Zealand has experienced over the past three decades, natural resource and capacity constraints, the already open nature of the New Zealand economy, and the environmental management legislation already in place.

6.5.4 Scale effects

As economies expand as a result of trade liberalisation, there is a risk of increasing pollution levels and other environmental factors. This risk stems largely from the potential product and structural effects outlined above. However, this risk may be offset by the productivity improvements (and hence income gains) that are also associated with liberalisation. As a result of allocative efficiency gains, it may in fact be possible to produce more goods and services using the same amount of aggregate resources. Also, over time, technological improvements, which can be hastened by trade liberalisation and broader economic integration, are also likely to contribute to a more efficient use of natural resources.

Given New Zealand’s existing environmental and resource management policy frameworks, and the provisions in the ANZTEC to promote the liberalisation of environmental goods and services and to promote capacity building on environmental issues, it is unlikely that scale effects resulting from the ANZTEC would result in any environmental degradation.
7 Costs to New Zealand of compliance with the agreement

7.1 Tariff revenue

The elimination of tariff revenue on imports from Chinese Taipei will cost an estimated $2.6 million a year.

7.2 Costs to government agencies of implementing and complying with ANZTEC

One off costs for setting up the ANZTEC website, leveraging activities and road-shows to maximise the benefit of ANZTEC are estimated at $150,000. There will be some on-going costs in terms of travel and staffing to meet the new obligations agreed in ANZTEC. These are expected to be covered in the baseline costs of the agencies involved. A number of the obligations agreed in ANZTEC will replace or can be combined with activities that existed prior to the negotiation of ANZTEC.

7.3 Costs to businesses of complying with ANZTEC

The expected effect of ANZTEC is to reduce compliance and at the border costs for New Zealand and Chinese Taipei businesses. The model for evidencing origin is based on New Zealand’s preferred approach of self-certification by the exporter. Unlike other models, this does not impose extra costs for exporters.
8 Completed or proposed consultation with the community and parties interested in the agreement

Negotiation of ANZTEC and the ATA was led by the New Zealand Commerce and Industry Office in Taipei with the assistance of technical advice provided by the private sector and the Ministry of Foreign Affairs and Trade, Ministry for Primary Industries, Ministry of Business Innovation and Employment, Ministry for the Environment, New Zealand Customs Service, Ministry of Transport, Ministry for Culture and Heritage, Treasury, New Zealand Film Commission, Te Puni Kokiri, and the Ministry of Health.

The Department of Prime Minister and Cabinet was consulted throughout the negotiations.

An extensive consultation process took place during the study phases of the process that preceded negotiations (involving all significant goods exporters to Chinese Taipei and those who might potentially be impacted by the liberalisation of imports from Chinese Taipei). A similar consultation process was conducted with the services sector. In some cases, consultations continued throughout the negotiations where input from New Zealand business was helpful to the design of elements of the agreement.

Those consulted will be advised on the outcome of the negotiations.

On signature full detail of ANZTEC and the ATA will be published along with a guide to the agreements.

During the study phases the New Zealand Commerce and Industry Office called for submissions on the possible agreement. A number were received. All submissions were strongly supportive of an ECA between New Zealand and Chinese Taipei.

The submission process was supplemented by a programme of consultation with organisations, companies and individuals either, already doing business with Chinese Taipei, or keen to do so in the future.

Stakeholder consultations revealed a number of key points and themes including:

- Chinese Taipei is an important and long-term market for New Zealand traders.
- High tariffs were an issue for a number of New Zealand exporters, particularly those exporting agricultural products.
- That tariff quotas on certain agricultural products were constraining exports.
- While Chinese Taipei was a relatively easy market to do business with there was support for greater cooperation on regulatory issues, particularly SPS and TBT.
- There was broad support for the inclusion of chapters relating to indigenous peoples, air services, and film and television co-production.
9 Subsequent protocols and/or amendments to the agreements and their likely effects

ANZTEC provides that it may be amended by agreement in writing by the Parties and such amendments are to come into force on the date or dates agreed by the Parties (Chapter 25 (Final Provisions), Article 2).

Specific provisions in ANZTEC envisage the possibility of review of existing commitments or the conclusion of further arrangements between the Parties. These include:

- A general review of the Agreement within two years of its entry into force and at least every three years thereafter, unless the Parties agree otherwise (Chapter 22 (Institutional Provisions), Article 5).
- Periodic review of customs procedures and the development of mutually beneficial arrangements (Chapter 4 (Customs Procedures and Cooperation), Article 16).
- Modifications to the lists of entities, goods and services coverage, and thresholds relevant to government procurement (Chapter 11 (Government Procurement), Article 21).
- Implementing Arrangements for the implementation of the SPS Chapter (Chapter 6 (Sanitary and Phytosanitary Measures), Article 5).
- Implementing Arrangements for the implementation of the TBT Chapter, including on specific product sectors of mutual interest to the Parties (Chapter 7 (Technical Barriers to Trade), Article 11).
- A review to consider the implementation of the Cross-Border Trade in Services Chapter and to consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of trade in services between the Parties (Chapter 13 (Cross-Border Trade in Services), Article 9).
- A process for the transposition of Tariff Schedules and technical revision to the PSR schedule to accommodate periodic amendments to the Harmonised System, or changes to a Party’s tariff for any other technical reason. Such revisions are to be considered as technical modifications and do not constitute an amendment to the Agreement.

ANZTEC makes it clear that the negotiation and modification of implementing arrangements must be consistent with the Agreement, and are not treaty-level processes – so do not constitute a formal amendment to the Agreement.

ATA provides that any amendment of the Agreement and its Annexes is to be made by written agreement between the Parties and the amendment will enter into force on the date of the later signature after completion of internal procedures of both Parties.
10 Withdrawal or denunciation

ANZTEC may be terminated by either Party giving 180 days written notice to the other Party (Chapter 25 (Final Provisions), Article 3).

ATA may be terminated by either party giving 12 months written notice to the other Party (Article 17).

Any decision by New Zealand to terminate ANZTEC or ATA would be subject to the usual domestic approvals and procedures for a treaty action.
Agency disclosure statement

This extended National Interest Analysis (NIA) has been prepared by the Ministry of Foreign Affairs and Trade, in consultation with other relevant government agencies. The extended NIA identifies all the substantive legal obligations in the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation and the associated Air Transport Agreement, a few of which will require legislative implementation, and analyses the advantages and disadvantages to New Zealand in becoming a party to these agreements. The Government has identified certain types of regulatory effects that would require a particularly strong case before regulation would be considered (impose additional costs on business during the current economic recession; impair private property rights, market competition, or the incentives on businesses to innovate and invest; override fundamental common law principles), but implementation of the obligations arising under ANZTEC are not expected to give rise to effects of this type.
Briefing on the International Criminal Court and the Kampala Amendment on the Crime of Aggression

Report of the Foreign Affairs, Defence and Trade Committee

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Briefing on the International Criminal Court and the Kampala Amendment on the Crime of Aggression

Recommendation

The committee has conducted a briefing on the International Criminal Court and the Kampala Amendment on the Crime of Aggression, and recommends that the Government give priority to New Zealand's ratification of the Kampala amendments to the Rome Statute, and thus make New Zealand one of the 30 founding states needed to implement the amendments.

Introduction

The International Criminal Court was established in 2002 by the Rome Statute as a permanent tribunal to prosecute individuals accused of the most serious crimes of international concern. The statute established four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. As of 1 May 2013, 122 states will be party to the statute.

The statute was reviewed and amended at a conference in Kampala, Uganda in 2010. The amendments defined the crime of aggression (Article 8) and gave the court jurisdiction over this crime (Article 15). The amendments will not come into operation until 2017, and their doing so is contingent upon a further vote on the amendments being adopted by a two-thirds majority of state parties, and also, thirty state parties having ratified or accepted the amendments before they can come into force. Ten countries have so far ratified, acceded to, or announced their intention to ratify the amendments: Lichtenstein, Samoa, Trinidad and Tobago, Luxembourg, Estonia, Botswana, Cyprus, Slovenia, Uruguay and Germany.

Definition of aggression

Under the amendment, the crime of aggression is defined in Article 8 as meaning

the planning, preparation, initiation or execution, by a person effectively to exercise control over or to direct the political or military action of a state, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

Once the amendment comes into force, this definition would place a country's political, civilian and military leadership under the jurisdiction of the court for their part in any act of aggression under Article 8. This is consistent with the precedents set by the Nuremberg and Tokyo war crimes tribunals held after World War Two.

The definition is based upon the United Nations General Assembly's Resolution 3314 of December 1974. It is premised upon traditional state-versus-state conflict, such as invasions, bombardments, or blockades. It does not cover concepts such as cyber or economic warfare.
Prosecution referral process

Although the amendments were passed by consensus, they were the result of a compromise between individual states particularly in relation to the UN Security Council. Major powers that are permanent council members regarded the making of decisions on acts of aggression as a core function of the council. Other countries, including New Zealand, were reluctant to accept the council as the sole such decision-maker.

The negotiated compromise was a mechanism to allow both the council and individual states to refer a person for prosecution to the court. However, individual states must notify the council of a decision to prosecute, and allow the council six months to make a decision of its own on the matter. If the council takes no action of its own within six months, the state may then refer the matter to the court prosecutor.

New Zealand position

The Ministry of Foreign Affairs and Trade told us it was in the process of advising the Government on the options available to New Zealand. The delay until 2017 for the amendments to come into force allows New Zealand several options: waiting until other like-minded countries have made decisions on the issue; passing legislation to bring the amendments into domestic law, but not ratifying the amendments themselves until the likely result of the 2017 vote is known; or becoming one of the thirty states needed to ratify the amendments or accept them into domestic legislation.

It is assumed that any legislative change to implement the Kampala amendments would involve changes to the International Crimes and International Criminal Court Act 2000. Any New Zealand legislative change could not become effective until 2017, and not then until all the conditions on their implementation had been met.

We note the motion of Dr Kennedy Graham which was agreed unanimously by the House on Wednesday 5 June 2013:

That this House note Germany’s ratification of the amendment to the Rome Statute of the International Criminal Court adopted in Kampala in 2010 accepting the criminalisation of acts of aggression arising from the illegal use of force in international relations, note that this brings the number of States parties ratifying the Kampala amendment to six, and urge that New Zealand move to become one of the founding 30 ratifying countries needed by 2017 in order to implement this amendment.

Conclusion

We believe the amendments to the Rome Statute may represent the biggest step the international community has taken to maintaining international security since the establishment of the United Nations Charter in 1945. Should they become operational, the amendments will hold a state’s leadership accountable to the court for any illegal acts of aggression for which they were responsible. This accountability would influence a state’s leadership in their consideration of the implications of military action against another state.

New Zealand should act consistently with its traditional role of maintaining international peace and security by playing its part towards ensuring the amendments become operational in 2017. To this end we make the following recommendation:
We recommend that the Government give priority to New Zealand’s ratification of the Kampala amendments to the Rome Statute, and thus make New Zealand one of the 30 founding states needed to implement the amendments.
Appendix

Committee procedure

The committee met on 13 June, 4 and 26 July 2013 to consider the briefing. We heard evidence from the Ministry of Foreign Affairs and Trade and the New Zealand Defence Force.

Committee members

John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
International treaty examination of the Agreement between the Government of New Zealand and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Report of the Foreign Affairs, Defence and Trade Committee

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Agreement between the Government of New Zealand and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Recommendation
The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Agreement between the Government of New Zealand and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and recommends that the House take note of its report.

Reasons for the agreement
Viet Nam is New Zealand’s 24th-largest trading partner. Both countries are parties to the ASEAN–Australia–New Zealand Free Trade Agreement, and are in the process of negotiating the Trans-Pacific Partnership Agreement; the lack of a double taxation agreement with Viet Nam is a key gap in our tax treaty network. Australia has had such an agreement with Viet Nam since 1992.

No agreement had previously been reached on this matter because Viet Nam sought a tax-sparing clause in the agreement, something New Zealand prefers not to include in its tax treaties to prevent opportunities for tax avoidance. Tax-sparing is a process whereby a tax credit from one party offsets a tax exemption granted by the other. It has now been agreed that New Zealand will provide Viet Nam with a tax sparing arrangement limited to ten years’ duration, subject to anti-avoidance measures. We were told this was consistent with New Zealand’s Double Taxation Agreement with Singapore.

There is expected to be little or no cost to the proposed agreement. The only cost to New Zealand would be in the form of loss of dividends, interest, and royalties, which are small as New Zealand’s investment in Viet Nam is low, and there will be some off-setting in the form of tax exemption for New Zealand.

Exchange of information
To help prevent tax avoidance and evasion, New Zealand generally seeks to exchange information about all types of taxes with other countries. Viet Nam has only ever exchanged income tax information with other countries, and this position is reflected in this agreement. This is not New Zealand’s preference, but the agreement does have a “most favoured nation” clause, which obliges Viet Nam to enter into negotiations with New Zealand should it enter into an agreement with another nation that allows other tax information to be exchanged.
Tax for students

A Vietnamese resident studying in New Zealand with a job related to the course of study, under article 20 of the agreement, in some circumstances, is not liable for income tax. The period worked must not exceed 183 days in a 12-month period. The clause is unusual. New Zealand has agreed to it because its inclusion is important to Viet Nam. We are assured by the Inland Revenue Department that this will not create a loophole allowing a student visa to be misused as a work visa.

Conclusion

We support the proposed double taxation agreement. The national interest analysis for the agreement is appended to this report.
Appendix A

Committee procedure
The agreement was referred to the committee for examination on 9 September 2013. We met on 26 September and 24 October 2013 to hear evidence and consider it. We heard evidence from the Inland Revenue Department.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
Appendix B

National Interest Analysis -- Double Tax Agreement with Viet Nam

1. Executive summary


1.2 Double tax agreements (DTAs) are bilateral international treaties that are principally designed to encourage growth in economic ties between countries. They do this by reducing tax impediments to cross-border services, trade and investment. New Zealand has 37 DTAs in force, primarily with its major trading and investment partners. The authorisation to negotiate and give effect to DTAs comes from section BH 1 of the Income Tax Act 2007.

1.3 Consistent with the Government’s DTA Strategy it is important for New Zealand to maintain a competitive DTA network with its main trade and investment partners in order to retain and grow internationally competitive companies. Viet Nam has been identified as one of the key gaps in the New Zealand tax treaty network. This gap has been further highlighted by the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), coming into force in 2010 (both New Zealand and Viet Nam are party to it), and the progress towards concluding the Trans-Pacific Partnership (TPP) Free Trade Agreement. Australia, by comparison, has had a DTA with Viet Nam since 1992. New Zealand has already concluded DTAs with five other key trading partners in the ASEAN region – namely Singapore, Thailand, Philippines, Indonesia and Malaysia.

1.4 Viet Nam is New Zealand’s 24th largest trading partner (goods) and 13th largest within Asia. Education, tourism and consultation services are an increasingly important component of the economic relationship (Viet Nam was the ninth-largest source of international students in New Zealand in 2012). Opportunities are also now arising in areas such as clean technology and environmental management, agribusiness and the aviation sector. In addition, there are sizeable investments in the dairy, timber and education sectors in particular, with the prospect of future increases in outbound direct investment and foreign direct investment between New Zealand and Viet Nam.

1.5 DTAs are not just about eliminating double taxation. In the absence of a DTA, New Zealand generally relieves double taxation of its residents on a unilateral basis. However, DTAs provide a more principled and comprehensive basis for doing so, and enable the revenue cost to be shared. They also provide other advantages that can reduce the compliance cost and cash-flow implications of cross-border economic activity and enable business decisions to be made with greater certainty. For these reasons, DTAs generally tend to be favoured by business interests and other key stakeholder groups. The New Zealand Embassy in Ha Noi and Consulate/New Zealand Trade and Enterprise in Ho Chi Minh City receive regular enquiries from New Zealand businesspeople regarding the existence of a bilateral DTA.
1.6 The Viet Nam DTA is broadly consistent with New Zealand’s other recent DTAs, and will be a good precedent for future DTA negotiations. However, as in all negotiations, some compromises were made by both countries. For New Zealand, the key compromise was the agreement to include a tax-sparing mechanism in the treaty. Tax sparing provisions were once a common feature of DTAs between developed and developing countries. The developed country would agree to provide a tax credit for tax deemed to be paid in the developing country, but not actually paid because of a tax exemption intended to attract foreign investment. While New Zealand stopped providing tax-sparing provisions some years ago, for tax policy reasons, recent changes to New Zealand’s international tax rules (which result in foreign dividends received by companies no longer being taxed) mean that tax sparing is now a less significant concern for New Zealand. The mechanism will apply to dividends, interest, and royalties paid from a Viet Nam source to a New Zealand resident. This mechanism does not apply where the New Zealand resident is a financial institution, and contains an anti-avoidance provision to prevent abuse. The mechanism will terminate after a 10-year period.

2. Nature and timing of the proposed treaty action

2.1 The proposed treaty action is to bring the Viet Nam DTA into force through an exchange of diplomatic notes that confirm the completion of the respective constitutional and legal requirements for entry into force by each country, pursuant to Article 27 of the Viet Nam DTA.

2.2 Before the treaty action is taken, the Viet Nam DTA must successfully undergo Parliamentary treaty examination, in accordance with Parliament’s Standing Order 394, and must successfully be given the force of law in New Zealand by an Order in Council made pursuant to section BH 1 of the Income Tax Act 2007.

3. Reasons for New Zealand becoming Party to the treaty

General reasons why New Zealand enters into double tax agreements

3.1 New Zealand began entering into double tax agreements (DTAs) in 1947, and currently has a network of 37 DTAs in force, predominantly with its main trading and investment partners.

3.2 DTAs are bilateral international treaties that are principally designed to encourage growth in economic ties between countries. They do this by reducing tax impediments to cross-border services, trade and investment. The major impediment is double taxation. As explained below, DTAs allocate taxing rights and reduce withholding taxes. Entering into a DTA therefore results in a prima facie revenue cost to New Zealand. However, the expectation is that a DTA will create a more favourable economic environment that will foster an increase in cross-border income-earning activity.

3.3 At a practical level, DTAs are complex technical documents that provide an interface between two, often conflicting, tax systems. Despite their complexity, DTAs are generally favoured by all of the key stakeholder groups that are involved in cross-border economic activity:

Taxpayers – A primary concern for any taxpayer contemplating entering into commercial or employment activity in another jurisdiction is that they must comply with the tax and other legal obligations of two separate jurisdictions. This can be perplexing, and obtaining professional advice or tax rulings can be costly and time consuming. Unique issues also
arise from cross-border activities, ranging from complex matters such as transfer pricing disputes, to more mundane considerations such as whether taxes paid in the other jurisdiction are creditable against home jurisdiction tax. DTAs help alleviate many of these problems. They establish a framework for the taxation of cross-border activity, prohibit discriminatory taxation, and establish a low-cost mechanism for taxpayers to raise concerns if they do not consider that the treaty is being correctly applied or interpreted.

Investors – Investing across an international border always involves risk. Specific risks arise in respect of tax because of the inherent complexity of tax laws, which can lead to uncertainty as to the actual tax outcome. Tax laws can also change suddenly in some jurisdictions. DTAs assist investors by specifying the maximum rates of tax that can be applied to dividends, interest and royalties. These “headline” rates reduce compliance costs for investors by making it easier to determine the after-tax returns on potential investments. The tax rates are also “locked in” by the treaty, which means that investors can make business decisions with greater confidence. To encourage greater inward investment, New Zealand has unilaterally reduced withholding taxes on certain returns from inbound investment. However, lowering tax rates in a bilateral treaty setting ensures that the rates are also reduced on a reciprocal basis by the treaty partner. This provides benefits to domestic investors.

Governments – As double taxation distorts business decisions and generally hinders cross-border economic activity, most jurisdictions unilaterally relieve double taxation of their tax residents. For example, New Zealand tax legislation relieves double taxation by allowing tax residents who derive foreign-sourced income, to credit the foreign tax paid against their New Zealand tax liability. However, DTAs provide more comprehensive relief from double taxation than is possible unilaterally, and allow the cost of relieving double taxation to be shared. They do this by allocating taxing rights between the jurisdictions concerned, on the basis of internationally accepted principles. In addition, most countries tax their residents on income earned worldwide. International cooperation between tax authorities is therefore needed to enable tax authorities to verify that income earned in other countries is reported correctly by tax residents. DTAs facilitate this by authorising the exchange of tax-related information (such as tax records, business books and accounts, bank information and ownership information). The exchanged information assists tax authorities to detect and prevent tax evasion and tax avoidance.

3.4 The Organisation for Economic Co-operation and Development (OECD), has assumed a leading role in promoting the use of DTAs as a way of contributing to the expansion of world trade and developing the world economy. The OECD has produced a Model Tax Convention, and a comprehensive commentary, for member and non-member countries to use as a basis for concluding DTAs. As a member of the OECD, New Zealand is subject to an express recommendation issued by the OECD Council in 1997 for all member countries:

… to pursue their efforts to conclude bilateral tax conventions … with those member countries, and where appropriate with non-member countries, with which they have not yet entered into such conventions …

1 The recommendation follows similar OECD Council recommendations that have been in place since before New Zealand joined the OECD.
Specific reasons for the double tax agreement with Viet Nam

3.5 New Zealand primarily enters into DTAs with countries with which it has a significant existing or potential economic relationship. Consistent with the Government’s DTA Strategy it is important for New Zealand to maintain a competitive DTA network with its main trade and investment partners in order to retain and grow internationally competitive companies. DTAs can also be entered into to exploit a particular opportunity, or to address particular taxation problems.

3.6 The lack of a DTA with Viet Nam has been one of the key gaps in New Zealand’s tax treaty network, particularly given the growing economic relevance of the Asian region to New Zealand. New Zealand already has DTAs with the other five major ASEAN nations. A DTA with Viet Nam will be an important part of the “connectivity” architecture that New Zealand seeks to put in place in its home region. This is recognised in the NZ Inc ASEAN Strategy, which was publicly launched by the Prime Minister on 5 August 2013.

3.7 Investment between New Zealand and Viet Nam, in either direction, is still not high. However, the two-way goods trade rose 20 per cent between 2010 and 2012 to NZ$777 million, with services trade in 2012 adding a further NZ$69 million. This makes Viet Nam New Zealand’s 24th largest trading partner (goods), and 13th largest within Asia. Education, tourism and consultation services are already an increasingly important component of the economic relationship (Viet Nam was New Zealand’s 10th largest source of international students in 2011), but additional opportunities are now arising in areas such as clean technology, environmental management, agribusiness and aviation. The entry into force of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), to which both New Zealand and Viet Nam are party, has given rise to fresh opportunities to increase bilateral trade, particularly in services. The two countries will further cement their relationship in the Trans-Pacific Partnership (TPP) free trade agreement, which is currently in the last stages of negotiation. The TPP is expected to deliver a much more liberalised framework for cross-border services and investment that will underpin the expansion of our trade and economic relationship.

3.8 The lack of a DTA has been further highlighted by the fact that Australia has had a DTA with Viet Nam since 1992. This has meant that New Zealanders engaged in income-earning activities in Viet Nam have in some cases been operating at a competitive disadvantage vis-à-vis Australian residents.

3.9 New Zealand has previously held back from entering into DTA negotiations with Viet Nam because of that country’s strict requirement for tax-sparing concessions from their DTA partners. New Zealand, by contrast, has had a strong preference for not including tax-sparing concessions in DTAs.

3.10 Tax-sparing provisions were once a common feature of DTAs between developed and developing countries. The developed country would agree to provide a tax credit for tax deemed to be paid in the developing country, but not actually paid because of a tax exemption intended to attract foreign investment. Many countries, including New Zealand, stopped including tax-sparing provisions in their DTAs some years ago, for tax policy reasons (including concerns about their use in tax avoidance schemes).

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2 New Zealand’s main exports to Viet Nam are dairy products, timber and timber products. Vietnamese imports have been mainly in phosphates, furniture, petroleum, nuts, footwear, telecom handsets, coffee and crustaceans.
Recent changes to New Zealand’s international tax rules (which result in foreign dividends received by companies no longer being taxed) mean that tax sparing is now less of an issue for New Zealand. Tax-sparing provisions have been included in some recent DTAs, most recently in the Papua New Guinea DTA signed in October last year. Given these developments, New Zealand is no longer constrained from concluding a DTA with Viet Nam. The Viet Nam DTA includes the tax-sparing provisions requested by Viet Nam, but also includes a number of anti-abuse rules proposed by New Zealand. Moreover, the tax-sparing provisions will automatically terminate after a 10-year period.

4. Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

As a bilateral instrument, the Viet Nam DTA necessarily involves trading-off advantages and disadvantages. However, on balance, entering into the Viet Nam DTA is expected to be in New Zealand’s overall interests.

Advantages of the treaty entering into force

A key advantage of the Viet Nam DTA is that New Zealanders engaging in cross-border income-earning activities can operate on an even footing with competitors from countries such as Australia, that already have the protection of a DTA. It also closes a perceived gap in New Zealand’s network of DTAs with its main trading and investment partners.

The general advantages of the Viet Nam DTA can be summarised as follows:

- The DTA will reduce tax impediments to cross-border activities and transactions (such as services, trade and investment). For example, in some circumstances the DTA will only permit one country to tax a particular transaction, thereby reducing compliance costs and providing cash-flow advantages to the parties to the transaction.
- The reduction in tax impediments is likely to foster increased bilateral economic activity that will benefit New Zealand in terms of employment and business opportunities, and offshore earnings.
- The allocation of taxing rights under the DTA will enable New Zealand to share the cost of relieving double taxation with Viet Nam, on an equitable basis.
- For tax authorities, the exchange-of-information mechanism will assist in detecting and preventing tax evasion and tax avoidance. The mechanism will also be a general deterrent against evasion and avoidance activity, and will further reduce the opportunities available to residents to escape legitimate New Zealand tax.
- For New Zealand business interests, the DTA will reduce the cost of importing capital, and make it easier to repatriate profits from Viet Nam.
- For investors in both jurisdictions, the DTA will reduce compliance costs and provide the certainty of low headline withholding tax rates, locked in by the treaty.
- For investors, businesses and taxpayers from both jurisdictions, the DTA will provide safeguards such as a mutual agreement procedure, which will facilitate the resolution of tax disputes (including disputes in complex areas such as transfer pricing), or the non-discrimination provision, which prohibits states from treating

Note that non-residents are not considered to be in the same circumstances as residents.
nationals of the other state less favourably than their own would be treated in the same circumstances.

4.4 In 2011, the Global Forum on Transparency and Exchange of Information for Tax Purposes concluded a review of New Zealand’s legal and administrative frameworks for tax information exchange, and recommended that New Zealand should continue to develop its exchange-of-information network. The Viet Nam DTA will help New Zealand to meet this recommendation.

**Disadvantages of the treaty entering into force**

4.5 As noted above, DTAs offer bilateral solutions to problems that cannot be solved unilaterally. However, a potential downside to DTAs is that those solutions are then locked in place by the treaty and can be difficult and costly to change. This can create difficulties if treaty provisions need to be changed urgently. Practical experience indicates that in genuine cases, treaty partners are usually amenable to making necessary changes. However, in extreme cases, if the treaty partner were to refuse to cooperate, the treaty may need to be terminated.

4.6 A second general disadvantage of DTAs is that they typically give rise to an upfront revenue cost. DTAs decrease the withholding tax rates on investment income and allocate taxing rights between the two jurisdictions. This means that New Zealand will lose the ability to tax some income streams to the extent that it could previously. This applies on a reciprocal basis, and the reciprocal reduction of Vietnamese tax will often provide an offset to the New Zealand reduction of tax (through, for example, not having to provide a foreign tax credit). In addition, any increase in cross-border activity as a result of the DTA entering into force will result in a further offset to the New Zealand reduction of tax. However, to the extent that the New Zealand reduction of tax is not completely offset, the DTA will have a net revenue cost. (Note that DTAs will generally give rise to favourable economic benefits – such as an increase in trade and investment – and these can be expected to outweigh the revenue impact.)

4.7 A third general disadvantage of entering into DTAs is the cost of administering the exchange-of-information provisions. If a DTA partner makes requests for information, New Zealand will incur costs in complying with those requests. However, New Zealand already has exchange-of-information arrangements with 47 other jurisdictions (including 37 DTAs and 10 Tax Information Exchange Agreements), as well as the systems for administering them. The costs of providing information under the Viet Nam DTA will therefore be marginal.

4.8 As noted above, in the negotiations New Zealand agreed to Viet Nam’s proposal to include tax-sparing provisions. This could be seen as a disadvantage, given that New Zealand’s established preference has been not to include tax-sparing provisions in its DTAs. However, also as noted, recent changes to New Zealand’s international tax rules mean that tax sparing is now a relatively minor issue for New Zealand, and tax-sparing provisions appear in some of New Zealand’s recent DTAs. In addition, the tax-sparing provisions include a number of anti-abuse rules, and will automatically terminate after a ten-year period.

4.9 Despite the fact that DTAs generally only apply to taxes on income (and, in the case of countries with capital taxes, to taxes on capital), the exchange-of-information provisions typically have a wider scope, applying to all taxes. However, Viet Nam has
never previously agreed to extend its exchange-of-information provisions beyond taxes on income. The Viet Nam DTA reflects this Vietnamese preference for a narrower exchange-of-information scope. This could be seen as a disadvantage. However, the wider exchange-of-information scope is a relatively recent international development, and most of New Zealand’s DTAs have a narrower scope. In addition, New Zealand asked for the insertion into the DTA of a most-favoured-nation obligation that will require Viet Nam to renegotiate the scope of the exchange-of-information provisions if they ever agree to a wider scope in any other DTA.

**Advantages of the treaty not entering into force**

4.10 Not having a DTA with Viet Nam is an option. In that case, the disadvantages identified above will not arise.

**Disadvantages of the treaty not entering into force**

4.11 If the Viet Nam DTA does not enter into force, New Zealand business interests will continue to operate at a competitive disadvantage, compared with Australian firms that are covered by a DTA. It is likely that the Government would be strongly lobbied by those New Zealand business interests.

5. Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

**Summary of key legal obligations**

5.1 DTAs do not impose requirements on taxpayers. Moreover, the Viet Nam DTA will not (and cannot) require the imposition of a tax that is not already imposed under domestic law. The DTA obligations will apply solely to the New Zealand and Viet Nam Governments.

5.2 When income is derived from one jurisdiction (the source jurisdiction), by a tax resident of the other jurisdiction (the residence jurisdiction), both countries typically tax on that income. DTAs primarily relieve such double taxation by allocating taxing rights. The key allocation of taxing rights in the Viet Nam DTA is as follows:

- Business profits of an enterprise will be taxable only in the jurisdiction in which the enterprise is resident, unless profits are derived through a permanent establishment in the source jurisdiction. In that case, the profits may be taxed in both jurisdictions. (Article 7 refers.) The term “permanent establishment” is generally defined in the Viet Nam DTA as meaning a fixed place of business through which the business of an enterprise is wholly or partly carried on. However, this general rule is supplemented by a number of clarifications and deeming rules which follow New Zealand’s preferred formula, and which will ensure that New Zealand can continue to impose tax on significant business activities such as natural resource exploration or exploitation. (Article 5 refers.)

- Investment income (dividends, interest and royalties) may generally be taxed in both jurisdictions. However, the amount of withholding tax that can be imposed by the source jurisdiction is limited to 5% where the dividend is paid to a company that owns at least 50% of the voting power in the company issuing the dividend, or 15% for any other dividend (Article 10 refers), and 10% for interest and royalties (Articles 11 and 12 refer). The limitation does not apply if the dividends, interest
or royalties are derived in connection with a permanent establishment in the source jurisdiction.

- Income from independent personal services will be taxable only in the jurisdiction in which the individual performing the services is resident, unless (i) the individual has a fixed base in the source jurisdiction, or (ii) the individual is present in the source jurisdiction for the purpose of performing the services, for more than 183 days in any 12-month period. In such case, the services income may be taxed in both jurisdictions. (Article 14 refers.)

- Income from employment will be taxable only in the jurisdiction in which the employee is resident unless the employee is present in the source jurisdiction for more than 183 days in a 12-month period, or the employer is a resident of the source jurisdiction (or is non-resident but the employee’s remuneration is borne by a permanent establishment in the source jurisdiction). In that case, the employment income may be taxed in both jurisdictions. (Article 15 refers.)

- Pensions will be taxable only in the jurisdiction in which the recipient is resident. (Article 18 refers.)

5.3 A number of exceptions to the above rules also apply. These include:

- Income from real property, including income from alienation of real property (referred to as “immovable property” in the Viet Nam DTA), will always be taxable in the jurisdiction where the property is situated, regardless of whether the residence country also has a taxing right. (Articles 6 and 13 refer.)

- Profits of an enterprise from the operation or alienation of ships or aircraft in international traffic will be taxable only in the jurisdiction in which the enterprise is resident. However, profits from domestic carriage by ship or aircraft will be taxable in both jurisdictions. (Articles 8 and 13 refer.)

- Directors’ fees will always be taxable in the jurisdiction in which the company paying the fees is resident, regardless of whether the country in which the director is resident also has a taxing right. (Article 16 refers.)

- Income from the activities of entertainers and sportspersons will always be taxable in the source jurisdiction, regardless of whether the residence country also has a taxing right. (Article 17 refers.). If the visit is wholly or mainly supported by the public funds of either state, then it is taxable only in the residence country.

- Salaries and wages for services to a Government of one jurisdiction will generally be exempt from tax in the other jurisdiction. (Article 19 refers.)

5.4 Where the allocation of taxing rights permits both jurisdictions to tax an item of income, the Viet Nam DTA will require New Zealand to relieve double taxation of its residents by allowing a credit for the tax paid in Viet Nam. (Article 22 refers.) This is consistent with the unilateral relief mechanism that already applies under New Zealand domestic law. The obligation also applies reciprocally, so Viet Nam must allow its residents a credit for New Zealand tax paid.

5.5 As noted above, the Viet Nam DTA includes tax-sparing provisions. These provisions, located at Article 22(3) to (5), require New Zealand to allow its residents to claim a foreign tax credit in certain circumstances, even though no tax has been paid in Viet Nam. The tax-sparing credits apply solely in the case of Vietnamese tax incentives that promote foreign investment for development purposes. They are designed to ensure that the tax incentives are not clawed back by New Zealand taxing its residents in full
(which would remove the incentive for New Zealanders to invest in the Vietnamese development areas). As noted above, anti-abuse rules have been built into the tax-sparing provisions, to ensure that they are used appropriately. The tax-sparing provisions will also automatically terminate after a 10-year period.

5.6 The non-discrimination provision requires that New Zealand does not subject Viet Nam nationals to a greater tax burden than New Zealand nationals would be subject to in the same circumstances, in particular with regard to residence. (Article 23 refers.) This requirement applies to both taxation and connected requirements. Similar rules apply for permanent establishments, deductions and New Zealand companies that are wholly or partly owned or controlled by Viet Nam residents. This provision does not create an exception to the related-party dealing rules around interest or royalty payments, or associated party dealings.

5.7 In addition to the above obligations, New Zealand will be required to comply with various administrative requirements imposed by the Viet Nam DTA. These are as follows:

- **Mutual agreement procedure.** New Zealand must comply with the procedures for settling disputes set out in the mutual agreement procedure article of the Viet Nam DTA. (Article 24 refers.) This is discussed below, in the section Dispute resolution.
- **Exchange of information.** As discussed, the Viet Nam DTA includes an Article that provides for the exchange of tax-related information between tax authorities, for the purpose of detecting and preventing tax evasion and tax avoidance. New Zealand will be required to respond to requests for information from Viet Nam. If Inland Revenue receives a valid request, and if it does not already hold the requested information, it must use its information-gathering powers to obtain the information. Inland Revenue can similarly request information from Viet Nam. (Article 25 refers.)

**Dispute resolution**

5.8 The Viet Nam DTA establishes a “mutual agreement procedure” for resolving disputes. Under this procedure, a taxpayer who considers that they have been taxed incorrectly under the treaty, including in transfer pricing cases, can approach their local tax authority under Article 24 to invoke a mutual agreement procedure. If the tax authority considers the case to be justified, and is unable to resolve the case through its own actions, it must approach the tax authority of the other jurisdiction to seek a bilateral resolution. This bipartisan approach is particularly appropriate in the tax treaty context because a single issue will generally affect a person’s tax position in both jurisdictions. The mutual agreement procedure is not a true disputes resolution mechanism, as the two sides are only obliged to “endeavour” to reach resolution. However, the taxpayer remains free to pursue a case through the courts (including if they do not agree with the decision reached under the mutual agreement procedure).

5.9 The mutual agreement procedure also authorises the tax authorities of the two jurisdictions to collectively resolve any difficulties or doubts about the correct interpretation or application of the Viet Nam DTA.
Reservations

5.10 The Viet Nam DTA does not allow parties to make a reservation upon ratification. 4

6. Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

6.1 Subject to the successful completion of the Parliamentary treaty examination process, the Viet Nam DTA will be incorporated into domestic legislation by Order in Council pursuant to section BH 1 of the Income Tax Act 2007. Section BH 1 authorises the giving of overriding effect to DTAs by Order in Council. However, the override relates only to tax matters, and applies only in respect of the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993.

6.2 The override of the Inland Revenue Acts is necessary to give effect to the core provisions of the Viet Nam DTA, which may provide relief from tax that would otherwise be imposed under domestic law. The override of the Official Information Act is necessary to ensure that confidential communications with the other jurisdiction do not have to be disclosed. The override of the Privacy Act is necessary to ensure that information regarding natural persons can be exchanged according to the terms of the treaty.

6.3 Article 27 of the Viet Nam DTA provides for the agreement to be brought into force through an exchange of diplomatic notes between the Contracting States. The Viet Nam DTA will enter into force on the date of the last of these notes. New Zealand will be able to notify Viet Nam that all procedures required by domestic law have been completed once the Order in Council has entered into force, which will be 28 days after its publication in the New Zealand Gazette.

6.4 Thereafter, the provisions of the Viet Nam DTA will have effect from various dates, according to the terms of the DTA. In New Zealand, the provisions relating to withholding taxes will generally take effect on 1 January following the year of the date of entry into force. The provisions relating to other taxes will have effect for income years beginning on or after 1 April in the calendar year following the year in which the DTA enters into force.

6.5 As an alternative to the above Order in Council mechanism, the Viet Nam DTA could be given legislative effect by means of the enactment of a dedicated statute. However, this option would unnecessarily increase the amount of primary tax legislation, and is therefore not preferred.

7. Economic, social, cultural and environmental costs and effects of the treaty action

7.1 No social, cultural or environmental effects are anticipated.

7.2 As already noted, the overall economic effects of the Viet Nam DTA are expected to be favourable to New Zealand. This is because the DTA can be expected to encourage growth in economic activity, and to assist Inland Revenue to detect and prevent tax evasion and tax avoidance.

8. The costs to New Zealand of compliance with the treaty

8.1 New Zealand will forgo some revenue from the limitation of its taxing rights, as outlined above. This will mean that New Zealand will not be able to tax some income that

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4 Reservations typically only feature in multilateral treaties. When permitted, they effectively enable a party to specify which treaty obligations they are committing to. However, reservations typically do not feature in bilateral treaties.
is currently taxed under domestic law, and that the rate of tax that can be imposed on
certain other income will be reduced.

8.2 This revenue cost will include tax forgone in relation to short-term activities of
Vietnamese residents in New Zealand, which the DTA will exempt from New Zealand tax.
It may also reflect reduced tax on royalties derived from New Zealand by residents of Viet
Nam, in respect of which the DTA will restrict withholding tax rates to 10% (the domestic
law rate being 15%). There may also be some revenue cost from reduced withholding tax
rates on dividends and interest derived from New Zealand by residents of Viet Nam,
although that tax is already largely relieved under domestic law.

8.3 Because investment flows from Viet Nam to New Zealand are currently low,
investment returns paid from New Zealand to Viet Nam in the form of dividends, interest
and royalties are correspondingly low. The prima facie revenue cost to New Zealand is
therefore expected to be negligible.

8.4 Viet Nam will be similarly constrained in terms of the tax it can impose on income
derived by residents of New Zealand. This reduced foreign tax will tend to flow through
to the New Zealand tax base through a reduction in credits for foreign tax paid. In
addition, the exchange of information provisions of the DTA will enhance our ability to
detect and prevent tax avoidance and tax evasion.

8.5 Finally, the DTA will generally give rise to favourable economic benefits (such as
increased trade and investment). To the extent that the cost to the New Zealand revenue is
not fully offset by the factors mentioned above, we would expect that the economic
benefits of the DTA will outweigh the costs.

8.6 The tax sparing provisions of the DTA are not expected to give rise to specific
costs. This is because of recent changes to New Zealand’s international tax rules that
generally result in foreign dividends received by New Zealand companies no longer being
taxed. As discussed, the tax sparing provisions will terminate after a ten-year period.

8.7 The exchange of information provisions of the Viet Nam DTA will result in some
administrative costs for Inland Revenue, arising from the need to respond to requests for
information from Viet Nam. Based on previous experience, the numbers of requests are
not expected to be significant. If requests are received, Inland Revenue already has
efficient systems in place for administering the exchange of information provisions of New
Zealand’s other 37 DTAs and 10 Tax Information Exchange Agreements in force, and the
additional costs will be marginal.

8.8 Compliance costs for New Zealand businesses are expected to be reduced under
the Viet Nam DTA. This is because New Zealand businesses will have clear guidance
about when they will be liable for tax on activities in Viet Nam, in line with internationally
recognised norms.

9. Completed or proposed consultation with the community and parties interested in
the treaty action

9.1 The Treasury, and the Ministry of Foreign Affairs and Trade, were consulted about
the terms of the Viet Nam DTA and the content of this extended National Interest
Analysis, and agree with its analysis and conclusions.
10. **Subsequent Protocols and/or amendments to the treaty and their likely effects**

10.1 The Viet Nam DTA does not expressly set out the process for amendments to the agreement, but amendments are typically made by negotiating an amending Protocol. New Zealand will consider any future amendments on a case-by-case basis. Future amendments will be subject to New Zealand’s normal domestic approvals and procedures for DTAs.

10.2 Only one future amendment to the DTA is currently contemplated. Article V of the Protocol to the Viet Nam DTA is a most-favoured-nation obligation that applies to Viet Nam. It provides that if, in any future DTA, Viet Nam agrees to extend the scope of the exchange-of-information article to taxes not otherwise covered by the DTA, it will enter into negotiations with New Zealand with a view to providing a similar extension of scope to New Zealand.

11. **Withdrawal or denunciation provision in the treaty**

11.1 Under Article 28 of the Viet Nam DTA, five years from the date of entry into force, either party may terminate the agreement by giving notice of termination through diplomatic channels. This is the same approach taken in New Zealand’s other DTAs.

12. **Agency Disclosure Statement**

Inland Revenue has prepared this extended NIA. Inland Revenue has analysed the issue of implementing the new DTA between Viet Nam and New Zealand, and the legislative and regulatory proposals arising from that implementation. As part of that process, Inland Revenue considered the option of not entering into the treaty. Inland Revenue is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis.

12.2 The allocation of taxing rights under the Viet Nam DTA is consistent with the New Zealand negotiating model, which in turn is based on the OECD’s Model Tax Convention. Although the revenue cost to New Zealand as a result of the allocation of taxing rights under the DTA cannot be accurately measured, Inland Revenue estimates that the revenue cost to New Zealand as a result of the allocation of taxing rights will be negligible.

12.3 The tax sparing mechanism agreed with Viet Nam represents a potential risk. The mechanism therefore has a potential cost to New Zealand. The tax sparing mechanism could be seen as potentially creating a precedent that may lead to other developing countries seeking a similar provision. However, that precedent already exists. (Six of New Zealand’s existing DTAs contain tax sparing provisions.) Moreover, the mechanism has been narrowly crafted, contains an anti-abuse rule, and will terminate after a ten-year period.

12.4 An Order in Council will be required to give the new DTA effect in New Zealand law. The Order in Council will override the Inland Revenue Acts, the Official Information Act 1982 and the Privacy Act 1993; this is authorised by section BH 1 of the Income Tax Act 2007 and is necessary to give effect to the terms of the new DTA.

12.5 The Ministry of Foreign Affairs and Trade, and the Treasury, have been consulted about the terms of the Viet Nam DTA and the content of this extended NIA, and no concerns were raised.

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5 A DTA has also been signed with Papua New Guinea, which includes tax sparing provisions. Once that agreement enters into force the number will increase to seven.
12.6 Inland Revenue’s view is that the policy options considered will not impose additional costs on business interests; nor impair private property rights, market competition, or the incentives for business to innovate and invest; nor override fundamental common law principles.

Carmel Peters
Policy Manager
Policy and Strategy
Inland Revenue
Border Processing (Trade Single Window and Duties) Bill

Government Bill

As reported from the Foreign Affairs, Defence and Trade Committee

Commentary

Recommendation
The Foreign Affairs, Defence and Trade Committee has examined the Border Processing (Trade Single Window and Duties) Bill, and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Customs and Excise Act 1996 and the Biosecurity Act 1993. It supports the full implementation of the Trade Single Window component of the Joint Border Management System and clarifies existing legislation. The purpose of the new system is to simplify and modernise border processes for both biosecurity and customs purposes (including the collection of duties). The bill also makes minor consequential amendments to other related border legislation. This commentary covers only the substantive amendments we recommend, and an important issue we considered.
Commencement
We recommend amendment of clauses 2(5), 5, 36, and clause 1 of schedule 1 to make clear that the Act, other than those provisions relating to the Joint Border Management System, would come into force on the day immediately after the expiry of the 3-month period that begins on the date on which this Act receives the Royal assent.

Requirement to consult industry groups
We recommend inserting into clause 15 of the bill a further amendment to section 118 of the Customs and Excise Act 1996, which would make consultation mandatory with representatives of groups whose interests are likely to be substantially affected by proposed changes to regulations governing the minimum level of duty. We are advised that this would be consistent with the approach taken in other legislation. It would also be consistent with other Customs and Excise Act 1996 regulation-making provisions (for example, sections 34A, 40A, and 50A relating to fees and charges).

Levy orders
We recommend inserting new clause 46A into the bill to amend section 140(1)(g) and (h) of the Biosecurity Act 1993 to provide more clearly for the making of levy orders to impose, or allow the imposition of, different levy rates for different services or functions under the Act, and to help make it clear that an order could set the rate or rates for a specified period (for example a levy year). This change would avoid doubt and reflect the fact of the 2 current levy rates.

De minimis provision for imports
We considered the de minimis provision for import consignments, particularly how it affects our retail environment. The New Zealand Customs Service does not collect duty on parcels and consignments valued below the de minimis (currently incurring $60 in duty) because the per-transaction compliance and administrative costs of cal-

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1 Sections 27, 28A, 29, and 35 of the Fair Trading Act 1986 (which relate respectively to regulations about consumer information standards, disclosure by fund-raisers making requests for charitable purposes, product safety standards, and safety standards in respect of services).
Calculating, processing, and collecting the revenue are disproportionate to the government revenue on the goods. If a parcel or consignment attracts only the Goods and Services Tax of 15 percent, it will be subject to the de minimis if it is valued at approximately $399 or less. If tariff duty is also payable, the de minimis will apply at a lower consignment value.

We accept that the provision of an online customer purchase option promotes a competitive retail environment, encouraging retailers to become more efficient. The rapid growth in New Zealanders’ offshore purchasing of goods online costing less than $399 places many traditional retailers, who have to charge GST on their retail goods, at a disadvantage. The Retailers Association estimates that the de minimis provision results in forgone revenue estimated to be around $300 million annually.

Many factors influence a consumer’s decision whether to shop in person or online, and the GST charged by a domestic retailer is only one of them.

Under current systems, if the de minimis exemption were very low, monitoring incoming goods and collecting taxes due could require a large organisation, costing more than any revenue collected. We are told that the current border technology cannot collect GST and tariff duty effectively on imports valued at less than $399, although there are various ways to monitor them, including random checks, which are being examined by an inter-departmental group. Under current law, Customs rely upon an honest declaration of value to establish taxes due.

This is a complicated subject and we are aware the Inland Revenue Department, Treasury, and Customs will soon be releasing a discussion paper on collecting GST on goods and services purchased online. It will include the revenue collection issues raised by the de minimis threshold, and distinguish sectors that are variously affected by online purchasing.
Appendix

Committee process
The Border Processing (Trade Single Window and Duties) Bill was referred to the committee on 27 August 2013. The closing date for submissions was 19 September 2013. We received and considered three submissions from interested groups and individuals. We heard one submission.

We received advice from the New Zealand Customs Service and the Ministry for Primary Industries.

Committee membership
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
International treaty examination of the Headquarters Agreement between the South Pacific Regional Fisheries Management Organisation and the Government of New Zealand

Report of the Foreign Affairs, Defence and Trade Committee

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Headquarters Agreement between the South Pacific Regional Fisheries Management Organisation and the Government of New Zealand

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Headquarters Agreement between the South Pacific Regional Fisheries Management Organisation and the Government of New Zealand, and recommends that the House take note of its report.

The South Pacific Regional Fisheries Management Organisation was established on 24 August 2012, following the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. The first international organisation to have its headquarters in New Zealand, it had its first meeting in January 2013. It has a staff of three.

The employees of the organisation, if they are New Zealand nationals, will be taxed, but will have their salaries topped up so that the New Zealand Government is not effectively taking money provided by other governments. Those who are not New Zealand nationals will not be taxed.

Privileges and immunities afforded to staff will be similar to those afforded to consular representatives. They will have immunity for official acts.

We support this treaty and have no further matters to bring to the attention of the House.
Appendix A

Committee procedure
The treaty was referred to the committee for examination on 21 October 2013. We met on 14 and 21 November 2013 to hear evidence and consider it. We heard evidence from the Ministry of Foreign Affairs and Trade.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
National Interest Analysis

1 Executive Summary

It is proposed that New Zealand sign and thereby bring into force the Headquarters Agreement between the South Pacific Regional Fisheries Management Organisation and the Government of New Zealand (the Agreement).

The South Pacific Regional Fisheries Management Organisation (the Organisation) is the first international organisation to be headquartered in New Zealand. It was established on 24 August 2012 when the Convention on the Conservation and Management of High Seas Fishing Resources in the South Pacific Ocean (the Convention), done at Wellington on 1 February 2010, entered into force.

Any minor financial implications to the Government arising from the Agreement (such as income tax forgone) are offset by the benefits of attracting an international organisation to New Zealand and the consumption of services by the Organisation. It is therefore in the national interest to conclude the Agreement.

2 Nature and timing of the proposed treaty action

In accordance with Article 23(1), the Agreement enters into force on signature. An Order in Council under the Diplomatic Privileges and Immunities Act 1968 is required to implement the Agreement in New Zealand law. Signature of the Agreement will need to be timed to coincide with the entry into force of the Order in Council. It is proposed that signature of the Agreement occur as soon as practicable after the Parliamentary treaty examination process has been completed and the Order in Council has been promulgated.

3 Reasons for New Zealand becoming party to the treaty

The Convention, which New Zealand ratified on 1 June 2011, requires that an agreement be negotiated between the Organisation and the Party that hosts the Secretariat. This agreement must set out the privileges and immunities which the Organisation and its officers shall enjoy in that territory (Article 6(3) of the Convention). As a Party to the Convention and the host of the Secretariat, New Zealand is therefore required to negotiate such an agreement. The Foreign Affairs, Defence and Trade Select Committee examined the Convention and reported back to the House on 18 March 2011. The National Interest Analysis appended to the report noted that the Secretariat would be located in New Zealand.

The Agreement sets out the privileges and immunities to be granted to the Organisation and its staff by New Zealand in order to ensure their ability to function properly and their independence. The Agreement also provides for the Organisation to have legal capacity to enable it to function effectively through the ability to enter into contracts of employment, rental agreements, operate bank accounts and similar activities (Article 3).
Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Advantages

Entering into the Agreement allows New Zealand to gain international recognition as the host of an international organisation. This will add to New Zealand’s positive international reputation in relation to international fisheries management. Hosting the Organisation further demonstrates New Zealand’s commitment to a rules based approach to the management of the important fisheries resources of the Pacific.

Entering into the Agreement will also enable New Zealand to comply with its obligation to enter into an agreement with the Organisation, as the Secretariat’s host.

Disadvantages

As discussed below, New Zealand will incur some minor financial costs as a result of the Agreement. These costs include income tax forgone and the waiver of visa fees.

The Agreement also provides for immunity from jurisdiction for experts, foreign representatives attending meetings that are convened by the Organisation and staff members of the Organisation. This immunity is, however, limited to official acts, and there is no immunity for motor traffic offences.

The lack of ability to prosecute certain people related to the Organisation for official acts and the minor financial costs that New Zealand will incur are outweighed by the benefits of hosting the Organisation. Therefore it is in the national interest to conclude the Agreement.

Legal obligations which would be imposed on New Zealand by the treaty

action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

The Agreement sets out the standard range of diplomatic privileges and immunities to be granted by New Zealand to the Organisation and its staff in order to ensure their ability to function properly and their independence. Like other intergovernmental organisations recognised under New Zealand law, within the scope of its official activities the Organisation has immunity from suit and other legal processes (Article 5(2)). However, there are some exceptions to this, including in respect of any contract for the supply of goods or services. Experts, foreign representatives attending meetings that are convened by the Organisation and staff members of the Organisation will enjoy immunity from jurisdiction for acts done by them in the exercise of their functions (Articles 13, 14 and 15). This immunity does not extend to motor traffic offences.

The Agreement provides that staff members of the Organisation, along with their officially recognised dependants and dependant children up to the age of 21 years, foreign representatives at Organisation meetings and experts will be provided with visas by New Zealand and will not be charged a fee for them (Article 16).

Staff members will be exempt from all taxes on income received from the Organisation (Article 14(5)). To ensure that the integrity of the New Zealand tax system is maintained, this does not apply to staff members who are New Zealand citizens or residents for tax purposes. However, so that New Zealand is not seen to be financially benefitting from the contributions of other member governments (who share the costs of the Organisation), the income tax that these staff members pay will be reimbursed to the Organisation.
The Agreement does not provide for reservations to be made.

Any dispute between the Organisation and the Government relating to the interpretation or application of the Agreement is to be resolved through a mutually acceptable method such as consultation or negotiation, or else by arbitration (Article 22).

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

The privileges and immunities conferred by the Agreement will be implemented in New Zealand law by an Order in Council under the Diplomatic Privileges and Immunities Act 1968.

Section 9 of the Diplomatic Privileges and Immunities Act 1968 allows the Governor-General, by Order in Council, to grant privileges and immunities to an international organisation and its staff members, and to grant such an organisation the legal capacities of a body corporate.

7 Economic, social, cultural and environmental costs and effects of the treaty action

The obligations in the Agreement will have a negligible impact on the New Zealand economy. There are no significant social, cultural or environmental costs and effects of the treaty action.

The provisions of the Agreement will only affect the staff members of the Secretariat and foreign experts and representatives that come to New Zealand for meetings convened by the Organisation.

8 The costs to New Zealand of compliance with the treaty

Any financial implications for the Government (such as any income tax forgone) are offset by the benefits of attracting an international organisation to New Zealand and the consumption of services by the Organisation. The Secretariat itself is small (currently three staff members), so neither the benefits nor the costs are significant.

9 Completed or proposed consultation with the community and parties interested in the treaty action

The Treasury, Inland Revenue Department, Ministry of Business, Innovation and Employment, Ministry for Primary Industries and the New Zealand Customs Service have been consulted and no material concerns were raised.

10 Subsequent protocols and/or amendments to the treaty and their likely effects

No protocols or amendments to the Agreement are envisaged at this stage. In accordance with Article 21, the Agreement may be amended by agreement between the Parties.

11 Withdrawal or denunciation provision in the treaty

Article 23(2) of the Agreement provides that the Agreement may be terminated by a joint decision between New Zealand and the Organisation. If the Organisation’s headquarters are ever moved from New Zealand, the Agreement will, after a reasonable period, cease to be in force.
12  Agency Disclosure Statement

The Ministry of Foreign Affairs and Trade has prepared this extended national interest analysis (NIA). It has undertaken an analysis of the issue of implementing the Agreement in New Zealand law and the legislative and regulatory proposals arising from that implementation. As part of that process, it has considered the option of not entering into the Agreement. The Ministry of Foreign Affairs and Trade is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis.

The Ministry of Foreign Affairs and Trade is of the view that the policy options considered will not impose additional costs on business; nor impair private property rights, market competition, or the incentives for business to innovate and invest; nor override fundamental common law principles.

The Treasury, Inland Revenue Department, Ministry of Business, Innovation and Employment, Ministry for Primary Industries and the New Zealand Customs Service have been consulted and no material concerns were raised.

[Name and designation of person responsible for preparing the NIA]

[Signature of person]  [Date]
Petition 2011/84 of Sam Fang on behalf of the Falun Gong Association Incorporated

Report of the Foreign Affairs, Defence and Trade Committee

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Petition 2011/84 of Sam Fang on behalf of the Falun Gong Association Incorporated

Recommendation

The Foreign Affairs, Defence and Trade Committee has considered Petition 2011/84 of Sam Fang on behalf of the Falun Gong Association Incorporated and recommends the House take note of its report.

The Foreign Affairs, Defence and Trade Committee has considered the petition of Sam Fang on behalf of the Falun Gong Association Incorporated, requesting that the House make it illegal for New Zealand citizens and permanent residents to receive an organ overseas that has been trafficked or illegally harvested and urge the New Zealand Government to publicly condemn the brutal and inhumane persecution of Falun Gong practitioners in China and publicly call on the Chinese Communist Party to immediately end the persecution.

The committee is aware that the petition forms part of a long campaign from Falun Gong and its supporters alleging that Falun Gong practitioners in China have been used as a source of organs for illegal donation. This allegation is unproven despite independent investigations and continues to be denied forcefully by the Chinese government.

The petition proposes that the House make it illegal for New Zealand citizens and permanent residents to receive an organ overseas that has been trafficked or illegally harvested.

The committee was advised that the sale of organs is not permitted in New Zealand. If people seek an organ transplant overseas then the New Zealand Government is not involved. Furthermore, with around a million New Zealanders resident abroad, it is difficult to see how, a law making receipt of an organ offshore illegal, could be enforced given issues including patient confidentiality, legal circumstances in other countries, and the clinical circumstances surrounding organ transplants.

The committee understands that New Zealand uses many channels for discussing human rights and rule of law matters with China. These include ministerial discussions, bilateral dialogue on human rights led by New Zealand’s Ambassador in Beijing, and bilateral Foreign Ministry consultations. New Zealand also discusses human rights issues at the United Nations (last month New Zealand spoke on the China Universal Periodic Review). There is also a secondment arrangement between the China University of Politics and Law and the New Zealand Human Rights Commission which provides direct exposure to New Zealand’s human rights practices. The committee members reaffirm our belief that religious and spiritual beliefs and expression of those beliefs is a fundamental human right that should be respected in all countries.

Issues raised in this petition have come before this committee in the last Parliament. The New Zealand Government investigated allegations made by Falun Gong of illegal organ harvesting from Falun Gong practitioners after they surfaced in March 2006 in a report written by Canadians David Kilgour and David Matas, and publicised through the Falun Gong publication Epoch Times.
Neither committee members nor the Government are aware of any independent evidence verifying the Falun Gong claims on organ harvesting. This conclusion is based on both New Zealand and foreign inquiries. New Zealand officials discussed the allegations with Kilgour and Matas; the office of the United Nations Special Rapporteur on torture; human rights non-governmental organisations; and other countries interested in the human rights situation in China. Other international organisations also attempted to verify whether the claims on organ harvesting made in the Kilgour/Matas report had substance. This included a significant US State Department investigation that concluded that there was no evidence of the practice. Officials are not aware of any independent assessment that supports the Falun Gong’s claims of forced organ harvesting.

We have no further matters to bring to the attention of the House.
Appendix

Committee procedure
The petition was referred to the committee on 7 November 2013. The committee met on 14 and 21 November 2013 to consider the petition.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
The Foreign Affairs, Defence and Trade Committee received a briefing from the Canberra-based Ambassador of Georgia on 21 November 2013. The Ambassador provided a brief history of Georgia up to its independence in 1991. He also detailed Georgia’s current contributions to international affairs and its recent complicated relationship with Russia culminating in conflict in South Ossetia in 2008.

We thank the Ambassador for taking the time to meet with us.

We have no further matters to bring to the attention of the House.

John Hayes
Chairperson
International treaty examination of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

Report of the Foreign Affairs, Defence and Trade Committee

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Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and recommends that the House take note of its report.

The agreement was formed by the Food and Agriculture Organisation of the United Nations in 2009 to prevent, deter and eliminate illegal, unreported, and unregulated fishing by setting a minimum standard for port states’ oversight of fishing vessels.

If widely implemented, the agreement will reduce the availability of “ports of convenience” with weak controls, thus making it increasingly difficult and less economic to undertake illegal, unreported or unregulated fishing. The net value of such fishing is estimated to be between US$10 billion and US$23 billion globally, of which US$400 million is incurred in the Pacific. New Zealand already in effect implements the agreement through the Fisheries Act 1996.

The largest markets for fish are the European Union, the USA and Japan. We heard that these states, particularly the European Union, are likely to require any fish coming into their markets to have been landed in a port state that has signed the agreement, thus making it difficult for illegally-caught fish to fetch the high returns these markets afford.

The agreement requires all incoming foreign vessels to request authorisation to enter a port, and sets out the information they need to disclose to do so. It allows port states to deny access to any vessel known to fish illegally, or to inspect the vessel, denying it use of the port facilities and the right to trans-ship or land catches. The agreement sets out the framework for inspections, and includes guidelines on training of inspectors, and forms for reporting investigations and information disclosed. It also sets out a process for following up the investigation of vessels found to have been fishing illegally.

The agreement provides a guide for preventing illegal fishing, and will increase the costs for any vessels that fail inspection. There are the usual safeguards for vessels in distress.

We asked which states in New Zealand’s area are of concern, and if any Pacific Islands Forum countries were involved, and were told that they included Singapore, Fiji, Malaysia, Indonesia and Tahiti, who are not parties to the agreement. Port states in the Pacific are being encouraged by the Western and Central Pacific Fisheries Commission to take action to monitor fishing vessels coming into their ports. Indonesia is about to become a member of the commission.

Illegal fishing in the Republic of Kiribati is on a large scale and ratification of the agreement would form part of a framework to combat it. New Zealand currently provides aerial surveillance on behalf of Kiribati, which has a large area to be monitored.
We support the proposed fishing agreement. The national interest analysis for the agreement is appended to this report.
Appendix A

Committee procedure
The treaty was referred to the committee for examination on 24 October 2013. We met on 5 and 12 December 2013 to hear evidence and consider it. We heard evidence from the Ministry of Primary Industries and the Ministry of Foreign Affairs and Trade.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
Appendix B

National Interest Analysis

Executive summary

1 It is proposed that New Zealand ratify the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the “Agreement”).

2 The Agreement is a multilateral, legally binding treaty that was developed under the auspices of the United Nations Food and Agriculture Organisation (FAO) and signed by New Zealand in 2009.

3 The objective of the Agreement is to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing through the implementation of effective port State measures. IUU fishing undermines efforts to sustainably manage fish stocks and has a range of negative environmental, economic and social consequences, including on the New Zealand fishing industry.

4 Port State\(^1\) measures are measures that port States apply to vessels from the time they request entry to port until the time they leave that port, for example, vessel inspections. The Agreement establishes a set of minimum standards on the management of access by foreign flagged fishing vessels (not including foreign flagged charter vessels) and related support vessels to ports.

5 The Agreement fills a gap in the international fisheries governance framework by setting internationally-agreed standards for port State measures. If widely implemented, it will reduce the availability of ‘ports of convenience’ (that is, ports with weak controls in place), making it increasingly difficult and less economic to undertake IUU fishing. A reduction of IUU fishing would have environmental, economic and social benefits, including economic benefits for New Zealand fishers operating in high value international fisheries that are targeted by IUU fishers.

6 Ratification of the Agreement is consistent with the New Zealand Government’s Business Growth Agenda, in particular its objective to build economic growth by sustainably using natural resources. It is also consistent with New Zealand’s pursuit of a stable and rules-based international system and with New Zealand’s policy objectives of strengthening international fisheries governance and reducing the occurrence of IUU fishing. It would reinforce New Zealand’s reputation as a responsible fishing State and set a positive precedent for the wider Pacific.

Nature and timing of the proposed treaty action

7 The Agreement was formally adopted by the FAO Conference at Rome on 22 November 2009. New Zealand signed the Agreement on 15 December 2009. During the 12 month signature period 23 countries signed the Agreement.

8 In accordance with Article 29, the Agreement will enter into force after 25 States have ratified, approved, accepted or acceded to the Agreement. To date, eight States have

\(^1\) A ‘port State’ is a State with ports that are used by foreign flagged vessels.
ratified, accepted, or acceded to the Agreement (Myanmar, Sri Lanka, the European Union, Norway, Chile, Uruguay, Seychelles and Oman).

9 It is proposed that New Zealand deposit an Instrument of Ratification with the Director-General of the FAO, as depositary, as soon as practicable following successful completion of the Parliamentary treaty examination process.

10 New Zealand’s ratification of the Agreement will not extend to Tokelau. Due to the content of the Agreement, it has been determined that it is not necessary to formally consult with the Government of Tokelau in relation to a possible extension of New Zealand’s ratification. This is because Tokelau is not a port State. However, Tokelau will be notified that New Zealand is ratifying the Agreement and further information will be provided to Tokelau if necessary.

Reasons for New Zealand becoming Party to the treaty

Background

Illegal, unreported and unregulated (IUU) fishing

11 The initiative to develop a multilateral, legally binding agreement on port State measures flows from the increasing attention on IUU fishing by the international community over the past 15 years.

12 IUU fishing undermines efforts to sustainably manage fish stocks and can have flow on impacts on the entire marine ecosystem. IUU fishing has a negative impact on social and economic opportunities, as well as food security. Because IUU fishers have reduced operating, compliance and labour costs, they have an unfair economic advantage over legal fishers targeting the same stocks.

13 The estimated global economic loss resulting from illegal fishing is between US$10-23 billion annually. This problem directly affects the New Zealand fishing industry as it participates in fisheries, and competes in international markets, with products derived from high value species that are targeted by IUU fishers.

Port State Measures

14 Port State measures are procedures that port States apply to vessels from the time they request entry to port until the time they leave that port, for example, approval of port entry and inspection of vessels. They can be applied to fishing vessels, as well as vessels that support fishing activities such as refuelling and re-supply vessels.

15 The use of port State measures can be a very effective means of addressing IUU fishing because ports are the first point of entry for harvested fish into a State. Enhanced port State measures can act as a disincentive to IUU operators by increasing the cost of their

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2 The concept of “IUU fishing” includes: fishing in violation of national or international laws (illegal); fishing that is not reported, or misreported, to national authorities or regional organisations (unreported); and fishing undertaken by vessels without nationality, or by vessels flagged to a state not party to a regional fisheries management organisation, or in areas/for species not covered by conservation and management measures (unregulated).

operations, for example, by forcing them to seek out more remote ports to land IUU-caught fish. The key to effective measures is to ensure port State measures are applied widely and consistently to avoid the development of ‘ports of convenience’, that is, ports with weak controls in place.

16 Port State measures have been effective in the merchant shipping domain where they have significantly reduced substandard shipping (for example, the Tokyo Memorandum of Understanding on Port State Control). The application of port State measures in a fisheries context has been less consistent and has been limited by the lack of legally-binding international standards (until now). To date, international initiatives relating to port State measures in the context of fisheries have been voluntary or developed, on an ad-hoc basis, by Regional Fisheries Management Organisations (RFMOs).

**Key reasons why New Zealand should take the proposed treaty action**

17 Key reasons why New Zealand should ratify the Agreement are:

- to bring the Agreement a step closer to coming into force. The Agreement will fill a gap in the international fisheries governance framework by creating legally binding international standards for port State measures;
- to be consistent with the New Zealand Government’s Business Growth Agenda, in particular its objective to build economic growth from sustainably using natural resources;
- to be consistent with New Zealand’s pursuit of a stable and rules based international system;
- to advance New Zealand’s policy objectives of strengthening international fisheries governance and reducing the occurrence of IUU fishing;\(^4\)
- to reinforce New Zealand’s reputation as a responsible fishing State; and
- to raise the standard of port State measures in the Pacific.

**Major and like-minded parties to the Agreement**

18 There is strong international support for the Agreement with 92 States involved in the negotiations and agreeing on the final text. Twenty-three States have signed the Agreement, including Australia, the European Union, Norway and the United States, of which the European Union and Norway have also ratified. Australia is currently undertaking parliamentary processes with a view to ratifying soon.

**Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand**

**Advantages**

19 The Agreement fills a gap in the international fisheries governance framework by setting internationally-agreed standards for port State measures. Given that 92 States reached agreement on the text, it is expected that the Agreement will achieve wide global coverage, creating consistent application of port State measures and raising the global standard. This will reduce the availability of ‘ports of convenience’, making it increasingly

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\(^4\) As stated in the New Zealand International Fisheries Strategy approved by Ministers in 2011.
difficult to land IUU-caught fish at a port and less economically viable to undertake IUU fishing. It is in New Zealand's interest to ratify the Agreement and bring it a step closer to entering into force.

20 Ratification of the Agreement is consistent with the New Zealand Government's Business Growth Agenda, in particular its objective to build economic growth from sustainably using natural resources. By reducing IUU fishing and increasing fish stock sustainability through improved port State measures, economic benefits available to New Zealand fishers will be enhanced.

21 New Zealand supports developing a stable and rules-based international system. New Zealand also supports international efforts to strengthen international fisheries governance and reduce the occurrence of IUU fishing. Ratification of the Agreement is consistent with these policy objectives.

22 New Zealand played a significant role during the development of the Agreement. Given this and the fact that we already comply with the measures, it would be fitting for New Zealand to be one of the first States to ratify. Furthermore New Zealand’s ratification would reinforce New Zealand’s reputation as a responsible fishing State. This could have flow on benefits for the trade of New Zealand seafood in a global market where consumers are increasingly demanding responsibly caught product.

23 A further advantage of the Agreement coming into force is the broadening of fisheries related port State measures to include vessels supporting fishing activities, for example refuelling and resupply vessels. While New Zealand has the capacity under the Fisheries Act 1996 to impose port State controls on these vessels, most other countries have limited their fisheries-related port State measures to fishing vessels. Support vessels are integral to the continuing operation of IUU fishing vessels, many of which refuel and resupply at sea to avoid the need to venture back to port. Making it harder for support vessels to gain access to ports will therefore make it more difficult for IUU fishing vessels to operate.

24 Finally, ratification by New Zealand will raise the standard of port State measures in the Pacific and may provide encouragement for Pacific Island countries to ratify. Many developing Pacific Island countries are currently reluctant to ratify the Agreement due to the onerous reporting requirements, particularly those with large numbers of foreign fishing vessels licensed to fish in their waters and using their ports. As set out in paragraph 47 below, New Zealand is working to address these issues through bilateral assistance and by providing funding to the Forum Fisheries Agency, which provides assistance to developing countries in their implementation of port State measures. FAO has also initiated a global series of regional workshops aimed at building capacity to support implementation of the Agreement.

**Disadvantages**

25 There are some minor costs associated with the Agreement as set out in paragraphs 47 - 49. These costs will be met within relevant agencies’ baselines.

26 Officials do not consider that there are any other disadvantages to New Zealand ratifying the Agreement.

**Overall Assessment of the Advantages and Disadvantages to New Zealand**

27 In light of the options available, ratification of the Agreement by New Zealand is the best policy option.
MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

Vessels subject to port State measures

28 In accordance with Article 3, Parties must apply port State measures to all foreign flagged vessels, except for:

- vessels of a neighbouring State that are engaged in artisanal fishing for subsistence;
- container vessels not carrying fish,
- fish that has been previously landed; and
- vessels chartered by a State’s nationals for fishing exclusively in areas under its jurisdiction and operating under its authority, for example, foreign flagged charter vessels operating in New Zealand waters. 5

Parties must deny IUU vessels entry or use of ports

29 Parties must deny a vessel entry to port when there is sufficient proof that the vessel has engaged in IUU fishing or fishing related activities, unless the entry is solely for the purpose of inspecting it and taking other appropriate actions which are as effective as denial of entry in preventing, deterring and eliminating IUU fishing, for example, initiating an investigation (Article 9).

30 Parties must deny a vessel that is already in port the use of port facilities (for example, for landing, transhipping and other port services including resupplying) in certain circumstances, such as when the Party finds that the vessel does not hold a valid authorisation to fish or there are reasonable grounds for believing that the fish on board were taken from coastal state waters in contravention of the applicable requirements of that state (Article 11).

31 Vessels must not be prevented from entering port for reasons of force majeure or distress (Article 10). Nor should port services needed for the health and safety of the crew be withheld (Article 11).

Parties must comply with inspection procedures

32 The Agreement sets out an inspection procedure for vessels entering ports (Articles 12-14) and stipulates that if after an inspection there are grounds for believing a vessel has engaged in IUU fishing, parties must notify interested parties of this (for example, parties to relevant RFMOs, relevant coastal states) (Article 18).

Parties must require their vessels to cooperate with measures

33 Parties must require that their flagged vessels cooperate during inspections in foreign ports. If a Party believes one of its vessels has engaged in IUU fishing they must request the port State to inspect the vessel (Article 20).

34 If a flag State receives an inspection report that indicates likely IUU fishing activity by one of their flagged vessels, they must investigate and take action (Article 20).

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5 Port State measures for foreign flagged charter vessels are covered by other sections of the Fisheries Act 1996.
Parties must encourage their own vessels to use certain ports

35 Parties must encourage their flagged vessels to use ports of States who act in accordance with the Agreement (Article 20).

Parties must support developing States

36 Parties are required to recognise the special requirements of developing States Parties in their implementation of port State measures consistent with the Agreement, including supporting funding mechanisms to assist developing States (Article 21). More information is included in paragraphs 47 and 48.

Parties must deter non-Parties

37 Parties are required to deter activities by non-Parties which undermine the implementation of this Agreement (Article 23).

Dispute Settlement

38 Parties are encouraged to settle disputes through consultations, and if this is not possible then by negotiation, mediation or other peaceful means (Article 22). Unresolved disputes would, with the consent of all parties involved, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea, or to arbitration. If still unresolved, Parties should continue to consult and cooperate with the view to reaching settlement in accordance with the rules of international law.

Annexes

39 The Agreement contains five Annexes which cover:

A Information to be provided in advance by vessels requesting port entry;
B Port State inspection procedures;
C Report on the results of inspection;
D Information systems on port State measures; and
E Guidelines for the training of inspectors.

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

40 The obligations of the Agreement are already met by the provisions of the Fisheries Act 1996, in particular Sections 113 and Part 6A (High Seas Fishing), the Customs and Excise Act 1996, and by processes undertaken by the Ministry for Primary Industries and the New Zealand Customs Service.

41 Section 113 of the Fisheries Act 1996 requires foreign flagged vessels (excluding foreign flagged charter vessels) to seek prior approval from the Ministry for Primary Industries to possess fish within New Zealand fisheries waters. This approval covers foreign flagged vessels seeking access to New Zealand ports and is issued subject to conditions that allow New Zealand to closely monitor the vessel’s fishing activities.

42 Part 6A of the Fisheries Act 1996 sets out the requirements, including inspection procedures and follow-up actions, for foreign flag vessels entering New Zealand ports (excluding foreign flagged charter vessels). For instance Section 113ZD requires foreign flagged fishing vessels or fishing carriers to seek prior approval from the Ministry for Primary Industries to enter a New Zealand port or its internal waters. These vessels are
required to provide 72 hours notification which allows the Ministry for Primary Industries to do a preliminary assessment and deploy resources to inspect where appropriate. Part 6A provides the legitimate grounds on which foreign flagged vessels can be denied port entry, which are consistent with the obligations imposed by the Agreement. Procedures are also set out in Part 6A that meet the Agreement’s obligations in respect of New Zealand flagged vessels being inspected in foreign ports.

**Economic, social, cultural and environmental costs and effects of the treaty action**

**Environmental**

43 Ratification of the Agreement by New Zealand and its subsequent entry into force would assist with the reduction of IUU fishing globally. This would enable New Zealand and others, through cooperative efforts, to better ensure long term sustainability of high seas fisheries, for both target and non-target species. Because IUU fishers often ignore international conservation and management measures relating to the broader marine environment, for example benthic habitats, seabirds and marine mammals, a reduction in IUU fishing would also have wider environmental benefits.

**Economic**

44 New Zealand companies participate in several international fisheries for high value species that are targeted by IUU fishing, for example, for toothfish, tuna, orange roughy, alfonso and squid. The estimated export value of New Zealand catch from international fisheries in 2011 was NZ$ 111 million (7.3% of New Zealand’s total fisheries export value). A reduction in IUU fishing in these fisheries would enhance economic benefits available to New Zealand fishers. Economic benefits would be achieved through improved fish stock sustainability, and through the creation of a more even playing field whereby responsible fishers are not undercut in key markets by IUU fishers.

45 The impact of the Agreement on foreign flagged vessels that use New Zealand ports is not expected to be significant. The port State measures that New Zealand currently applies already exceed the majority of minimum standards set out by the Agreement. In addition, a relatively small number of foreign-flagged vessels visit New Zealand ports (35 foreign flagged non-charter vessels visited New Zealand ports in 2012). The key change will be that port State measures will be applied to a wider range of vessels than previously, that is, vessels in support of fishing activities. Many of these vessels may not have been inspected previously for fisheries purposes, although there has been the capacity to do so under the Fisheries Act 1996.

**Social and Cultural**

46 There are no specific social or cultural effects for New Zealand anticipated by the treaty action. A reduction in IUU fishing will have wider social implications however, particularly for developing countries where communities are dependent on fishing for their livelihoods.

**The costs to New Zealand of compliance with the treaty**

47 Under the Agreement, Parties are required to provide assistance, including financial assistance, to developing States in their implementation of port State measures consistent with the Agreement. Parties can provide assistance to developing States directly, or through the FAO or other appropriate international organisations, such as RFMOs. New Zealand currently meets this requirement through provision of funding to the Forum Fisheries
Agency, which provides assistance to developing countries in their implementation of port State measures. There will be no additional cost implications for New Zealand with respect to meeting this obligation.

48 The Agreement provides for the establishment of an ad hoc working group to periodically report and make recommendations to the Parties on the establishment of funding mechanisms for developing States. There may be costs associated with periodic attendance of meetings once the ad hoc working group is established, should New Zealand choose to attend. These costs will be met with relevant agencies’ baselines.

49 Additional costs to New Zealand from ratification of the Agreement would be minimal and include training for fishery officers and additional inspection and reporting requirements. These costs would be met within agencies’ baselines.

**Completed or proposed consultation with the community and parties interested in the treaty action**

50 This National Interest Analysis was jointly prepared by the Ministry for Primary Industries and the Ministry of Foreign Affairs and Trade. The following agencies were consulted during the preparation of this paper: the Ministry of Transport, Maritime New Zealand, the New Zealand Customs Service, the Treasury and the Department of Conservation. No concerns or issues were raised. The Department of Prime Minister and Cabinet was informed.

51 The following stakeholders were consulted regarding New Zealand’s ratification of the Agreement: Deep Sea Conservation Coalition, Environment and Conservation Organisations of Aotearoa New Zealand (ECO), Greenpeace, Royal Forest and Bird Protection Society of New Zealand and World Wide Fund for Nature (WWF). All NGOs that responded are supportive of New Zealand’s ratification of the Agreement. No concerns were raised.

52 Seafood New Zealand was consulted on behalf of the New Zealand fishing industry. It is also supportive of New Zealand ratification of the Agreement and raised no concerns or issues.

**Subsequent protocols and/or amendments to the treaty and their likely effects**

53 Once Party to the Agreement New Zealand would only be bound by any amendments if it chose to be. Amendments to the Agreement may only be adopted with the agreement of all Parties, including New Zealand (Article 33). Amendments to the Annexes of the Agreement only apply to those Parties that have expressly accepted them (Article 34).

**Withdrawal or denunciation provision in the treaty**

The Agreement provides for withdrawal by a Party at any time after the Agreement has been in force for one year for that Party. Withdrawal must be by written notice to the Depositary and becomes effective one year after receipt of that notice (Article 35).
Marriage (Definition of Marriage) Amendment Bill

Member’s Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Marriage (Definition of Marriage) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Marriage Act 1955 (the Act) to ensure that its provisions are not applied in a discriminatory way. It would insert an interpretation into section 2(1) of the Act to clarify that a marriage is between two people regardless of their sex, sexual orientation, or gender identity. It also seeks to replace schedule 2 of the Act with a new schedule 2, to set out descriptions of prohibited marriages in appropriate terms.

Some of us believe that this bill is unnecessary on the grounds that the union of same-sex couples is already provided for under the existing civil union legislation passed in 2004.
Our consideration and the structure of this commentary

The bill is subject to a conscience vote for members. We begin by setting out the major issues raised during hearings of evidence and our consideration of this bill. Next, we discuss the amendments we have recommended to the bill with a view to making it an effective piece of legislation. Finally, we discuss Petition 2011/35 of Bob McCoskrie on behalf of Protect Marriage.

This commentary addresses the significant changes we recommend to the bill.

Submissions process

We received 21,533 submissions on this bill. We considered that 18,635 of these submissions replicated content in a very similar manner; 10,487 were in favour of the bill and 8,148 were against the bill.

The purpose of submissions is to inform the committee of issues it may wish to consider when recommending amendment to the bill. Where a number of submissions raise the same issue in the same way, it is not an effective use of committee time to hear evidence from each of these submitters (particularly where there is such a large number of submissions). However, these submitters can be assured that we received, read, and considered all of the points they raised.

We considered that 2,898 submissions presented unique content. These submissions raised substantive issues, or presented common issues in a distinct manner. We worked very hard to ensure that as many views as was possible were heard in the time available to us. We made a point of trying to hear from every organisation that sought to make an oral submission, and from as many members of the public as we could. We thank everyone who made a submission on the bill. We appreciate the time and effort that submitters have put into the preparation of their submissions.

Human rights and marriage

We acknowledge that whether or not the ability to marry constitutes a human right has been a topic of much debate. Proponents of the bill have expressed the view that the right to marry freely is a human right, which is currently denied to same-sex couples and transgender people. Opponents of the bill argue marriage is not a human right.
The majority of us consider that marriage is a human right, and that it is unacceptable for the state to deny this right to same-sex couples. Others of us believe that marriage is not a right, and should continue to be the sole domain of heterosexual couples.

**Religious beliefs**

We accept that for many people of religious persuasion marriage is a covenant between one man, one woman, and God, for the purpose of procreation. A large number of people and organisations have expressed their concern that, were this bill to pass, celebrants could not lawfully refuse to solemnise a marriage that would conflict with their religious beliefs. Other people with religious convictions argue that marriage is foremost about celebrating the love shared between two people, and that their inability to marry same-sex couples constitutes a constraint on their freedom to practice their religion. We accept the right of people to hold religious and cultural beliefs, and we make no attempt to dissuade people from holding them.

It is our intention that the passage of this bill should not impact negatively upon people’s religious freedoms. The Marriage Act enables people to become legally married; it does not ascribe moral or religious values to marriage. The bill seeks to extend the legal right to marry to same-sex couples; it does not seek to interfere with people’s religious freedoms. We recommend an amendment to section 29 of the Marriage Act, which we discuss later in this commentary, to clarify beyond doubt that no celebrant who is a minister of religion recognised by a religious body enumerated in Schedule 1, and no celebrant who is a person nominated to solemnise a marriage by an approved organisation, is obliged to solemnise if solemnising that marriage would contravene the religious beliefs of the religious body or the religious beliefs or philosophical or humanitarian convictions of the approved organisation.

**Role of the state in regulating marriage**

The role of the state in regulating marriage was an issue we debated at length. We are aware that some people consider that the religious and cultural meanings of marriage should take precedence over the regulatory role of the state, while others consider that New Zealand’s
laws should be driven by universal human rights considerations, not by particular religious perspectives.

In New Zealand, couples may fulfil the legal formalities under the Marriage Act as part of their wedding ceremony, whether that ceremony is conducted in a church, some other public or private place, or in a registry office.

We note that religious and non-religious couples already have a range of options available to them for the solemnising of their marriages. Of approximately 22,000 marriages conducted in New Zealand each year, around

- 23 percent are conducted in a registry office by a registrar
- 32 percent are conducted by a church or organisational marriage celebrant
- 45 percent are conducted by an independent marriage celebrant.

We note that in a number of European jurisdictions, there is a complete separation between the state and the particular religious or cultural functions of marriage. In these jurisdictions a marriage is authorised and registered by the state first, often in a registry office, and a couple is then free to choose to have a religious or cultural ceremony appropriate to them. We do not consider this bill to be an appropriate mechanism to consider or address this issue.

Civil unions and marriage

We considered the types of legal recognition the state can bestow on a couple’s relationship. Opponents of this bill consider same-sex couples’ access to civil unions to be sufficient legal recognition. Therefore, they argue, marriage could be left to heterosexual couples. The bill’s proponents argue that being denied the opportunity to marry because of a person’s sex, sexual preferences, or gender identity is an example of institutional discrimination.

Most of us consider that marriage should be extended to couples of the same sex, because the law should be applied equally. We recognise that same-sex couples should have access to the same choices of ways to legally recognise their relationship as heterosexual couples. We note that if the bill were to pass it would enable international recognition of relationship status for married same-sex couples.
Some of us believe that this bill’s intention remains unnecessary, on the grounds that the union of same-sex couples is already provided for under the existing civil union legislation passed in 2004.

Transgender issues
We wish to highlight an issue brought to our attention by transgender people. At present, married transgender people wanting their sex changed on their birth record (to enable them to fully adopt the gender of their choice) must either divorce their spouse or change their relationship from a marriage to a civil union. We are aware of how distressing this can be for transgender people in this position, and how disruptive it can be for their families.
We consider that transgender people should be able to change sex without being subject to these constraints. The bill as consequentially amended would enable any transgender people to continue to be married regardless of their gender identity.

Adoption and family matters
We acknowledge that some people feel very strongly about the issue of adoption of children by same-sex couples and transgender people. If the bill were to pass, it would make consequential amendments to the Adoption Act 1955 that would have the effect of enabling married same-sex couples to adopt children lawfully, as any married couple may do.
Many opponents of the bill are not in favour of same-sex couples being allowed to adopt children. Some argue that if changes to adoption laws are to be made this should be done through a bill that specifically amends the Adoption Act 1955. These opponents also consider a family with a mother and a father married to each other to lead to the best outcomes for children.
We note that currently under the law a homosexual or transgender person may legally adopt a child, but same-sex couples may not. Such a position seems absurd. The amendments we recommend will ensure that married couples are eligible to adopt, regardless of the gender of the adoptive parents.
We note that many families already exist which comprise children and same-sex or transgender parents. However, both parents do not have access to the full range of legal rights that married heterosexual
couples have. We consider that allowing same-sex couples to marry would grant an appropriate legal right to those families who are already raising children.

**Conclusion**

The introduction of the bill has encouraged New Zealanders to engage in a robust debate over the institution of marriage. We acknowledge that people hold sincere and strong beliefs over the importance of this institution. Some New Zealanders are strongly in favour of enabling same-sex couples to marry and others are strongly against such a proposition. The passion with which submitters made their arguments to us was palpable. We commend all those people who took the time to make a submission.

We were impressed by the participation of young people in this debate. We received heartfelt submissions from youth on both sides of the debate. We are heartened that so many of the younger generation, which is so often maligned as uninterested in politics and marriage, chose to involve themselves in this debate.

**Clarification of section 29 of the Marriage Act 1955**

We recommend inserting new clause 5A, which would add a new subsection to section 29 of the Act.

Section 29 of the Act states: “A marriage licence shall authorize but not oblige any marriage celebrant to solemnise the marriage to which it relates.” We acknowledge that concern has been raised about the clarity of section 29. We received advice from the Crown Law Office and from the Ministry of Justice which suggests that section 29 should be clarified to put beyond doubt that no celebrant who is a minister of religion recognised by a religious body enumerated in schedule 1, and no celebrant who is a person nominated to solemnise a marriage by an approved organisation, is obliged to solemnise if solemnising that marriage would contravene the religious beliefs of the religious body or the religious beliefs or philosophical or humanitarian convictions of the approved organisation. Our recommended amendment provides this clarity.
Repeal of section 56 of the Marriage Act 1955
We recommend that section 56 of the Act be repealed.
Section 56 states that it is an offence to impugn or deny the validity of a lawful marriage. We consider that section 56 is not compatible with the rights and freedoms set out in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
By recommending the repeal of section 56 in the context of this bill, it is not our intention to suggest that it is appropriate to denigrate any kind of marriage.

Commencement date
We recommend amending clause 2 to delay the commencement date of the bill, to allow the Department of Internal Affairs to prepare for its implementation. We consider that a delay of four months would be sufficient. We have provided for earlier commencement by Order in Council should earlier advice be received that this is possible.

Consequential amendments to other Acts
We also recommend a number of consequential amendments to 14 other Acts of Parliament and to a regulation, to ensure that there will be no legal differences between different kinds of marriages. We recommend only changes that are strictly necessary to ensure that the amended provisions would work as intended for all marriages. We note the concerns raised by a number of submitters regarding the potential for New Zealand to follow overseas experiences of removing gender-specific language from statutes. Most of the numerous statutory references to “husbands” and “wives” and other gender-specific terms are therefore not affected by this bill.

Petition 2011/35 of Bob McCoskrie on behalf of Protect Marriage
Petition 2011/35 of Bob McCoskrie on behalf of Protect Marriage requests that the House maintain the definition of marriage in law as between one man and one woman. We considered this petition alongside the Marriage (Definition of Marriage) Amendment Bill.
We heard evidence from Mr McCoskrie in Auckland on his petition. Aside from the matters raised already in this report, we have no other matters to bring to the attention of the House.
Appendix

Committee process
The Marriage (Definition of Marriage) Amendment Bill was referred to the committee on 29 August 2012. The closing date for submissions was 26 October 2012. We received and considered 21,533 submissions from interested groups and individuals. We heard 220 submissions, which included holding hearings in Wellington, Auckland and Christchurch.

We received advice from officials from the Ministry of Justice, the Department of Internal Affairs, and the Crown Law Office.

Committee membership
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker

Hon Trevor Mallard was at times replaced by Moana Mackey and on occasion by Charles Chauvel for this item of business.

Holly Walker was replaced by Kevin Hague for this item of business.

Eric Roy was at times replaced by Tim Macindoe for this item of business.
Special report on a matter relating to the 2012/13 financial review of the Department of Internal Affairs

Report of the Government Administration Committee

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Special report on a matter relating to the 2012/13 financial review of the Department of Internal Affairs

Recommendation

The Government Administration Committee recommends that the House take note of its report.

We heard evidence from the Department of Internal Affairs on 11 December 2013 in relation to its 2012/13 financial review. The evidence indicated that the Minister of Internal Affairs was updated regularly about the status of the Government Digital Archive Programme. Since then we have been advised in writing by the department that this was not correct; the Minister was given an initial briefing on the programme but the one update prepared subsequently was not sent to the Minister. A copy of the letter sent by the department is attached as an appendix.
Appendix A

Approach to financial review

We met on 19 February 2014 to consider the special report correcting evidence received at the 2012/13 financial review hearing for the Department of Internal Affairs.

Committee members

Hon Ruth Dyson
Chris Auchinvole
Kanwaljit Singh Bakshi
Mojo Mathers
Hon Trevor Mallard
Eric Roy
Appendix B

Correspondence from the Department of Internal Affairs

7 February 2014

Hon Ruth Dyson
Chair
Government Administration Committee
Parliament Building

Dear Ms Dyson:

Department of Internal Affairs 2012/13 Financial Review Hearing – correction to evidence

I am writing to inform you of a correction required to evidence provided by the Department of Internal Affairs at its Financial Review Hearing for the 2012/13 year.

The Department’s response to one of the Committee’s questions indicated that the Minister of Internal Affairs was “regularly” updated about the status of the Government Digital Archive Programme. This is not correct, and the Department can confirm that although the Minister had been briefed initially, the subsequent update prepared was not sent to the Minister.

I apologise to the Committee for any confusion this may have caused.

Yours sincerely,

Mervin Singham
Deputy Chief Executive
Strategy and Governance Branch
Plumbers, Gasfitters, and Drainlayers Amendment Bill

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Plumbers, Gasfitters, and Drainlayers Amendment Bill and recommends by majority that the amendment set out below be passed. The committee is unable to agree on whether the bill should be passed.

Introduction
The Plumbers, Gasfitters, and Drainlayers Amendment Bill seeks to do two things. First, it is intended to retrospectively validate a disciplinary levy imposed under section 143 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (The Act) between 1 April 2007 and 11 January 2012, and an offences fee prescribed under section 142 of the Act since 12 January 2012, by the Plumbers, Gasfitters, and Drainlayers Board. Second, the bill seeks to amend the Act to provide the board with a levy power to fund its function of instituting prosecutions for breaches of any pertinent Act.
The Plumbers, Gasfitters, and Drainlayers Board
The board was established under the Plumbers, Gasfitters, and Drainlayers Act 1976, and is continued in existence by the current Plumbers, Gasfitters, and Drainlayers Act 2006. The board is responsible for protecting the health and safety of the public by regulating and ensuring the competency of persons carrying out sanitary plumbing, gasfitting, and drainlaying work. One function of the board is to prosecute those who work illegally in the industry: non-registered persons performing work that only registered persons are allowed to perform.

We note that the matters covered by this bill arise because the 2006 Act did not specifically allow the board to impose a levy for the prosecution of such people working illegally.

We further note that the board received legal advice on 9 December 2010 supporting the board’s ability to set the offences fee.

The disciplinary levy and the offences fee
The board is funded entirely from fees and levies charged under the Act, which are collected only from people registered under the Act. One such levy is the disciplinary levy, which is set by the board to fund the costs of complaints and disciplinary action against such persons. There is also the offences fee, which the board collects in order to fund prosecutions against non-registered persons working illegally in the industry. The validity of the disciplinary levy and the offences fee has been the subject of complaints to the Regulations Review Committee and the Office of the Ombudsman.

Amendment to the collection of the offences fee
We recommend a minor drafting amendment to clause 5, which would insert new subsection 171B(2). This amendment would make it clear that, while the board could continue to collect the currently prescribed offences fee for as long as necessary, it could not change the fee. In order to change the amount it collects to fund its prosecution function, it would need to replace the offences fee with an appropriate disciplinary and prosecution levy imposed under section 143 (as amended by the bill).
Validation of the disciplinary levy and the offences fee

We agree that it is necessary to extend the board’s power to impose a new levy to secure funding for all of the functions it is required to carry out under the Act. The board could then legitimately impose a levy to meet the costs of prosecuting non-registered persons working illegally in the industry.

Some of us consider that it is necessary to validate the disciplinary levy and the offences fee, without which the board’s finances would be severely constrained. The board needs to be properly funded to carry out its statutory functions to protect the public. The alternatives to validation, such as refunding the disciplinary levy and offences fee or retaining the status quo (which would allow civil proceedings to recover the levy and the fee), could leave the board underfunded. We wish to make it clear that we do not condone the board’s actions. The board acted ultra vires in using part of the levy to prosecute non-registered persons working illegally in the industry, and has attracted criticism for doing so. It is unusual for a select committee to recommend legislation that would apply retroactively and we do not do so except where we consider it is absolutely necessary, as in this case.

We consider that the board has been held to account through its Accountability Agreement with the Minister for Building and Construction, the select committee process, and an Ombudsman’s Opinion on a complaint of 14 July 2011 about the validity of the disciplinary levy. We note that the Ombudsman has recommended that the disciplinary levy imposed between 31 July 2010 and 11 January 2012 be validated by legislation.

However, others of us do not agree with the retroactive validation of the offences fee and disciplinary levy. We consider that if the offences fee and the disciplinary levy are validated the board is not being held accountable for its actions. We agree that the board needs to be properly funded to carry out its statutory duties. We also agree that the board should be able to set an offences fee. We do not agree, however, with making lawful the previous unlawful actions taken by the board. We are also in favour of the Ombudsman’s recommendation that registered persons be compensated for excess levy payments.
Other matters

Historical issues in the sector
We note that the sector has a colourful history. A number of registered persons have been in contention with the board for many years; many of them now belong to the Plumbers, Gasfitters and Drainlayers Federation, one of the sector’s two professional bodies. The other professional body, Master Plumbers, Gasfitters and Drainlayers New Zealand Inc., supports the bill.

In 2008, because of concern about the board’s performance, the Minister for Building and Construction replaced most of its appointed members and requested that it be investigated by the Office of the Auditor-General. The office’s report, published in July 2010, raised a number of issues with the board’s performance, and set out what the board needed to do to improve it, including rebuilding its relationship with disgruntled registered persons; but it indicated that the board was on the right track. We are pleased to hear that, on balance, the board has improved its standard of performance.

We understand that the industry feels that the board needs to increase its transparency and its communication with the sector. We agree with this sentiment.

We note that the Office of the Auditor-General is due to conduct a follow-up audit later this year. We await the results with interest.

Funding models
We are interested in the funding models of other regulatory boards in the building and construction portfolio. We note that some boards use a different model from the Plumbers, Gasfitters, and Drainlayers Board. The electrical workers model receives funding from the electricity levy to fund investigations into non-registered persons carried out by the Ministry of Business, Innovation and Employment. This levy is charged to the industry through electricity generators, who then pass on the cost to consumers.

We are aware of some support in the plumbing, gasfitting, and drainage sector for a levy similar to the electricity levy, or funding from the existing gas levy to fund some of the board’s functions. The most appropriate model of funding levies is a debate that is likely to continue during the review of the Act.
Process
We were concerned that the committee initially was given only one week to consider this bill. This timeframe was not ideal, but we were advised that it was preferable that the legislation be enacted before 1 April 2013, when the new licensing year commences.
We were then given a two-week extension to the reporting date, which has assisted our deliberation.
Some of us remain concerned at the short time the committee had to progress this bill. We think that the time available was insufficient for the committee to consider the bill thoroughly.

Green Party minority view
Green Party members of Parliament are open to finding a solution to the on-going issues that have beset the Plumbers, Gasfitters and Drainlayers Board over the collection of the disciplinary levy and, since 2010, offences fee, for the prosecution of unlicensed practitioners.
In our view it is appropriate that the board prosecute unlicensed practitioners and be funded in order to carry out this function. Licensed practitioners stand to gain from the prosecution of unlicensed practitioners because of the benefit to the reputation of their industry, and we therefore have no philosophical objection to the idea of licensed practitioners funding this function through a levy or fee. We note that this funding model is used by a number of construction industry boards including the Chartered Professional Engineers Council, the Engineering Associates Registration Board, and the New Zealand Registered Architects Board.
However, we do accept the concerns of some submitters that the board has not been as transparent as it could be about how the offences fee is spent, and note their concerns that it may not be being used entirely for the purposes of prosecuting unlicensed practitioners. If the fee is collected for this purpose, it should be used only for this purpose, and we recommend that the board be more proactive about disclosing how the levy is spent so that stakeholders can be confident that it is only being used for the purpose for which it is collected.
It is clear that the disciplinary levy and later the offences fee have been collected inappropriately and illegally. While we support legis-
lation to validate the collection of such a fee in future, we are not comfortable with retrospective validation of the funds that have already been collected. Retrospective legislation should be used extremely sparingly because of the precedent it sets, and we are not convinced that it is required in this case. There are also issues of natural justice: a number of complainants have pursued their legitimate concern about the illegal collection of the disciplinary levy and offences fee through every available mechanism, including the Ombudsman, Auditor-General, and Regulations Review Committee, the latter twice. To reach the end of this process and be vindicated, only to have the law changed by Parliament, seems unfair and inappropriate.

Our preference would be to legislate to validate the collection of an offences levy by the board from now on, but not to retrospectively validate its previous collection. We recognise that this may require the board to refund its previous levies and fees, and think this is appropriate. However, noting the concern that this may leave the board in a financially unviable position, we think it would also be appropriate if the Government offered financial support to the board to enable it to refund the illegally collected levies and fees and still continue to operate. Based on estimates by the Ombudsman in its report into a complaint on this matter, this might mean a liability to the Government of around $1 million. While this is a substantial sum, it is probably appropriate that the Government make a financial contribution to enable the board to refund the levies, given that the current situation has arisen in part because the wording of the Plumbers, Gasfitters, and Drainlayers Act 2006 was inadequate to allow for the intended function of the board. We think the refunding of the illegally collected fees and levies would go some way towards restoring confidence in the board amongst the sector, and put the board on a more secure footing in the future.

It is of vital importance that the passage of this legislation does not create new grievances within the plumbing, gasfitting, and drainlaying sector. We think that the retrospective validation of funds, coupled with the extremely short time that the committee has had to consider this bill, is likely to do exactly that. Since this problem has been known for several years, our preference would have been for a robust consultation with the industry, followed by non-retrospective legislation following the normal timeframes for select committee consid-
eration. We remain uncomfortable and concerned with the rushed process and suspect that it will create new issues and grievances which are in nobody’s interests. We could have supported a solution that was not retrospective, but given these concerns, we cannot support the bill as currently drafted.
Appendix

Committee process
The Plumbers, Gasfitters, and Drainlayers Amendment Bill was referred to the committee on 14 March 2013. We received and considered three submissions from interested groups and 23 submissions from individuals. We heard from three submitters.
We received advice from officials from the Ministry of Business, Innovation and Employment.

Committee membership
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker
Raymond Huo replaced Trevor Mallard for this item of business.
Mojo Mathers replaced Holly Walker for this item of business.
2011/12 financial review of Drug Free Sport New Zealand and the inquiry into the performance in the previous financial year, and the current operations of Drug Free Sport New Zealand

Report of the Government Administration Committee

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Appendix 5
2011/12 Financial Review of Drug Free Sport New Zealand and inquiry into the performance in the previous financial year and the current operations of Drug Free Sport New Zealand

Recommendation
The Government Administration Committee has conducted the financial review of the 2011/12 performance and current operations of Drug Free Sport New Zealand and considered its inquiry into the performance in the previous financial year, and the current operations of Drug Free Sport New Zealand and recommends that the House take note of its report.

Introduction
Drug Free Sport New Zealand (DFSNZ) is an independent Crown entity established under the New Zealand Sports Drug Agency Act 1994 and continued by the Sports Anti-Doping Act 2006. The organisation works to maintain a culture where New Zealand sports people reject doping. It is responsible for implementing and applying the World Anti-Doping Code in New Zealand. Its total income in 2011/12 was $2.703 million and its total expenses were $2.623 million, resulting in a surplus of $80,715.

Testing
One of DFSNZ’s core roles is to conduct testing of New Zealand athletes—those based in New Zealand and New Zealand nationals competing overseas—to ensure that they comply with the Sports Anti-Doping Rules, which are made under the Sports Anti-Doping Act 2006. The organisation tests athletes for the use of banned substances for performance-enhancing or recreational effect, and seeks to detect the attempted use, possession, or trafficking of such substances and prohibited methods of using substances. The organisation’s testing programme seeks a balance between the specific targeting of high-priority athletes and a broad coverage to ensure a deterrent effect in all sports.

The testing regime comprises urine and blood samples, and also a programme that tracks the locations and actions of our top domestic and overseas athletes.

Testing for cannabinoids
We heard that the use of cannabis or cannabis synthetics by athletes constitutes about 70 percent of all positive tests for banned substances. DFSNZ said that in almost every case involving cannabinoids that has been taken to the Sports Tribunal, it was determined that the use of cannabis was not for performance enhancement.

DFSNZ is required under the World Anti-Doping Code to test for cannabinoid use. Given the small size and budget of the organisation, and the more serious threat posed to sport by performance-enhancing drugs, we asked about the appropriateness of testing athletes for cannabinoids. The organisation told us that it would prefer not to have to test for cannabinoids, but that it seemed unlikely that cannabinoids would be removed from the
World Anti-Doping Agency’s list of prohibited substances. Neither we nor the organisation encourage the use of cannabinoids, but we consider that its resources could be better used elsewhere.

**Lance Armstrong case**

We asked about the effect of Lance Armstrong’s long-term evasion and eventual positive test for performance-enhancing drugs on world anti-doping efforts. DFSNZ said it sees the cases of Lance Armstrong and Marion Jones as proof that investigative methods succeed in uncovering conspiracy to evade positive tests. DFSNZ emphasised that Mr Armstrong was caught by a national anti-doping body, which focuses solely on detecting drug cheats, rather than the international cycling federation.

**Australian Crime Commission Investigation**

A recent investigation by the Australian Crime Commission into the use of prohibited substances in Australian sport stated that doping and illegal drug use among Australian athletes was widespread. The commission found that the use of prohibited substances had been orchestrated and condoned by coaches, sports scientists and support staff in multiple sporting codes, and that criminal organisations were involved in the distribution of these substances. The Australian Sports Anti-Doping Authority is investigating specific cases, such as that of the Australian Rules football club Essendon, on the basis of the commission’s findings.

We were told that there is no significant link between organised crime and the supply of performance-enhancing drugs in New Zealand. DFSNZ is strengthening its relationship with the New Zealand Police and the New Zealand Customs Service regarding the distribution and use of prohibited substances. It intends to enhance its intelligence-gathering capability to help detect doping behaviour. We applaud this initiative.

**Sports supplements**

Following the release of the commission’s report, concern was expressed by Ben Franks, a prominent New Zealand rugby player, about the potential for an athlete to fail a drug test because of prohibited substances included in sports supplements. Mr Franks suggested that DFSNZ should state which sports supplements are safe to use. DFSNZ told us that sports supplements can contain prohibited substances, often inadvertently, which is why it would be impossible for DFSNZ to guarantee any sports supplement to be clear of prohibited substances; it therefore does not recommend their use by athletes. Any athlete who uses supplements does so at their own risk.

We were told that, after cannabinoids, prohibited substances in sports supplements appear to be the second most common cause of anti-doping rules violations.

**Substance use in gyms**

Generations of New Zealanders have joined gyms in the interests of their health. There is also a distinct “body culture” within the gym scene, of “bulking up” for aesthetic or athletic reasons—in some cases with the help of steroids and other prohibited or illegal substances. Concerns about steroid use amongst its membership prompted one gym to contact DFSNZ. The organisation had no mandate to investigate this issue in the absence of any connection to a New Zealand athlete, but it helped the gym to devise a code of conduct.
**Education**

DFSNZ educates New Zealand athletes, medical professionals, and support personnel on complying with anti-doping requirements. Education is one of the organisation’s priority outcomes. It provides informational resources to athletes and holds seminars for high-priority groups of athletes and personnel, and conducts “outreach” programmes for young athletes.

We are very satisfied with the organisation’s provision of education.

**Inquiry into the performance in the previous financial year, and the current operations of Drug Free Sport New Zealand**

We were unable to commence this financial review before the chief executive of DFSNZ was required to travel overseas. In order to hear evidence from him on the performance in the previous financial year and the current operations of DFSNZ, we launched an inquiry into this matter.

Other than the comments set out above, we have no further matters to raise on this inquiry.
Appendix

Approach to this financial review
We met on 20 February and 5 June 2013 to consider the financial review of Drug Free Sport New Zealand. We heard evidence from Drug Free Sport New Zealand and received advice from the Office of the Auditor-General.

Committee members
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker

Evidence and advice received
Office of the Auditor-General, Briefing on Drug Free Sport New Zealand, dated 20 February 2013.
Organisation briefing paper, prepared by committee staff, dated 13 February 2013.
Drug Free Sport New Zealand, Responses to written questions, dated 29 May 2013.
Drug Free Sport New Zealand, Responses to additional questions, dated 29 May 2013.
Statutes Amendment Bill

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Statutes Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction
This is an omnibus bill. It is designed to provide a legislative vehicle for minor, technical, and non-controversial amendments to existing legislation.

The major changes we recommend are outlined below; we do not cover very minor drafting amendments.

Real Estate Agents Act 2008
We recommend that clause 103 be omitted from the bill to remedy inconsistency with existing provisions in the legislation. The clause would amend the Real Estate Agents Act so that fines imposed by the Real Estate Agents Disciplinary Tribunal were paid to the Real Estate Agents Authority. We note that this clause conflicts with sec-
tion 24(2) of the Real Estate Agents Act, which specifies that all fines imposed on a person by a Complaints Assessment Committee or the Disciplinary Tribunal are payable to the Registrar.

**Legislation Act 2012**

We recommend the insertion of new Schedule 4, to make a number of technical changes to the Schedule of the Legislation Act 2012. Some provisions in the Schedule are not yet in force, and have been affected by subsequent amendments to a number of Acts. The technical changes we recommend would correct provisions in the Schedule that have been superseded by other Acts of Parliament.

We also recommend inserting new clauses 85C and 85D, which would amend the Local Government Act 2002, and clauses 137A and 137B, which would amend the Tariff Act 1988. These amendments would tidy up amendments made to those Acts by the Legislation Act 2012.

**Accident Compensation Corporation Act 2001**

We recommend inserting clause 3A, which would amend section 34 of the Act, to clarify the intent of the Act regarding new claims lodged for medical misadventure on or after 1 July 2005. The Act currently omits to state that all new claims after 1 July 2005 are to be assessed under the treatment injury criteria and not the medical misadventure cover. Our proposed amendment would rectify this. We also recommend consequentially inserting new clause 5 to bring section 360 into line with this amendment.

We recommend inserting clause 4A, which would amend section 325 of the Act. This would clarify the scope of the regulation-making power regarding ambulance transport of the body of a person who has died at the scene of an accident.

**Disputes Tribunals Act 1988**

We recommend inserting new clauses 53A and 53B, which would amend the Disputes Tribunals Act 1998. They would amend the term of appointment of a Disputes Tribunal Referee from 3 years with a term not exceeding 5 years. This would allow flexibility in the terms of Disputes Tribunal Referees.
Dividing the Statutes Amendment Bill

Part 27 of the bill as introduced proposed amendments to the Unit Titles Act 2010. We consider these amendments to be minor and technical, but there are so many of them that we consider their cumulative effect on the Act to be more than minor. After due consideration, and in accordance with Standing Order 290, we resolved to divide the provisions in Part 27 into a separate bill. This bill has been renamed the Unit Titles Amendment Bill.
Appendix

Committee process
The Statutes Amendment Bill was referred to the committee on 11 December 2012. The closing date for submissions was 15 February 2013. We received and considered seven submissions from interested groups and individuals. We did not hear oral submissions. On 8 May 2013 the committee resolved to divide the bill.

We received advice from the Ministry of Justice and the Ministry of Business, Innovation and Employment.

Committee membership
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker
Unit Titles Amendment Bill

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Unit Titles Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction
The clauses of this bill formerly constituted Part 27 of the Statutes Amendment Bill. Amendments made by statutes amendment bills should be minor, technical, and non-controversial changes to existing legislation. We consider that the amendments to the Unit Titles Act 2010 proposed in Part 27 of the Statutes Amendment Bill as introduced, are minor and technical, but there are so many of them that we consider their cumulative effect would be more than minor. We resolved therefore to divide the Statutes Amendment Bill, so that Part 27 became a separate bill to be known as the Unit Titles Amendment Bill.

We recommend a number of amendments to the latter bill, which we set out below.
Amendments to the Unit Titles Act 2010

We recommend replacing the definition of the term “access lot” which is amended by clause 143, with a clearer and more precise one. We also recommend a minor consequential amendment to clause 146, which seeks to amend section 55 of the Unit Titles Act.

We recommend amending clause 150, which seeks to replace section 89(1), requiring a body corporate to hold an annual general meeting. Our amendment would clarify that a development that predates the Unit Titles Act 2010 cannot seek to avoid this obligation by waiting until a unit is sold after the 2010 Act came into force.

We recommend amending clause 154, which seeks to replace section 138 of the Act. We recommend that the words “and maintenance” be added to section 138(4) of the Act, to improve the consistency of section 138, which requires bodies corporate to repair and maintain common property.

We recommend two amendments to clause 157, which seeks to amend section 148 of the Act, so that if a buyer requested some, but not all, of the prescribed information when requesting an additional disclosure, the person supplying the information would need to provide only the information requested. We consider that these amendments would improve the consistency of this provision throughout section 148.
Appendix

Committee process
The Statutes Amendment Bill, from which this bill was divided, was referred to the committee on 11 December 2012. The closing date for submissions on the bill as introduced was 15 February 2013. We received and considered seven submissions from interested groups and individuals. We did not hear oral submissions. On 8 May 2013 the committee resolved to divide the Statutes Amendment Bill.
We received advice from the Ministry of Justice and the Ministry of Business, Innovation and Employment.

Committee membership
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker
Members of Parliament (Remuneration and Services) Bill

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Members of Parliament (Remuneration and Services) Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to establish a new framework for setting entitlements for members of Parliament and the Executive. In doing so it would implement, subject to some modifications, most of the recommendations in the Law Commission’s report Review of the Civil List Act 1979—Members of Parliament and Ministers. The bill would repeal the Civil List Act 1979 and modernise and modify the law relating to

• the salaries and allowances of members of Parliament
• support services provided for members of Parliament, Ministers, and certain electoral candidates
• annuities and other benefits and privileges for former Prime Ministers
• benefits and privileges for former members of Parliament.

In summary, the bill recommends that the Remuneration Authority should determine accommodation services to members, travel services to members’ families, and resolution of issues about these services and the on-going travel entitlements to former members. These are all currently determined by either the Speaker of the House of Representatives or the Minister Responsible for Ministerial Services.

Our consideration
We wish to draw attention to a number of matters that interested us during our consideration of this bill. We have taken particular care to ensure that the law on payment of salaries and other entitlements to members is clear and workable.

We note public apprehension about the setting of members’ salaries and allowances. Some members of the public believe erroneously that members of Parliament set their own salaries and allowances, when in fact they are set by the Remuneration Authority. The bill would maintain this arrangement.

We have sought to ensure that the bill achieves the appropriate balance between the competing public interests of ensuring that members of Parliament are properly supported in carrying out their roles and functions on the one hand and maintaining confidence in the integrity of Parliament on the other hand. We emphasise that this bill modernises, and closes down anomalies regarding, members’ superannuation. We detail below suggested amendments to ensure that members cannot “double dip” and claim more than the payment owing to them. We have also suggested amendments to strengthen the financial penalties for members who are absent without leave or are suspended from the House.

This bill would increase the transparency and clarity of the requirements for reporting members’ and former members’ entitlements to travel and accommodation services, and of the provision of members’ superannuation. We note also that if a service provided to members results in a personal benefit, the Remuneration Authority must take this into account when setting salaries and allowances. This must then be expressly disclosed by the authority in its determination.
In the rest of this commentary we discuss substantive amendments we propose to the bill as introduced. Our commentary does not cover minor or technical amendments.

**Purpose clauses**
The bill as introduced contains two purpose clauses: clause 3, which sets out the main purposes of the bill, and clause 16, which sets out the purposes of Part 3.

We recommend rewording clause 3 to clarify that the primary purpose of the Act is to ensure that the House of Representatives and its members are properly supported in a way that maintains confidence in the integrity of Parliament. We also recommend removing reference to members carrying out their roles “efficiently and effectively”. Some critical features of representative democracy may be viewed by some people as inherently inefficient, and effectiveness is a subjective judgement. We consider, instead, that these requirements should apply to the system for determining entitlement to services.

We recommend omitting clause 16 and incorporating the matters set out in it as principles to be taken into account in clause 17. We are aware of concern that the purposes set out in clause 16 as introduced diminish the importance of the fundamental purposes set out in clause 3. Capturing these purposes as principles would address this concern, while ensuring that the matters set out in clause 16 were still taken into account by decision makers in exercising their powers under Part 3 of the bill.

We recommend omitting clause 17(3), which is designed to ensure that entitlements determined under the provisions of this bill by the Remuneration Authority or directed by the Speaker could not be used for electioneering purposes, and moving the expression of this intent to clause 24, which sets out how the Speaker must issue directions.

**Support for members with physical or sensory impairments**
We recommend inserting new clause 17(1)(ab) to provide for entitlements to services to be determined in a way that takes into account the particular requirements of members with physical or sensory impairments. The bill as introduced makes no specific mention of how services should be provided to such members, and we consider that
this should be covered by clear, flexible guidance within the legislation.

**Determination of member travel services**
The bill seeks to establish a new framework for setting entitlements for members of Parliament and the Executive. Under this new framework, entitlement to some of the travel and accommodation services that are currently determined by the Speaker of the House of Representatives and the Minister Responsible for Ministerial Services would be determined by the Remuneration Authority.

We recommend that the Speaker of the House of Representatives continue to determine travel entitlements for members of Parliament and qualifying electoral candidates. Travel by members of Parliament is critical to the effective functioning of the House. We consider that this is of fundamental democratic importance, and should be protected from the risk that decisions might be made which undermine it. We also consider that Ministers’ entitlement to any additional or alternative travel services (excluding international travel and accommodation) should continue to be determined by the Minister Responsible for Ministerial Services.

A number of amendments are required to effect this proposed change, as set out below.

**Overview of the Act**
We recommend amendments to clause 4(3) to remove references to the Remuneration Authority determining the entitlements of members of Parliament and qualifying electoral candidates, and Ministers, to travel services; and to include a reference to the Speaker issuing directions on entitlements of members of Parliament and qualifying electoral candidates to travel services. These amendments are needed to reflect our proposed changes to the determination of member travel services.

**Remuneration Authority**
We recommend amending clause 18 to remove references to the Remuneration Authority determining the entitlements of members of Parliament and qualifying electoral candidates, and Ministers, to
Commentary

Members of Parliament (Remuneration and Services) Bill

We also recommend amending clauses 30 and 46 to align them with the amendment proposed to clause 18.

We recommend amending clause 19 to remove references to the Remuneration Authority seeking advice from the Speaker and Minister Responsible for Ministerial Services on the entitlements of members of Parliament and Ministers to travel services.

Speaker of the House of Representatives
We recommend inserting new paragraph (aa) into clause 24(1) to state that the Speaker is responsible for issuing directions on entitlements of members of Parliament and qualifying electoral candidates to travel services. We recommend amending clauses 30 and 46 to align them with the proposed amendment to clause 24.

Minister Responsible for Ministerial Services
We recommend inserting clause 4(3)(d), which refers to the Minister Responsible for Ministerial Services determining Ministers’ entitlement to travel services (excluding international travel and accommodation) additional or alternative to that set by Speaker’s direction for members of Parliament.

We recommend inserting new clauses 27A–27D. These clauses set out the travel services (excluding international travel and accommodation) to which entitlement would be determined by the Minister Responsible for Ministerial Services, the procedure for the Minister’s determination, requirements for the publication of the Minister’s determination, and provisions for the resolution of issues about the Minister’s determinations. We also recommend amending clauses 30 and 46 to align them with the amendment proposed in clauses 27A–27C.

We recommend amending clause 29(5), to ensure provisions regarding the frequency of adjustments would apply to determinations made by the Minister Responsible for Ministerial Services under section 27A.

We recommend amending clause 17(2) to also require the Minister Responsible for Ministerial Services to consult the Commissioner of Inland Revenue about Ministers’ entitlement to any additional or alternative travel services (excluding international travel and accommodation), where the decision results in an element of personal (or
potential personal) benefit for Ministers, members of Parliament, or their family members. This change would align the consultation requirements for the Minister Responsible for Ministerial Services when making a decision with those of the Speaker and Remuneration Authority.

**Travel services for family members**

We recommend that clause 3 include among the purposes of the bill provision for travel services or entitlements for family members of members of Parliament. One of the proposed roles for the Remuneration Authority under this bill is to determine travel entitlements of family members. We consider that it is important to clarify this matter, which was unclear in the bill as introduced.

We recommend inserting new section 18(1)(ba) to require the Remuneration Authority to determine the entitlements of members’ family members to travel services within New Zealand. We also recommend inserting clause 19(1)(a)(ii), requiring the authority to seek advice from the Speaker about such entitlements before making any such determination.

**Travel entitlements for former members’ spouses or partners**

We recommend inserting clause 8 in Schedule 2 to exclude from the entitlements of spouses or partners of former members of Parliament any travel for private business purposes. We note that this exclusion would also extend to former members.

We note that spouses of former members lose their entitlements when the former member loses his or her entitlement through committing an offence punishable by two or more years’ imprisonment. We accept the advice that this carries on existing provisions but we note the potential for an unfair situation to arise, through no fault on their part. We recommend that this matter be considered in the future review of this Act.

**Composition of Remuneration Authority**

We recommend omitting clause 7, which sets out how the Remuneration Authority must be constituted when it performs certain functions. We note that this clause requires the Remuneration Authority
to include an additional member to help it to perform its functions other than setting salaries and allowances payable to members of Parliament. We consider that, given our proposed changes to the determination of members’ travel entitlements, the additional member would not be necessary. We also recommend consequentially removing from clause 4(1) a reference to the composition of the authority, and the removal of clause 57.

Payment of salaries and allowances to mid-term list members of Parliament
We recommend amending clause 11 to provide for the salary and allowances of a member of Parliament to commence when the Electoral Commission declares him or her to be elected under section 137(4) of the Electoral Act 1993. We are aware of a gap in the current law relating to authorisation of the starting date for payment of salaries to members of Parliament who enter Parliament mid-term following the vacating of a seat held by a list member of Parliament. Our proposed amendment would allow these members to be paid lawfully.

In order to validate the commencement of salaries and allowances paid to mid-term list members since 1996, we recommend inserting proposed new clause 64A. We note that validation would not incur further costs to the Crown.

We also recommend amending clause 12 to prevent a mid-term list member of Parliament who loses his or her seat at a general election and then re-enters Parliament under section 137 of the Electoral Act 1993 from receiving double payment for that period. Currently, the law provides for members who do not seek re-election at a general election, or stand unsuccessfully for re-election, to be paid a salary for three months starting on the day after polling day. These members could, in effect, be paid twice; our proposed amendment would ensure that this did not occur.

Annuities payable to former Prime Ministers
We recommend amending clause 40 so that the annuity payable to former Prime Ministers would not commence until after they had ceased to receive additional salary under clause 12, which provides for 3 months’ additional salary if a member does not stand or is not
re-elected at a general election. The amendment would prevent double payment for this period.

**Deduction of members’ salaries**

We recommend a series of amendments to clause 14 to change the provisions for a deduction from the salaries of members who are absent without leave from the House. We consider that such deductions should commence after the third day of their absence in a calendar year. Under the bill as introduced deductions would begin after nine days, which we consider too lenient. We recommend that the deduction of 0.2 percent should be calculated as a percentage of the gross annual salary of the member in question, rather than of the gross annual salary of an ordinary member. We also recommend that any deduction be made only after the Speaker certifies that it may be made.

**Deductions where a member is suspended from the House**

We recommend inserting new clause 14A, to provide for a member who is suspended from the House to have his or her salary docked by 0.2 percent for each day he or she is suspended. We consider that a financial penalty should be applied to members who are suspended. Our proposed amendment would strengthen the House’s ability to deal with misbehaviour by members. We recommend that any such deduction is made only after the Speaker certifies that it may be made.

**Record of attendance**

We consider that a significant penalty for failure to attend parliamentary business will require clear rules about attendance so that members are clear about how the requirements apply to them. We recommend that the Standing Orders Committee develop such rules to be included in the Standing Orders.

**Dispute resolution**

We recommend substituting the word “must” for “may” in clauses 22(2) and 27(2). This amendment would require rather than allow the body or individual making a determination or direction to prescribe procedures for resolving members’ disputes.
We recommend amending clause 22 to make the Remuneration Authority responsible for the final resolution of disputes or issues about the interpretation, application, or operation of any provision in its jurisdiction.

We recommend inserting new clauses 27(2A) and 27(2B), setting out how to resolve any issue about the Speaker’s directions if agreement cannot be reached under clause 27(2). This would provide a remedy for members who were unhappy with the treatment of a complaint under standard procedures. Similar provision is made for resolution of issues about determinations made by the Minister Responsible for Ministerial Services.

We also recommend inserting new clauses 38(1), (2) and (3), to require that any issues concerning former-member travel entitlements be determined by the Remuneration Authority.

**Members’ superannuation**

We recommend inserting clause 58(2), to amend the Remuneration Authority Act 1977 to clarify that the superannuation subsidy paid to members could not be backdated more than 12 months. This would clarify the law on the claiming of the superannuation subsidy.

**Statutory review**

We recommend inserting new clause 64AA. This would require a review of the Act after two full determination cycles. It is important that the new entitlements system be reviewed to examine its continued workability.

**Fringe benefit tax**

We recommend amendments to Schedule 3 relating to the payment of fringe benefit tax under the Income Tax Act 2007 on services provided to members. They would ensure that only the private elements of services were subject to the fringe benefit tax.

**Commencement and transitional provisions**

We recommend amending clause 2 to provide for the provisions of the bill to come into effect on 1 November 2013.
We also recommend amending clause 66, to specify the transitional period for service entitlements as extending from the day on which the bill comes into force until the date of the next general election.

**Briefing from the Remuneration Authority**

We invited the Remuneration Authority to brief us on its capacity to action the intended policy changes in the bill as introduced. We were told that the Authority preferred to continue to perform its core tasks with three members, rather than with the three-plus-one model proposed in the bill as introduced. We support its position, and we note that we have recommended that the current configuration of the authority be retained.
Appendix

Committee process
The Members of Parliament (Remuneration and Services) Bill was referred to the committee on 28 March 2012. The closing date for submissions was 18 May 2012. We received and considered 18 submissions from interested groups and individuals. We heard seven submissions.

We received advice from the Cabinet Office, the Office of the Clerk of the House of Representatives, the Parliamentary Service, and the Parliamentary Counsel Office.

Committee membership
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker
Metiria Turei replaced Holly Walker for this item of business.
Parental Leave and Employment Protection (Six Months’ Paid Leave) Amendment Bill

13 — 1

Report of the Government Administration Committee

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The Government Administration Committee has examined the Parental Leave and Employment Protection (Six Months’ Paid Leave) Amendment Bill. The committee is unable to agree on whether the bill should be passed.

Introduction

Although we recognise that the proposals in this bill offer benefits, we also acknowledge that they have financial implications. We have therefore been unable to reach agreement on whether the bill should be passed. This report provides some background information on the bill, a summary of the proposed amendments that we discussed, and a summary of the submissions we received.

Background

The Parental Leave and Employment Protection (Six Months’ Paid Leave) Amendment Bill is a member’s bill in the name of Sue Moroney. It seeks to amend the Parental Leave and Employment Protection Act 1987 by extending the period of paid parental leave from 14 weeks to 26 weeks. The bill proposes a staged increase, adding an additional entitlement of four weeks each year from 2012 to 2014.

Since 1987 the Parental Leave and Employment Protection Act has provided for women and their partners to take employment-protected leave on the birth or adoption of a child. In 2002 the Act was amended to provide for 12 weeks of paid parental leave, and in 2004 this was extended to 14 weeks, and coverage was expanded to include employees with shorter continuous service with the same employer. In 2006 this leave was also made available to the self-employed.

Amendments considered

We considered recommending a number of amendments to the bill. However, we could not agree on whether the bill should proceed, so are unable to recommend them. A summary of the key amendments we considered is below. Should the bill be passed then we would recommend that they be considered.

Purpose

We considered amending the purpose of the bill to extend the duration of maternity leave to 26 weeks, for consistency with the proposed duration of parental leave payments. This would have reflected the intent of the bill more accurately, and paralleled existing arrangements. The Parental Leave and Employment Protection Act currently provides for 14 weeks of maternity leave, and 14 weeks of parental leave payments.

Commencement

We considered recommending a staged progression to an additional 12 weeks of paid parental leave by three sets of amendments to the principal Act, as set out in proposed new
Part 1, Part 2, and Part 3. These new parts would have come into force on three different
dates, 1 July 2014, 1 July 2015, and 1 July 2016, making entitlements on any given date
clearer. Each part would have amended the sections in the Parental Leave and
Employment Protection Act referring to the duration of parental leave payments or
maternity leave, to reflect the number of weeks that would apply at the particular time.
Additional provisions in each part would have allowed a person to give notice to their
employer of their wish to take parental leave, and to apply for parental leave payments,
before the date on which the part came into force, if the expected date of delivery of their
child was on or after that date.

Submissions
Of the 3,809 submissions received on the bill, 3,795 (99.6 percent) supported it. The
submissions were primarily concerned with

- facilitating bonding and attachment between parent and baby
- supporting families and ensuring the stability of their incomes
- closing the shortfall between New Zealand’s paid parental leave provisions and those
  of other OECD countries
- improving health outcomes for mothers, babies, and children
- the World Health Organisation’s recommendation of exclusive breastfeeding up to
  six months of age
- allowing choice for women
- creating job opportunities
- the economic implications of the bill
- the positive and negative implications of the bill for employers.

Cost implications of proposed changes
Our consideration of the bill included a detailed examination of the costs of extending the
duration of paid parental leave, and any potential savings that might offset them. We
sought cost estimates on the assumption of a recommended 1 July 2014 starting date and
three-year implementation period, and estimates of any potential savings that might offset
them.

Parental leave payments are funded by the Government, up to a current maximum of
$488.17 per week before tax (adjusted annually to reflect average ordinary time weekly
earnings). Expenditure on paid parental leave for the financial year to June 2012 was $157
million.

The total cost of extending the duration of paid parental leave over the three-year
implementation period has been estimated at an additional $276 million, calculated on the
assumption of up to 15 percent of recipients returning to work during the proposed
additional 12 weeks. The additional per annum cost once the scheme is fully implemented
is estimated at $138 million.

The estimated additional cost of implementing the regime in the 2014/15 year is $45.8
million, increasing to $92 million in 2015/16, and $138 million in 2016/17 when it is fully
implemented.
The potential short-term savings to offset costs are estimated at about $28.4 million per annum once the increase was fully implemented. This estimate is subject to assumptions about the uptake of paid leave and return-to-work patterns; and it is based on estimates of annual savings from

- a reduction of about $13 million to the Early Childhood Education Subsidy reflecting a corresponding reduction in childcare needs
- an additional $8 million in tax from recipients of paid parental leave
- an additional $5 million in tax from temporary employees filling in for those on paid parental leave
- benefit payments reduced by $2.4 million per annum as a result of beneficiaries replacing paid parental leave recipients.
Appendix

Committee procedure
The Parental Leave and Employment Protection (Six Months’ Paid Leave) Amendment Bill was referred to the committee on 25 July 2012. The closing date for submissions was 5 October 2012. We received and considered 3,809 submissions from interested groups and individuals. We heard 38 submissions, and held hearings in Auckland and Wellington.

We received advice from the Ministry of Business, Innovation and Employment, the Inland Revenue Department, the Treasury, the Ministry of Health, and the Ministry of Education.

Committee members
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Mojo Mathers
Hon Trevor Mallard
Eric Roy

Sue Moroney replaced Hon Trevor Mallard and Jan Logie replaced Mojo Mathers for this item of business.
Sullivan Birth Certificate Bill

Private Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Sullivan Birth Certificate Bill and recommends that it be passed with the amendments shown.

Introduction
The Sullivan Birth Certificate Bill, a private bill sponsored by Louisa Wall, is promoted by Rowen Helen Louise Sullivan. Rowen Sullivan is seeking to have the name of her late birth mother, Diane Sullivan, included on her New Zealand post-adoptive birth certificate, in addition to that of her adoptive mother, Doreen Margaret Shields. The bill would direct the Registrar-General of Births, Deaths and Marriages to enter Diane Sullivan’s details on Rowen Sullivan’s post-adoption birth record, from which a birth certificate could be issued. Rowen Helen Louise Sullivan was born on 23 February 1993 in England to a same-sex couple, Diane Sullivan, a British citizen, and New Zealander Doreen Margaret Shields. Only Diane Sullivan’s name, as the birth parent, was recorded on Rowen Sullivan’s birth certificate.
In November 1999 the family moved to New Zealand, and Rowen and Diane Sullivan became permanent residents on family grounds. At that time the law did not allow Diane and Doreen to marry or jointly adopt Rowen.

Diane Sullivan died in 2010, and Rowen was formally adopted by Doreen in January 2013. However, this required the removal of Diane Sullivan’s name from Rowen’s post-adoption birth record. Therefore, the purpose of the bill is to add Diane Sullivan’s details to that record so that both Diane Sullivan and Doreen Shields’ names can be included on Rowen Sullivan’s New Zealand post-adoption birth certificate.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

**Title of the bill**

We recommend that the title of the bill be changed to the “Sullivan Birth Registration Bill”. We consider that the title of the bill as introduced, the “Sullivan Birth Certificate Bill”, could be misleading as its passage would not directly effect change to Rowen Sullivan’s birth certificate. Clause 3 of the bill as introduced would direct the Registrar-General to amend the post-adoptive birth record, from which birth certificates can be issued at any time. We have recommended a new clause 4 (see below) to reflect Rowen Sullivan’s understanding that the amended registration record shows her parents are her legal parents for all purposes.

**Adoption order to include birth mother’s details**

We recommend deleting clause 3(1)(b) of the bill as introduced and replacing it with new clause 3(1)(b) to make it clearer that the effect of the Registrar-General adding Diane Sullivan’s details to Rowen Sullivan’s birth record would be the same as if an adoption order had been made in favour of Diane Sullivan and Doreen Shields, rather than just Doreen Shields.

**Parents of Rowen Sullivan**

We recommend the insertion of new clause 4 which would provide that Diane Sullivan and Doreen Margaret Shields are, for all pur-
poses, the parents of Rowen Sullivan. This is the legal position under Part 2, section 18 of the Status of Children Act 1969, which applied to Rowen Sullivan before the adoption order was made. The proposed clause reinstates that legal position for all purposes, including the law of succession and parental relationship. Ultimately it would make what is a matter of fact, that Diane Sullivan and Doreen Shields are Rowen Sullivan’s parents, a matter of law.
Appendix

Committee process
The Sullivan Birth Certificate Bill was referred to the committee on 7 August 2013. The closing date for submissions was 27 September 2013. We received and considered seven submissions from interested groups and individuals, and heard from three submitters. We received advice from the Department of Internal Affairs.

Committee membership
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Mojo Mathers
Eric Roy
Jan Logie replaced Mojo Mathers for this item of business.
Petition 2008/148 of Geoff Annals on behalf of the New Zealand Nurses Organisation and the Service and Food Workers Union Ngā Ringa Tota

Report of the Health Committee

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Petition 2008/148 of Geoff Annals on behalf of the New Zealand Nurses Organisation and the Service and Food Workers Union Ngā Ringa Tota

Recommendation

The Health Committee has considered Petition 2008/148 of Geoff Annals on behalf of the New Zealand Nurses Organisation and the Service and Food Workers Union Ngā Ringa Tota, and recommends that the House take note of its report.

Background

We have considered Petition 2008/148 of Geoff Annals on behalf of the New Zealand Nurses Organisation and the Service and Food Workers Union Ngā Ringa Tota requesting that the House of Representatives note that 10,607 people have supported a campaign to ask the Government to properly fund aged care services in New Zealand, and that the House urge the Government to do as the campaign asks.

The petitioner believes that fundamental changes over the past few decades to the provision of aged care have led to insufficient protection for the health, welfare, and financial sustainability of the aged, and those who care for them. The petitioner argues that regulation is needed to ensure minimum standards of safety, fairness, and sustainability.

Evidence was presented in support of four core principles for ensuring an appropriate quality of residential care for older New Zealanders: compulsory safe staffing levels and skill mix, fair pay and conditions for aged care workers commensurate with other areas of the health sector, a single nationally recognised training and education programme for health care assistants, and a guarantee that government funding of care facilities is used for the nursing and personal care of residents.

The petition recommends that the 2005 Safe Staffing Indicators be updated and made mandatory, and that funding be increased and targeted to deliver pay parity between care assistants in DHBs and those working in residential aged care.

We heard from the petitioner that public resources for aged care are being used inappropriately and wastefully, and the high cost of providing substandard care is unsustainable and unjust. The petitioner alleges that there is no accountability in public resourcing of aged care, where there is considerable overlap between private and public service provision. Further, there is less protection for the physical and mental wellbeing of older New Zealanders in aged care than there is for their financial wellbeing. We were told that inadequate and fragmented regulation of the provision of aged care undermines public safety and the regulated health workforce, and has established an underclass of poorly paid, casualised workers. We asked the Ministry of Health and the Minister for Senior Citizens to respond to the concerns raised in the petition.

Staffing

We were told by the petitioner that private facilities are free to decide the number and mix of skilled staff that they employ, without auditable requirements and according to their own
assessment of risk. Therefore, nursing staff have largely been replaced with unregulated care assistants who are trained “on the job” to undertake traditional nursing tasks at considerably less cost.

The petitioner argued that there is an urgent need for cross-sector engagement to develop a tool to determine the number of hours required to provide direct care for residents. We heard how it is not uncommon for registered nurses working in aged care to be in charge of 40 to 80 patients, as well as being accountable for the care assistants. The petitioner said that the disproportionate representation of aged-care nurses in professional conduct hearings and investigations is indicative of their heavy workloads, and that unsafe staffing was the reason many nurses chose to leave or not enter the aged care sector.

**Pay parity**

We were told that most care assistants are paid the minimum wage or a few cents above it for physically heavy and emotionally challenging work, without the guarantee of full-time hours, and with few opportunities for advancement. These workers are often women and those from lower socio-economic groups; their skilled care, kindness, emotional support, and empathy are what make facilities homes.

Concern was raised that wages and salaries for nurses and allied health staff in this sector are less than those of their DHB counterparts, and there is considerably less provision for professional development and less accommodation of shift preferences. The petitioner argues that all workers in aged care face health risks resulting from the mental and physical stress of the job, and need mandatory fair pay and conditions, and a fair reward for experience and learning.

**Training**

The petitioner also expressed concern that there is no mandatory, nationally consistent training or education for care assistants, and that the training provider CareerForce does not maintain a national database of the training their clients have completed.

The petitioner argued that a national review of care assistant education is needed, as a basis for the development of a standardised programme and nationally consistent, portable qualifications consistent with public safety. There is also an urgent need for the collection of accurate, current, comprehensive health and health workforce data to create a national database.

**Government funding**

The petitioner said that currently there is a very complex mix of subsidised community and residential care, private property development, and DHB-contracted services pertaining to aged care, which are not coherently regulated. In the absence of a consistent regulatory environment and comprehensive code of practice covering the full range of services offered by retirement villages and rehabilitation care, the safety of older consumers and the aged care health workforce is compromised, and public funding is unaccounted for.

We were told that despite the Government’s best endeavours some aged care providers do not comply with regulations as intended; a recent case involved a provider using various loopholes to avoid implementing pay raises. The petitioner asserts that all public funding must be transparent and publicly accounted for, and health funding for aged care must be used to improve health outcomes for the elderly. He argues that it is not acceptable for
public money to be diverted to subsidise services for private profit or into marketing to capture consumers for subsidised services.

The petitioner said that by under-funding the sector the Government is signalling that aged people in care do not matter; as a result the sector has been captured by profit-driven organisations, and is being run on a business model. At present funding for the sector is inadequate and poorly utilised. The petitioner proposes that the Government ensure that all residential facilities meet minimum requirements for safe and sustainable aged care, making transparent and accountable use of public health resources, and providing safe, fair employment and workplace conditions.

Human Rights Commission inquiry

The Human Rights Commission used its inquiry powers in 2011–2012 to examine equal employment opportunities in the aged care sector, gathering evidence from 886 participants. Recommendations were drawn up by the Equal Employment Opportunities (EEO) Commissioner and the inquiry team after feedback from the sector, and are endorsed by the New Zealand Human Rights Commission.

Dr McGregor, the EEO commissioner, believes that New Zealand has an unprecedented opportunity to address the “indecency” of poorly paid “emotional labour” undertaken by marginalised workers looking after vulnerable people. She found that inaction on pay inequality and inadequate compensation for travel are “breaches of fundamental human rights, which cannot be justified by affordability arguments”.

The inquiry modelled the potential costs of a three-step process to restore some measure of equality to carers’ wages over three years. The commissioner made the following recommendations, which are aimed at eliminating discrimination and progressing equal employment opportunities:

Leadership: The Prime Minister to ensure that the Minister for Senior Citizens has a top-ten Cabinet ranking to ensure the delivery of better services and the provision of leadership and co-ordination across ministerial portfolios.

Pay: The Minister of Health to direct DHBs to develop a mechanism to achieve pay parity between health care assistants working in DHBs and carers working in home support and residential facilities. DHBs, residential care, and home support providers to implement pay parity for carers across the government-funded health sector within three years.

Fair travel: The Ministry of Health and DHBs to develop a sustainable and consistent fair travel policy, subject to annual review and adjustment, covering the real and actual costs of travelling including vehicle costs and time spent travelling.

Qualifications: Providers in the aged-care sector and CareerForce to commit to ensuring all new staff achieve a level two foundation skills qualification within six months of commencing employment, and all existing staff achieve the qualification in the next two years. In five years level three should become the normal level of qualification for all staff with 18 months or more service.

Safety standards: The voluntary standard “indicators for safe aged-care and dementia-care for consumers” should become compulsory to ensure the protection of carers and older people. The “home and community support sector” standard must also be compulsory.

Consumer information: The implementation of a five-star system of quality assurance comparing residential facilities, with the aim of improving consumer choice and public
accountability, developed by the Ministry of Health and DHBs with input from the Auditor-General.

Transparency: DHBs to provide disclosure in their annual reports that makes explicit expectations about “passing through” annual funding increases and details the fair-travel and equal-pay provisions in aged-care service delivery contracts.

Migrant workers: Immigration New Zealand to ensure information about qualifications and registration requirements are available in countries of origin, and to develop best practice guidelines for migrant workers in aged care.

Diversity of carers: Health Workforce New Zealand to provide leadership on the recruitment of men as paid carers and the promotion of “encore careers” in aged care, and to develop strategies that encourage part-time paid carers to increase their hours of work.

Valuing carers: The Human Rights Commission to host a stakeholder summit with government agencies, peak bodies, providers, Age Concern, Grey Power, trade unions, and community groups to enhance sector cooperation and promote and celebrate the paid aged-care workforce.

Ministry of Health

The Ministry of Health informed us that the Government has increased funding for aged care by $131 million a year over the past three years, and that their priority is to ensure that older adults with dementia can continue to live independently and safely in their own homes for as long as possible.

Staffing

The ministry said the petitioner’s submission provided no evidence to suggest that the current contractual arrangements do not ensure reasonable levels of staffing and care in aged residential care facilities. The current contract requires safe staffing levels in aged residential care facilities, including dementia units, and an appropriate mix of registered nurses and carers. This is enforced through auditing, and over the past three years the ministry has worked closely with DHBs to progressively improve the quality and reliability of the auditing of rest homes against the Health and Disability Services Standards (2008). Measures include introducing unannounced audits, publishing audit summaries online, third-party accreditation of designated audit agencies, and the publication of a handbook to support such agencies.

The ministry noted that prescribed staffing ratios have been trialled in aged residential care and subsequently rejected for various reasons. The ministry believes it is evident from the mental health sector that prescribed ratios in employment agreements have led to industrial unrest and disruption to patient services that are far more detrimental to patients than any perceived benefits.

The Age Related Residential Care Services Agreement (ARRC), entered into between DHBs and each aged residential care facility, sets out obligations designed to maximise the safety of services via operational management strategies and programmes. There are also guidelines on the desirable number and mix of staff relative to the size of the facility and the services it offers.
Pay parity

The Ministry told us that the pay and conditions of aged-care workers is a matter for negotiation between the employers and employees, and that training is already required for care assistants under the ARRC agreement.

Training

We understand that the New Zealand Qualifications Authority is currently reviewing all qualifications in this area, and industry training organisations will need to demonstrate their relevance to the sector.

Minister for Senior Citizens

Human Rights Commission inquiry

The Minister for Senior Citizens informed us that many of the actions recommended by the EEO commissioner are consistent with those the Government is already taking in the aged residential care sector. The Minister believes that implementing pay equity over three years would incur additional costs, which are not factored into the report’s estimates. The Minister said that the remedy suggested in the report would require significant additional expenditure in a time of tight fiscal constraint.

We understand that the Government has acknowledged the importance of ensuring sustainable home-based support services in areas where care workers must travel substantial distances to care for older New Zealanders. The Ministry of Health is working with DHBs to ensure that such services are sustainable.

Training

We heard that there are several current Government initiatives regarding qualifications. Care staff in aged residential care facilities receiving government funding are already required to undergo foundation skills training within six months of their appointment. We were told that the new Home and Community Support Sector Standard, which is in the process of being implemented, also contains appropriate training standards.

Staffing

The minister said that it is more important to focus on positive outcomes for older people rather than on any single input measure such as staffing ratios; and locking in a particular mode of service delivery by fixing staff ratios could stifle innovation, and create barriers to developing more effective ways of improving older people’s health care.

We were told that rest homes are rated according to a “traffic light” system, with a three-step grading providing clear information to consumers on the quality of aged care residential facilities. The reports are available online. It is believed that any requirement from Government for further transparency could be perceived as interfering in the statutory role of DHBs.

Pay

The minister said the strength of correlation between gender and low occupational status is debatable, as more women are now accessing occupations at various levels, many of which have traditionally been the domain of males. It is believed that over time this will reduce the gender pay gap as occupational and vertical segregation are major contributing factors to women’s lower pay rates. The minister agreed that caregivers should be celebrated,
because what they do each day makes a positive difference to the lives of older New Zealanders.

**Conclusion**

We acknowledge the commendable work that those employed in the aged-care sector carry out every day to ensure the elderly are safe, healthy, and content, and their indispensable role in the community.

The advice we have received from the ministry has led us to believe that the ministry is committed to ensuring the sustainable operation of the health sector, and is well placed to deal with an increase in demand for acute care. We are satisfied that the ARRC agreement sets adequate training requirements and provides sufficient opportunities for staff in the aged-care sector, and improved auditing procedures have helped ensure that training requirements are met.

We recognise the complexity of the funding model and the tension between private and DHB providers, and we strongly encourage employees and employers to work together to develop fair rates of pay. We will continue to monitor developments in this area. We have no other matters to draw to the attention of the house.

**New Zealand Labour and New Zealand First minority view**

The Labour and New Zealand First parties wish to register a minority view on this petition. While there has been no difference between the parties on the committee on the importance of good-quality care for our senior citizens, there is a difference between us on how the sector needs to be managed in the future. With New Zealand’s demographics set to see a considerable increase in the number of older people, Government should be preparing some strategic consideration of how to manage aged care as demand for services increases. One of those strategic considerations relates to the pay and conditions of those who work in the sector. Currently they are typically on the minimum wage, working long hours, with no prospect of immediate improvement in wages. They carry out a range of tasks, from intimate personal care to some quite complex health care delivery. They are committed to the people in their care and seek to do their best by them every day.

We heard from some of these workers who spoke in support of the petition. Their stories were vivid and on occasion heart-rending. Points made by the submitters are included in the main body of this report above.

In May 2012 Dr Judy McGregor, then Equal Employment Opportunities Commissioner at the Human Rights Commission, launched a significant report of a major national enquiry into equal employment opportunities in the aged-care sector workforce, called *Caring counts Tautiaki tika*. Labour and New Zealand First party members wanted Dr McGregor to present her findings to the committee but that was not agreed to. In her report Dr McGregor gets to the heart of the injustice between those who work in the aged care sector who are covered by the Multi-Employer Collective Agreement applying across DHBs and those working for private employers in home support and residential facilities. The lack of pay parity caused her great concern. There was no justification for such a pay gap.

Dr McGregor arrived at 10 recommendations which in our view constitute the basis of a plan to improve both the wages and pay inequality in the sector and provide for more skilled staff who were rewarded for their skills attainment. Her report also contained financial modelling which showed that a stepped approach to redressing pay inequalities of
community-based and residential carers with their DHB counterparts would constitute only one percent of the health budget. She asserted that there was compelling social justice and business-case reasons for addressing the unfair pay gap, as well as for properly paying carers who travel in their own cars between clients.

**Conclusion**

It is the view of the Labour and New Zealand First party members of the Health Committee that the Ministers of Health and Employment should develop a programme of implementation of the recommendations in the McGregor report, to be phased in over time. While we do not prescribe a timeframe, we do urge that the Government explicitly adopt these recommendations in their entirety as the basis for a strategic approach for the aged care sector workforce in the future.
Appendix

Committee procedure

The petition was referred to us on 4 October 2011. We received written submissions from the petitioner, the Minister for Senior Citizens, and the Ministry of Health. We heard evidence from the petitioner and the Ministry of Health on 24 October 2012.

Committee members

Dr Paul Hutchison (Chairperson)
Shane Ardern
Dr Jackie Blue
Kevin Hague
Iain Lees-Galloway
Andrew Little
Scott Simpson
Barbara Stewart
Hon Maryan Street
Dr Jian Yang
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Petition 2011/11 of Lyn Polwort

Recommendation

The Health Committee has considered Petition 2011/11 of Lyn Polwort and recommends that the House take note of its report.

Background

We have considered Petition 2011/11 of Lyn Polwort, requesting that the House of Representatives note that 7,680 people have signed a petition calling for increased funding for cochlear implants to enable severely disabled New Zealand adults to hear, facilitating parity with other severely disabled New Zealanders.

A cochlear implant provides a sensation of sound to people with profoundly impaired hearing, bypassing the defective or damaged ear and sending electronic signals directly to the auditory nerve and thus the brain via a series of internal and external components. A microphone and sound processor, worn externally behind the ear, are connected to a transmitter coil, worn on the side of the head. It transmits data to a receiver-stimulator package surgically implanted into the mastoid bone, underneath the skin behind the ear. This sends signals to the cochlear implant itself, an array of electrodes surgically implanted in the cochlea or middle ear, which stimulates the auditory nerve. This provides a sensation of hearing in response to sound, but does not restore hearing.

The petitioner told us that up to 4,000 New Zealanders who are severely hearing-impaired would potentially benefit from a cochlear implant. Currently 20 adults receive an implant per year, and there are 180 on the waiting list, which is growing at the rate of 10 a month. These figures suggest that waiting times could exceed seven years, and already some people are reporting very long and distressing waiting times. The petitioner believes that denying surgery within the six-month period mandated for elective surgery for mobility and vision disabilities represents discrimination against the hearing impaired.

The petitioner recommends that the Government increase funding for implants to ensure that severely hearing disabled adults who meet the scoring criteria are implanted within the six-month mandated period. We asked the Minister of Health and the Ministry of Health to respond to the concerns raised in the petition.

Funding

The petitioner told us that cochlear implants are given a low priority for funding in New Zealand, yet the health utility gains they confer surpass those of other prosthetic procedures. New Zealand is unique in that funding decisions here are based on arbitrary prioritisation rather than clinical assessments of health need. The petitioner believes that this unduly disadvantages severely hearing-disabled adults.

The petitioner proposed increasing funding for implants to restore the ability of more hearing-impaired New Zealanders to function in society and contribute to the economy. The petitioner also seeks the re-prioritisation of implant surgery to restore parity with treatment for other disabilities, to end the discrimination hearing-impaired New Zealanders face.
The petitioner explained that research by the National Institute for Health and Clinical Excellence (NICE) highlighted that in most other developed countries which have insurance-based health systems, cochlear implants are on the approved prosthesis list for surgery. Cochlear implants are not covered by health insurance in New Zealand. The NICE guidelines on cochlear implants for severely hearing disabled adults note that implants are a cost-effective use of resources compared with other hearing aid interventions such as hearing aids, given the health utility and quality of life gains to deaf adults.

**Adverse effects of deafness**

We were told about the adverse impacts on those with severe hearing loss: deafness in children has significant consequences for linguistic, cognitive, emotional, educational, and social development. In adults, the loss of ability to hear environmental noises and understand speech hinders their ability to take part in daily activities, leading to loss of social and professional networks, which can result in isolation and mental health problems.

The petitioner told us that it is unlikely that adults who become deaf and their family members will become proficient users of sign language; if they do not, they are left isolated and unable to communicate and participate in society.

We heard first-hand how an implant can dramatically improve the lives of hearing-impaired New Zealanders. Lacking the ability to hear was likened to being in solitary confinement, resulting in low self-esteem, and often loss of career or limited job prospects. We were also told about the frustration and stress hearing loss causes families, and that the deaf are more likely to develop dementia; links have been found between loneliness and this debilitating illness.

**Ministry of Health**

The Ministry of Health informed us that the cochlear implant programme provides implant services to eligible people with severe to profound hearing loss who do not benefit from standard hearing aids, and have been assessed as likely to benefit from an implant. Funding is generally for one implant per person, which is usually sufficient to allow a person to hear effectively, and for most children to develop speech. The needs of children are prioritised over adults; in the 2011/12 financial year all the children received a cochlear implant who were assessed as being able to benefit from one.

The ministry contracts the Northern Cochlear Implant Trust and the Southern Hearing Charitable Trust to manage the provision of cochlear implant services. The contracted services include assessment, supply of the device, surgery, audiology, rehabilitation for adults or habilitation for children who have never had hearing, maintenance and support, device replacement, and repairs for children’s devices.

We were told that each implant package costs between $45,000 and $55,000, which covers training and support services for up to five years after the implant. Follow-up services, such as replacement of sound processors, are required to maintain effective use, with associated costs.

**Funding criteria**

The ministry said that access to implants for first-time recipients is prioritised on the basis of their assessed ability to benefit from one. Assessments are undertaken by a clinical assessment team using standardised criteria to prioritise access. The same Cochlear Implant
Priority Access Criteria are used throughout New Zealand to ensure fairness and transparency. Factors considered are audiological needs, hearing and listening needs, the expected surgical outcome, developmental needs, the recipient’s expectations, and their educational, occupational, and psychological status.

We heard that children are given the highest priority and do not need to wait; but there can be long waits for adults as demand grows with knowledge of the benefit of implants.

We were pleased to hear that the ministry is considering how to improve the sustainability of implant services, its top priorities being to ensure that those assessed as able to benefit from an implant receive one.

**Minister of Health**

The Minister of Health assured us that access to cochlear implants for severely hearing-disabled adults is a high priority, which is taken into account in the ministry’s planning of funding distribution. The minister told us that the ministry will be continuing discussions with the New Zealand Cochlear Implant Consumer Group to determine how implant services could best be improved within existing funding. It is thought that such discussions will improve the transparency of waiting list management and foster clear and consistent communication with consumers.

Data provided by the minister showed that waiting times for implants for adults in the United Kingdom are significantly shorter than the average of just over two years in New Zealand, ranging from 13–18 weeks for treatment.

**New funding**

We are aware that the Government has provided an additional $2.6 million of one-off funding for cochlear implants this financial year.

**Conclusion**

We recognise the devastating effects of a severe hearing disability on quality of life and the complex financial, professional, social, and emotional challenges it presents. Therefore, we support providing as many implants as possible within the available resources. We will continue to monitor progress in this area, and have no other matters to draw to the attention of the House.

**Green Party and Labour Party minority view**

The Green Party and Labour Party believe that cochlear implants for adults should be funded on the basis of need, on a comparable basis to other elective surgery for mobility and vision impairments. The Green Party and Labour Party consider the current long waiting times of two years to be excessive, and recommend that the ministry reprioritise resources to ensure that all adults assessed as being able to benefit from an implant receive one within six months.
Appendix

Committee procedure
The petition was referred to us on 28 March 2012. We received written submissions from the petitioner, the Minister of Health, and the Ministry of Health. We heard evidence from the petitioner and the Ministry of Health on 17 October 2012.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Dr Jackie Blue
Kevin Hague
Iain Lees-Galloway
Andrew Little
Scott Simpson
Barbara Stewart
Hon Maryan Street
Dr Jian Yang