ARRANGEMENT OF THE PAPERS

I—Reports and proceedings of select committees

VOL. 1
Reports of the Education and Science Committee
Reports of the Finance and Expenditure Committee
Reports of the Government Administration Committee

VOL. 2
Reports of the Health Committee
Report of the Justice and Electoral Committee
Reports of the Māori Affairs Committee
Reports of the Social Services Committee
Reports of the Officers of Parliament Committee
Reports of the Regulations Review Committee

VOL. 3
Reports of the Regulations Review Committee
Reports of the Privileges Committee
Report of the Standing Orders Committee

VOL. 4
Reports of select committees on the 2012/13 Estimates

VOL. 5
Reports of select committees on the 2013/14 Estimates

VOL. 6
Reports of select committees on the 2014/15 Estimates
Reports of select committees on the 2010/11 financial reviews of Government departments, Offices of Parliament, and reports on non-departmental appropriations

VOL. 7
Reports of select committees on the 2011/12 financial reviews of Government departments, Offices of Parliament, and reports on non-departmental appropriations
Reports of select committees on the 2012/13 financial reviews of Government departments, Offices of Parliament, and reports on non-departmental appropriations
VOL. 8
Reports of select committees on the 2010/11 financial reviews of Crown entities, public organisations, and State enterprises

VOL. 9
Reports of select committees on the 2011/12 financial reviews of Crown entities, public organisations, and State enterprises

VOL. 10
Reports of select committees on the 2012/13 financial reviews of Crown entities, public organisations, and State enterprises

VOL. 11
2012 Reports of select committees

VOL. 12
2013 Reports of select committees, Vols 1 to 3 (see also Vol. 13)

VOL. 13
2013 Reports of select committees, Vols 4 to 6 (see also Vol. 12)

VOL. 14
2014 Reports of select committees

J—Papers relating to the business of the House

VOL. 15
Government responses to select committee reports
Inter-parliamentary relations reports

VOL. 16
Inter-parliamentary relations reports
Responses under Standing Orders 156–159
Reports by the Attorney-General pursuant to section 7 of the New Zealand Bill of Rights Act 1990 and Standing Order 262
Document tabled under the authority of the House of Representatives by Hon Shane Jones
Summaries of annual returns to the registrar of pecuniary interests of members of Parliament
Prime Minister’s Statements to Parliament
Notification by the Prime Minister of the 2014 General Election date
## CONTENTS

### VOLUME 11

<table>
<thead>
<tr>
<th>Shoulder Number</th>
<th>Title</th>
<th>Date</th>
<th>Tabled</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.22A</td>
<td>2012 Reports of select committees, September 2014</td>
<td></td>
<td>–</td>
</tr>
</tbody>
</table>
2012 Reports of select committees

Fiftieth Parliament
September 2014
Contents

Business

Recommended sitting programme for 2013
14 Nov 12 11

Commerce

Petition 2008/143 of Lois Griffiths and 382 others
17 Aug 12 15
Petition 2011/13 of Steffan Browning
17 Aug 12 17
Petition 2011/5 of Penelope Mary Bright and 307 others
20 Aug 12 19
Petition 2008/142 of Johannes Jozef Rikkerink
29 Aug 12 21
Petition 2011/30 of Myles Thomas on behalf of Save TVNZ7 Campaign
3 Sep 12 23
Financial Markets Conduct Bill (342-2)
7 Sep 12 27
Interim report on the Commerce (Cartels and Other Matters)
Amendment Bill (341-1)
28 Sep 12 41
Consumer Law Reform Bill (287-2)
2 Oct 12 49
Companies and Limited Partnerships Amendment Bill (344-2)
11 Dec 12 65

Education and Science

Report from an Ombudsman on Complaints Arising out of bullying at Hutt Valley High School in December 2007
3 May 12 71
2010/11 financial review of the New Zealand Teachers Council
3 Aug 12 77
Report from the Controller and Auditor-General, Institutional Arrangements for Training, Registering, and Appraising Teachers
17 Aug 12 83
Report from the Controller and Auditor-General, New Zealand Qualifications Authority: Assuring the Consistency and Quality of Internal Assessment for NCEA
17 Aug 12 85
Report from the Controller and Auditor-General on Education Sector: Results of the 2010/11 Audits
22 Aug 12 87
Advanced Technology Institute Bill (66-2)
26 Oct 12 91
* Inquiry into 21st century learning environments and digital literacy (I.2A)
19 Dec 12

Finance and Expenditure

Spending Cap (People’s Veto) Bill (315-1)
16 Feb 12 109
Student Loan Scheme Amendment Bill (326-2)
13 Mar 12 113
Petition 2008/145 of Vaughan Gunson and 38,297 others
22 Mar 12 121
Report from the Controller and Auditor-General on Central government: Results of the 2010/11 audits (Volume 1)
22 Mar 12 123
* Reserve Bank of New Zealand’s Monetary Policy Statement, March 2012 (I.3A)
23 Mar 12
Standard Estimates Questionnaire 2012/13
27 Mar 12 125
<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report from the Controller and Auditor-General on <em>Central government</em>: Results of the 2010/11 audits (Volume 2)</td>
<td>29 Mar 12</td>
<td>131</td>
</tr>
<tr>
<td>* Budget Policy Statement 2012 (I.3B)</td>
<td>11 Apr 12</td>
<td></td>
</tr>
<tr>
<td>* Reserve Bank of New Zealand's Financial Stability Report, May 2012 (I.3C)</td>
<td>29 May 12</td>
<td></td>
</tr>
<tr>
<td>Non-bank Deposit Takers Bill (312-2)</td>
<td>31 May 12</td>
<td>135</td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General on The Treasury: Implementing and managing the Crown Retail Deposit Guarantee Scheme</td>
<td>31 May 12</td>
<td>143</td>
</tr>
<tr>
<td>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill (325-2)</td>
<td>6 Jun 12</td>
<td>153</td>
</tr>
<tr>
<td>Mixed Ownership Model Bill (7-2)</td>
<td>11 Jun 12</td>
<td>165</td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General, Draft annual plan 2012/13</td>
<td>14 Jun 12</td>
<td>187</td>
</tr>
<tr>
<td>Supplementary Estimates of Appropriations for the year ending 30 June 2012</td>
<td>14 Jun 12</td>
<td>191</td>
</tr>
<tr>
<td>Addition to the Supplementary Estimates of Appropriations for the year ending 30 June 2012</td>
<td>26 Jun 12</td>
<td>193</td>
</tr>
<tr>
<td>International Finance Agreements Amendment Bill (336-1)</td>
<td>19 Jul 12</td>
<td>197</td>
</tr>
<tr>
<td>* Reserve Bank of New Zealand’s Monetary Policy Statement, June 2012 (I.3D)</td>
<td>24 Jul 12</td>
<td></td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General, Public Entities’ Progress in Implementing the Auditor-General’s Recommendations 2012</td>
<td>26 Jul 12</td>
<td>201</td>
</tr>
<tr>
<td>International treaty examination of the Convention between New Zealand and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income</td>
<td>3 Aug 12</td>
<td>203</td>
</tr>
<tr>
<td>2010/11 financial review of Air New Zealand Limited</td>
<td>16 Aug 12</td>
<td>221</td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General, Annual Plan 2012/13</td>
<td>16 Aug 12</td>
<td>245</td>
</tr>
<tr>
<td>Visit of a delegation of parliamentarians from the Legislative Assembly of Niue</td>
<td>23 Aug 12</td>
<td>247</td>
</tr>
<tr>
<td>Customs and Excise (Tobacco Products—Budget Measures) Amendment Bill (22-1)</td>
<td>30 Aug 12</td>
<td>249</td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General, Reviewing Financial Management in Central Government and Report from the Controller and Auditor-General, Fraud Awareness, Prevention, and Detection in the Public Sector</td>
<td>13 Sep 12</td>
<td>257</td>
</tr>
<tr>
<td>Reserve Bank of New Zealand (Covered Bonds) Amendment Bill (19-2)</td>
<td>24 Sep 12</td>
<td>263</td>
</tr>
</tbody>
</table>
I. 22A

* Reserve Bank of New Zealand's Monetary Policy Statement, September 2012 (I.3E) 2 Oct 12

Climate Change Response (Emissions Trading and Other Matters) Amendment Bill (52-2) 17 Oct 12 271

* Reserve Bank of New Zealand’s financial stability report, November 2012 (I.3F) 6 Dec 12

* Reserve Bank of New Zealand’s Monetary Policy Statement, December 2012 (I.3G) 20 Dec 12

**Foreign Affairs, Trade and Defence**

Briefing on major defence projects 4 May 12 295

International treaty examination of the United Nations Convention Against Corruption 11 May 12 301

Defence Amendment Bill (348-2) 3 Jul 12 319

Petition 2011/1 of Edwina Hughes and 904 others 3 Aug 12 325

New Zealand observation delegations to the 2012 Timor-Leste general election 20 Aug 12 329

Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment Bill (127-2) 28 Aug 12 333

International treaty examinations of the Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Enable the Bank to Operate in Countries of the Southern and Eastern Mediterranean, and the Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Allow the Use of Special Funds in Recipient Countries and Potential Recipient Countries 14 Sep 12 337

International treaty examination of the United Nations Industrial Development Organization (UNIDO) 30 Nov 12 343

**Government Administration**

Crown Entities Reform Bill (332-2) 30 Mar 12 355

Petition 2008/119 of Donald James Rowlands and 891 others 24 May 12 361

Electronic Identity Verification Bill (323-2) 19 Jun 12 363

Statutes Amendment Bill (No 3) (349-2) 19 Jun 12 371

Report from the Controller and Auditor-General, *Realising benefits from six public sector technology projects* 20 Aug 12 375

**Health**

Report from the Controller and Auditor-General on *New Zealand Blood Service: Managing the safety and supply of blood products* 4 May 12 377

Medicines Amendment Bill (345-2) 3 Aug 12 379

Natural Health Products Bill (324-2) 31 Oct 12 385
Petition 2011/10 of Wendy Matthews and 5454 others 12 Dec 12 401
Petition 2011/20 of Alexander Milne 13 Dec 12 407

**Justice and Electoral**

Prisoners’ and Victims’ Claims (2012 Expiry and Application Dates) Amendment Bill (12-1) 5 Jun 12 415
Privacy (Information Sharing) Bill (318-2) 8 Jun 12 421
Victims of Crime Reform Bill (319-2) 27 Jun 12 431
Petition 2011/8 of Peter McKenzie on behalf of the Barnabas Fund (NZ) 20 Jul 12 439
Petition 2011/23 of Tina Nilson and 988 others 17 Aug 12 441
Petition 2011/22 of Naginbhai Neil Ghelabhai Patel and 881 others 31 Aug 12 455
Briefing on the activities of the Office of the Judicial Conduct Commissioner in 2010/11 23 Oct 12 457
Habeas Corpus Amendment Bill (34-2) 11 Dec 12 463
Legal Assistance (Sustainability) Amendment Bill (316-2) 14 Dec 12 467

**Law and Order**

Arms Amendment Bill (No 3) (248-1) 22 Mar 12 481
Report from the Chief Ombudsman and an Ombudsman on Investigation of the Department of Corrections in Relation to the Provision, Access and Availability of Prisoner Health Services 3 May 12 487
Interim report on the Corrections Amendment Bill (330-1) 28 Jun 12 489
Briefing on Rehabilitation and Reintegration Services 3 Aug 12 497
Interim report on the Administration of Community Sentences and Orders Bill (339-1) 24 Aug 12 503
Corrections Amendment Bill (330-2) 2 Oct 12 519
Administration of Community Sentences and Orders Bill (339-2) 30 Oct 12 529
Bail Amendment Bill (17-2) 9 Nov 12 535

**Local Government and Environment**

Interim report on the Manukau City Council (Regulation of Prostitution in Specified Places) Bill (197-1) 10 Feb 12 545
Report from the Controller and Auditor-General on Local government: Improving the usefulness of annual reports 5 Apr 12 549
Report from the Controller and Auditor-General on Managing freshwater quality: Challenges for regional councils 5 Apr 12 551
Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill (321-2) 15 May 12 555
Petition 2005/168 of Metiria Turei 22 Jun 12 573
<table>
<thead>
<tr>
<th>Bill Title</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report from the Controller and Auditor-General, <em>Local government: Results of the 2010/11 audits</em></td>
<td>22 Jun 12</td>
<td>577</td>
</tr>
<tr>
<td>Hutt City Council (Graffiti Removal) Bill (334-2)</td>
<td>25 Jul 12</td>
<td>579</td>
</tr>
<tr>
<td>Mount Maunganui Borough Reclamation and Empowering Act Repeal Bill (18-2)</td>
<td>19 Sep 12</td>
<td>583</td>
</tr>
<tr>
<td>Riccarton Bush Amendment Bill (28-2)</td>
<td>19 Sep 12</td>
<td>587</td>
</tr>
<tr>
<td>Building Amendment Bill (No 4) (322-2)</td>
<td>26 Oct 12</td>
<td>591</td>
</tr>
<tr>
<td>Waitaki District Council Reserves and Other Land Empowering Bill (20-1)</td>
<td>26 Oct 12</td>
<td>601</td>
</tr>
<tr>
<td>Local Government Act 2002 Amendment Bill (27-2)</td>
<td>30 Oct 12</td>
<td>605</td>
</tr>
<tr>
<td>South Taranaki District Council (Cold Creek Rural Water Supply) Bill (338-2)</td>
<td>12 Nov 12</td>
<td>627</td>
</tr>
<tr>
<td>Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill (63-1)</td>
<td>7 Dec 12</td>
<td>633</td>
</tr>
<tr>
<td>Marine Reserves (Consultation with Stakeholders) Amendment Bill (38-1)</td>
<td>12 Dec 12</td>
<td>637</td>
</tr>
<tr>
<td>Marine Reserves Bill (224-1)</td>
<td>12 Dec 12</td>
<td>641</td>
</tr>
<tr>
<td>Game Animal Council Bill (347-2)</td>
<td>13 Dec 12</td>
<td>645</td>
</tr>
</tbody>
</table>

**Māori Affairs**

<table>
<thead>
<tr>
<th>Bill Title</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petition 2011/7 of Barney Tūpara</td>
<td>29 Mar 12</td>
<td>657</td>
</tr>
<tr>
<td>Ngai Tāmanuhiri Claims Settlement Bill (320-2)</td>
<td>6 Jun 12</td>
<td>659</td>
</tr>
<tr>
<td>Rongowhakaata Claims Settlement Bill (4-2)</td>
<td>6 Jun 12</td>
<td>671</td>
</tr>
<tr>
<td>Maraeroa A and B Blocks Claims Settlement Bill (9-2)</td>
<td>14 Jun 12</td>
<td>679</td>
</tr>
<tr>
<td>Maraeroa A and B Blocks Incorporation Bill (8-2)</td>
<td>14 Jun 12</td>
<td>689</td>
</tr>
<tr>
<td>Ngāti Mākino Claims Settlement Bill (335-2)</td>
<td>14 Jun 12</td>
<td>693</td>
</tr>
<tr>
<td>Ngāti Whātua Ōrākei Claims Settlement Bill (5-2)</td>
<td>25 Jul 12</td>
<td>701</td>
</tr>
<tr>
<td>Ngāti Manuhiri Claims Settlement Bill (6-2)</td>
<td>25 Jul 12</td>
<td>715</td>
</tr>
<tr>
<td>Ngāti Whātua o Kaipara Claims Settlement Bill (43-2)</td>
<td>12 Dec 12</td>
<td>731</td>
</tr>
</tbody>
</table>

* Visit of the Māori Affairs Committee to Australia, 29 October to 1 November 2012 (I.10A) | 18 Dec 12 |

**Officers of Parliament**

* Alterations to the 2011/12 appropriations for Vote Audit, Vote Ombudsmen, and Vote Parliamentary Commissioner for the Environment, and 2012/13 draft budgets for the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment (I.15A) | 29 Mar 12 |

Inquiry into the appointment of a Parliamentary Commissioner for the Environment | 30 Mar 12  | 741  |
<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inquiry into the appointment of an auditor for the Office of the Controller and Auditor-General</td>
<td>6 Dec 12</td>
<td>743</td>
<td></td>
</tr>
<tr>
<td>Inquiry into the appointment of an Ombudsman</td>
<td>6 Dec 12</td>
<td>747</td>
<td></td>
</tr>
</tbody>
</table>

### Primary Production

<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petition 2005/45 of David Mark Wills</td>
<td>22 Mar 12</td>
<td>751</td>
<td></td>
</tr>
<tr>
<td>Dairy Industry Restructuring Amendment Bill (11-2)</td>
<td>6 Jun 12</td>
<td>753</td>
<td></td>
</tr>
<tr>
<td>Briefing on agricultural development in the Waitaki Basin and Mackenzie Country</td>
<td>28 Sep 12</td>
<td>761</td>
<td></td>
</tr>
<tr>
<td>Petition 2011/2 of G R Hughey</td>
<td>28 Sep 12</td>
<td>765</td>
<td></td>
</tr>
<tr>
<td>Briefing from the Animal Health Board on biosecurity matters</td>
<td>9 Nov 12</td>
<td>771</td>
<td></td>
</tr>
<tr>
<td>Briefing from the forest industry</td>
<td>9 Nov 12</td>
<td>777</td>
<td></td>
</tr>
<tr>
<td>Briefing on the impact of high technology trawlers</td>
<td>9 Nov 12</td>
<td>781</td>
<td></td>
</tr>
<tr>
<td>Petition 2008/146 of Sorrel Davies</td>
<td>9 Nov 12</td>
<td>783</td>
<td></td>
</tr>
<tr>
<td>Briefing on the 2012 Ballance Environmental Farm Awards</td>
<td>3 Dec 12</td>
<td>785</td>
<td></td>
</tr>
</tbody>
</table>

### Regulations Review

<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaint regarding the Legal Services Regulations 2011 (SR 2011/144)</td>
<td>1 Jun 12</td>
<td>789</td>
<td></td>
</tr>
<tr>
<td>Subordinate Legislation (Confirmation and Validation) Bill (57-1)</td>
<td>26 Oct 12</td>
<td>815</td>
<td></td>
</tr>
<tr>
<td>Investigation into the Road User Charges (Transitional Matters) Regulations 2012 (SR 2012/145)</td>
<td>13 Nov 12</td>
<td>823</td>
<td></td>
</tr>
</tbody>
</table>

### Social Services

<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report from the Controller and Auditor-General on Inquiry into the Plumbers, Gasfitters, and Drainlayers Board</td>
<td>16 Feb 12</td>
<td>837</td>
<td></td>
</tr>
<tr>
<td>Petition 2008/116 of Moana Jean Karika Rule</td>
<td>10 May 12</td>
<td>841</td>
<td></td>
</tr>
<tr>
<td>Social Security (Youth Support and Work Focus) Amendment Bill (10-2)</td>
<td>29 May 12</td>
<td>847</td>
<td></td>
</tr>
<tr>
<td>* Inquiry into the identification, rehabilitation, and care and protection of child offenders (I.12A)</td>
<td>20 Jun 12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special report on the 2012/13 Estimates for Vote Internal Affairs: Minister for the Community and Voluntary Sector</td>
<td>23 Aug 12</td>
<td>871</td>
<td></td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General on Home-based Support Services for Older People</td>
<td>29 Aug 12</td>
<td>873</td>
<td></td>
</tr>
<tr>
<td>Petition 2011/9 of Wal Gordon on behalf of the Plumbers Gasfitters and Drainlayers Federation NZ and 1227 others</td>
<td>20 Sep 12</td>
<td>879</td>
<td></td>
</tr>
<tr>
<td>Petition 2011/26 of Steven Winyard</td>
<td>20 Sep 12</td>
<td>881</td>
<td></td>
</tr>
<tr>
<td>Child Support Amendment Bill (337-2)</td>
<td>31 Oct 12</td>
<td>885</td>
<td></td>
</tr>
<tr>
<td>Families Commission Amendment Bill (26-2)</td>
<td>13 Nov 12</td>
<td>909</td>
<td></td>
</tr>
</tbody>
</table>
Standing Orders

Captioning proceedings of the House and webcasting select committee hearings and Petition 2011/4 of Merrin Macleod 30 Nov 12 919

Transport and Industrial Relations

Petition 2008/149 of Darryl Monteith on behalf of the Gisborne Rail Action Group 17 Feb 12 925

Petition 2008/150 of Vivienne Shepherd 17 Feb 12 927

Petition 2008/151 of Loretia Pomare on behalf of Save Kapiti and the Alliance for Sustainable Kapiti 17 Feb 12 929

Petition 2008/138 of George Laird 6 Mar 12 931

Petition 2008/141 of Norman Harvey Wilkins 6 Mar 12 935

Petition 2011/3 of Jan and Cathrina de Klerk 6 Mar 12 937

Petition 2008/140 of George William Stanley King and 40 others 19 Mar 12 939

Petition 2008/147 of Geoff Houtman 26 Mar 12 941

Petition 2011/6 of Tim Fellows and 127 others 26 Mar 12 943

Report from the Controller and Auditor-General on the New Zealand Transport Agency: Delivering maintenance and renewal work on the state highway network 29 Mar 12 945

Report from the Controller and Auditor-General, Severance payments: A guide for the public sector, March 2012 12 Apr 12 947

Petition 2011/25 of Richard Aslett and 7,436 others 3 Aug 12 949

Petition 2011/18 of Meng Foon 16 Aug 12 951

Immigration Amendment Bill (16-2) 28 Aug 12 953

National War Memorial Park (Pukeahu) Empowering Bill (53-2) 18 Sep 12 967

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Bill (3-2) 12 Dec 12 975

Intelligence and Security

Supplementary Estimates of Appropriations for Vote Communications Security and Intelligence, and Vote Security Intelligence for the year ending 30 June 2012 13 Jun 12 983

Other reports of the 50th Parliament presented in 2012

Select committee reports on Estimates and financial reviews are printed in a separate compendium as listed below:

Reports of select committees on the 2012/13 Estimates (I.19A)

Reports of select committees on the 2010/11 financial reviews of Government departments, Offices of Parliament, and reports on non-departmental appropriations (I.20A)
Reports of select committees on the 2010/11 financial reviews of Crown entities, public organisations, and State enterprises (I.21A)
Introduction

This volume contains select committee reports presented to the House in 2012.

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 2013

Report of the Business Committee

Dr The Rt Hon Lockwood Smith
Chairperson
Recommended sitting programme for 2013

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 2013.

Recommended sitting programme

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

Committee procedure
The Business Committee met on Tuesday, 13 November 2012 to consider a sitting programme for recommendation to the House.

Committee members
Dr The Rt Hon Lockwood Smith (Chairperson)
Hon John Banks
Hon Gerry Brownlee
Hon Peter Dunne
Te Ururoa Flavell
Hone Harawira
Chris Hipkins
Gareth Hughes
Hon Trevor Mallard
Barbara Stewart
Hon Anne Tolley
Michael Woodhouse
Petition 2008/143 of Lois Griffiths and 382 others

Report of the Commerce Committee

The Commerce Committee has considered Petition 2008/143 of Lois Griffiths and 382 others, requesting “that the New Zealand Parliament ask the Guardians of the NZ Superfund to disinvest the Fund from Elbit Systems, Caterpillar, G4S and three major Israeli banks: Bank Hapoalim, Bank Leumi and Israel Discount Bank”, and has no matters to bring to the attention of the House.

Jonathan Young
Chairperson
The Commerce Committee has considered Petition 2011/13 of Steffan Browning, which requests “that the House take note that 2,330 people have signed a petition demanding the withdrawal of two block offers and that a permit for off-shore oil exploration be declined”, and has no matters to bring to the attention of the House.

Jonathan Young
Chairperson
The Commerce Committee has considered Petition 2011/5 of Penelope Mary Bright and 307 others, which requests “that the House conduct an urgent inquiry into the decisions regarding prosecutions relating to the Huljich Kiwisaver Scheme registered prospectuses dated 22 August 2008 and 18 September 2009”, and has no matters to bring to the attention of the House.

Jonathan Young
Chairperson
The Commerce Committee has considered Petition 2008/142 of Johannes Jozef Rikkerink, requesting “that the House of Representatives consider passing a law which would cap the level of sound in advertisements during television programmes to a level no greater than a quarter of the decibel level of the average TV programme”, and has no matters to bring to the attention of the House.

Jonathan Young
Chairperson
Petition 2011/30 of Myles Thomas on behalf of Save TVNZ 7 Campaign

Report of the Commerce Committee

Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>New Zealand Labour Party minority view</td>
<td>2</td>
</tr>
<tr>
<td>Appendix</td>
<td>4</td>
</tr>
</tbody>
</table>
Petition 2011/30 of Myles Thomas on behalf of Save TVNZ 7 Campaign

**Recommendation**

The Commerce Committee has considered Petition 2011/30 of Myles Thomas on behalf of Save TVNZ 7 Campaign, and recommends that the House take note of its report.

**Introduction**

The Commerce Committee has considered Petition 2011/30 of Myles Thomas on behalf of Save TVNZ 7 Campaign, requesting

> That the House urge the Government to continue funding TVNZ7 at its current levels for many years beyond 2012 and note that 36,155 people have signed an online petition to the same effect.

The National Party members’ view is that TVNZ 7 was initially launched to help encourage New Zealand homes towards digital television. To that end it has been successful, with more than eight in 10 Kiwi homes now watching digital television. The funding for TVNZ 7 was for a set time period. Transmission of TVNZ 7 ceased at midnight on the evening of Saturday, 30 June 2012, as a matter of Government policy. There was never any suggestion that Government funding would continue for the channel beyond the contracted period.

The National Party members’ view on broadcasting is that public money should be channelled into the making of programmes, not the platform on which they are delivered. Traditional one-to-many television broadcasting remains a dominant medium, but is being supplemented by a rapidly evolving viewing environment in which people choose personalised content from multiple sources— mobile phones, tablets, iPads, smart televisions, and laptops—and watch it at their convenience.

**New Zealand Labour Party minority view**

The Labour Party members of the committee oppose the committee’s majority decision to report on this petition without hearing from the signatories or the petitioner. Labour members of the committee believe that the 36,155 people who signed a petition asking for the retention and continuation of TVNZ 7 have the right to be heard by the Commerce Committee.

The large number of signatories and the passion and energy displayed by the Save TVNZ 7 Campaign demonstrates the wide appeal of TVNZ 7 and public broadcasting in general. Around 3,000 people attended public meetings and rallies around New Zealand in May and June. Official figures show that 1.6 million Kiwis watched TVNZ 7 in May, almost 120,000 more than in April. A movement in support of public broadcasting has now been firmly established in New Zealand.

Labour believes that the National Government’s conscious decision to kill off our only public broadcast television channel will diminish our national identity.
TVNZ 7 ended transmission at midnight on 30 June and was replaced by a TV One Plus 1 channel after the Government decided not to extend funding. The former Labour Government provided $79 million over six years, $70 million of which came from a special dividend from Television New Zealand, to set up digital public broadcasting channels TVNZ 6 and TVNZ 7. It was always the intention of the previous Government that they would continue.

All Opposition parties and two of the Government’s current coalition partners have expressed strong support for public broadcasting. New Zealand is now the only country in the OECD, except Mexico, without a public television broadcaster. This is to our national shame. We believe that public service broadcasting serves a vital and important function in our society, allowing our culture and quality programming to take precedence over commercial imperatives. There are now fewer quality New Zealand television programmes being made and the Minister of Broadcasting, Craig Foss, and his Government are indifferent to the widespread pleas for a television channel which provides rich, informative, intelligent, and commercial-free content.

Many of the petitioners wrote to the members of the committee seeking the opportunity to be heard in support of this petition. It is unacceptable that this committee has demonstrated a lack of respect or consideration for their views and refused to hear from them. During the presentation of the petition Elliot Baguley, a young boy, said that he loved TVNZ 7 and would miss it if it was cut. He was supported in this by both his mother and grandmother, who demonstrated their support for the channel at the presentation of the petition and at public meetings.

The Labour members of this committee believe that this Government has neglected an important facet of society by failing to provide a public broadcaster such as TVNZ 7, and that much of the New Zealand population, from children to the elderly, are being denied access to non-commercial, quality programming.

Labour members acknowledge the Save TVNZ 7 Campaign and signatories to the petition for their support for this channel and their work in coordinating the petition and the wider campaign. We believe that these petitioners deserved the opportunity to be heard by the committee and that the majority report does not do justice to the support demonstrated for TVNZ 7. We believe that by refusing to allow the petitioners to be heard, the Government members of the committee have demonstrated a blatant disregard for democratic process, and we condemn this decision.
Appendix

Committee procedure

The petition was referred to the Commerce Committee on 28 June 2012. We considered the petition on 2 August, 16 August, and 30 August 2012.

Committee members

Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Chester Borrows
Hon Clayton Cosgrove
Hon David Cunliffe
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Financial Markets Conduct Bill

Government Bill

As reported from the Commerce Committee

Commentary

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

Introduction
The main purposes of the Financial Markets Conduct Bill are to promote and facilitate the development of fair, efficient, transparent financial markets and to promote the confident and informed participation of businesses, investors, and consumers in the financial markets. The bill seeks to achieve these ends by reforming the regulation of financial market conduct. It seeks to govern the way financial products are offered, promoted, issued, and sold, and the ongoing responsibilities of those who offer, issue, manage, supervise, deal in, and trade them. It also seeks to regulate the provision of certain financial services.

This 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, drafting, clarity, and legal efficacy. These amendments include:

- an exception to the prohibition of offers in the course of unsolicited meetings, to allow authorised financial advisers to continue their established business practice in this respect (clause 26A(2)(b))
- allowing requests for relevant information to be made all the way up the chain of ownership to trace interests in listed issuers, and allowing requests to be made for purposes other than substantial security holdings (clause 284)
- removing the requirement in clauses 287 to 290 for public issuers to maintain a register of substantial product holder disclosures for public inspection
- a new general offence for false or misleading statements, based on section 377(1) of the Companies Act 1993 (clause 498A)
- specific requirements for market operators of domestic financial product markets, licensed providers of market services under Part 6 of the bill, and supervisors under the Financial Markets Supervisors Act 2011 to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (see proposed changes to clauses 314(c), 322(ba), 394(f), and 646(2) and Part 1 of Schedule 4)
- amendments to section 14 of the Financial Service Providers (Registration and Dispute Resolution) Act to extend the current bans on persons being directors, senior managers, or controlling owners to include overseas bans (see Part 1 of Schedule 4 of the bill)
- new transitional provisions for participatory securities that would not be financial products under the bill and for interests in contributory mortgages (clauses 31 and 46 of Schedule 5)
- shifting various provisions, including shifting provisions on accounting records to a new Part 6A, and shifting transitional provisions to a new Schedule 5.

**Liability regime (criminal and civil)**

The liability regime proposed in the bill sets out the circumstances where liability would arise for contraventions of its provisions, including those in which investors could seek compensation and in
which company directors and others could be criminally prosecuted. While the regime in the bill is fundamentally sound, we recommend a number of amendments to make clear the precise circumstances where liability would arise under this regime.

**Criminal liability**

We recommend amendments to Part 7 of the bill to establish a separate criminal liability for a director where there is a disclosure defect (for example, a false statement in a product disclosure statement) that is materially adverse from an investor’s point of view. The offence would be committed if the offer took place with the director’s authority, permission, or consent, and the director knew of, or was reckless as to whether there was a defect (see clause 488(1A)). This would function in a very similar way to section 242 of the Crimes Act 1961. A key change proposed by the bill is to make the offerors of products and the directors of companies criminally liable for inaccurate statements about products in disclosure documents, but only if the Crown could prove a “guilty mind”. This would move the focus of criminal liability towards the offeror; it includes fault elements for significant offences, generally knowledge or recklessness, in line with the Crimes Act offence for a false statement made by a promoter. We understand that recklessness is also a fault element in the equivalent Australian legislation.

In the case of criminal accessory liability, we consider that the ordinary rules under Part 4 of the Crimes Act should apply. Under these rules a person who promotes an offer would be liable for a false statement made by an offeror if, for example, the promoter committed or omitted an act for the purpose of aiding any person to commit the offence.

We believe that the liability regime should not discourage capable prudent people from becoming directors with overly punitive sanctions, and companies should be able to attract directors with diverse skills and backgrounds. Although directors should supervise capital raising and exercise due diligence regarding offer documents, they should be able to focus mainly on business strategy and supervising management, rather than on compliance and liability. Directors should be liable for civil pecuniary penalties and to compen-
sate investors that lose money if they fail to perform their duties, but should not be liable to imprisonment where there is no fault element.

Civil liability—liability of accessories
We recommend that a new term (“involvement in a contravention”) be used to refer to the behaviour of accessories in the civil context (clause 509). This would clarify how the application of the bill applies to people who were, for example, knowingly concerned in, or party to, the contravention. We are satisfied that “involvement in a contravention” is an appropriate test with a sufficiently high threshold.

We are aware of concern that professional advisers might risk being involved in a contravention in the course of their normal activities. We do not expect this to happen. This test is consistent with equivalent provisions in the Australian Corporations Act 2001 and in other New Zealand laws, including the Commerce Act 1986 and Fair Trading Act 1986, and reflects the rules for parties under the criminal law. For a person to be involved in a contravention, it would need to be proved that he or she was an intentional participant in the primary contravention with knowledge of all the essential facts.

In addition, some of the defences in the bill are more suitable for the primary person in a contravention than for accessories. This uncertainty could lead to expensive and inefficient efforts to limit liability risk. We therefore recommend amendments to broaden the range of defences available to accessories, including defences for reasonable reliance and taking reasonable and proper steps to ensure compliance (clause 482E).

In addition, we recommend changes to the Financial Markets Authority’s order powers to provide for orders to be made preventively when provisions are likely to be contravened (clauses 448, 453, and 455). This would allow the Financial Markets Authority to take a proactive approach in situations in which provisions of the bill might be contravened.

Defences to civil liability
The defences part of the civil liability regime specifies the minimum standard of behaviour or actions that must have been demonstrated to avoid liability. We recommend amendments to include defences
that apply to disclosure contraventions and more general defences for other kinds of contraventions (clauses 482A to 482C).
We consider it is necessary for the primary contravener to have a defence if it reasonably relied on a person other than their director, employee, or agent; if (in relation to disclosure) it made all the enquiries that were reasonable in the circumstances and believed on reasonable grounds that the disclosure was not defective; and, in the case of a new circumstance that should have been disclosed, if it was not aware of the matter. Our recommended amendment would give a director of the contravener access to these defences, and to a defence if he or she took all reasonable and proper steps to ensure that the company complied.

We consider that these amendments to the provisions for defences to civil liability would provide certainty for those who might be liable under the bill, and make it clear how the defences would work under the legislation. However, we do not consider that making out a defence should be easy. A defendant who wants to rely on a defence under the bill would have to prove it—they could not simply claim that the defence applies.

Presumption that contravention caused loss
As introduced, the bill presumes that when financial products decline in value as a result of a material defect in disclosure (such as a materially misleading statement), the investor would be treated as suffering a loss unless the decline in value was proved to have had another cause. We consider that clause 480 is an appropriate response to the difficulty for investors of proving that defective disclosure caused them loss. However, the provision should relate only to causation, and we recommend amendments to make it clear that the amount of the investor’s loss that should be compensated for is not determined by the clause; it would be up to a court to decide how much compensation would be awarded.

Indemnities and insurance
We recommend amendments to the indemnity and insurance provisions set out in clauses 503 to 506 of the bill, so that indemnity and insurance restrictions regarding New Zealand companies and their directors and employees would be governed by the Companies Act,
rather than these provisions in clauses 503 to 506. This would remove duplication and potential conflict in legislation. We believe these amendments would provide a simple regime that would aid compliance.

The provisions would continue to apply to the auditors of New Zealand companies, and to overseas companies and other non-company entities.

We also recommend that the indemnity and insurance provisions be extended to cover licensees (including supervisors) to ensure that the regime is comprehensive, and certain other changes for consistency with the Companies Act.

**Directors’ assets**

We are aware of concern that directors might be unable to pay penalties or compensate investors, since most directors’ assets can be transferred to trusts. The use of trusts in commercial and asset-protection contexts has implications beyond the scope of this bill.

**Relationship with Fair Trading Act 1986**

Part 2 of the bill replicates key parts of the Fair Trading Act and applies them to financial services and products. We recommend amending Part 9 (clause 567) so that equivalent provisions in the Fair Trading Act would not apply to financial products and financial services regulated by Part 2 of the bill. This would remove uncertainty over which law applies. Misleading and deceptive conduct in relation to financial services and products would be regulated solely by this legislation. In addition, we recommend amendments to Part 2 of the bill to improve consistency with the Fair Trading Act.

We note that the Consumer Law Reform Bill (which is currently before the Commerce Committee) has implications for Part 2 of the bill. If the Fair Trading Act is amended to include prohibitions on unsubstated representations or unfair contract terms, these rules should be replicated in Part 2 for consistency.
Discretionary investment management services
Part 6 of the bill proposes new requirements for providers of discretionary investment management services (DIMS) and other providers of market services. We recommend amendments to clarify the boundary between the DIMS covered by the bill and those that fall under the Financial Advisers Act 2008, and make it less subject to arbitrage. These amendments to clause 573 redefine a personalised DIMS to make it clear that providing the client with multiple options in a model portfolio, or allowing investors to make minor modifications to such a portfolio, would not constitute personalisation.

We also recommend amending the bill (in clause 387A(2)(a)) to exclude from the need for a licence for DIMS that are not retail services under the bill, rather than relying solely on the exclusion under the Financial Advisers Act (see clause 572(1)). Retail services as defined in clause 33A of Schedule 1 would exclude services provided only to wholesale investors. We recommend amendments to ensure that the additional requirements for disclosure, client agreements, and for duties of DIMS licensees and custodians under subparts 4 to 6 of Part 6 apply also in respect of the retail service.

Further, we recommend that a DIMS licensee with a corporate licence under the bill be allowed to provide financial advice under that licence to the extent that the advice is given in the ordinary course of, and incidentally to, providing the DIMS under its licence, for example in relation to selecting investment options, reinvestment, and switching (see clause 390A(1)(b)). We believe these services are integral to providing the DIMS itself.

Treatment of derivatives—disclosure
We recommend amendments to the bill to clarify the provisions relating to derivatives, which differ from other financial products, and the business models through which derivatives are typically offered. The amendments we propose would make clear that a product disclosure statement could be lodged for a derivative product type, rather than for each individual derivative contract (clause 33A). This would ensure that when issuers of derivatives made offers to many investors, each offer would not require a separate product disclosure statement. We recommend also a requirement that customised
terms for specific investors not be disclosed (clause 43(2)). For the purposes of clarity, the bill’s scheme in respect of derivatives is outlined below:

If a derivative were entered into between

- a licensed derivatives issuer and a retail investor (for example, a bank and a customer), then the issuer must make disclosure because of clause 27, but the retail investor need not because of exclusions in Schedule 1, including clause 35(1)(f).

- a person who is in the business of entering into derivatives and an investor who is not (for example, an energy company and a retail investor), then the first person needs to be licensed because of clause 387(d) and must make disclosure because of clause 27, but the investor does not because of exclusions in Schedule 1, including clause 35(1)(f).

- two licensed derivatives issuers (for example, two banks), then disclosure is not required because of exclusions in Schedule 1, including clause 35(1)(f).

- two wholesale investors (for example, two large energy companies), then disclosure is not required because of the exclusion in clause 3(1) of Schedule 1.

- two investors who are not in the business of issuing derivatives, then disclosure is not required because of the exclusion in clause 19(1) of Schedule 1.

**Treatment of derivatives—new exceptions**

Schedule 1 of the bill outlines the provisions relating to disclosure requirements and exclusions. As introduced, the bill provides an exclusion from providing a product disclosure statement to an investor for an offer of financial products where the minimum amount payable by the investor is at least $500,000. This exclusion is carried over from the Securities Act 1978 and is intended to provide a bright-line test for offers to wholesale investors.

This exclusion would not apply to many derivatives, as they seldom require large up-front payments. To provide an equivalent exclusion for derivatives, we recommend that the exclusion in clause 3 of Schedule 1 for offers with a minimum investment of $500,000 be accompanied by an exclusion for derivatives with a minimum notional value of $5 million.
Schedule 1 exclusions
Schedule 1 also provides various disclosure exclusions for offers under Part 3 of the bill. These exclusions would apply for investors who are considered to be capable of evaluating the merits of the offer or accessing the information they need, or where full product disclosure is otherwise not needed, because, for example, of the investor’s size and experience or relationship with the issuer.
We consider that significant changes should be made to two particular exclusions, as follows:—
Clause 36 of Schedule 1 specifies the criteria an investor must meet to be classified as a wholesale investor. We recommend reducing the criteria to three, of which the investor must meet one, simplifying the identification of sophisticated investors.
We recommend reducing the threshold defining a “large” person for the purposes of the wholesale investor exclusion in clause 37 of Schedule 1 to net assets of $5 million or turnover of $5 million in each of the past two years, from total assets of $10 million or turnover of $20 million over the past two years. Few businesses or individuals in New Zealand were likely to meet the higher threshold. We believe that an individual or business meeting the lower threshold is likely to be sufficiently sophisticated to participate in wholesale offers of financial products.
We recommend inserting a new exclusion for offers of financial products of the same class as quoted financial products (clause 18A of Schedule 1). We consider that continuous disclosure obligations to which a listed issuer would be subject would ensure that the market had already priced the risk associated with these products.

Principal purpose of superannuation schemes
The bill as introduced seeks to change the current law so that the sole purpose of a registered superannuation scheme must be to provide retirement benefits (clause 115). If a scheme has purposes that are not merely incidental to providing retirement benefits, we consider it should be registered as a standard managed investment scheme. However, we recommend some amendments to the application of this rule to allow existing superannuation schemes (or sections of them) to retain a “principal retirement purpose” if the scheme (or section) is closed to new members (clause 116(2)); and to allow workplace
schemes (as defined in regulations) to provide benefits and allow withdrawals on leaving employment with the relevant workplace or industry (clause 116(3)).

We also recommend changes to clause 114(1) and clause 115(1) to restrict the provision of benefits, as well as redemptions and withdrawals, to the retirement purpose, and also to clarify that the potential for early withdrawal in accordance with the KiwiSaver Act 2006 (for example to facilitate first-home ownership) is not inconsistent with the sole purpose test.

**Related parties for restricted schemes**

Clause 161 places a 5% limit on investments in related parties of restricted schemes. This means that a restricted superannuation scheme provided to a company’s employees could not invest more than 5% of the scheme’s property back into the company. We support retaining this restriction on related party holdings for restricted schemes, and consider it is set at the appropriate level. It would provide the manager of the scheme with some flexibility to invest in a related party, but avoids excessive related party concentration.

However, we recommend that the 5% limit apply separately to non-associated persons. We consider it is necessary to make it clear that investments in businesses that are each a related party of the scheme but are not associated with each other would count separately for the purposes of testing compliance with the 5% restriction. We also recommend that, for workability reasons, the 5% limit should apply only to new acquisitions (although schemes would be required to sell-down existing holdings to comply with the 5% limit within a transitional 3-year period under clause 36 of Schedule 5).

For the related party transactions provisions generally, we also recommend that employer contributors be treated as related parties under clause 158 only for specified employer-related schemes (that is, those that employers have an involvement in other than merely as contributors) rather than all restricted schemes. These employer-related schemes would be identified at the point of their registration under the bill’s transitional provisions (see clause 21 of Schedule 5).
**Territorial scope**

We recommend amendments to the territorial scope provisions of the bill to make them equivalent to those in the Securities Act, extending the Financial Markets Authority’s stop order powers in clause 448 to apply to any restricted communications distributed to persons outside of New Zealand (see clause 452A). Further amendments are also proposed to provide for the Financial Markets Authority to seek civil remedies if there is a contravention of Part 2 in relation to such communications.

We consider that the territorial scope of the bill needs to be extended to allow the regulation of the conduct of New Zealand residents and businesses in respect of their offshore activities in limited circumstances. As introduced, the bill does not seek to replicate the existing territorial scope provisions of the Securities Act; we believe it should, to facilitate cross-border cooperation, and to regulate externally directed conduct to preserve the reputation of New Zealand issuers or service providers.

**Crowd funding**

Crowd funding is the pooling of a large number of small contributions to fund a business or project, generally over the internet. Clause 388 of the bill gives crowd funding intermediaries as an example of a type of licensed intermediary service that may be prescribed under regulations. We recommend that the Government, in due course, consider prescribing crowd funding intermediaries in regulations under the bill as an intermediary service for which providers could apply for a licence. Individuals seeking crowd funding through an intermediary service would be exempt from disclosure requirements under clause 6 of Schedule 1 (subject to limited disclosure and other requirements under clause 26 of Schedule 1).

**Liability for audit opinions**

We are aware of concern about liability for audit opinions, specifically the routine disclaiming of liability to third parties. We do not recommend amending the bill in this respect, but would like to see wider consultation and policy work in this area.
Licensing

We recommend amendments to the provisions for licensing of market services to recognise existing licenses under other licensing regimes. The amendments under clause 395 would require the Financial Markets Authority, in making its licensing decision, to have regard to whether the applicant was already a licensed provider under the Financial Service Providers (Registration and Dispute Resolution) Act and whether the proposed market service was merely incidental to other licensed services.

We also recommend amendments to facilitate group licensing by allowing related bodies corporate, not only subsidiaries, to be covered by a single licence where appropriate controls or supervision by the licensee can be demonstrated (see clause 398). The head licensee remains responsible for the related bodies corporate covered by the licence.

We considered the desirability of requiring the Financial Markets Authority to treat applicants who were already licensed under other regimes (for example, registered banks) as meeting any equivalent requirements under the bill. We agree that cross-recognition of equivalent requirements is highly desirable, but consider that this is a matter for regulations under Part 6, which would specify the substantive licensing requirements.

Commencement

We recommend that the default commencement date in clause 2(3) be amended from 1 April 2015 to 1 April 2017. We expect that most of the provisions of the bill would come into force well before that date. However, given the complex nature of the reform, we consider that the change to clause 2(3) would allow more flexibility to bring some provisions into force later.
Appendix

Committee process
The Financial Markets Conduct Bill was referred to the committee on 7 March 2012. The closing date for submissions was 26 April 2012. We received and considered 62 submissions from interested groups and individuals. We heard 37 submissions, which included holding hearings in Auckland. We received advice from the Ministry of Business, Innovation and Employment, with the assistance of the Financial Markets Authority.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Chester Borrows
Hon Clayton Cosgrove (Deputy Chairperson)
Hon David Cunliffe
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Interim report on the Commerce (Cartels and Other Matters) Amendment Bill

Interim report of the Commerce Committee

Contents

Recommendation 2
Introduction 2
Details of proposed amendments 2
Appendix A 4
Appendix B 5
Recommendation
The Commerce Committee recommends that the House take note of its report.

Introduction
On 3 September 2012 the Minister of Commerce wrote to the committee requesting that it consider, alongside the Commerce (Cartels and Other Matters) Amendment Bill, a proposal to transition international shipping and international civil aviation from a competition regime regulated by industry-specific legislation (the Shipping Act 1987 and the Civil Aviation Act 1990, respectively), to a regime governed by the Commerce Act 1986.

Details of proposed amendments
At present, competition issues in international shipping and civil aviation are, for the most part, regulated according to sector-specific regimes in the Shipping Act and the Civil Aviation Act, rather than under the general competition law set out in the Commerce Act. In this respect, they are regarded as anomalies.

To provide for international shipping and international civil aviation transitioning to a competition regime that is governed by the Commerce Act would require the following amendments to be made to the Commerce Act, the Shipping Act, and the Civil Aviation Act:

**International shipping**
- Repealing section 44(2) of the Commerce Act (this section provides that the prohibitions in Part 2 of the Commerce Act, including the prohibition against hard-core cartel conduct in section 30, do not apply to international shipping).
- Repealing Part 1 of the Shipping Act (this sets out an alternate regime under which competition in international shipping is regulated).

**International civil aviation**
- Repealing Part 9 of the Civil Aviation Act (this sets out an alternate regime under which competition in international air carriage is regulated).
- Providing transitional arrangements for arrangements that have already been authorised under section 88 of the Civil Aviation Act.

With regard to international shipping, the Minister has asked the committee to consider

- whether the safeguards built into the Commerce Act and the bill provide sufficient flexibility for international shipping lines to collaborate, in order to provide maximum capacity and frequency of services to and from New Zealand
with transitioning to a Commerce-Act-only regime for international shipping
• if the risks can be managed, whether any transitional arrangements would be required to move to a Commerce-Act-only regime.

With regard to civil aviation, the Minister has asked the committee to consider

• if there is a move to a Commerce Act-only regime, whether any specific mechanisms would be required to ensure that New Zealand’s international obligations under international air services agreements and related understandings were taken into account; for example, whether the provision in the Commerce Act stipulating that the Commerce Commission must have regard to any economic policy statements transmitted in writing to the Commission would provide sufficient guidance for the commission or whether further direction would be required
• whether the authorisation process under the Commerce Act and the safeguards in the bill would provide sufficient flexibility for the following collaborative arrangements: airline alliances; activities (such as passenger tariff coordination systems) undertaken by the International Air Transport Association relevant to New Zealand; and joint tariff-setting by airlines outside of authorised alliances
• whether any risks are associated with transitioning to a Commerce-Act-only regime for international civil aviation
• whether transitional or grandfathering provisions should apply for existing arrangements of the types outlined above, or those already authorised under the Civil Aviation Act, if there were a move to a new regime
• if the provisions in the Civil Aviation Act relating to commission regimes are revoked, whether any industry-specific regulation is necessary to deal with the relationship between airlines, travel agents, and their clients.

While the proposal appears to be within the purview of the bill, we would like to conduct a final round of consultations with interested groups to canvass the acceptability of the Minister’s proposal. A copy of the Minister’s letter is attached as Appendix B to this report.
Appendix A

Committee procedure
The bill was referred to us on 24 July 2012. We called for public submissions on 26 July 2012 and have received 18 submissions from interested groups and individuals.

Committee members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Chester Borrows
Hon Clayton Cosgrove
Hon David Cunliffe
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Appendix B

Office of Hon Craig Foss
MP for Tukituki
Minister of Commerce
Minister of Broadcasting
Associate Minister for ACC
Associate Minister of Education

3 SEP 2012
Mr Jonathan Young
Chairperson
Commerce Committee
Parliament Buildings
WELLINGTON 6011

Dear Mr Young

COMMERCe (CARTELS AND OTHER MATTERS) AMENDMENT BILL: CONSIDERATION OF INTERNATIONAL SHIPPING AND CIVIL AVIATION EXEMPTIONS FROM COMMERCE ACT

On 24 April 2012, the New Zealand Productivity Commission tabled its final report on the International Freight Transport Services Inquiry in Parliament. That report contained a number of recommendations to improve the performance of New Zealand’s international freight systems. Included in those recommendations were recommendations relating to the competition regimes for international shipping and civil aviation. A copy of those recommendations is included as Appendix 1 to this letter.

At present, competition issues in international shipping and civil aviation are, for the most part, regulated under sector specific regimes in the Shipping Act and Civil Aviation Act, rather than under the general competition law set out in the Commerce Act.

The Productivity Commission’s recommendations have raised a broader question as to whether it is appropriate to continue to regulate competition under sector specific regimes or whether to repeal the exemptions and transition to a Commerce Act regime. Transitioning to a regime under the Commerce Act would go further than the Productivity Commission recommendations.
This issue is closely related to the amendments in the Commerce (Cartels and Other Matters) Amendment Bill (the Bill) that the Commerce Committee is currently considering. As you know, the Bill includes a number of amendments to the Commerce Act that may help mitigate uncertainty in the current law and reduce the need for industry-specific exemptions. Specifically, the amendments include:

- clarifying the scope of prohibited cartel conduct;
- introducing an exemption for collaborative activity; and
- introducing a new clearance regime.

Given the relationship between the Productivity Commission's recommendations and the Bill, I expect that the Committee would receive submissions on the desirability of maintaining the transport exemptions. Nevertheless, to ensure that all affected parties recognise that repealing the exemptions in their entirety is an option, I would like to formally request that the Committee consider:

- For international shipping, transitioning to a competition regime that is governed by the Commerce Act.
- For international civil aviation, transitioning to a competition regime that is governed by the Commerce Act.

This would ensure that the process is open and transparent and that all parties have a chance to comment on issues. It would also ensure that the Committee can undertake a thorough consideration of the issues related to the Bill.

Any changes to the regimes will have particular impacts on key parties, including cargo owners, shipping lines, airlines, airports and ports. A list of names and contact details for key affected parties is included as Appendix 2 to this letter.

Given the timing of the Committee's consideration (with submissions on the Bill due on 6 September) I would support the Committee considering a short extension of six weeks for submissions from parties wanting to submit on the issues relating to the international shipping and civil aviation exemptions.

As you know, officials from the Ministry of Business, Innovation and Employment have been appointed as advisers to the Committee on the Bill. These officials, together with officials from the Ministry of Transport, will be available to provide any additional advice the Committee requires to consider these issues alongside the Bill.

Thank you for your consideration of these issues and your work to date on the Bill.

Yours sincerely

Hon Craig Foss
Minister of Commerce
Appendix 1: Recommendations of Productivity Commission in relation to industry-specific competition regimes

International shipping

Recommendation 11.1
Ratemaking agreements – ones involving price fixing or limiting capacity with the intent of raising prices – have a high risk of anti-competitive detriment. Exemptions for such agreements should be removed and authorisation mechanism should be relied upon for assessing whether these agreements are in the public interest.

There should be a transitional period to allow the agreements in place at the time the exemption is repealed to continue until their compliance with the Commerce Act 1988 has been tested.

Recommendation 11.2
The exemption for non-ratemaking agreements should be retained in the Shipping Act 1987 and be conditional on filing agreements with the Ministry of Transport for placing on a public register.

The exemption and remedial regime should apply equally to outwards and inwards shipping.

To be eligible for exemption, agreements must allow and protect confidential individual service contracts.

The exemptions for international shipping in the Commerce Act should be repealed.

Civil Aviation

Recommendation 12.2
Subject to a review of the passenger-specific impacts, the Government should consider adopting a Commerce Act only regime for regulating international air services.

Recommendation 12.3
If the Government decides to retain Part 9 of the Civil Aviation Act, it should amend Part 9 to:

- require the Minister of Transport to have regard to an assessment of the benefits and costs of trade practices that are proposed for authorisation under s.88 or s.90 of the Act, and commission regimes that are proposed under s.89;
4

- require an assessment of the costs arising from any potential reduction in competition as part of each assessment of benefits and costs;
- require public consultation on the assessment of benefits and costs where the trade practice or commission regime is likely to reduce competition; and
- require the publication of s.88 and s.90 authorisations that are granted.
Consumer Law Reform Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Consumer Law Reform Bill, and recommends that it be passed with the amendments shown.

Introduction
The Consumer Law Reform Bill is an omnibus bill. It aims to modernise New Zealand’s consumer law and improve its alignment with the Australian Consumer Law. It proposes amendments to
• the Fair Trading Act 1986
• the Consumer Guarantees Act 1993
• the Weights and Measures Act 1987
• the Carriage of Goods Act 1979
• the Sale of Goods Act 1908
The bill also seeks to repeal the Auctioneers Act 1928, the Door to Door Sales Act 1967, the Layby Sales Act 1971, and the Unsolicited Goods and Services Act 1975. The matters covered by the four Acts being repealed are incorporated into the amended Fair Trading Act and a new Auctioneers Act.
This commentary covers the key amendments that we recommend to the bill. It does not cover a number of minor or technical amendments proposed to improve workability, drafting, clarity, and legal efficacy.

**Purpose clauses**
The bill as introduced proposes amendments to the Fair Trading Act, the Consumer Guarantees Act, and the Weights and Measures Act, to provide for new standardised purpose clauses for these Acts. We recommend amendments to these new purpose clauses inserted by clauses 5, 34, and 46, to ensure that the wording is appropriate and clear, and to highlight the importance of consumer protection.

**Fair Trading Act**

**No contracting out**
Clause 7 would insert new section 5D into the Fair Trading Act, describing the terms under which parties in trade might contract out of some of the terms of the Fair Trading Act. New subsection 5D(4) sets out the list of considerations for a court to take into account when deciding whether contracting-out behaviour was fair and reasonable. We recommend expanding the guidance in this section on what is fair and reasonable, adding three considerations to this list: whether each party was given sufficient opportunity to negotiate the terms of the agreement, whether one party was required to accept or reject the terms of the agreement in the form in which they were presented, and whether one party knew that if it were not for their agreement to contract out, a representation made in connection with their agreement would have breached section 12A, 13, or 14(1). These amendments would strengthen the fair and reasonable test protection for weaker parties such as franchisees contracting out of the Fair Trading Act.

**Unsubstantiated representations**
The proposed new provisions on unsubstantiated representations are intended to target traders who make representations without reasonable grounds. We recommend adding new subsection 12A(2A) (inserted by clause 9) to make it clear that the provision does not include representations that a reasonable person would not expect to be substantiated, so that creativity in advertising would not be stifled. We
also recommend deleting the words “or of fact or opinion” from new paragraph 12A(3)(c).

Under the existing scheme the Commerce Commission must disprove such representations, which can be difficult and costly. No direct harm may necessarily occur from representations that are true but nonetheless unsubstantiated, but there can be indirect harm. Traders that incur the costs of undertaking relevant research before making claims are disadvantaged relative to traders willing to make unsubstantiated claims. There can also be indirect harm to consumers, such as paying a premium for goods when additional benefits are not substantiated, or buying goods in the expectation they will deliver particular outcomes that are not substantiated. New subsection 12A(3) lists the circumstances a court must have regard to when assessing whether a person had reasonable grounds for a representation. We recommend adding two further considerations to this list to provide for steps a seller may take to verify a representation. In addition, we recommend adding new section 12B so that the unsubstantiated representation provisions in section 12A would not apply to representations already covered by industry-specific legislation.

**False or misleading representations**

To align the bill with the Financial Markets Conduct Bill, we recommend inserting clause 10(1) to add to section 13(b) of the Fair Trading Act “a person who has other particular characteristics”, to make it clear it is a misrepresentation to claim, for example, that a person is licensed or registered. We recommend also inserting clause 10(3) to add “or services” to section 13(j) of the Fair Trading Act, so that it would be an offence to mislead a consumer about the place from which services were supplied.

**Unsolicited goods and services**

To ensure that museums could still treat anonymous goods left with them as gifts, rather than as goods left under their care which they are obliged to try to return, we recommend removing the words “in trade” from new subsection 21A(1) inserted by clause 11, and inserting new subsection 21A(1A) to provide for cases where the sender is in trade. We also recommend amending new subsection 21A(3) to prevent the unintended consequence of the gifting of stolen goods.
We accept that sending unsolicited goods is a legitimate form of marketing, provided that there is no obligation for the recipient of the goods (the consumer) to pay for them if they are not used or wanted. The principle of the law is to protect recipients from demands for payment for unsolicited goods and services, and to provide that such goods become the property of the recipient after a period of time.

We also recommend amending the unsolicited goods provisions in clause 11 to require traders to advise a recipient of unsolicited goods of their obligation to make the goods available for collection. If a trader did not inform the recipient at the time the goods were delivered, and on any invoice for the goods, of this obligation, then none of these obligations would apply. To ensure that it would not be an offence for a consumer not to make goods available for collection under new section 21A(1)(b), we recommend adding new subsection 21A(3A) (inserted by clause 11).

Further, we recommend specifying in subsection 21A(4) and 21B(2) that the unsolicited goods and services provisions do not apply to gas and electricity. We consider that the practice of leaving gas and electricity supplies connected for new owners would complicate the status of these supplies as “unsolicited goods”. It is also impractical to require the return of unsolicited electricity or gas used by new homeowners or tenants.

**Unfair contract terms**

We recommend the addition of new clause 11A, which would insert a new section 26A in Part 1 of the Fair Trading Act. New section 26A would prohibit the use of unfair contract terms in standard form contracts. Contravention of this prohibition would give rise to the remedies described in Part 5 of the Fair Trading Act.

A term is an unfair contract term only if it is declared to be such by the High Court or a District Court, on the application of the Commerce Commission. This process would ensure that the Commerce Commission was given control of the enforcement of unfair contract terms. To provide for this process, we recommend inserting new clause 26A, which would insert new sections 46H to 46M. These provisions set out the power of a court to declare a term in a standard form consumer contract to be unfair, and the basis for such a declaration. These provisions reflect the essential features of the Australian
Consumer Law provisions relating to unfair contract terms. A “grey list” of examples of unfair contract terms is included in new section 46M, replicating the list in the Australian Consumer Law.

**Internet sales sites**

We recommend that the bill require under clause 12B (inserting new section 28B) that internet sites facilitating sales between traders and consumers must require traders to identify themselves as such if selling goods or services covered by the Consumer Guarantees Act. We consider that failure of traders to do so on such sites should be an infringement offence under the Fair Trading Act. The provisions of the Consumer Guarantees Act are contingent on whether the seller is in trade, so this is important information for consumers. We recommend inserting subsection 28B(2) to provide that the person operating the internet site must take all practicable steps to ensure that persons offering goods or services for sale on the site comply with this provision.

**Product safety**

We recommend amending clause 14 (which amends section 31 of the Fair Trading Act) to require the Minister of Consumer Affairs to consult people who would be substantially affected before declaring that an unsafe goods notice will apply indefinitely. This would ensure consistency with other parts of the Fair Trading Act, which require similar consultation. However, we recommend providing that if the Minister issued a notice without consultation, this would not affect the validity of the notice.

In addition, we recommend amending clause 15 by inserting new paragraph 31A(1)(b) so that where a supplier was required under other legislation to report a product safety recall to a government agency, that supplier would not be required to notify the chief executive of the Ministry of Consumer Affairs, as the intention is not to duplicate product safety recalls required under other specific legislation.

In order to align the bill with the Search and Surveillance Act 2012, we recommend amending clause 17 (inserting new sections 33A to 33D).
New Part 4A of the Fair Trading Act
The bill as introduced seeks to amend the Fair Trading Act to insert a new Part 4A, “Consumer Transactions and Auctions”. This new part, inserted by clause 18, covers layby sales, uninvited direct selling, extended warranties, and auctions.

Layby agreements
We recommend inserting new subsection 36F(1A) to allow the cancellation of layby agreements to be communicated in any way using the supplier’s contact details provided in the agreement, as detailed in section 36C(2)(a)(iv), or in any other way as agreed to by the supplier and consumer. We believe that this would ensure clarity between parties when agreements were being cancelled, and provide protection for retailers. We also recommend aligning new sections 36M(2A) and 36U(3A), relating to uninvited direct sales and extended warranties, with this provision.

Completion of layby agreement
New sections 36I and 36J set out comprehensive provisions for cancellation of a layby agreement if a supplier undergoes bankruptcy, receivership, or liquidation, but there are no provisions for the simple closing of a business. We therefore recommend amending new section 36G to include circumstances where the supplier has stopped trading, other than those covered by new section 36I.

Uninvited direct sales
The intention of the uninvited direct sales provisions is to protect consumers from personal, unexpected sales pressure. We propose a number of amendments to clarify the application of these provisions. We recommend specifying separately the descriptions in new section 36K of the circumstances in which a consumer most clearly would not reasonably expect sales pressure, which are in the consumer’s home or workplace, or over the telephone.

We recommend inserting 36K(1)(ab) to provide that the uninvited direct sales rules apply where the value of the agreement is more than $100, or if the price payable over time is not ascertainable at the time of the supply of goods or services. This would be relevant to,
for example, energy or telephone contracts sold door to door or over the telephone.

We recommend also inserting new section 36K(1C) to exclude renewal agreements (as defined in 36K(3)) from the meaning of uninvited direct sale. The uninvited direct selling provisions should not apply to renewal of an agreement by an existing customer for the supply of the same kind of goods or services.

To eliminate duplication of provisions, we recommend amending new section 36L, so that only the provisions of the Credit Contracts and Consumer Finance Act for disclosure, cooling-off periods, and cancellation would apply to uninvited direct sales of consumer credit contracts. The provisions regarding the oral notice of cancellation rights should remain because there is no provision for this in the Credit Contracts and Consumer Finance Act.

We recommend amending new section 36O to extend provision for cancellation of uninvited direct sales during the cooling off period to cover collateral agreements, including collateral credit agreements.

New section 36Q provides that consumers have no obligation to return goods to a supplier upon cancellation of a sales contract. We recommend that this provision be amended so that suppliers could request the consumer to return goods if the supplier provided the means and bore the cost.

In addition, we recommend inserting new subsection 36Q(3A) to require consumers returning goods to take reasonable care to ensure that they will not be damaged in transit.

**Extended warranties**

The bill addresses pressure applied by suppliers in trade when selling extended warranties to consumers. A consumer who has just made a purchase may be persuaded easily to take out an extended warranty in haste. They may do so without proper consideration of their existing rights under the Consumer Guarantees Act.

To make it clear that these provisions cover only extended warranty agreements for goods covered by the Consumer Guarantees Act, we recommend amending the definition of “extended warranty” under new section 36S. We also recommend amendments to these provisions to simplify and clarify definitions.
We recommend that the summary of consumer rights set out in subsection 36T(2) include for consumers’ information remedies available under the Consumer Guarantees Act, and a comparison between the relevant Consumer Guarantees Act protections and those provided by the extended warranty. We consider that this would help consumers to decide whether the additional protections provided by the extended warranty represented value for money.

We also recommend amending new section 36U so that a consumer’s right to cancel an extended warranty agreement within the cooling-off period would not apply if the warranty were a condition of a consumer credit contract, such as a payment protection insurance agreement in respect of a hire purchase agreement. Finance companies would not usually be willing to extend finance to cover goods not covered by such insurance.

We recommend adding a regulation-making power by inserting new section 36UA, to provide for the regulation of the summary of consumer rights under the Consumer Guarantees Act, should the Minister consider it necessary. This would allow disclosure obligations to be made clearer, and would ensure consistency with the approach taken for the proposed regulation-making power regarding unsolicited goods and services. We recommend also requiring the Minister to consult first with people who would be substantially affected by a change in regulations. This would align with the current regulation-making powers in the Fair Trading Act.

**Auctions**

We recommend amending new subsection 36Y(3) to allow an unfinished auction sale to continue until the end of the next working day. The amendment would clarify that goods that are unsold when bidding closes could be treated as sold at auction if they were sold by negotiation within one working day following the auction.

We also recommend substituting a new section 36Z to require notice of the terms of an auction to be available in an appropriate form (including via the internet), for example in the sale catalogue or in a separate publication of auction terms. This would avoid the need for multiple announcements.

We also recommend amending the requirement for announcing whether the vendor is in trade to apply only to goods covered by
the Consumer Guarantees Act, as this information is otherwise unnecessary.

We recommend amending new section 36ZA to provide expressly that vendor bids may be made by an auctioneer, but only if the terms of the auction specify that vendor bids are permitted, the auctioneer identifies each vendor bid as it is made, and during the auction each bid from the vendor is made by only one person.

In addition, we recommend providing in new section 36ZC for a vendor in trade with multiple auction sales or with a running account to contract with the auctioneer their own requirements for accounting for the proceeds of sale. We consider such vendors to be sufficiently sophisticated to safely contract out of the protections of this section.

**Jurisdiction and penalties**

Under the District Courts Act 1947, the jurisdiction of the District Court is capped at $200,000. The High Court has jurisdiction to deal with claims above this amount. We therefore recommend amending clause 19 (which seeks to amend section 37 of the Fair Trading Act) to clarify how these monetary limits apply with regard to enforceable undertakings.

We recommend amending clause 22 (which would amend section 40 of the Fair Trading Act) to increase the fines for contravention of Parts 1, 3, and 4A of the Fair Trading Act from $60,000 to $200,000 for individuals, and from $200,000 to $600,000 for bodies corporate. We consider that increasing the penalties would act as a deterrent and bring the penalty regime closer to that of comparable consumer laws and the Australian Consumer Law.

The bill as introduced seeks to establish a new regime of infringement notices for certain clear, low-level offences under the Fair Trading Act, such as inappropriate disclosure relating to layby agreements and extended warranties. We recommend increasing the maximum infringement fee provided for in new section 40B from $1,000 to $2,000. Several New Zealand infringement regimes provide for fines larger than $1,000. We believe that the possibility of a harsher fine would discourage large traders from factoring in small fines as a cost of doing business and continuing to offend.
We also recommend delaying the commencement of the infringement offence regime until the same date on which the amendments made by clause 18 come into force.

**Commerce Commission interview powers**

We recommend inserting new clause 27A (amending section 47G) to include compulsory interview powers for the Commerce Commission, similar to the power provided by section 98(c) of the Commerce Act 1986. We consider that compulsory interview powers would make investigations more efficient, and save time and money. We intend this power to apply only to investigations of the serious offences set out in Part 1 of the Fair Trading Act. We also recommend including subclauses 27A(3) and 27A(4), which reflect equivalent provisions in the Commerce Act relating to self-incrimination and include a use-immunity provision.

**Powers of authorised employees of the Commerce Commission**

We recommend amending clause 28 (which inserts new section 47L(2)) to give authorised employees of the Commerce Commission equivalent powers to those set out for product safety officers under new section 33C(2)(d) to 33C(2)(f). This would allow the Commerce Commission to monitor more effectively or enforce compliance with consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, and service safety standards. We also recommend other changes to align the bill with the Search and Surveillance Act 2012.

**Consumer Guarantees Act**

**Gas and electricity**

Clause 35 of the bill provides that the supply of gas and electricity is neither a good nor a service under the Consumer Guarantees Act. We recommend amending clause 35 (which would amend section 2(1) of the Act), because as introduced it would unintentionally mean that no goods and services related to the supply of electricity or gas would benefit from the normal Consumer Guarantees Act protections. This amends the definition of supplier to ensure that the supply of gas and electricity is subject to a specific guarantee of acceptable quality. It
also makes clear that associated services such as metering are subject to the normal services guarantees under the Consumer Guarantees Act.

We also recommend clarifying under clause 41 (which inserts new section 46A(1)(ca)) that Transpower in its capacity as system operator would not be included in the indemnity. Transpower is accountable to the Electricity Authority for its system operator function, and there is no indication that these arrangements are inadequate.

We heard from a number of submitters that the provisions in clause 41 (inserting new section 46A) should not be included, as the Electricity Authority already provides for an optional indemnity. We consider it appropriate to include these provisions in statute as the provisions would ensure that all sectors of the industry were covered, including Transpower and the gas industry.

**Carriage of goods**

There was general opposition from submitters to the changes to the Carriage of Goods Act proposed in the bill as introduced. The current rights of consumers under the Consumer Guarantees Act against the suppliers of goods do not generally apply when consumers receive goods from suppliers under the Carriage of Goods Act. In some circumstances consumers are well protected by the Carriage of Goods Act, but there are other circumstances where (especially when they are receiving goods) they have no protection under either the Carriage of Goods Act or the Consumer Guarantees Act.

As introduced, the bill would have applied the Consumer Guarantees Act to the Carriage of Goods Act. However, submitters were concerned, and we agreed, that there would be unintended consequences (including additional costs to consumers) from this change.

We recommend inserting into new clause 35A a new section 5A of the Consumer Guarantees Act as a more precisely focused way of increasing protection to consumers. This section would provide a new delivery guarantee, to the effect that when a supplier delivered or arranged delivery of goods to a consumer, the goods would have to be received by the consumer when agreed (or in a reasonable time), and the acceptable quality guarantee in section 6 of the Consumer Guarantees Act would apply at and from the time when the goods were actually received by the consumer.
Collateral credit agreements
We recommend inserting new clause 37A (which would insert new section 39A) to apply provisions for services equivalent to the provisions for goods under clause 37. If a contract for the supply of goods or services were cancelled because of a failure of the goods or services under a Consumer Guarantees Act guarantee, a court or disputes tribunal could order all or any of the rights and obligations of a consumer under a collateral credit contract used to purchase the goods or services to be vested in the supplier.

Acceptable quality guarantee
We recommend inserting clause 35B (amending section 7 of the Consumer Guarantees Act) to include in the consideration of what counts as acceptable quality a requirement that the consumer have regard to the information they are given about the nature of the supplier and the context in which the supplier came to have the goods. We believe that the guarantee of acceptable quality is flexible and reasonable enough to apply to all goods. We therefore recommend omitting clause 40 (inserting new section 41A), which would have excluded from the guarantee of acceptable quality second-hand goods and used motor vehicles sold by traders at auction.

The acceptable quality guarantee is not a guarantee that goods will be perfect; it is a guarantee that the goods are of a quality that a reasonable consumer would consider acceptable when taking into account the circumstances of the transaction. In particular, new goods could reasonably be expected to be in perfect condition, while second-hand goods could reasonably be expected to show signs of use and potentially be less durable than new goods. Because it is based on the assumption of a reasonable consumer, the acceptable quality guarantee does not hold traders to a standard that would be unrealistic for the type of goods sold. The flexibility of the reasonableness test is intended to protect consumers and suppliers, and to deliver reasonable results to both parties.

On this basis, there is a good case for all sales by traders of goods and services to consumers to come under the Consumer Guarantees Act. The guarantee of acceptable quality is sufficiently flexible that vendors selling goods by auction (particularly vendors such as the New Zealand Police, the New Zealand Customs Service, reposses-
sion agents, liquidators, and insurers) would not be held to unrealistic standards of quality, provided that they are upfront about the goods.

**Contracting out**
We recommend inserting new clause 40A (which amends section 43) to align the rules for contracting out of the Consumer Guarantees Act in the case of consumers acquiring goods or services for the purpose of a business with the contracting out rules proposed for the Fair Trading Act.

**Weights and Measures Act**

**Infringement regime**
The proposed changes to the Weights and Measures Act are to recognise new technology and ways of selling goods. We recommend amending clause 47(2) to reclassify breaches of sections 8 and 18 more appropriately, as infringement offences rather than summary offences. To modernise the infringement regime of the Act and ensure that it is consistent with those to be included in the Fair Trading Act, we recommend inserting new clauses 53A to 53C. We recommend also inserting new clause 53D to align penalty levels for all offences with changes to penalties in the Fair Trading Act.

We recommend inserting new clause 55A (which would insert new section 41B) to provide for a regulation-making power to set infringement fee levels. This would bring the way fees are set under the Weights and Measures Act into line with Cabinet guidelines relating to infringement offences.

**Auctioneers Act**

**Disqualification from registration as an auctioneer**
Part 2 of the bill as introduced sets out provisions that will become a new Auctioneers Act, replacing the Auctioneers Act 1928. We recommend amending the new provisions for disqualification from registration as an auctioneer under clause 67(1)(f) to change as a reason for disqualification convictions under the Fair Trading Act Part 1 and subpart 4 of Part 4A. We consider it appropriate to limit Fair Trading Act breaches as a reason for disqualification to those specifically relevant to auctioneer registration. These offences include
false or misleading representations in the supply of goods and services, and breaches of the new provisions relating to auctions conduct.

We recommend inserting new clause 67A, which would ensure that a person who would be disqualified from becoming a registered auctioneer could not conduct auctions on behalf of a registered auctioneer. We recommend also inserting clause 74(1)(f) so that a registered auctioneer’s registration could be cancelled if they engage a disqualified person to conduct an auction on their behalf.

**Appeals against decision of Registrar**

We recommend amending clause 82 to allow an appeal from the District Court to the High Court against a decision of the Registrar of Auctioneers on a point of law only. The bill as introduced allows only one level of appeal, whereas the usual provision is for two levels. We recommend also amending the clause so that the decision of the High Court on any such appeal would be final.

**Unconscionable conduct**

Unconscionability applies where courts consider it unfair or inequitable (or “against good conscience”) to allow a party to enforce its contractual rights against another party who is detrimentally affected by an oppressive bargain. The Minister of Consumer Affairs invited the Commerce Committee and those making submissions on the bill to consider whether protections regarding unconscionable conduct should be added to Part 1 of the Fair Trading Act. The Australian Consumer Law includes unconscionable conduct protections, which have encountered some technical problems. We believe it is prudent to wait until Australia has developed a body of authoritative case law on the matter before following suit. We consider that implementing unconscionability provisions could lead to a period of uncertainty while the provisions were tested by the courts in Australia and New Zealand. The committee considers that it is desirable in principle to address this issue. We recommend that the position is reviewed once the Australian courts have had the chance to consider the Australian provisions.
Appendix

Committee process
The Consumer Law Reform Bill was referred to the committee on 9 February 2012. The closing date for submissions was 29 March 2012. We received and considered 90 submissions from interested groups and individuals. We heard 60 submissions, which included holding hearings in Auckland.
We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Chester Borrows
Hon Clayton Cosgrove (Deputy Chairperson)
Hon David Cunliffe
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
Companies and Limited Partnerships Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Companies and Limited Partnerships Amendment and recommends that it be passed with the amendments shown.

Introduction
The bill as introduced proposes amendments to the Companies Act 1993 and the Limited Partnerships Act 2008 to strengthen the rules applying to the governance, registration, and reconstruction of companies, and the registration of limited partnerships.

This commentary covers the key amendments that we recommend to the bill. It does not cover a number of consequential, minor, or technical amendments proposed to improve workability, drafting, clarity, and legal efficacy.
Criminalisation of serious breaches of certain directors’ duties

The bill seeks to introduce criminal sanctions for very serious breaches of two existing duties that directors owe to their companies and creditors. We consider that some existing conduct by directors that is not currently subject to criminal sanctions is sufficiently blameworthy to warrant criminal punishment. We also consider that the new provisions in the bill would allow, in certain circumstances, certain conduct that is already subject to criminal sanctions to be prosecuted more directly.

However, we are aware that the bill could be perceived by directors and their advisers to criminalise legitimate business risk-taking behaviour. We have therefore sought an appropriate balance between encouraging positive entrepreneurial behaviour and imposing clear and effective sanctions on behaviour that crosses a criminal threshold.

Although we recommend no changes other than minor drafting amendments to the relevant provisions, we would support further consideration of the drafting of these new offences to ensure that the provisions are expressed in a way that provides clear guidance to directors and does not have a chilling effect on legitimate business risk-taking.

Registration

The registration provisions in the bill as introduced would require companies to appoint a New Zealand resident director or agent, and give the Registrar of Companies greater investigative, removal, and warning powers. These measures would apply to companies and to limited partnerships where appropriate.

Requirement for a director who lives in New Zealand

We recommend that the requirements for an agent living in New Zealand in Part 1 subpart 2 (concerning companies) and Part 2 subpart 1 (concerning limited partnerships) be omitted. Better balance could be achieved by requiring a company to have a director who lives in New Zealand, or who lives in and is a director of a company in a country with which New Zealand has reciprocal arrangements for the enforcement of low-level criminal fines. Similar re-
requirements are inserted for limited partnerships. We recommend inserting new clauses 22B and 52A to make transitional provisions for these changes.

The purpose of requiring a director who lives in New Zealand is to ensure that there is an identifiable individual with a substantive connection with the company who can be questioned about the activities of the company, and who can in certain circumstances be held to account. The requirement would provide a broad, practical, non-technical test for the Registrar to apply. A person would not be required to be a New Zealand citizen or to hold an appropriate visa before they could be a director who lives in New Zealand, although the person’s residence status would probably be relevant to the Registrar’s consideration in appropriate cases.

The option of appointing an agent who lives in New Zealand was intended to provide an alternative with lower compliance costs for overseas-based New Zealand companies, but we consider that such agents would be of limited help to enforcement agencies and in many cases would not be accountable for the actions of the company. We therefore consider that the requirement for an agent living in New Zealand would provide only limited deterrence from the misuse of companies and limited partnerships.

We have considered the costs of this requirement and believe that most companies and limited partnerships already comply. At most we understand that 4,200 companies would need to adjust their circumstances to comply, and these companies could choose from several options to meet the requirement, including that of a director living in an enforcement country with a reciprocal arrangement for the enforcement of low-level criminal fines with New Zealand.

**Additional information requirements**

We recommend inserting new clauses 7A and 49A to require that information on the date and place of birth of directors of companies or partners of limited partnerships who are natural persons be collected at registration and kept up to date, although this information should not be publicly available in respect of directors. Date and place of birth information helps to constitute a unique identification system for directors.
We recommend also requiring under new clause 7B that the name of a company’s ultimate holding company, if it has one, be disclosed at registration and kept up to date. The disclosure of an ultimate holding company is a matter of public interest, and would allow those dealing with a company to know where “control” over the company ultimately lies. The structure of a limited partnership differs from that of a company, and we do not consider it appropriate to require limited partnerships or their partners to disclose their ultimate holding company.

We consider that disclosure of the date and place of birth of all directors, and the ultimate holding companies of all companies, would be of benefit, increasing the transparency of these corporate forms. Both measures would incur minimal compliance costs, as companies would either hold this information already or be able to obtain it easily.

We recommend inserting new clauses 22C and 52B to supply transitional provisions for these changes.

**Powers of Registrar**

While we do not propose amendment of the bill, we would support further consideration of a power for the Registrar to require information about the true owners and ultimate controllers of a company or limited partnership. We consider that this mechanism for obtaining accurate and timely information would assist law enforcement agencies investigating shell company activities and would assist in meeting Financial Action Task Force recommendations.

**Amalgamations and arrangements of code companies**

The bill seeks to establish a new process for regulating amalgamations and schemes of arrangement for code companies under the Companies Act to align them better with the process under the Takeovers Code. We believe that these provisions would be internationally consistent, preserve the integrity of the takeovers

---

1 A code company is one that was a party within the last 12 months to a listing agreement with a registered exchange that has securities that confer voting rights quoted on the registered exchange’s securities market; or has 50 or more shareholders and 50 or more share parcels.
Commentary

Companies and Limited Partnerships Amendment Bill

regime, give shareholders fair and equal treatment, and encourage shareholders’ participation where their rights are affected.
We recommend removing from the bill all reference to “compromises” in relation to arrangement, amalgamations, and compromises of code companies, as its inclusion was unintended and is unnecessary.

Definition of “director”
We recommend amending and aligning the definition in clause 26 of “director” under the Takeovers Act and Code to include reference to limited partnerships, as the definitions of “director” in the Takeovers Act and the Takeovers Code do not reflect the limited partnerships regime.

Determination of interest class
We recommend deleting clause (e) in Schedule 1 to allow the court further discretion in determining the appropriate interest class for associates of the offeror depending on the circumstances of each case. As a result of this change, for example, a person who provided a voting undertaking would not by that act alone be considered an associate of the promoter for the purposes of the interest class test. The Takeovers Panel, via its no objection statement, would also be able to assist the court.

Dates of commencement
We recommend amending in clause 2 the dates of commencement arrangements, so that subparts 2 and 4 of Part 1 and Part 2 would come into force 6 months after the date on which this Act receives the Royal assent unless they are brought into force earlier on a date appointed by the Governor-General by Order in Council.
Appendix

Committee process
The Companies and Limited Partnerships Amendment Bill was referred to the committee on 24 July 2012. The closing date for submissions was 6 September 2012. We received and considered 13 submissions from interested groups and individuals. We heard eight submissions.
We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Chester Borrows
Hon Clayton Cosgrove (Deputy Chairperson)
Hon David Cunliffe
Clare Curran
Peseta Sam Lotu-Iiga
Mojo Mathers
Mark Mitchell
David Clendon replaced Mojo Mathers for this item of business.
Report from an Ombudsman, Complaints Arising out of Bullying at Hutt Valley High School in December 2007

Report of the Education and Science Committee

Contents
Recommendation 2
Introduction 2
Findings of the ombudsman 2
Response of the Ministry of Education 3
Conclusion 5
Appendix 6
Report from an Ombudsman, Complaints Arising out of Bullying at Hutt Valley High School in December 2007

Recommendation

The Education and Science Committee has examined the report from an Ombudsman, Complaints Arising out of Bullying at Hutt Valley High School in December 2007, and recommends that the House take note of its report.

Introduction

In December 2007 a number of violent assaults took place of which both the victims and the perpetrators were students of Hutt Valley High School. Some parents were dissatisfied with the response of the school to the bullying, which they considered did not reflect the seriousness of the incidents. They were also unhappy with public statements made by the school to the effect that it had handled the incidents reasonably and responsibly. These parents therefore brought a complaint to the Office of the Ombudsmen. David McGee, an ombudsman, undertook an investigation into these events, and presented a report on the matter to the House in September 2011. The report stood referred under Standing Order 393 to the previous Government Administration Committee, which referred it to the Education and Science Committee for consideration. In considering the report, we heard evidence from the ombudsman, and invited the Ministry of Education to provide a written comment on the policy issues raised by the report.

Findings of the ombudsman

In speaking to us, the ombudsman was careful to emphasise that his report was a case study; it includes no formal recommendations, and makes proposals that are suggestions only. He considered that his investigation had found issues that should be highlighted and considered, but he did not believe his investigation had been sufficiently wide-ranging, or that he had the necessary background in education, to make formal recommendations for policy or legislative change. Nevertheless, we believe the suggestions deserve serious consideration.

The first suggestion was that National Administration Guideline 5, which in part requires boards of trustees to provide a safe physical and emotional environment for students, be amended to also require each school board to implement an effective anti-bullying programme. These policies should be reviewable by the Education Review Office. At the time of the incidents, Hutt Valley High School did not have adequate anti-bullying policies or programmes, and while such policies might not have prevented the incidents from occurring, the ombudsman suggested they might have ensured the school addressed the complaints more appropriately.

The second suggestion was that schools should be given more specific guidance on the appropriate punishments for various infringements, along the lines of the sentencing
guidelines used by judges. This would ensure more consistency in discipline between
schools, while still allowing considerable flexibility for boards to respond to the specifics of
each instance of offending. The ombudsman emphasised in making this recommendation
that he does not wish to see an over-judicialisation of disciplinary approaches, so that
certain offences would always attract identical penalties. The guidelines should also cover
the various options that are available to boards, including restorative justice approaches as
well as suspension and expulsion.

The final suggestion was that principals and boards of trustees be required to consider the
views of victims in making decisions on discipline for bullying or violence. Victims could
provide a written victim impact statement, or attend the board of trustees’ suspension
hearing. The ombudsman emphasised that he was not proposing an automatic right for
victims to be involved, but that boards of trustees should consider whether they could
usefully learn something from the victim. He noted that victims often feel shut out of the
disciplinary process. At the same time, he recognised that having victims attend a board of
trustees hearing might itself turn the hearing into a judicialised process, with a risk that they
might be re-victimised if cross-examined. He felt that it was important to find the lowest-
level, least formal, way for the victim to have some involvement, perhaps via a written
victim impact statement, or by ensuring the impact on the victim was reflected in the
principal’s report.

The Green Party and New Zealand Labour Party believe it is regrettable that the
ombudsman did not consider the issue of a possible homophobic culture in the school in
relation to some of the bullying incidents.

Response of the Ministry of Education

National Administration Guideline 5

We offered the Ministry of Education an opportunity to respond to the ombudsman’s
suggestions. The ministry was not in favour of the proposed amendment to National
Administration Guideline 5 to require anti-bullying programmes. It considered that in the
several years since the incidents, it has come to be expected that all schools will have
systems and processes to manage bullying. The ministry was concerned that the processes
used in some schools might not constitute “anti-bullying programmes,” although they
might be effective in a particular school’s circumstances. The change might thus impose
obligations on some schools without significantly improving the environment for children.

The ministry also said that guidance material for boards of trustees on applying Guideline 5
is being developed. The ministry’s Core Governance Knowledge Base is designed to equip
boards of trustees and principals to manage health and safety issues appropriately, and one
section focuses on creating a positive school environment to reduce bullying.

The New Zealand First Party sees opportunities in taking a co-operative approach to the
development of the core governance material.

Guidance and guidelines

The ministry also did not consider that guidance on appropriate punishment was necessary.
It argued that this might cause boards of trustees to focus on seeking precedents, rather
than considering the facts of the case in totality and reaching a considered position on their
merits. It also suggested that the circumstances of a specific case might justify a lesser punishment, so there was a risk that guidelines might remove the flexibility to respond appropriately.

We were informed that guidelines on stand-downs, suspensions, exclusion, and expulsions, issued in 2010, include examples of appropriate decisions. The ministry also released good-practice guidelines for managing behaviour. The ministry explained that, because every incident is unique, it believes guidance of this nature is more useful than explicit advice on what it should do to manage bullying incidents of specified kinds.

**Attendance at suspension hearings**

The ministry did not support the idea that victims attend suspension hearings, noting that the Education Act 1989 did not allow it, and that the presence of the victim would make the hearing more like a judicial process. It pointed out that the guidelines already allow boards to consider victims’ views, and that the principal’s report on any suspension should cover the impact of the student’s behaviour on those affected. The ministry also noted that restorative justice processes are used by some schools, which allow the victims to tell the bully about the effects of their behaviour. The ministry considered that it would be more effective to emphasise such processes as good practice, rather than to prescribe particular procedures.

**Positive Behaviour for Learning Action Plan**

The ministry also provided us with information on initiatives to support positive learning which it is implementing, in collaboration with representatives of organisations from the wider education sector, through the Positive Behaviour for Learning Action Plan. We are also aware that a recent announcement has been made regarding the provision of a further appropriation of $12 million over four years to expand the Positive Behaviour School Wide programme across all secondary schools.

Some of the initiatives in the plan are preventative, and over time should have a positive impact on the behaviour of students. The School-Wide framework supports schools in creating a culture where positive behaviour and learning thrive, and expectations are clearly defined and taught, across both classroom and non-classroom settings. The Incredible Years programmes help reduce challenging behaviours and increase social and self-control skills, and offer programmes for parents and teachers of children with behaviour that is difficult to manage.

Other initiatives are designed to provide support to schools and to target students’ wellbeing. A Well-being at Schools online survey, developed with funding from the ministry and the New Zealand Police, will enable schools to gather information from students and teachers about the safety of their environment. The Behaviour Crisis Response Service is available to help stabilise situations involving Year 1 to 10 students, ensure the safety of students and staff, and put in place a safety plan around the student. Finally, evidence for Restorative Practice as an effective behaviour intervention is being documented, with a view to developing such a model for intermediate and secondary schools, along with systems for monitoring and evaluation.
Review of expectations and requirements

The ministry explained that it is also considering how expectations and requirements for schools are set, and will review the effectiveness of the National Administration Guidelines. It will also monitor the effect of the Positive Behaviour for Learning Action Plan to determine whether anything else is needed to ensure schools provide a safe physical and emotional environment.

Education Review Office

We asked about the role of the Education Review Office in ensuring that schools provide a safe environment. The ministry consulted the chief review officer, Dr Graham Stoop, who confirmed that the office examines schools’ compliance with legal and health and safety requirements, particularly those regarding student safety, while conducting reviews. Schools are required to self-review and report on their compliance with these requirements, completing board assurance statements and self-audit checklists. This ensures that each board has health and safety policies, and procedures, guidelines, and practices linked to the physical and emotional safety of students. In addition to relying on the self-attestation of schools, reviewers examine in depth certain key aspects of students’ safety, including emotional safety (which includes preventing bullying and sexual harassment) and physical safety. Finally, the office publishes a resource, called Safe Schools: Strategies to Prevent Bullying, which includes self-review questions to help schools consider whether their culture and practices ensure a safe environment for students and minimise the risk of bullying behaviour.

Conclusion

The ombudsman has raised a number of significant issues, but the majority of us are satisfied that a number of the issues have been addressed since the incidents occurred, and there are other options for responding to the issues than those proposed by the ombudsman.

Bullying is an unacceptable behaviour, which can have serious and long-lasting effects on its victims. We were pleased to see progress as a result of the ombudsman’s report, particularly some of the work on core governance. We recognise that a framework has been established to make school environments safer and thus to address bullying. However, we will remain interested in the implementation of this framework.
Committee procedure

We met on 15 February, 7 March, 28 March, 4 April, and 2 May 2012 to consider the report from an Ombudsman, *Complaints Arising out of Bullying at Hutt Valley High School in December 2007*. We heard evidence from the ombudsman, David McGee, and received written evidence from the Ministry of Education.

Committee members

Nikki Kaye (Chairperson)
Hon Simon Bridges
Catherine Delahunty
Chris Hipkins
Colin King
Hon Nanaia Mahuta
Tracey Martin
Sue Moroney
Simon O’Connor
Scott Simpson
Hon Chris Tremain
Dr Megan Woods


2010/11 financial review of the New Zealand Teachers Council

Report of the Education and Science Committee

Contents

Recommendation 2
Introduction 2
Ministerial inquiry into convicted sex offender employed in education sector 2
Teacher registration 3
Appraisal 4
Special projects from appropriation 4
Promotion of the profession 4
Appendix 6
New Zealand Teachers Council

Recommendation
The Education and Science Committee has conducted the financial review of the 2010/11 performance and current operations of the New Zealand Teachers Council and recommends that the House take note of its report.

Introduction
The New Zealand Teachers Council was established in 2002 as an autonomous Crown entity, and it has six main functions: to set the standards for entering the teaching profession and maintaining ongoing membership, to set the requirements for and monitor initial teacher education programmes, to carry out processes for the efficient registration of teachers, to commission and carry out research to support quality teaching, to communicate with the profession, and to consult on key policy documents. In the last financial year income was $5.7 million, of which $178,000 was contributed by the Crown, the rest from teacher subscriptions. The council supports close to 100,000 teachers.

We note that on 13 July 2012, the Minister of Education announced a review of the role and functions of the New Zealand Teachers Council. The review will investigate the council’s capability to focus on, set, and enforce high standards, promote effective teaching practice, develop the professional community of teachers, and lead public discussion on education issues.

Ministerial inquiry into convicted sex offender employed in education sector
We are aware that earlier this year a convicted sex offender was found to be teaching in schools in the North Island. In February a ministerial inquiry was initiated to look at how a convicted sex offender could have been employed in the education sector. The Minister has received a report regarding this inquiry, but this has not yet been publicly released. The council explained that in this specific case, the person was able to register by committing identity theft. We heard that this is the only incident that the Teachers Council has been able to identify in the last 10 years.

Members were concerned as to how rigorous the registration process is, given the sheer weight of numbers of applications that the council must process each year. We queried how the Teachers Council can be sure, given the large number of applications, that there is a robust application process. We were told that every registration officer must strictly adhere to the registration policy. There is also a layer of management within the registration team, which independently conducts a random audit check of the applications. A further check was brought in during 2010, where the Teachers Council has a data share agreement with the Ministry of Education payroll office, which allows the council to check that someone employed in a teaching position is authorised and registered.
We are interested in both the outcome of the ministerial inquiry and the review of the Teachers Council.

**Information sharing processes for vetting persons of interest**

The Teachers Council acknowledged that the existing process of vetting teacher registration, and particularly the timely flow of information between the Teachers Council and the Ministry of Justice, can always be improved, and the council is taking steps to address this. There is a process of police vetting, but because of their false identity, the convicted sex offender appeared to pass this process. We heard that section 139AP of the Education Act 1992, which requires court registrars to notify the council if someone identified as a teacher is convicted, has a proviso, “unless ordered otherwise by the court”. We heard that the council is not aware of any circumstance where this provision had been used. We asked if the council foresaw any problem that would arise if the provision were removed, and were told that the council has not fully considered the implications of removing the proviso. The council has committed to providing further information on their position on this issue.

**Teacher registration**

**Māori and Pacific registration**

We asked if the initial teacher induction programmes had initiatives to address cultural competency, particularly training to give Pākehā teachers the ability to work with Māori and Pasifika students. We were told that the new requirements have a Māori competency framework that was built into the teacher induction training. The council will be considering this issue when approving or reviewing all initial teacher training.

We sought to learn if the council, or any organisation, collects data on how many Māori teachers register, and whether the council believes that this information should be collected. The Teachers Council explained that it does not collect demographic information, as it treats every application on its own merit. Currently demographic information is gathered on who trains to be teachers, but no demographic information on those who then register as teachers. We heard that TeachNZ has responsibility for teacher recruitment, and they provide the demographic breakdown on the numbers of teachers in training. The Teachers Council explained that it is working with TeachNZ to enrich the database and collect information about the demographic breakdown of the number of teachers who train then register. New Zealand First expressed a concern about the lack of data on Māori and Pacific Island teacher registration and their retention in the education workforce.

**Consistency in terms of registration**

We inquired whether the council believed that there could be improvements in the consistency of assessing whether registered teacher criteria are met. We heard that such appraisal can be variable at present, with examples of poor appraisal as well as of excellent appraisal. In an effort to achieve a more consistent standard, the council has undertaken greater outreach to more remote schools, and has provided online access for teachers to a lot of professional development material.
Appraisal

We heard that the main business of the Teachers Council is to promote the best teaching practice, but that it does have a role in teacher appraisal. We heard that the council is implementing a suggestion made in an OECD report to move to a single set of standards for teacher appraisal. It is hoped that this single system will remove the variability in reporting that currently takes place. The Teachers Council stated that it takes a broad approach to teacher appraisal, including observing the contextual environment that the teachers are working in. When appraising teachers, it said that national standards can set a level to test the competence of teachers, provide an aspirational guide for learning, and provide assurance to the public. While it does not believe that students’ results alone offer a complete assessment of the teacher’s ability, it stated that the learning of students is critical, and that it is important to identify and recognise accomplishment by teachers, and accepts that there are many ways that this can occur. The council recognises that student appraisals should be included in performance measurement, and notes that this does already happen in many schools in both the primary and secondary education sectors, but that this does not happen in all schools.

Special projects from appropriation

We note that the Teachers Council’s cash reserves fluctuate along with fee payments and expenditure on special projects. We asked the council to outline current and planned special projects and the effect that these projects will have on the council’s cash reserves. We were told that an appraisal project and an information and record management project are in the process of being assessed on their business cases. The council also noted that they have not included any major new project work, as they are awaiting the outcomes of the ministerial inquiry and the review of the Teachers Council.

Promotion of the profession

We heard that the aim of the New Zealand Teachers Council is to have effective and capable teachers in every sector, to provide the best outcomes for learners. We heard that one of the council’s mandates is to provide professional leadership, but that they are not the only entity that provides this leadership. We asked if the council believes that it has a role to lead the debate around teacher performance and appraisal, and the council stated that it is currently doing so. We asked whether the council feels that it should play a greater role in promoting and attracting people to the profession, and if this should be considered as part of the current review of the organisation. We heard that the council does think that there is currently a promotional aspect to its role, but that it feels it can never do enough in terms of promoting the profession.

Induction and mentoring

In the last financial year, the council has developed and published guidelines for induction and mentoring of teachers. This resulted in four two-year pilot schemes, which are designed to support teachers and their needs in the early stages of their careers, and to give teachers the skills and support they need in their development. We heard that the council has had a particular focus on the induction and mentoring of newly qualified teachers, which they see as a critical part of their role. It also sees that mentoring is of benefit to teachers that are in service, and so is looking to ensure that mentoring is available to them also. The council is also looking to promote professional learning for experienced teachers.
to develop the skills to be able to mentor others. This could be able to be provided through online learning. The council also stated that this learning could be provided through a variety of pathways; it could be offered through official education with a resulting qualification, or through more unofficial and informal means.
Appendix

Approach to this financial review

We met on 18 July and 1 August 2012 to consider the financial review of the New Zealand Teachers Council. We heard evidence from the New Zealand Teachers Council and received advice from the Office of the Auditor-General.

Committee members

Nikki Kaye (Chairperson)
Hon Simon Bridges
Catherine Delahunty
Colin King
Hon Nanaia Mahuta
Tracey Martin
Sue Moroney
Simon O’Connor
Scott Simpson
Dr Megan Woods

Evidence and advice received


Office of the Auditor-General, Briefing on New Zealand Teachers Council, dated 18 July 2012.

New Zealand Teachers Council, additional information, received on 12 March 2012.

New Zealand Teachers Council, additional information, received on 4 April 2012.

New Zealand Teachers Council, additional information, received on 25 July 2012.
The Education and Science Committee has considered the report from the Controller and Auditor-General, *Institutional Arrangements for Training, Registering, and Appraising Teachers*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Nikki Kaye
Chairperson
The Education and Science Committee has considered the report from the Controller and Auditor-General, New Zealand Qualifications Authority: Assuring the Consistency and Quality of Internal Assessment for NCEA, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Nikki Kaye
Chairperson
Report from the Controller and Auditor-General on Education Sector: Results of the 2010/11 Audits

Report of the Education and Science Committee

Contents
Recommendation 2
Introduction 2
Early childhood education 2
School governance 2
Tertiary funding breakdown 3
Appendix 4
Report from the Controller and Auditor-General on Education Sector: Results of the 2010/11 Audits

Recommendation

The Education and Science Committee has examined the report from the Controller and Auditor-General on Education Sector: Results of the 2010/11 Audits, and recommends that the House take note of its report.

Introduction

The report from the Controller and Auditor-General on Education Sector: Results of the 2010/11 Audits is based on information collected from the annual audits of organisations in the sector, and additional information collected by the Tertiary Education Commission. The report focuses on areas such as capital asset management, non-financial performance reporting, early childhood education and management, and the financial management of Māori immersion schools.

In previous years, the Office of the Auditor-General has reported on all the results of annual audits of central government entities as a whole. The 2010/11 financial year is the first year where they have also reported separately on certain sectors, including education. The Office of the Auditor-General suggested it might expand this sectoral reporting approach, for instance into the science sector. We will be interested in whether and how this happens.

Early childhood education

The sector audit found that the student attendance forms for early childhood education providers often needed to be adjusted, for example when children go home sick or are away on holiday. We heard that the Office of the Auditor-General recommended that the Ministry of Education monitor carefully the information that is supplied by the provider, and possibly help providers to reduce the number of adjustments required.

School governance

In some integrated schools, principals receive remuneration from the board of trustees for their normal duties, and then also from proprietors for additional duties, such as running a hostel. We heard of a limited number of principals, of no more than 10 schools, receiving such additional remuneration for responsibilities covered by their normal salary. To improve transparency, and prevent these double payments, school auditors are now asked to ensure that the financial disclosure note includes all transactions between proprietors and the boards of trustees and also boards’ employees; this should allow such payments to be tracked easily.
Some of us are concerned that some kura and small rural schools may have difficulty ensuring good governance, as the communities that they source board of trustees members from are small, and may lack the skills necessary to run a school successfully. Such board members may not be in a position to undertake the voluntary training offered by the Ministry of Education, for example because of their distance from training centres.

We heard that the Office of the Auditor-General cannot audit the training completed by every single board of trustees. However, the office said that it is trying to establish the critical factors in school performance, and intends to use this information to help all schools lift their performance.

**Kura kaupapa governance**

We heard of a limited number of instances where some kura kaupapa Māori school boards illegally lent money to staff, most often in the form of financial advances. We were told the Ministry of Education’s current handbooks setting out the guidelines for financial management were insufficient; the ministry has confirmed it will issue revised guidelines on sensitive expenditure, and make it clear that loans to staff are unlawful. We will be interested in viewing the revised guidance and financial model when the Ministry of Education publishes them.

We heard that the Office of the Auditor-General will monitor this issue and, if necessary, will ask the Ministry of Education to issue targeted advice to the kura in question. We asked whether this was an issue on which the ministry should be reporting regularly, to reduce the risk of financial mismanagement. We heard that the Ministry of Education prepared information in 2008 on the frequency with which they make statutory appointments to kura, which is higher than the rate for non-kura. An updated report on this topic may be used to ensure such mismanagement is prevented.

**Tertiary funding breakdown**

We were told that there is funding pressure on some universities at the moment, and we were interested in possible sources of funding to supplement what they receive from tuition, student fees, and research. We were told that universities supplement their funding with income from a range of sources, including interest, dividends, trust income, and off-plan funding from the Tertiary Education Commission. We also learned that domestic students’ tuition fees on average constitute 17.9 percent of university funding, with international student fees contributing a further 8.9 percent. For polytechnics, 21.5 percent of tuition fees come from domestic students and 7.7 percent from international students.
Committee procedure
We met on 2 May and 15 August 2012 to consider the report from the Controller and Auditor-General on Education Sector: Results of the 2010/11 Audits. We heard evidence from the Office of the Auditor-General.

Committee members
Nikki Kaye (Chairperson)
Hon Simon Bridges
Catherine Delahunty
Colin King
Hon Nanaia Mahuta
Tracey Martin
Sue Moroney
Simon O’Connor
Scott Simpson
Dr Megan Woods
Advanced Technology Institute Bill

Government Bill

As reported from the Education and Science Committee

Commentary

Recommendation
The Education and Science Committee has examined the Advanced Technology Institute Bill and recommends that it be passed with the amendments shown.

Introduction
The bill would establish a new Crown agent, the Advanced Technology Institute (ATI), to support science and technology-based innovation and its commercialisation by businesses. The ATI would act as an intermediary, connecting businesses in certain industries with researchers, and promoting commercial application of research discoveries.

It is our belief that in order to achieve benefit to New Zealand, the ATI needs to have robust and meaningful input from industry and the scientific and broader economic development communities, and not unnecessarily replicate and compete with scientific, industry, and commercialisation structures that are already in place and succeeding.
A significant majority of the submissions we received were supportive of the bill, and many of them proposed amendments, which will be discussed below. The majority of the committee considered many of these amendments were either covered under the framework of the Crown Entities Act 2004, or were better provided by non-statutory mechanisms. One submission was critical of the establishment of the ATI, claiming it would be a repetition of previous initiatives which in the submitter’s view have failed. While we acknowledge the concerns raised in that submission, the majority of us consider that this bill, with the amendments suggested below, is likely to result in the ATI achieving its purpose. One submitter expressed the view that there is on-going uncertainty surrounding the ATI; removal of a research focus, and the implication of large-scale staff relocation, all risk putting the personnel situation of the new institute in jeopardy. They were concerned that this level of upheaval puts at risk important research skill and capability; if expertise is unable to transition it will be lost overseas.

The amendments we are recommending are generally by way of clarification; this commentary discusses the more significant of them.

Crown entity
During our consideration of the bill, one submitter suggested that the ATI should be an autonomous Crown entity, which has more independence from the Crown than a Crown agent. However, we note that Crown agents must give effect to Government policy; while other Crown entities must only have regard to Government policy. As the proposed functions for the ATI clearly envisage it giving effect to Government policy, we consider that a Crown agent is the most appropriate form of statutory entity for the ATI.

Statement of core purpose
One submitter proposed that the ATI should be required to adopt a statement of core purpose to avoid overlaps with other agencies. The majority of us disagree with this proposal, as statements of core purpose are not required by legislation, and are a specific mechanism developed for Crown Research Institutes to identify areas of specialty. However, we recognise that the ATI will require a similar purpose
document. We understand that the responsible Minister is currently considering similar non-statutory mechanisms for the ATI within the framework of the Crown Entities Act.

**ATI board**

Some submitters argued for the bill to be amended to require that the board membership reflect certain requirements, such as having technology transfer expertise, or that they reflect geographical representation from across New Zealand. However, we do not believe such provision is required. Section 29 of the Crown Entities Act requires responsible Ministers to appoint or recommend only persons who, in the responsible Ministers’ opinion, have the appropriate knowledge, skills, and experience to assist the statutory entities to achieve their objectives and perform their functions; and responsible Ministers must take into account the desirability of promoting diversity in the membership of Crown entities.

We believe that section 29 of the Crown Entities Act provides sufficient guidance on the appointment of board members, as the mix of skills and experience required will change over time. We also note that board appointments are subject to circular CO (02) 16, which outlines ways of increasing the diversity of board membership. One submission proposed that geographical representation should reflect where the economic growth is, and the raw potential resides, and that it is essential to the make-up of the ATI Board. All Cabinet and Cabinet committee papers are now required to include a section headed “Representativeness of Appointment(s)” to confirm that full consideration has been given to the need for the membership of the body concerned to have an appropriate gender, age, ethnic, and geographical balance.

**Stakeholder advisory group and special advisers**

We recommend amending clause 10(4) and (5) to require the Minister to consult with the ATI board when appointing members to the stakeholder advisory group, and before setting terms of reference for the topics or subject areas on which the advisory group may advise the board. The bill as introduced enables the Minister to establish a stakeholder advisory group to advise the board on matters relating to the performance of its functions. Given the role the advisory group
is expected to play, we consider it appropriate for the board to be consulted on its membership, and to offer advice on the scope of the group’s role.

The majority of us note that clause 10(4) sets out that the Minister must ensure as far as reasonably practical that the advisory group members have sufficient expertise to provide appropriate advice to the board, and must be broadly representative of the manufacturing sector, services sector, and research, science, and technology (RS&T) providers.

Some submitters argued for the bill to expressly provide for the inclusion of the tertiary sector in the stakeholder advisory group. However, the majority of us believe the bill is worded to include a broad definition of RS&T provider, which includes the tertiary sector and other universities. One submitter suggested that a representative of the stakeholder advisory group be allowed to attend the ATI Board meetings as a non-voting representative. However, the majority of us do not consider this necessary. Clause 10 requires the board to consider any advice it receives from the advisory group, and it is important that there be a clear division of roles between governance and advice.

One submitter suggested that clause 9 (which allows the Minister to appoint the chief executive of the Ministry as a special adviser to the board) should be deleted, claiming it is unwarranted. The majority of us feel that the purpose of this clause is to help ensure the board aligns its strategies and activities with Government policy. This clause is similar to provisions in legislation relating to other Crown entities (for example, New Zealand Trade and Enterprise and Education New Zealand) where advisors have proved successful. Given that the ATI will be a Crown agent (and not an autonomous Crown entity) it is appropriate to have this clause.

**ATI’s objectives, functions, and operating principles**

We recommend amending clause 14(1)(b) to explicitly require the ATI to “collaborate” with businesses, RS&T providers, and others. The bill as introduced requires the ATI to engage proactively with these entities, but nothing further. The amendment we recommend would ensure the ATI worked cooperatively with existing research
facilities, and is intended to help to avoid unnecessary duplication, an issue that was raised by a number of submitters.

We recommend inserting new clause 4A to clarify the status of the examples given in clause 13(2) and (3) of ways the ATI might perform certain functions. Other submitters were concerned by the inclusion of these examples and suggested these examples be deleted and instead be discussed during the draft Statement of Intent’s preparation, with the negotiation process allowing a constructive dialogue on the merits of the examples. However, the purpose of examples is to illustrate or clarify the point a provision is making. Importantly, an example does not limit the provision to which it relates. If an example and the provision to which it relates are inconsistent, the provision prevails over the example. We also note that such examples are commonly used in modern legislation, and that section 5(2) and (3) of the Interpretation Act 1999 make it clear that examples are part of the enactment in which they occur. Our amendment would make it clear that the purpose of the examples is to illustrate or clarify possible approaches to functions described in clause 13(1)(b) and (e), not to limit the ATI to these options.

We recommend amending clause 13(3)(a) to include RS&T providers among the types of organisation with which the ATI could collaborate on providing services to business. This change is intended to encourage the ATI to work collaboratively with other RS&T providers, and limit unnecessary duplication of research activity.

One submitter raised the issue that research providers do not necessarily need to own the intellectual property concerned, but can benefit in other ways, such as royalties.

We heard it suggested that we should include “engineering” in the ATI’s functions in clauses 13(1)(a), (b), and (g), because engineering is not a subset of technology, but rather a discipline in its own right. However we feel that it is generally understood that the phrase “technology-based innovation” requires a range of complementary inputs, including engineering knowledge, scientific knowledge, design expertise, knowledge of manufacturing processes, commercialisation expertise, and so on. We also heard that we should amend the ATI’s function in clause 13(1)(d) to undertake research and development “in collaboration with businesses”, in order to ensure the ATI understands it is not a Crown Research Institute under a different guise. However, we feel that the recommendation is much nar-
rower than the clause as introduced. The ATI may need to undertake research and development on behalf of businesses or other organisations. This clause is intended to provide for some of Industrial Research Limited’s (IRL) existing functions. Clause 14(1)(b) also requires the ATI to proactively engage with businesses, other RS&T providers, and other persons that the ATI considers relevant to the performance of its functions.

Submitters suggested that we insert an additional function: “to facilitate a pipeline of skilled people through tertiary study that are suited to employment in implementation of innovation in the NZ economy.” The majority of us feel that this clause is outside the intended focus of the bill, as it covers the provision of tertiary education. The ATI has a role in fostering the mobility of skilled people, and will be expected to work closely with the Ministry of Education and the Tertiary Education Commission in performing its functions. Clause 13(2)(b) provides an example of “encouraging the exchange of staff, students, or other individuals between RS&T providers and businesses.”

A submitter suggested that we amend clause 14(2)(a) to “the ATI must act fairly, reasonably, and transparently, and incorporate considerations of the long-term impacts of their decisions on established centres of excellence in this area.” We feel that the inclusion of the word “reasonably” does not add further clarification beyond the word “fairly”, and the remainder of the recommendation unnecessarily prioritises existing providers over new providers.

We also heard that we should replace clause 14(1)(d)(ii) with “to fill gaps in RS&T and to support and not duplicate the agreed activities of existing RS&T providers.” The majority of us believe that the bill recognises the importance of the ATI’s role in harnessing and building on the capability that currently exists across the system, rather than unnecessarily duplicating that capability by building its own to the detriment of other actors in the system. The majority of us believe clause 14(1)(d)(ii) gives effect to this intent. At the margins, however, some overlapping capability is likely and, in general, this is a positive for business as it gives them more choice and helps to ensure that research and development and innovation services are delivered cost-effectively. The majority of us believe the proposed clause would be unworkable as it would be impractical to eliminate all duplication in the system.
A submitter suggested that we insert a new clause 14(1)(d)(iii): “acts to fill gaps in capability by preferentially developing the capacity of existing providers.” We feel that the proposed provision unnecessarily prioritises existing over new providers. Another submitter suggested we insert an additional requirement that the ATI must “develop expert knowledge on the RS&T strengths of New Zealand institutional and business-to-business providers to the New Zealand advanced manufacturing sector and act in a manner that builds the role of such providers.” We feel this suggestion duplicates the function set out in clause 14(1)(b): “promote and facilitate networking and collaboration among businesses and between RS&T providers and businesses to assist businesses to undertake, or benefit from, science and technology-based innovation and related activities.”

Some submitters suggested that clause 12 should be redrafted to say that ATI’s main objective is to “increase the uptake of innovation by the manufacturing and services sectors of the New Zealand economy through increasing their investment in undertaking or applying scientific, engineering, or technological research and development.” The majority of us believe that the role of the ATI is broader than the recommended clause. The recommended clause implies the sole focus of the ATI is on increasing investment.

**Net benefit**

We note that clause 14(1)(a) requires the ATI to “aim to ensure that any activities it undertakes are for the net benefit of New Zealand”. Some submitters queried the interpretation of the term “net benefit”. We consider it appropriate to remove the word “net” so that the ATI undertakes its activities for the “benefit of New Zealand”. This is aligned with the other entities such as Crown Research Institutes. The committee recognises that the term “benefit” is wide enough to include a range of benefits, such as economic, environmental, social, and cultural.

**Internal research capability and research funding**

One issue that we considered was the internal research capability of the ATI. When the ATI is established, IRL will be a subsidiary of the ATI. The functions set out in the bill must provide for the functions
that IRL already performs. IRL currently undertakes research and development and will continue to do this in the future. Relevant expertise and capability exists across a range of entities, including CRIs, universities, polytechnics, and the private sector. No single institution can expect to maintain all of the capability required, and therefore a key role of the ATI is to collaborate with RS&T providers and to harness their capability. However, the demand-side study undertaken to support policy developed clearly indicated the ATI should have a role in providing a range of services directly to business, including research, technology development, and business capability services.

One submitter was concerned about the potential impact that the ATI could have on other research organisations bidding for science functions. They also raised a concern regarding the high-value manufacturing sector and their view was that a large amount of commercially-relevant research is sufficiently innovative that no business partners may exist yet. The ATI will require functional in-house knowledge of research practices to determine what capabilities are required to provide for particular services. The majority of us consider that the nature and extent of internal research capability are for the board of the ATI to make. In undertaking research and development the bill is agnostic about whether the research capability sits inside or outside the ATI.

A number of submitters raised the potential conflict of the ATI being both a funder and service provider. Some submitters suggested either removing the function in clause 13(1)(f) (to allocate and administer RS&T funding) or delay the implementation of this funding. The majority view was that clauses 14(2) and (3) of the bill address this issue by requiring the ATI to implement systems and procedures to enable it to act fairly and transparently in carrying out its function of allocating and administering RS&T funding. We feel that by administering grants funding the ATI will offer firms direct access to research and development support. This is consistent with the objective of a one-stop shop for New Zealand businesses to access advice and support. Information about these systems and procedures must be made publicly available. The ATI would have to report on their implementation in its annual report. The Auditor-General would be required to report on the ATI’s implementation of the systems and procedures as part of its annual financial audits of the ATI. These
provisions are similar to those that apply to NZTA in respect of land transport funding decisions, as provided for in the Land Transport Management Act 2003.

Transitional arrangements
One submitter suggested that clause 16 be redrafted so that the chief executives of the Ministry of Business, Innovation and Employment and New Zealand Trade and Enterprise could only make recommendations to transfer staff. The submitter considered that it would be inappropriate for the ATI to be forced to take staff that may not fit its intended mode of operation, and recommended redrafting this clause so that the ATI’s chief executive would be responsible for recruiting employees, but the chief executives of MBIE and NZTE would be able to make recommendations to him/her on suitable candidates who could be considered for appointment. Having joint responsibilities would help protect the staff involved. We believe that the transfer of staff from MBIE and NZTE will relate to discrete functions that the ATI will be expected to perform. To maintain continuity of programmes and policies the existing staff will need to be transferred. The proposed provisions provide certainty to affected staff that they will be offered equivalent employment by the ATI. This is important for maintaining continuity of performance of these functions prior to and immediately following transfer to the ATI.

Consequential amendments
Crown Entities Act 2004
We recommend an amendment to Part 1 of the Schedule to exempt the ATI from the requirements of sections 164 and 165 of the Crown Entities Act 2004. The consequential amendments set out in the Schedule include an exemption for the ATI from the restrictions on acquisition of securities, borrowing, and giving guarantees and indemnities, as set out in sections 161, 162, and 163 of the Crown Entities Act. We consider that the ATI should also be exempt from section 164 (restrictions on use of derivatives) and section 165 (net surplus payable by certain statutory entities and Crown entity companies). We note that IRL is currently exempt from both sections 164 and 165 of the Crown Entities Act (along with sections 161, 162, and 163), and we consider that all these exemptions should apply for any organisation which is
responsible for the functions undertaken by IRL; such functions often require a multi-year approach to activities, which the exemptions in question would facilitate. The amendment we recommend would allow the ATI to take a multi-year approach to its activities, including those for which IRL would have been responsible.

**Chief Metrologist**

We recommend amending Part 2 of the Schedule, to omit two of the consequential amendments proposed to the National Standards Regulations 1976. Part 2 of the Schedule as introduced omits the reference to IRL in those regulations and replaces it with one to the ATI. However, the regulations also provide for the position of Chief Metrologist of the Measurement Standards Laboratory of New Zealand, which will continue to sit under IRL. We also recommend including a new definition of “Industrial Research Limited” in the regulations to reflect the fact that IRL will cease to be a Crown Research Institute.

One submitter questioned the appropriateness of transferring the Measurement Standards Laboratory to the Advanced Technology Institute. The submitter recognised that the laboratory provides advice and training to industry, and suggested that it might be more appropriate to place the core facility with the other key precision measurement facilities in the Institute for Environmental Science and Research Limited (ESR). ESR undertakes a large amount of chemical and biological measurement and is in effect the home of standardisation in New Zealand for such measurement. However, we believe that this matter is outside the intention of the bill. The establishment board is responsible for completing “due diligence” on the current staff, assets, and liabilities of IRL and advising on which should be transferred to the new entity directly, which should be transferred as part of the transition of IRL to a subsidiary of the new entity, and which should be considered for inclusion in other entities.

**Minority views**

**New Zealand Labour Party**

While the Labour Party supports this enabling legislation for the establishment of the Advanced Technology Institute, there are a num-
ber of changes we believe could strengthen the final form of the institute as it is established.

It is our belief that in order to achieve benefit to New Zealand, the ATI needs to have robust and meaningful input from industry and the scientific and broader economic development communities, and it must not unnecessarily replicate and compete with scientific, industry and commercialisation structures that are already in place and succeeding. The ATI needs to be part of a wider and interconnected economic development vision for New Zealand.

Labour members agreed with the view expressed by one submitter that the ATI alone cannot be successful in transforming high-value manufacturing in isolation. Such a transformation requires addressing the macro policy issues that overvalue the currency and the rules that allow having things (capital gains) to attract less tax than doing things. Labour members are of the view that the ATI needs to sit alongside research and development tax credits as a means of enabling and encouraging more New Zealand businesses to undertake research and development initiatives.

Process: We are concerned about the speed this legislation has been rushed through the select committee process, and do not feel that adequate time has been given to industry, the scientific community, the economic development communities, members of the public, and members of the committee to carefully consider important aspects of this bill. Instead of the usual four to six months afforded to a piece of legislation for the calling and hearing of submissions and consideration by the committee, this bill has been hurried through in 6 weeks. Opposition members of the committee have signalled their dissatisfaction with the timeframe. However, Government members voted down a motion to ask for an extension to the time allowed. The government has stated one factor in the decision was that the majority of submissions were in favour. We note, however, that even many of the submissions that were in favour have recommended changes that have not been carefully considered or adopted. Furthermore, there was one substantive submission from an industry grouping that raised fundamental questions about the probable success of the ATI. We are disappointed that there was not sufficient time to more fully examine these points. It is our opinion that this hurried timeframe has been to the detriment of the legislation.
Purpose of the ATI: Labour members believe that the ultimate function of the ATI is to operate for the benefit of New Zealand. The economic development goals that the ATI is being established to achieve are a means to an end in a stronger and larger export-focused manufacturing sector which provides well-paid and skilled jobs, and not an end in themselves. We agree with one submitter that this purpose needs to be taken seriously and for that reason should be included in clause 12 which sets out ATI’s main objective and not merely listed as one of several operating principles set out in clause 14. We believe this change would make explicit the fundamental purpose of the institute.

ATI’s collaboration within New Zealand’s science system: The ATI is a new kind of entity that will sit alongside tertiary organisations, in-house capacity, and the CRIs in the provision of RS&T for our high-value manufacturing sector. It is our view, and one expressed by a number of submitters, that it is crucial that there not be unnecessary duplication and competition with pre-existing research provision by the ATI. The ATI must be built on a core culture of collaboration. For this reason, Labour members support the submission to more explicitly address this point in clause 14 of the bill. Specifically, we support the inclusion of the subclause to 14(1) stating that the ATI must “proactively seek to identify and collaborate with existing organisations that can support the delivery of ATIs functions and avoid unnecessarily undermining activities performed by existing organisations”.

We agreed with one submitter that given IRL’s important national research strength in high-value manufacturing and services, it is important that the merger into the ATI does not harm this national research strength and the proposed restrictions on its research activities will be detrimental to its existing strengths.

Another submitter noted the success of the adoption of statements of core purpose (SCP), as recommended by the CRI Taskforce, in developing more collegial approaches across the CRIs, and improving the functioning of the wider national innovation system.

SCPs are concise, clear, and transparent to all. It was noted they enable a trusting environment by making it clear who, across the Crown-owned research capability, has primary responsibility and accountability for the stewardship of the science capability and the creation of wealth and well-being for sectors and science areas. They
recognise that linking together this capability is crucial for innovation. Labour agrees with this view, and we support the inclusion of a requirement for ATI to have a SCP in clause 14. We do not consider the argument that there is no legislative requirement for the CRIs to do this to be a sufficient reason for not including this requirement in the ATI bill. SCPs have come about since the CRIs were created, and we consider ATI having an SCP a way to strengthen the national innovation network.

Funder/provider divisions: Labour agrees with a number of the submissions that raised concerns about the potential for conflict between the active functions of the ATI (research and development, and knowledge and technology transfer) and the enabling functions (principally funding) to third parties. We share the concerns that were expressed over government’s intention as expressed in the ATI Cabinet paper over the placement of contestable funding from the TechNZ funding programme directly into the ATI. The move to have ATI as a funder has resulted in a perception of there being a potential for an unfair advantage from other R&D providers. For this reason, we agree with the submission that the funding model that would get the best buy-in from other research organisations would be to place a relative minimum of core funding into the organisation but have it work with a bigger pool of industry-linked project funding held by MBIE which ATI can access through partnered projects with other R&D institutions and industry partners.

We agree with the sentiment of the submitter who stated that ATI needed to be perceived as a “doing organisation” and less of a funding body, but are nonetheless comfortable with non-contestable funding, particularly around knowledge access, sitting within the organisation. For this reason, the New Zealand Labour Party recommend deleting clause 13(1)(f).

Input into operation of ATI: In order for the ATI to succeed, Labour members believe that there needs to be strong input from a variety of sectors, groups, businesses, and individuals. The ATI needs to be part of a broader economic development vision which requires the skills, experience, knowledge, and perspectives of a broad range of parties that reflect the geographic and business diversity of New Zealand’s manufacturing sector.

We note that very few submissions were received from industry and businesses directly engaged in high-value manufacturing. As noted
earlier in this view, we consider this was in part a function of the rushed process. We did note, however, that in one of the few industry-led submissions there were serious concerns voiced that many of the decisions around with whom and how the ATI works with businesses will be made “by people who know little of the development mindset.”

Labour members are of the opinion that clause 10 of the legislation should make more explicit the need for strong industry representation on the stakeholder advisory group, and empower industry groups to have a say in their representation on this group. One of the reasons for this proposal is business feedback that ATI’s science and technology supports for emerging companies needs to be linked to appropriate capability development in marketing management in internationalisation. These interdependencies are seen as critical for the successful commercialisation of research and development, Labour notes the bill is silent on how this goal will be achieved.

Given the need for strong collaborations with tertiary RS&T providers, Labour members are of the view that the submission requesting that “RS&T providers” should be amended to “tertiary sector and other RS&T providers” in both clauses 10(4)(a) and (b). It is our belief that the ATI can only succeed if there are strong collaborations and connections between the institute and research being conducted in our tertiary institutions.

It was also noted by one submitter that the ATI will incorporate some of the functions currently carried out by NZTE, and that the New Zealand Trade and Enterprise Act 2003 contains provisions for engagement with the whole community interested in economic development clause 9(1). In particular, it points to the recognition in that Act of the interest of unions as representatives of employees, both in industries directly engaged in the economic development that NZTE assists, and in the wider economy. The submitter asked that these provisions be mirrored in the ATI bill. We agree with this recommendation, and believe that union representation should be added to clause 10(4)(b)(i).

We also agree with the submission that asked for geographic representation within the ATI. We believe strongly in regional economic development and agree with the argument that the ATI needs to have decision-makers who represent the expertise, contributions and needs of the regions of New Zealand; that there needs to be geographic rep-
representation that takes into account where the economic growth is and where the potential resides. Labour believes that clause 10 of the legislation should make more explicit the need for this diversity of geographic representation on the stakeholder advisory group.

We also support the submission that asked that the relationship between the Stakeholder Advisory Group and the ATI board be strengthened. 

*Functions of the ATI:* Labour members are of the view that in order for New Zealand to have an economy that is led by science and innovation there needs to be strong links between the ATI and the education sector. We are, therefore, supportive of one submitter’s recommendation that a new subclause be added to clause 13 of the bill around the educational pipeline needed for the success of an economy based on science and innovation. Labour members are of the belief that the ATI should be empowered through clause 13 to provide advice into the primary, secondary, and tertiary educational sectors around the skills and knowledge required for the development and implementation of innovation in New Zealand. Such advice would sit alongside the functions of the Industry Training Organisations.

*Conclusion:* Labour members are of the view that in order for the ATI to succeed it needs to be open to the views of all stakeholders (industry, science, and employees) and to be an integrated part of a broader economic development vision. On its own, the ATI cannot successfully transform our economy and it needs to be seen as a broader set of policy initiatives that make RS&T more accessible to New Zealand businesses. It needs to work co-operatively and collaboratively within the pre-existing landscape of RS&T and technology commercialisation provision. It must be set up in a way that makes it clear that it is a valuable contributor and not a competitor to be feared.

**Green Party of Aotearoa New Zealand**

The Green Party supported this bill at first reading, albeit with some reservations, and hoped that some of the structural and operational issues of concern could be dealt with at select committee. The select committee process has been truncated to an unreasonable extent, and the Government members of the committee, in common
with the responsible Minister, have been unable to give a satisfactory explanation for such haste.

We therefore find ourselves in the position of being obliged to submit a minority view in advance of the committee having adequately discussed or sought common ground on some key points of concern or difference.

The submissions received were generally supportive of the concept of establishing an organisation to facilitate a positive and productive relationship between the science and research sector, and New Zealand business. Most submitters also sought amendments to resolve potential shortcomings or concerns with the bill, and the truncated select committee process has not allowed sufficient time for due consideration of many of those concerns.

The submissions were without exception very well informed and raised valid and insightful issues, and it is unfortunate that in the interests of haste too little time has been allowed for reflection on the issues raised and amendments proposed.

Common themes in the submissions included:

• The danger that the new organisation would duplicate and/or disrupt existing successful programmes or relationships held by, for example, the commercialisation arms of a number of universities, or the members of EDANZ.

• The extent to which ATI would become a provider (in addition to the current activities of its proposed subsidiary, IRL) rather than a facilitator or “networking” organisation, and so become a direct competitor to existing providers.

• Concern about the ATI being both a funding agency and a provider of research.

• The likelihood that the inevitable disruption and uncertainty, particularly for (but not limited to) staff at IRL, could lead to a loss to the country of some valuable talent and experience.

At the time of writing, the committee has yet to properly address the issue of the “definition” of the reference to “net benefit” in clause 14(1)(a) of the bill, which could be interpreted as limiting the scope and aim of the organisation to solely financial or economic goals, rather than to recognise or acknowledge social, cultural, and environmental aspirations as well as the economic.
New Zealand First Party

New Zealand First opposed this bill at first reading on the grounds that we believed that many of the suggested functions were already being successfully delivered by other organisations in New Zealand. The majority of submissions bore out this contention and raised the concern of duplication of service along with increased competition for the very rare research dollar. However the majority of submitters did draw our attention to a pivotal role that ATI can play in the creation of relationships between these service providers that would enhance the current environment.

After considering all the submissions and working with the select committee, New Zealand First supports the bill. However there remains a single area of concern that we would like to see given greater attention in the legislation. The area of ATI competing for research funding and contracts requires more focus. We see the ATI’s role as 80 percent relationship-building between business and research entities and 20 percent funding facilitation of research to increase a business’s capacity to expand its exports and markets to the benefit of New Zealand as a whole.

To facilitate this we had requested of the committee that the word “identify” into clause 14 (1) (b) after the word “proactively” and before the word “engage” in an attempt to highlight that the ATI must know who is providing this service while not necessarily engaging with them in an attempt to address inadvertent duplication or competition.
Appendix

Committee process
The Advanced Technology Institute Bill was referred to the committee on 13 September 2012. The closing date for submissions was 1 October 2012. We received and considered 23 submissions from interested groups and individuals. We heard seven submissions. We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
Nikki Kaye (Chairperson)
Catherine Delahunty
Hon Jo Goodhew
Colin King
Hon Nanaia Mahuta
Tracey Martin
Sue Moroney
Simon O’Connor
Scott Simpson
Dr Megan Woods
David Clendon replaced Catherine Delahunty for this item of business.
Spending Cap (People’s Veto) Bill

315—1

Report of the Finance and Expenditure Committee

Contents
Recommendation 2
Appendix 3
Spending Cap (People’s Veto) Bill

Recommendation
The Finance and Expenditure Committee recommends that the Spending Cap (People’s Veto) Bill not be passed.

This bill was referred to the Finance and Expenditure Committee toward the end of the 49th Parliament, and reinstated in this Parliament at the stage it had reached in the last Parliament.

Through the chairperson, we have received an assurance from the Government that as a result of the coalition agreement reached between the National Party and the ACT Party in December 2011, the Government now plans to introduce other legislation to limit the growth in core Crown operating spending, making the Spending Cap (People’s Veto) Bill redundant.

We have therefore not examined the bill in detail, and recommend that it not be passed.
Appendix

Committee procedure
The Spending Cap (People’s Veto) Bill was referred to the Finance and Expenditure Committee of the 49th Parliament on 14 September 2011. The committee received three submissions on the bill.

Committee members
Simon Bridges (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
Hon Clayton Cosgrove
Paul Goldsmith
John Hayes
Todd McClay
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Student Loan Scheme Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Student Loan Scheme Amendment and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Student Loan Scheme Act 2011 in three main ways:

- It would exclude investment and business losses from the calculation of net income in assessing student loan repayments. As a consequence of this change, the salary or wages of all borrowers would be assessed on a pay-period basis. An annual square-up assessment would be required only in respect of any income a borrower derived from sources other than salary or wages.

- It would allow alternative contact details provided to the loan manager (StudyLink) as a condition of accessing a student
loan to be obtained by the Inland Revenue Department for potential use in locating borrowers in default. A contact person would bear no liability for loan repayments, and would be asked only to supply the borrower’s current contact details or to ask the borrower to contact the department.

• It would make several changes to the rules for the repayment “holiday” to which borrowers living overseas are entitled. The repayment holiday would be reduced from three years to one; borrowers would need to apply for the holiday; and the application would need to specify a contact person in New Zealand.

Our commentary covers the main amendments we recommend to the bill. Minor and technical amendments are not discussed.

Repayment codes
We recommend inserting clauses 7B to 7E to reflect current administrative practices regarding the repayment codes used for income tax and student loan repayments. The treatment specified in the Student Loan Scheme Act 2011 was designed in anticipation of changes to the Inland Revenue Department’s computer system which will now not be made.

Offsetting a significant over-deduction
We recommend an amendment to clause 12 so that a significant over-deduction could be offset against an unpaid amount before being refunded. The bill as introduced would allow a significant over-deduction in one period to be offset against a significant under-deduction in another period, but does not cover a situation in which a borrower has an unpaid amount. We do not consider that a borrower should receive a refund leaving a debt due. We recommend that the amendment apply from 1 April 2012.

New Zealand-based non-resident borrowers
We recommend inserting new clauses 15A and 19A to allow borrowers who are deemed to be New Zealand-based but who are currently non-resident (such as a borrower studying overseas or working for an overseas aid agency) to apply for an extension of time for filing information. The new clause would better reflect the Act’s policy intent,
which is that the repayment obligations of such borrowers should be payable on the same dates that borrowers resident in New Zealand with other income pay their remaining repayments. We also recommend consequential amendments to the late filing provisions by inserting clauses 27 and 27A.

**Determining excess repayments**

We recommend an amendment to clause 22 to correct an error in the way repayment obligations are defined for the purposes of calculating whether a borrower has made excess repayments and is therefore entitled to the repayment bonus. As the Act stands, a borrower could miss out on the bonus entitlement through no fault of their own if there was an under-deduction, however insignificant, from their salary or wages. The amendment we propose would treat the borrower as having satisfied their repayment obligation in such a situation; other means are available to collect the amount owing. We believe this would align more accurately with the policy intent of the legislation.

**Communication with a contact person**

We recommend an amendment to clause 29, inserting new section 193A, to allow the Commissioner of Inland Revenue to notify an individual that they have been nominated as a contact person for a borrower. Under the bill as introduced, the commissioner could communicate with a contact person only if the borrower were in default. We believe preliminary communication would be useful to help contact people to understand the role expected of them, and particularly to reassure them that they would only be asked to provide contact information about the borrower or to ask the borrower to contact Inland Revenue. The department would not use the contact details to follow up on the contact person’s own tax obligations.

**Keeping contact person’s details up-to-date**

We recommend an amendment to clause 29, inserting new section 193B, to require a borrower to notify the Commissioner of Inland Revenue whenever there is a change in the details of the contact person named in their loan application, and to provide new contact details if the contact person dies or becomes incapacitated or is unwill-
ing to act as the borrower’s contact person. In the bill as introduced, such an obligation applies only to details provided in an application for a repayment holiday.

**Calculation of interest**
We recommend an amendment to clause 29A to provide that loan repayments are treated as being received on the day after payment is made, for the purposes of calculating interest. That is, interest would be imposed on outstanding loan balances up to and including the date of payment. This change would align the legislation with what is already the administrative practice.

**Declaration of worldwide income**
We recommend inserting clause 30B, which would amend Schedule 1, to address circumstances in which a borrower is treated as living in New Zealand, and therefore qualifies as a New Zealand-based borrower, even though they are currently non-resident (for example, a borrower might be studying overseas or working for an overseas aid agency). Our proposed amendment would require a borrower in such circumstances to file a declaration of their worldwide income to qualify for such treatment. Such a requirement was imposed under the Student Loan Scheme Act 1992, but was omitted from the Student Loan Scheme Act 2011 through a legislative oversight. Consequential amendments are recommended to section 25(2) and Schedule 1 of the Act, through the addition of a further clause in that schedule (new clause 11).

**Change from StudyLink to Inland Revenue**
The Student Loan Scheme Act 2011 provides for the Inland Revenue Department to take over the role currently performed by StudyLink in charging interest on loans while a borrower is studying. Whereas the Act specifies a changeover date of 1 January 2012, we are informed that 1 April 2012 would be more administratively efficient, and that borrowers would not be disadvantaged by the change of date.
To regularise the current position, we recommend the retrospective repeal of clause 2 in Schedule 5 of the Act by the insertion of clause 30D.
Transitional provisions for late payment interest

The Student Loan Scheme Act 2011 changed the way late payment interest will be imposed from 1 April 2013. To ensure that borrowers are not disadvantaged in the transition to the new rules, we recommend amending clause 32 to clarify the date from which late payment interest would be charged during the transition to the new late payment interest regime. We believe the change would make it easier for borrowers to understand and comply with their obligations.

Repayment holiday

At present, borrowers who go overseas are entitled to take a “holiday” from making repayments for up to three years, during which interest accumulates on their loans. The bill would shorten the repayment holiday to one year.

Although we do not recommend any significant amendment to the provisions regarding the repayment holiday (clause 17), we consider it worth noting the rationale behind them. We understand that the changes proposed in the bill are designed to convey the idea that the break from compulsory repayments is a privilege rather than a right, and to treat borrowers who remain in New Zealand (and do not have any repayment holiday) more equitably. The changes proposed are designed to signal a matter of policy rather than in the expectation of affecting repayment rates.

Some of us were disappointed to learn that at the time of the Budget 2011 decisions there was not enough empirical evidence to evaluate the effect of the three-year repayment holiday introduced in 2007, and that limited modelling has been done on the likely effect of curtailing the holiday, as borrowers’ response to the change is uncertain.

Impact of repayment holiday

We considered whether it would be desirable for a person who had repaid their loan in full to be entitled to take another repayment holiday if they took out another loan to finance a second degree. However, we consider that a further entitlement to a repayment holiday would not necessarily advantage borrowers, as a repayment holiday tends to increase, rather than decrease, a borrower’s lifetime loan obligations since interest accumulates during the holiday. Some of us were concerned about the effect on women and second-chance learners of
not allowing a second repayment holiday once a first loan had been fully repaid. 
Some of us are concerned by the possibility that a typical borrower based overseas may face interest obligations after a repayment holiday that may amount to two to three times the original principal amount. We consider that this could militate against the likelihood of borrowers repaying their loans.

Impact of the bill
We note that one purpose of the bill is to improve compliance by encouraging personal responsibility for loan repayments. The measures in the bill are estimated to increase revenue collected from student loans by an additional $14 million per annum, comprising an additional $5 million per annum from the extension of pay-period assessments, and $9 million per annum as a result of the exclusion of losses from the calculation of repayment obligations. We note that the estimated additional revenue represents about 0.12 percent of the total nominal loan balance of approximately $12 billion, of which approximately $2.5 billion is owed by student loan borrowers currently overseas.
Appendix

Committee process
The Student Loan Scheme Amendment was referred to the Finance and Expenditure Committee of the 49th Parliament on 15 September 2011. The committee called for submissions on the bill. The bill was reinstated in the 50th Parliament on 21 December 2011. We received and considered five submissions from interested groups and individuals. We heard two submissions.

We received advice from the Inland Revenue Department, the Ministry of Education, and the Ministry of Social Development.

Committee membership
Simon Bridges (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
Hon Clayton Cosgrove
Paul Goldsmith
John Hayes
Todd McClay
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
The Finance and Expenditure Committee has considered Petition 2008/145 of Vaughan Gunson and 38,297 others, requesting that Parliament remove GST from food and tax financial speculation, and has no matters to bring to the attention of the House.

Simon Bridges
Chairperson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *Central Government: Results of the 2010/11 Audits (Volume 1)*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Simon Bridges
Chairperson
Standard Estimates
Questionnaire 2012/13

Report of the Finance and Expenditure Committee

Contents
Recommendation 2
Introduction 2
Appendix A 3
Appendix B 4
Recommendation

The Finance and Expenditure Committee recommends that the House take note of the Standard Estimates Questionnaire for 2012/13, 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 2012/13 Estimates of Appropriations. The questionnaire is attached as Appendix B.

The changes we recommended for the 2012/13 questionnaire served to modernise and refine several questions from the 2011/12 questionnaire.
Appendix A

Committee procedure
The committee met on 29 February, and 7 and 21 March to consider the Standard Estimates Questionnaire 2012/13.

Committee members
Simon Bridges (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
Hon Clayton Cosgrove
Paul Goldsmith
John Hayes
Todd McClay
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Appendix B

Standard Estimates Questionnaire 2012/13

Outcomes desired from 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 2012/13. 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 2012/13? 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 2012/13, 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 2012/13 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 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.

7 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

8 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 2012/13 year?
• How will the performance of the Crown entities be monitored to ensure the risks are well managed?
• Have any concerns arisen regarding the performance of the Crown entities over the previous financial year? If so, please provide details.

9 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

10 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?

11 What are the particular challenges and priorities for the agencies funded by the Vote in responding to the Canterbury earthquakes?

12 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 2012/13? If so, please provide the following details regarding this expenditure:
• the total budget for 2012/13, compared with the overall departmental budget
• the purpose of each engagement
• the reason that internal resources cannot be used.

13 What mergers and machinery-of-government or other structural changes have affected the Vote in 2012/13?

14 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**

15 What improvements have been made to the performance information presented under this Vote for 2012/13? 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?

16 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?

17 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 2012/13 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 on *Central Government: Results of the 2010/11 Audits (Volume 2)*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Simon Bridges
Chairperson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General, *Draft Statement of Intent 2012–15*, and has no matters to bring to the attention of the House.

We wrote to other select committees on 4 April 2012 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 look forward to receiving a copy of the draft annual work plan of the Office of the Controller and Auditor-General shortly for our review.

We recommend that the House take note of this report.

Todd McClay
Chairperson
Non-bank Deposit Takers Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Non-bank Deposit Takers Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to implement the final components of a new regulatory regime for non-bank deposit takers (NBDTs). It would incorporate the prudential requirements already imposed under Part 5D of the Reserve Bank of New Zealand Act 1989, and introduce new measures covering the licensing of NBDTs, suitability assessments for directors and senior officers, restrictions on changes of ownership, and new powers for the Reserve Bank to detect and manage instances of distress or failure of NBDTs.
This commentary covers the main amendments that we recommend to the bill. It does not cover minor or technical amendments.
Commencement
We recommend amending clause 2 to delay by a year some of the consequential amendments to the Financial Service Providers (Registration and Dispute Resolution) Act 2008, to allow the necessary transitional period for NBDTs to become licensed.

Definition of non-bank deposit taker
We note that the bill proposes a broad definition of NBDT in order to allow for potential changes as a result of market innovation, while leaving scope for some entities to be exempted from the full regime. Clause 5 defines an NBDT as a person who offers debt securities to the public in New Zealand and carries on the business of borrowing and lending money, or providing financial services, or both. The bill acknowledges that this definition might at times be too broad or too narrow by including a regulation-making power in clause 72 that would allow entities to be declared to be, or not to be, NBDTs.
We recommend the following amendments to clause 5 to refine the framework for determining who is, and is not, an NBDT. Our recommended amendments to clause 72 are discussed later in this commentary.
We recommend amending clause 5(1)(c) to reflect more accurately the policy intention that, if a person were to become an NBDT after the bill came into force, the person would remain an NBDT until all the debt securities it had issued were repaid. In the bill as introduced, the person would remain an NBDT only until debt securities issued since the bill came into force had been repaid.
Similarly, we recommend amending clause 5(1)(d) so that entities that were deposit takers at the time of the bill’s introduction would remain NBDTs until all debt securities they had issued had been repaid. The new definition would not capture entities that were not deposit takers under Part 5D of the Reserve Bank Act before the bill’s introduction (unless they met another aspect of the definition). We note that five entities have been so declared.
In some cases an entity might be an NBDT under clause 5(1) but also be captured by clause 5(2), which specifies entities that are not NBDTs. To avoid confusion, we recommend an amendment to clause 5(2) to make it clear that a person listed in this clause would not be an NBDT even if they also fell under the definition of NBDT in clause
5(1). For example, an entity that was a deposit taker because it had debt securities unpaid would cease to be a deposit taker if it went into receivership (provided it was not offering debt securities to the public in New Zealand).

**Directions about government policy objectives**

We recommend the insertion of a new clause, 8A, to carry over into this legislation section 68B of the Reserve Bank of New Zealand Act, which allows the Minister to direct the Bank to have regard to a government policy related to the Bank’s functions. We consider it appropriate to keep all the law pertaining to NBDTs in one piece of legislation.

**Applications for licence**

Clause 13(2)(d) sets out particular considerations that the Reserve Bank must consider in determining an application from an overseas person. We believe the provision as introduced would set a higher than necessary standard as it would require all aspects of the law and regulatory requirements in the home jurisdiction to be as good as or better than those in New Zealand. We recommend amending it to create a broader test: that the Reserve Bank must have regard to whether the specified aspects of the law and regulatory requirements of the applicant’s home jurisdiction are satisfactory.

**Conditions of licence**

In clause 17, we recommend adding an express obligation for NBDTs to comply with the conditions of their licence. This would mean that references to a “failure to comply with the Act” would automatically include a failure to comply with a condition of licence.

**Changing conditions of licence**

In the bill as introduced, clause 19 sets out the consultation procedure to be followed before the Reserve Bank could impose any conditions on a licence, or add new conditions, or amend or revoke existing conditions. We recommend amending clause 19 so that the procedures would not apply to the conditions initially imposed on a licence, but only to changes made subsequently to them. We understand that this
would accord with the original policy intention, which was that consultation would be required only for changes subsequent to the initial licensing process.

Cancellation of licence
We recommend amending clause 20 so that breaching a condition of licence would also be a ground for cancelling a licence.
We also recommend amendments to clause 21 to require the Reserve Bank to consult the trustee of an NBDT when it intends to cancel the NBDT’s licence for breach of its trust deed, and to notify the trustee of the cancellation. We consider such consultation and notification appropriate because the trustee is the NBDT’s supervisor.

Governance requirements
Clause 25 is intended to prevent companies including provisions in their constitutions that would allow directors to act other than in the best interests of the company. We recommend an amendment to this clause to make it clear that it also applies to directors of subsidiaries, wholly owned subsidiaries, and joint venture arrangements.

Consent for changes of ownership
We recommend amending clause 42(1)(a) so that the wording reflects more clearly the approach in section 77A of the Reserve Bank Act, and seeks to achieve the policy outcome sought. The aim is that prior consent be sought for any transaction that would result in a person increasing their level of influence above a specified level, or above the level previously authorised.

Reports for monitoring and enforcement purposes
Under clause 48, an NBDT could be required to provide a report on various matters to help the Reserve Bank investigate its compliance. Sub-clause (2) would require the Reserve Bank to notify the NBDT as to why it wanted the report. We consider this sub-clause unnecessary, as sub-clause (1) would require that the report be for the purposes of investigating non-compliance. The comparable section in the Reserve Bank Act, section 157ZI, does not require the Reserve
Bank to state its reasons for requiring a report. We therefore recommend that sub-clause 48(2) be deleted.

**Directions by Reserve Bank**

Clause 55 in the bill as introduced would allow the Reserve Bank to give various directions to NBDTs and associated persons. A wider range of directions could be given to NBDTs than to associated persons. We recommend amendments to clause 55 so that the same range of directions could be given to both.

We also recommend amendments to sub-clauses (2)(g) and (3)(g) to ensure that an entity would have the power to comply with a direction by the Reserve Bank to replace its auditor.

**Removal and appointment of directors**

While clause 59 in the bill as introduced would allow the Reserve Bank to appoint a new director when one has been removed, we consider that it might be desirable in some cases to appoint an additional director without first removing an existing one. We therefore recommend amending clause 59 to allow the Reserve Bank to appoint additional directors.

We also recommend removing the reference to 7 working days’ notice in clause 60. This would mean that the period of notice given by the Reserve Bank to remove or appoint a director must be reasonable in the circumstances. This amendment would maintain consistency with the equivalent provision in the Reserve Bank Act.

In clause 60(1)(a), we recommend adding trustees to the list of those who must be notified regarding the removal of a director.

**Appeal against Reserve Bank decisions**

Clause 61(1) in the bill as introduced proposes giving directors or senior officers the right to appeal any decision by the Reserve Bank regarding their suitability. For reasons of fairness, we recommend adding an appeal right for those who were proposed as a director or senior officer but not approved by the Reserve Bank. We recommend deleting the specified right to appeal concerning information on which a decision regarding suitability was made (paragraph (b) of clause 61(1) in the bill as introduced); we consider this paragraph to
be unnecessary as its effect is caught by paragraph (a). We recommend the deletion of clause 61(1), and the insertion of new clause 6(1) which would give effect to our recommendations in this area.

**Offences**

We recommend amendments to clauses 63 and 68 to align them more closely with the Criminal Procedure Act 2011. This entails consequential drafting amendments of a purely technical nature throughout the bill, replacing “tiers of offences” with “levels of penalties”, and reversing the order of the four levels of penalties.

**Regulation-making power**

We recommend amending clause 72 to allow the Governor General (on the advice of the Minister and in accordance with the recommendations of the Reserve Bank) to specify additional detail in regulations as to the circumstances in which a person (or class of persons) is, or is not, an NBDT. We consider that this approach would provide useful flexibility to respond to market changes.

The amendment we recommend to clause 72(1)(c) would mean that banks, local authorities, and the Crown could not be declared to be NBDTs.

We also recommend the insertion of an additional sub-clause, 72(3), which would expressly prevent the Reserve Bank from recommending a regulation declaring a security to be a debt security unless satisfied that it was similar in substance to a debt security. This would provide an in-substance test to ensure that some forms of investment vehicle were not inadvertently captured by the otherwise broad definition of debt security in clause 4(1)(b).

**Protection of trustees**

Clause 76 would protect trustees against any civil, criminal, or disciplinary proceedings arising from the disclosure of information to the Reserve Bank in good faith. We recommend amending this clause to include any situation where the trustee disclosed information in good faith following a direction given by the Reserve Bank under clause 56.
Rating agencies
We consider that subclause 85(6) is unnecessary and recommend that it be deleted.

Transitional provisions
We recommend that clause 88(1) be amended to make it clear which of the existing exemptions under Part 5D of the Reserve Bank Act would be treated as class exemptions (and therefore continue to be amended and published as regulations) and which would be treated as individual exemptions (to be amended by the Reserve Bank and published in the Gazette).
We note that not all of the exemptions currently in force under Part 5D of the Reserve Bank Act would need to continue under the bill. For example, there is currently an exemption for NBDTs in receivership or liquidation; this exemption would not be required under the bill as such entities would not fall within the bill’s definition of NBDT. We therefore recommend revoking those exemptions, as set out in new clause 92.

Material incorporated by reference
We recommend inserting new clause 3A into Schedule 1 to exclude material that is made or issued in New Zealand under the authority of an Act, and publicly available, from the need to be certified and made available by the Governor of the Reserve Bank. We believe it is necessary for the Governor to certify correct copies and make them available only if they originate outside New Zealand.
Appendix

Committee process
The Non-bank Deposit Takers Bill was referred to the Finance and Expenditure Committee of the 49th Parliament on 10 August 2011. It was reinstated as business before the 50th Parliament on 21 December 2011.
The closing date for submissions was 6 October 2011. We received and considered nine submissions from interested groups and individuals. We heard four submissions.
We received advice from the Reserve Bank of New Zealand.

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
**Report from the Controller and Auditor-General, The Treasury: Implementing and managing the Crown Retail Deposit Guarantee Scheme**

**Report of the Finance and Expenditure Committee**

---

**Contents**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Nature and cost of the scheme</td>
<td>2</td>
</tr>
<tr>
<td>Summary of the Auditor-General’s findings</td>
<td>3</td>
</tr>
<tr>
<td>The Treasury’s operational performance</td>
<td>3</td>
</tr>
<tr>
<td>The policy of non-intervention</td>
<td>4</td>
</tr>
<tr>
<td>Conclusion</td>
<td>6</td>
</tr>
<tr>
<td>Minority view of New Zealand Labour Party</td>
<td>6</td>
</tr>
<tr>
<td>Minority view of New Zealand First</td>
<td>7</td>
</tr>
<tr>
<td>Appendix</td>
<td>9</td>
</tr>
</tbody>
</table>
Recommendation

The Finance and Expenditure Committee has considered the Report from the Controller and Auditor-General, The Treasury: Implementing and managing the Crown Retail Deposit Guarantee Scheme, and recommends that the House take note of its report.

Introduction

The Crown Retail Deposit Guarantee Scheme was a highly unusual measure implemented in response to urgent circumstances during the financial crisis. It was designed and announced within a day, on Sunday 12 October 2008, to avoid a flight of funds from New Zealand institutions to Australia, where the Australian Government was about to announce a similar deposit guarantee scheme for financial institutions.

The Auditor-General carried out a performance audit of the Treasury’s implementation and management of the scheme, publishing its 135-page report in late September 2011. We note that this is the only report inquiring into the issue.

Nature and cost of the scheme

The scheme’s goal was to maintain the confidence of depositors, investors, and the wider public in New Zealand’s financial markets. It offered a Crown guarantee for money that people deposited or invested with banks and non-bank deposit-takers. If an institution covered by the guarantee failed, the Crown would repay the money people had deposited or invested in it, up to a maximum of $1 million each.

The Crown ended up guaranteeing $133 billion in funds. It was required to pay out about $2 billion to depositors after the failure of nine finance companies covered by the scheme. The Auditor-General’s report noted that the final amount to be recovered by the Crown would not be known until receivership processes were completed. More recently, we were told by the Treasury that the net cost to the Crown was just over $500 million, after about $1 billion was recovered from receiverships and $500 million paid in fees by scheme participants.

The scheme was initially put in place for two years and was due to expire in October 2010. It was revised from January 2010 to address some problems with the original design, and an extended scheme was established from October 2010 through December 2011 to ease the phase-out from the scheme and reduce the potential cost to the Crown.¹

¹ Features of the revised and extended schemes are outlined on pages 77 to 82 of the Auditor-General’s report.
Growth in the Crown's liability

The Auditor-General notes that the decision to include non-bank deposit-takers under the scheme was significant. This group included finance companies and savings institutions such as building societies and credit unions. As it turned out, finance companies were the only institutions to fail and require the exercise of the guarantee.

The Auditor-General notes that during early 2009 deposits with finance companies covered by the scheme grew, in some cases substantially: “We saw one example where a finance company’s deposits grew from $800,000 to $8.3 million after its deposits were guaranteed. At South Canterbury Finance Limited, the deposits grew by 25 percent after the guarantee was put in place.”

Summary of the Auditor-General’s findings

Importantly, the Auditor-General’s overall conclusion is that the scheme achieved its goal. No banks in New Zealand failed and there was no run on banks; the stability of New Zealand’s financial system was maintained. However, this was achieved at a cost to the Crown. Nine finance companies failed, requiring the Crown to pay out about $2 billion to depositors. We understand from the Treasury that the net cost to the Crown was just over $500 million, after about $1 billion was recovered from receiverships and $500 million paid in fees by scheme participants.

The Auditor-General’s report deliberately does not question the policy choices made in setting up the scheme, such as the decision to include finance companies, which were known to be more risky. We were told that the Auditor-General’s role also does not extend to examining the Reserve Bank, or private-sector institutions involved in the scheme. Its performance audit was therefore limited to the Treasury. The main findings were as follows:

- The Treasury’s work to establish the scheme quickly and under great pressure is commendable.
- This was accomplished, however, at the expense of good governance arrangements and planning. In essence, the Treasury remained in a reactive, crisis-management mode for too long, responding to needs as they emerged rather than systematically preparing for and anticipating the next eventuality.
- The Treasury relied too heavily on the presumption of minimal intervention, at least in its early policy advice, and gave insufficient weight to the need to manage the potential overall cost to the Crown.

We examine the Auditor-General’s findings in more detail below. The findings focus on two issues: the Treasury’s operational role in implementing and managing the scheme, and its policy approach to market intervention to safeguard the Crown’s financial interests.

The Treasury’s operational performance

The Auditor-General’s first set of findings is that the Treasury responded well to immediate operational needs, but did not appreciate how important it was to “get ahead of
the wave” and plan for issues that were likely to arise. It reports that the department managed to get the scheme up and running quickly in challenging circumstances: it was initiated on a Sunday when Parliament was dissolved for a general election; there was subsequently a change of Government; and other aspects of the global financial crisis also demanded attention. It was clearly a hectic time. However, as well as launching the scheme and starting to process applications, the Auditor-General considers that the Treasury should have also been working to set up good governance arrangements for the scheme’s overall management, and to plan ahead. The Auditor-General found that it did not appear to have started doing so for several months. The Treasury did not begin monitoring individual financial institutions and carrying out documented planning for many activities until March 2009. There was no evidence of mechanisms for formal oversight by senior management, such as a steering committee.

The Auditor-General also considers that the Treasury should have recognised the likelihood of problems arising from a scheme set up in such haste, and should have set up a work stream to address them. In the Auditor-General’s view, some problems were obviously probable; others could have been predicted if the Treasury had conferred with its counterparts in the US and UK, who had experience in running such schemes. The Treasury did take steps to improve the scheme’s effectiveness, and it was eventually modified twice, but such work did not begin until 2009.

The Auditor-General’s report offers several recommendations covering project planning, monitoring, and reporting for large and complex initiatives. It also recommends that the Treasury, with help from the Reserve Bank, document the analysis and thinking undertaken when considering how to deal with South Canterbury Finance Limited. It suggests this could form the basis of a framework for dealing with distressed institutions.

The Auditor-General states that the Treasury has accepted its recommendations, and is now taking a more structured approach in its response to crises. This is reflected in its recent work on Government support for AMI Insurance Limited.

The policy of non-intervention

The Auditor-General notes that the main point of difference between its office and the Treasury concerns the Treasury’s adherence to New Zealand’s long-standing policy of minimal government intervention in the financial markets.

The Auditor-General points out that the retail deposit guarantee scheme was in itself a significant intervention. The guarantee distorted the market, as depositors could increase their returns by moving their investments into finance companies without worrying about the increased risk, which the Crown would bear. The finance companies, in turn, had less reason to minimise risk in their investment activity. The Auditor-General notes that advice from officials recognised from the outset that including finance companies in the guarantee scheme increased the risk to the Crown. In this situation, the Auditor-General found it curious that the Treasury continued to operate on its usual basis of non-intervention despite evidence of finance companies increasing their deposits significantly during the first half of 2009, once the guarantee scheme was in place. A table on page 74 of the Auditor-General’s report shows that the deposit books of many finance companies had been shrinking, but then grew by several hundred million dollars in the months immediately
following the scheme’s introduction. They then declined again, the decline in part driven by the collapse of some finance companies.

In the Auditor-General’s view, the evidence of increasing deposits in finance companies should have prompted more policy work by the Treasury about ways for the Crown to minimise this increasing liability. While the Auditor-General notes that the objectives of the scheme did not explicitly mention a need to minimise the Crown’s liability, it considers it reasonable to assume that this was an important consideration for the Treasury in its implementation of the scheme, given the role that the Treasury has as guardian of the Crown’s funds. The Auditor-General notes that after the first finance company failed in March 2009 the Treasury started to take a more active role in obtaining information and seeking to minimise the cost to the Crown. However, it states that at least in the initial five months, the Treasury’s view appeared to be that it was better to recover what funds it could after an institution failed, than to try to influence events before a failure.

We questioned the Auditor-General closely on this issue, as it is not clear whether any effort to intervene in finance companies’ behaviour would have improved the situation, or might instead have precipitated their failure, worsening the position for depositors and the Crown. We also asked about the flow of information to the Treasury, as the growth in deposits—and hence the Crown’s eventual liability under the guarantee scheme—might have been less evident at the time than with hindsight.

The Auditor-General agreed that the outcome of any intervention could not be predicted. The report noted that the Treasury’s ultimate sanction, withdrawal of the guarantee, could well cause an institution to fail because of the resulting loss of depositors’ confidence. Also, since all deposits up to the date of withdrawal would remain covered by the guarantee, the Crown’s potential payout might be about the same.

The Auditor-General emphasised that it was not saying the Treasury should have intervened. Rather, since the scheme was itself an intervention in the financial markets, the Treasury should have asked questions of itself about how things might be done differently from the usual approach of non-intervention in order to minimise the Crown’s exposure.

As to what it might have done differently, the Auditor-General said the Treasury had the right to contact finance companies directly and ask them to report on growth in their deposits, and therefore in the Crown’s exposure. Eventually it did so, but in the early months of the scheme it chose to follow the chain of communication set out in the existing regulatory model. This involved finance companies providing information to their trustees, who passed it on to the Reserve Bank, and then to the Treasury. Unfortunately this process took time, and finance companies’ initial provision of information was often slow, so the growth in deposits had occurred by the time the Treasury was aware of it.

We asked whether the Minister of Finance had sought information about the growth in the Crown’s liability, or had directed the Treasury to seek ways of limiting the Crown’s exposure. The Auditor-General told us it had no documentary evidence of what the Treasury reported to the Minister, or of any such request by the Minister when the scheme

---

3 Ibid, p. 45.
was set up. We were subsequently informed that a document from late February 2009
considered the proposition that the disadvantages exceeded the benefits of intervening in
financial institutions. The Auditor-General also noted that from March 2009—after the
first finance company failed—the Treasury began work on measures to limit the cost to the
Crown, which were incorporated into the extended scheme from October 2010. It also
undertook more detailed monitoring and inspection of finance companies deemed at risk
of failure.

**Conclusion**

We believe it is clear that the scheme was a necessary measure to stabilise New Zealand’s
financial markets and prevent an outflow of funds during the financial crisis. It achieved
this aim.

On the whole, the majority of us consider that the Treasury coped well in difficult
circumstances. Delays in receiving information for monitoring purposes were compounded
by the unusual circumstances of the five months immediately after the scheme’s
introduction, with Parliament dissolved for a general election, then a change of
government, in addition to the rapidly-moving events of the financial crisis itself.

We are, however, of the view that adequate control and reporting mechanisms should have
been implemented by the Treasury more quickly in the initial months of the scheme. In
this, the Treasury should have done better.

We concur with the Auditor-General’s observation that all entities are likely to face
unexpected situations, and need not only to respond rapidly to immediate operational
needs, but also to set up strategic oversight and governance arrangements to carry them
through and beyond the crisis. We hope that the Auditor-General’s work will encourage
the application by all public entities of the lessons learned from the scheme.

**Minority view of New Zealand Labour Party**

The Treasury’s and Minister of Finance’s handling of the Crown Retail Deposit Guarantee
Scheme is a matter into which there has not been proper inquiry. The process has been
limited and serious questions raised by the Auditor-General have been papered over and
remain unanswered.

The only opportunity we have had to question the Treasury on its handling of this matter
was limited to a small number of tangential questions during the much earlier Treasury
financial review process.

New material raising serious issues was presented during the Auditor-General’s appearance
before the committee. Other material was highlighted in a way that made the matter seem
even more serious than was submitted in the written report. No opportunity has been
provided for committee members to raise critical concerns with the Treasury since this new
information has come to light.

The Auditor-General’s advice to the committee was that during the first five months of the
guarantee scheme Treasury did not monitor whether finance companies deposits were
growing in a way that increased the Crown’s risk (and eventual losses paid by the taxpayer)
through more risky behaviour on the back of the Crown guarantee.
The Auditor-General notes that during early 2009 deposits with finance companies covered by the scheme grew, in some cases substantially: “We saw one example where a finance company’s deposits grew from $800,000 to $8.3 million after its deposits were guaranteed. At South Canterbury Finance Limited, the deposits grew by 25 percent after the guarantee was put in place”.

The funds were used for increasingly risky new loans, including capitalised interest and second mortgages, which added to the Crown’s losses.

Treasury’s excuse that it did not want to interfere in financial markets was not accepted by the Auditor-General, who pointed out to the Finance and Expenditure Committee that the grant of the guarantee was already a substantial interference.

The Auditor-General has found

- the Treasury’s monitoring of the growing taxpayer exposure to risk was inadequate
- there appears to be no evidence of Treasury written communications with the Minister of Finance raising concerns during the scheme’s first five months
- no evidence that the Minister of Finance raised any questions in respect of Treasury’s management of risk.

There are also uninvestigated allegations of poor practice which caused high losses upon realisation of the likes of South Canterbury Finance.

Because neither we, nor anyone else, has been able to enquire properly into the matter, we are unable to quantify the loss attributable to the Treasury’s handling of the scheme. In our view, it is almost certain that the losses were at least $100 million higher, and quite possibly they were between $300 million and $500 million more. Treasury’s mishandling of the scheme has contributed to the biggest unnecessary loss of Crown revenue since the INCIS computer scandal.

Our previous request to have the Treasury appear before us so we could hold them to account and question them was blocked by National members of the committee.

We have signalled that there should be a full inquiry into the Treasury’s handling of the scheme. We feel that anything less would be a scandal and amount to an abrogation of the Finance and Expenditure Committee’s proper responsibility to New Zealanders.

**Minority view of New Zealand First**

The objective of the Crown Retail Deposit Guarantee Scheme was to maintain the confidence of depositors, investors, and the wider public in New Zealand’s financial markets. This objective has largely been met.

However, serious questions remain about the design and implementation of the scheme. A number of concerns raised in *The Treasury: Implementing and managing the Crown Retail Deposit Guarantee Scheme* have not been adequately explored. The committee has been seriously constrained in its ability to investigate the matter further.
We are principally concerned with the Treasury’s operational performance and its policy of non-intervention.

In terms of operational performance, the Auditor-General has found the Treasury wanting in the area of governance and risk management. It is reasonable to expect that the Treasury should have had mechanisms for formal oversight of the scheme in place well before March 2009.

We note the decision to include finance companies in the scheme as non-bank deposit takers. This appears to have led to a significant increase in Crown liabilities. The Auditor-General reports that during early 2009 deposits with finance companies covered by the scheme grew, in some cases substantially. However, officials did not take action until after the first finance company collapsed.

The Treasury should have identified and managed risk from the beginning. The Treasury could have taken a number of preventative measures. For example, officials could have conferred with their counterparts in the United States or the United Kingdom, where similar schemes already existed, to identify possible defects. Common sense would have indicated the need for a cap on the government’s guarantee to avert the kind of future investment mistakes which are the subject of this report.

The Treasury’s claim that it did not want to interfere in the financial markets is contradicted by the scheme itself. The view, apparently held by the Treasury, that it was “better to recover what funds it could after an institution failed, than to try to influence events before a failure”, is unacceptable.

Furthermore, questions must be asked about the extent to which the Minister of Finance was involved in monitoring the scheme.

The Treasury’s mishandling of the scheme resulted in the biggest unnecessary loss of Crown revenue since the failed INCIS computer system of the early 1990s, and has amounted to losses to the Crown in excess of $1 billion.

We note that of the nine financial institutions to receive payments from the scheme, all were NBDTs. The largest of these, South Canterbury Finance, received approximately $1.6 billion. Of this amount, the Government expects to recover only $600 million.

The Finance and Expenditure Committee has a responsibility to ensure that those who implemented the scheme are held accountable. We call for a full inquiry into the Treasury’s actions and inactions in respect of the Crown Retail Deposit Guarantee Scheme.

---

6 Ibid.
Appendix

Committee procedure
We met on 28 March, 4 April, and 2, 9, 23, and 30 May 2012 to consider the Controller and Auditor-General’s report *The Treasury: Implementing and managing the Crown Retail Deposit Guarantee Scheme*. We heard evidence from the Office of the Controller and Auditor-General.

Committee members
Todd McClay (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
Hon Clayton Cosgrove
Paul Goldsmith
John Hayes
Dr Russe Norman
Hon David Parker
Rt Hon Winston Peters
Hon Dr Nick Smith
Taxation (Annual Rates, Returns Filing, 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, Returns Filing, and Remedial Matters) Bill, and recommends that it be passed with the amendments shown.

Introduction
The Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill seeks to make amendments to various Acts, including the Income Tax Act 2007, the Tax Administration Act 1994, the Goods and Services Act 1985, and the KiwiSaver Act 2006. The bill would set the annual rates of income tax for the 2012–13 tax year, and effect the following principal changes:

• simpler filing requirements for individuals and record-keeping requirements for businesses
• requiring taxpayers who choose to file a tax return also to file returns for the previous four tax years
removing the requirement for taxpayers to file a return merely because of their Working for Families entitlements
• increasing the KiwiSaver employer, default, and minimum employee contribution rates from 2 to 3 percent, as announced in Budget 2011
• allowing the capital costs of unsuccessful software development to be tax-deductible
• increasing the minimum tax equity requirement for foreign-owned banks from 4 to 6 percent, as announced in Budget 2011
• taxing bonus shares issued by companies under profit distribution plans
• clarifying that late payment fees charged by businesses, and the credit card service fee for tax and social service payments, are subject to GST
• changing the GST rules for the sale of second-hand goods by a non-resident, so that input credits cannot be claimed twice
• preventing liquidators and receivers from switching the basis on which they account for clients’ GST obligations
• conferring charitable donee status on four overseas-focused charities.

The bill also proposes various remedial amendments to ensure that legislation operates correctly and is consistent with the original policy intent, including the following:
• amending the portfolio investment entity (PIE) rules to ensure they are applied correctly
• ensuring that the rules introduced in 2011 for look-through companies are consistent with the policy intent
• clarifying the loss limitation rules for limited partnerships
• clarifying the definition of “hire purchase agreement”
• repealing an exemption to foreign investment fund rules, and providing an optional method of valuing certain shareholdings under the rules
• introducing new rules for the transfer of emissions units by public bodies in certain circumstances.

This commentary discusses the more significant amendments we recommend to the bill. It does not discuss technical or inconsequential amendments. For example, although new clauses 16B and 16C ap-
pears substantial, their effect is minor and we propose their insertion for purely technical and drafting reasons.

We are recommending amendments which would make some provisions apply retrospectively. We consider that taxpayers would not be adversely affected by these amendments, and that the amendments would not be unexpected by those affected, as they would effect minor clarifications which reflect the policy intent of the original legislation to which they relate.

Supplementary Order Paper
The Minister of Revenue released Supplementary Order Paper 1 to the bill on 7 February 2012. The SOP proposes two sets of amendments to the Income Tax Act 2007. The first consists of technical amendments to correct anomalies in the loss-limitation rules for look-through companies and limited partnerships. The other involves a remedial amendment to the shareholder continuity rules, which are used to determine whether a company is entitled to carry forward losses and tax credits. Both sets of amendments are consistent with the Act’s original policy intent.

The Minister wrote to the committee on 3 February 2012 inviting us to include the SOP in our consideration of the bill. We have done so, and are recommending that the substance of the amendments proposed in the SOP be incorporated into the bill.

Filing requirements for individuals
The bill contains various amendments designed to simplify the return-filing requirements for individuals regarding income tax and Working for Families tax credits. The aim is to reduce compliance costs for taxpayers and make Inland Revenue more efficient by moving from paper forms to electronic services.

Income tax forms for individuals
The bill as introduced proposes to remove the requirement for the Commissioner of Inland Revenue to issue personal tax summary (PTS) forms to certain taxpayers; instead, these taxpayers would be required to file tax returns. By removing the distinction between the two income tax forms mainly used by individuals—the IR 3 income
tax return and the PTS—the proposal would effectively result in their amalgamation.

We consider that implementing the proposal would place excessive pressure on Inland Revenue’s computer systems and resources over the next few years, when the department will also be implementing several major policy initiatives such as changes to student loans and child support, and planning major changes to the way it operates. We understand that the proposal could be implemented more effectively later, alongside these intended changes.

We therefore recommend that this aspect of the bill not proceed, and that the two paper forms, the IR 3 and the PTS, continue to be used. (We note that, in practice, the distinction between the two forms is likely to become less apparent as Inland Revenue develops its electronic services and returns are increasingly filed online.) We are recommending numerous amendments in the bill to remove clauses that would have repealed the relevant provisions in the Tax Administration Act 1994 and the Income Tax Act 2007, and to amend wording accordingly. The main clause affected is clause 114, which would be deleted so that Part 3A of the Tax Administration Act relating to PTSs (also known as income statements) would continue in effect. Numerous consequential amendments are also recommended in clauses 88 and 100 to 129.

Clause 106 in the bill as introduced would insert a new section, 33AA, which would replace section 33A of the Tax Administration Act. New section 33AA sets out more clearly which taxpayers are exempt from filing a return. We recommend amending clause 106 to provide additional clarification. We also recommend inserting clause 109B to retain the existing filing exemption for non-resident seasonal workers, which was omitted from the redrafted section 33AA.

**Four-year filing requirement**

The bill (clause 106, inserting new section 33AA(4)) would require taxpayers who chose to file a tax return also to have their tax obligations reconciled for each of the previous four tax years. This is designed to avoid the current practice of “cherry-picking”, whereby people file returns only for years in which they are due a refund. We recommend an amendment which we believe would be more likely to
achieve the policy intent, so that the relevant four-year period would end with the most recently ended tax year.

We also recommend amending clause 106 to insert new section 33AA(5) so that any credits and debits arising from the application of the four-year square-up rule would be offset against each other in calculating any refund due.

We note that under the bill as introduced the four-year rule would require taxpayers who had a debit from a previous year to be subject to late payment penalties and interest from the original date on which the payment would have been due had they been required to file a return. We consider that it would be unfair to apply penalties and interest for years when a taxpayer was not required to file a return. Accordingly, we propose amending clause 106 by inserting new section 33AA(6) setting a new due date for payment; penalties and interest would apply only if payment were not made by the new date.

Deferral of application date for changes to filing requirements
We recognise that the proposals in this bill would add to pressure on Inland Revenue’s resources, as it also seeks to implement several policy changes over the next few years. We therefore recommend that the application date for the changes to filing requirements be deferred by two years, to the 2016–17 tax year, but with the flexibility to bring the date forward by Order in Council if appropriate (clause 106(2)).

Working for Families
The bill proposes several minor amendments to the Working for Families tax credit provisions, including extending eligibility for the in-work tax credit to unpaid shareholder-employees of a close company (clauses 65(2) and (3)). We recommend that the effective date of this provision be changed from 1 April 2012 to 1 April 2011 (clause 2(18)). The change would give shareholder-employees access to the credit earlier but still restrain the fiscal cost of the measure. We understand that the earlier date would have no adverse impact on administrative or compliance costs.
**Record-keeping requirements for businesses**

The bill seeks to amend the Tax Administration Act 1994 to facilitate the move by businesses from paper to electronic records. Clause 103 would allow the Commissioner of Inland Revenue to authorise data storage providers to store their clients’ tax records overseas. Although it is likely that most such records would be kept in an electronic form, we consider that the Commissioner should have the flexibility to authorise the keeping of records in a different form if requested. We therefore recommend amending clause 103 to specify that records may be kept “in a form approved by the Commissioner”.

**Unsuccessful software development**

We recommend amending clause 17 to make it clearer to taxpayers when a tax deduction is allowed, that is, for expenditure on software that would need further development to become depreciable property. We also recommend amending clauses 163 and 2(8) so that proposed new section DB 31B of the Income Tax Act 2004 would apply from the 2006–07 tax year rather than 2007–08. This could benefit taxpayers who might have relied on the Commissioner’s 1993 policy statement. The Commissioner is otherwise time-barred from amending the assessments of affected taxpayers.

**Hire purchase agreements**

The bill seeks to correct a drafting error in the definition of “hire purchase agreement” that arose when the Income Tax Act was rewritten in 2004. We recommend that the relevant clauses (88(9), 88(10), 168(2), and 168(3)) be deleted from the bill so that this drafting can be considered together with work being undertaken on the wider issue of the applicability of the definition of “hire purchase agreement” to GST land transactions.

**Profit distribution plans**

We recommend amending the definition of profit distribution plan in clause 88(14) to remove the requirement that all shareholders be notified of an issue of shares, which we consider to be unnecessary, and to make it clear that the definition does not include an issue of shares under a share purchase agreement or scheme.
We also recommend amending clause 2(23) to defer by three months the effective date of the changes to the tax rules for profit distribution plans, to 1 October 2012, to allow a reasonable transition period.

**Amendments to GST Act**

We are recommending several amendments to the bill’s provisions relating to the Goods and Services Tax Act. The main amendment we propose is discussed immediately below; the others would simply clarify and improve the existing drafting. We considered carefully the change proposed in the bill to the GST accounting basis used by liquidators and receivers, in the light of submissions received. We are satisfied with the provision as proposed (clause 140) and have decided not to recommend any amendment.

**Late payment fees**

Clause 137 of the bill would insert new section 5(25) in the Goods and Services Tax Act to make late payment fees charged by suppliers on overdue accounts subject to GST. This approach would mirror the existing GST treatment of discounts for prompt payment, on the basis that such fees or discounts both amount to an adjustment of the payment due for the goods or service supplied.

We recommend replacing the proposed subsection to make it clear that GST would not apply to late payment fees if the underlying charge was exempt from GST. The amended wording would also differentiate more clearly between late payment fees, which would be subject to GST, and interest payable on an overdue account, which is exempt from GST.

We also recommend extending the effective date of the proposed amendment to 1 January 2013 (clause 137(2)) to allow sufficient lead time for businesses to update their systems.

**Amendments to KiwiSaver Act**

We recommend inserting several new clauses amending the KiwiSaver Act to establish an administrative process for employees who have reached the date at which they can make withdrawals from KiwiSaver, and can therefore choose whether or not to remain in KiwiSaver and continue to make contributions. The scheme has now
been in existence for nearly five years, and there is some uncertainty about how the process will work when employees reach their “end date” (the later of age 65 or 5 years after joining the scheme). The new clauses (153B, 153BB, 153BC, 157B, and 159B) would provide for employees to arrange a “non-deduction notice” with their employer if they wished to cancel or suspend their contributions; they would not need to apply to Inland Revenue to record their choice. We recommend that the proposed amendments apply from 1 July 2012; this would be given effect through the amendment we recommend to clause 2(22B).

Clause 159B would also clarify the start date for employees who are enrolled in KiwiSaver by their employers, and ensure that the same start date was used for all employee contributions and interest calculations.

Remedial and miscellaneous matters

Portfolio investment entities

The bill proposes several remedial amendments to the portfolio investment entity (PIE) rules in the Income Tax Act 2007, including some amendments to recently-enacted rules for foreign investment PIEs. We recommend several further remedial amendments in clauses 17B, 40 to 58, 84 to 88, and 94 to 95 with the aim of ensuring that the legislation operates correctly and is consistent with its original policy intent.

The effect of our proposed amendments would be to align the tax treatment of non-resident portfolio investments made through foreign investment PIEs with the way the investment would be treated if it were made directly by a non-resident investor. The mechanism would be optional for the PIE and the company.

Look-through companies and limited partnerships

The bill proposes several remedial amendments relating to the look-through companies regime in the Income Tax Act 2007. In line with proposals in Supplementary Order Paper 1, we recommend several further technical amendments to correct anomalies in existing rules relating to the level of deductions that can be taken by owners of look-through companies and partners in limited partnerships. The proposed changes would ensure that the exposure of a partner or
shareholder to economic risk from their investment was calculated correctly.

We recommend new clauses 35B and 35C, which would insert or replace various subsections in sections HB11 and HG11 of the Income Tax Act relating to limitations on deductions by persons with interests in look-through companies or limited partnerships. The amendments we propose would

- make it clear that section HB 11(7) applies only when a person’s income from dividends distributed from a foreign investment fund is greater than the calculated amount of the fund’s income, so that when the fund makes a loss, only the positive dividend amount is counted
- clarify the definition of “recourse property”, that is, property to which a creditor has recourse to enforce a guarantee or indemnity, to address more explicitly the approach to proportional attribution where an associate of more than one shareholder provides a guarantee or indemnity
- change the commencement dates specified in clause 2 for the new rules for partnerships and look-through companies, to correct drafting errors in the bill as introduced and ensure that the provisions operate as intended; taxpayers would not be disadvantaged by the changes. (While most of the partnership provisions would apply from 1 April 2012, two would apply from 1 April 2008, being the start date of the limited partnership rules. The look-through company provisions would apply from 1 April 2011.)
- introduce numerous consequential amendments in clauses 39, 55, and 88, including some providing for the same rules to apply to limited partnerships.

We also recommend inserting clause 32B so that fringe benefits provided to an owner of a look-through company or a partner of a partnership were not unintentionally attributed to an employee with whom the owner or partner was associated.

**Shareholder continuity rules**

We recommend remedial amendments to the shareholder continuity rules as proposed in Supplementary Order Paper 1, entailing the insertion of new clauses 88(12D) and 90B. The changes would clarify
the date of the transfer of ownership interests to ensure that tax losses were not forfeited where shares were owned by a trust for the sole benefit of the New Zealand or an overseas Government, and the trust was later terminated and the shareholding transferred to the Government beneficiary.

Insurance policies
The bill includes some technical amendments to the Income Tax Act 2007 to clarify the application and effect of transitional rules for life insurance policies sold before new tax rules for life insurance businesses came into effect in 2010. We recommend the insertion of clauses 19B, 21B, and 25B to clarify the tax position relating to the valuation of an insurance company’s outstanding claims reserve when an insurer transfers a line of general or non-life insurance business to another insurer part-way through an income year. At present, the legislation does not cover such a situation. A consequential amendment is also recommended in clause 26(2).

Auckland Council Independent Maori Statutory Board
We recommend the insertion of clauses 88(11C) and 135(3) to amend the Income Tax Act 2007 and the Goods and Services Tax Act 1985 to deem the Auckland Council Independent Maori Statutory Board to be a “local authority” for the purposes of these Acts. The amendments would mean that the board is treated the same as other advisory boards of the Auckland Council. Like funding for other local authorities, the funding provided by the council to the board would not be subject to income tax, and the board would be able to register for GST purposes and claim back the GST content of expenses it incurred in carrying out its functions. We recommend that the proposed amendments apply from 1 November 2010, the date on which the board was established (clause 2(17C)).

Emissions units
We recommend inserting clause 88(8D) to extend the definition of “forestry business” in the Income Tax Act to include forestry activities undertaken solely for the purpose of receiving emissions units, rather than for the production of timber. This amendment would
be consistent with the previous definition, which allowed foresters participating in the Permanent Forest Sink Initiative, under which harvesting was restricted, to receive deductions for expenditure on establishing and maintaining forests. Normally, deductions are not allowed for capital expenditure. We recommend amending clause 2(10) so that the change would apply retrospectively from 1 April 2008.

We also recommend replacing clause 21 to amend the accrual accounting rules which apply to industrial allocations of emissions units, by extending them to cover the allocation of emissions units for “removal activities”. These are activities which result in greenhouse gases being removed from New Zealand’s Kyoto Protocol liabilities, by means including incorporating them into products for export. We recommend a consequential amendment to clause 20B, and an amendment to clause 2(16) to apply the change retrospectively from 1 July 2010, when businesses first became entitled to removal allocations.

Electronic notices
We note that the Electronic Transactions Act 2002 allows companies to provide dividend statements to shareholders by email; it also allows Maori authorities to provide distribution notices electronically to recipients if they have so consented. For legislative consistency, we believe these points should also be made explicit in the Tax Administration Act, and recommend inserting clauses 105B and 105C accordingly.
Appendix

Committee process
The Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was referred to the Finance and Expenditure Committee of the 49th Parliament on 27 September 2011, and the committee called for submissions. The bill was reinstated as business before the 50th Parliament on 21 December 2011. We received and considered 27 submissions from interested groups and individuals. We heard 12 submissions.

Supplementary Order Paper 1 was released by the Minister of Revenue on 7 February 2012.

We received advice from the Inland Revenue Department and the Treasury.

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
Mixed Ownership Model Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Mixed Ownership Model Bill and recommends by majority that it be passed with the amendments shown.

The minority of us believe that the early reporting back of this bill has provided insufficient opportunity to examine the bill adequately.

Introduction

The bill seeks to allow the Crown to sell up to 49 percent of its shareholding in four State-owned enterprises (SOEs)—Genesis Power Limited, Meridian Energy Limited, Mighty River Power Limited, and Solid Energy New Zealand Limited—while ensuring that the Crown retained majority ownership of these companies and that the non-Crown shareholding did not become concentrated. To do this, the bill would allow these four entities to be removed from the State-Owned Enterprises Act 1986 so that they ceased to be SOEs (as the Act explicitly prevents the Crown from selling shares in an SOE), and to be placed under the Public Finance Act 1989.
The bill would also create a new Part 5A in the Public Finance Act setting out the parameters of the mixed ownership model. Part 5A would place limits on the ownership of these companies, and the majority of us consider it would provide for the protection of Māori interests. The following are the main features of the new provisions:

- Neither the Crown nor the company could sell or issue shares or securities if it would result in the Crown holding less than 51 percent of the voting rights in the company.
- No non-Crown shareholder could have a relevant interest in shares conferring more than 10 percent of the voting rights in the company. (As discussed later in this commentary, there would be an exemption for trustee and nominee companies.)
- The Crown, as majority shareholder, would not be allowed to act in a way that was inconsistent with the principles of the Treaty of Waitangi.
- The State-Owned Enterprises Act rules governing land memorials and land titles would be preserved in the new legislation.

Transfer of companies

Part 1 of the bill provides for the mixed ownership model companies to be transferred from the State-Owned Enterprises Act to the Public Finance Act, so that they would cease to be SOEs and the Crown could sell some of its shares. The companies would also be removed from the Ombudsmen Act 1975 and the Official Information Act 1982, and added to the list of mixed-ownership enterprises in the Income Tax Act 2007. We understand that it is the Government’s intention to effect each company’s transfer separately.

As a contingency measure, we recommend by majority an amendment to allow the transfer to be reversed by Order in Council and a mixed ownership model company to be restored to the SOE Act (and to the Ombudsmen Act and the Official Information Act, and the list of State enterprises in the Income Tax Act). In the bill as introduced, there is no provision for such a reverse transfer. As a precaution—for example, in case market conditions deteriorated at the last minute and the Government decided not to proceed with a sale for the time being—the majority of us consider it would be de-
sirable to allow a mixed ownership model company to be restored to its original legislative status. Accordingly, we recommend by majority an amendment to clause 15 to insert new section 3C in the Public Finance Act.

**Public Finance Act provisions**

For legislative transparency, the majority of us recommend the insertion of clauses 15A and 15B to include references to mixed ownership model companies in sections 4(2)(b) and 27(3) of the Public Finance Act. These amendments would make it clear that a parliamentary appropriation would not be required before a mixed ownership model company could incur an operating loss, and that the Government’s interests in the mixed ownership model companies must be included in the Government’s annual financial statements.

**Controls over shareholdings**

Clause 16 would insert new Part 5A, containing sections 45P to 45X, into the Public Finance Act setting out the provisions applying to mixed ownership model companies.

**Majority Crown ownership**

New section 45R would set a 51 percent minimum on the Crown’s shareholding, by prohibiting a shareholding Minister or the company from disposing of shares or consenting to issues of shares or securities if doing so would reduce the Crown’s voting rights in the company to less than 51 percent. We note that only the owners of shares with voting rights would have the right to vote on the appointment of directors. The majority of us consider that the provision is an appropriate means of ensuring that the Crown retains control of the companies under the mixed ownership model. The majority of us therefore do not propose any change to this provision.

**Widespread non-Crown ownership**

New section 45S would set a 10 percent cap on individual non-Crown shareholdings, by providing that no person other than the Crown could have a relevant interest in securities conferring more than 10 percent of the voting rights of a mixed ownership model company.
We note that the definition of “relevant interest” is the same as in the Securities Markets Act 1988 and essentially the same as that used in the Companies Act 1993. As well as covering two related bodies corporate, the definition is wide enough to capture an agreement, arrangement, or understanding between two persons to act in concert in relation to the exercise of voting rights.

We considered whether the cap should be set at a different percentage, but concluded that the level proposed is appropriate; a 10 percent cap has been used by other companies and so is familiar to the market, and it would achieve a widespread shareholding. The majority of us therefore do not propose any change to this provision.

**Enforcement of 10 percent cap**

New section 45T sets out the means by which any breach of the 10 percent cap would be remedied. The majority of us recommend two amendments to this provision. In the bill as introduced, section 45T(1)(b) would require a person who contravened the cap to take the necessary steps to ensure they were no longer in breach at the end of 60 days after the date of the first contravention. The majority of us recommend amending this provision so that the 60-day period for remedying a breach would start from the date on which the person “becomes aware or ought to have become aware” that they had contravened the 10 percent limit. This formulation would be consistent with the Securities Markets Act, and would avoid argument if a person became aware of a breach only after the 60 days had elapsed.

The majority of us also recommend an amendment to add a new subsection, 45T(2A), to ensure that resolutions passed at a shareholder meeting would not be invalidated if votes were counted in good faith and without knowledge that the votes had been exercised in breach of the 10 percent cap. The majority of us consider that this change would provide important commercial certainty for the companies that a transaction approved in good faith could not later be invalidated if it proved that voting restrictions had been breached without the company’s knowledge. The company would still have an obligation and incentive to take appropriate precautions to avoid any shareholder breaching the cap.

We note that new section 45U would provide an exemption from the 10 percent cap for trustee corporations or nominee companies that
had been listed as exempt by the Financial Markets Authority (FMA). As trustees and nominees merely hold interests on behalf of another person, the majority of us consider such an exemption appropriate. The cap would still apply to the person for whom the trustee or nominee was holding the shares, and the trustee or nominee would be required to keep share transactions under review and advise the company if any person for whom it was holding shares breached the 10 percent cap. New section 45V (as included in the bill as introduced) provides for the FMA to remove the exemption for a trustee or nominee if these conditions were not being met.

The majority of us recommend an amendment to clarify how the FMA should exercise its powers when policing the above arrangements. Under the bill as introduced, new section 45W provides that the FMA could use its existing information-gathering powers to exercise its functions under new section 45V, that is, to designate trustee corporations or nominee companies as no longer exempt from the 10 percent cap. The majority of us consider that it would be clearer and more workable to provide the FMA with exactly the same powers through its existing legislation. Accordingly, we recommend by majority that new section 45W be removed from the bill, and that an amendment to the Financial Markets Authority Act 2011 be inserted in Schedule 2 of the bill, adding a reference to sections 45U and 45V. This would ensure that the FMA’s powers would be used to monitor and enforce these sections in a way that was consistent with the FMA’s existing enforcement framework.

Public Audit Act

In Schedule 2, we recommend by majority inserting an amendment to the Public Audit Act 2001 to make it clear that the mixed ownership model companies would be subject to that Act. There is no doubt about the application of the Public Audit Act, as the Crown would retain a 51 percent shareholding and so would control the composition of the board of each mixed ownership model company. Nevertheless, the majority of us consider the amendment desirable for legislative clarity.
Protection of Māori interests

In Schedule 2, the majority of us recommend inserting an amendment to section 64 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 echoing the requirement for consultation that currently applies to SOEs, and applying it even more broadly to mixed ownership model companies. At present, the Act requires an SOE to consult with Waikato-Tainui whenever the SOE proposes to create or dispose of a property right or interest in the Waikato River and is required to consult with Ministers. The proposed change would oblige mixed ownership model companies to engage with iwi whenever they proposed to create or dispose of any property right or interest in the Waikato River, whether or not consultation with Ministers was required. Such a change was sought by Waikato-Tainui during consultation on the bill.

Green Party minority view

Introduction

The Green Party is opposed to the Mixed Ownership Model Bill and recommends the bill does not proceed. Our opposition to the bill is based on

- the Government accounts being permanently worse off as a result of the mixed ownership model
- flaws in the Government’s arguments in favour of the mixed ownership model
- negative impact on New Zealand’s external debt situation as a result of the mixed ownership model
- reduction in Government income as a result of the mixed ownership model
- higher power prices as a result of the mixed ownership model
- the mixed ownership model limiting the ability to invest in renewables.

This minority view also sets out what we see as the alternatives to the mixed ownership model.

Government accounts permanently worse off

BERL research, commissioned by the Green Party, shows that a programme of asset sales to finance the construction of new assets leaves
the Government accounts permanently worse off (compared to the baseline) in terms of Government debt, debt ratio, net worth and total assets.

In the short term the option of selling investment assets to fund the construction of new assets leaves the Government’s accounts in a worse situation compared to the baseline.

• The annual deficit increases as a result of the loss of dividend revenue, with no compensating decrease in spending.

• Assuming that the increased deficit is funded out of “cash reserves”, total assets decline. This leads to a deterioration in net worth.

• Debt remains the same, but the debt ratio increases as a result of the decline in total assets.

In the long term the annual deficit returns to baseline, but net worth, total assets, and debt ratio are worse than baseline. The short-term impact on the financial surplus is not recouped in subsequent periods, leaving this permanent impact on net worth and total assets.

Flaws in Government arguments in favour of mixed ownership model

We asked BERL to examine the various arguments the Government has put forward for the asset sale programme; BERL determined that while each of the arguments had some merit they did not rely on the adoption of the Mixed Ownership Model Bill.

Improvement in the pool of investments available to New Zealand investors

Households (colloquially termed “mom and pop investors”) could be attracted to direct investment opportunities in Government bonds or the SOEs issuing bonds. These investment vehicles could be in the guise of infrastructure or national development bonds directly targeted at the retail investor. Therefore domestic investment options could be made available that do not rely on selling the assets.

Allowing mixed ownership companies access to capital to grow

The objective of allowing mixed ownership companies access to capital to grow without depending entirely on the Government need not
require a partial sale of equity. To access capital, mixed ownership companies need to attract funds from the private sector. This can be done, subject to the maintenance of a prudent debt-to-equity ratio, without the reduction in an existing owner’s equity stake. Accessing funds to finance growth, through the use of debt instruments, is standard practice in the business sector.

Allowing for the external oversight of companies
This objective could be achieved through alternative means such as the appointment of independent directors, directors/boards reporting to a parliamentary committee (as opposed to Ministers), or the setting of clearer, transparent directions from shareholding Ministers as to market-related objectives. This objective does seem in contradiction to the stated expectation of a gain on sale of these assets (as forecast in the 2012 Budget Policy Statement). Were these companies’ performances below par and in need of sharper discipline, such a gain on sale would seem unlikely.

Negative impact on New Zealand’s external debt situation
As noted in the 2010 Budget, “New Zealand’s largest single vulnerability is now its large and growing net external liabilities. New Zealand now owes the world $168 billion, or around 90 percent of (annual) GDP.”

The BERL report stresses the difference between the Government’s debt and the external debt in any discussion in regards to the Government’s financial situation being used as justification for a programme of partial asset sales.

While the Government has stated that New Zealanders will be at the front of the queue to purchase the investment assets being sold, some assets may be sold to overseas investors. Consequently, the portion of company earnings (dividends and profits) that relate to overseas investors will be an outflow (or payment) on the external accounts. This would ultimately represent, assuming all else remained unchanged, a permanent deterioration in the external deficit and the level of external debt.

Further, while the initial offering may be directed towards domestic purchasers, future private share transactions could increase the portion of shares (and earnings) in overseas investors’ hands. Such an
outcome would lead to a further deterioration in the external deficit and external debt position.

Reduction in Government income
By the Government’s own estimate, it would lose $360 million a year in profits from asset sales—$200 million in dividends and $160 million in retained profits. That is a low estimate, based on the average dividend return of $258 million in the past six years from the assets the Government intends to sell. Even accepting the Government’s estimates on sales revenue, the reduced interest on debt is only $266 million a year. That means the Government would lose $94 million net each year from selling the assets.

That money has to come from somewhere. It could come from higher taxes. It could come from cuts to public services. Or, most likely, it would come from more borrowing. The Government would get a one-off boost from selling the assets but that loss of dividends, made up for with borrowing, would mount year after year forever, long after the sales proceeds were gone.

On top of those dividends, the Government makes a gain when the value of the companies increases (equity gain). That isn’t money in the bank, like dividends, but it is an asset that gives the Government’s debtors more confidence and makes it less likely that we will get another credit downgrade.

The four energy companies had an average return on investment of 18.5 percent per annum over the last five years, including both equity gain and dividends. This is more than four times higher than the Government’s cost of borrowing at 4 percent.

Higher power prices as a result of the mixed ownership model
On average, privately-owned electricity companies charge 12 percent more for electricity than publicly-owned ones. Privately-owned electricity companies have complained to publicly-owned ones that they are not charging enough for the privately-owned companies to make a profit, and the CEO of Contact Energy has said that electricity prices need to rise for private investors to make a profit.

Publicly-owned power companies can make a profit for the Government while charging less than privately-owned electricity companies because the government’s cost of borrowing is only 4 percent
whereas a private investor’s cost of borrowing is around 8 percent. That means that to cover its interest costs the Government just needs a dividend of over 4 percent but a private investor needs twice that much.

If the assets are sold to private, often overseas, buyers it is likely they would demand higher prices. The boards of companies would be legally required to act in the best interests of the shareholders, and their rights to a higher profit would have to be respected. To make higher profits, they would charge higher electricity prices.

**Mixed ownership model limits the ability to invest in renewables**

In a world that is carbon-constrained and economically volatile now is not the time for New Zealand to sell off our highly successful, resilient, renewable energy powerbase. These are publicly owned entities that have been grown and owned by New Zealanders who have spent years nurturing and developing the expertise that could be the cornerstone of a cleaner, smarter, robust economy.

The Government is selling our best opportunity to become large-scale exporters of renewable energy technology. Private-sector imperatives will likely delay and deter the switch to increased renewable use, which could further affect New Zealand’s chance of becoming a cutting-edge developer and exporter of renewable technologies. Prized energy assets like the Manapouri power station could also be sold off under the legislation into full foreign ownership and control. There are huge risks in further binding our economic and energy fortunes to the whims and profit margins of overseas investors. It could mean that we will lose the power to direct these energy companies towards cleaner energy technologies and to make decisions that will determine our country’s overall energy strategy and mix. With the right vision and political will, we can keep their renewable energy know-how and innovation in New Zealand, capitalising on the potential to create thousands of green, highly paid jobs; insulate our economy from the volatile fossil fuel markets; and build a more sustainable future for our country.
Commentary

Mixed Ownership Model Bill

Alternative Solutions

Returning to monopoly public ownership of the main generating capacity

This could be done under tight oversight and control to ensure efficiency, give it a responsibility for energy conservation as much as new generating capacity, require it to charge average costs or below for a base usage allocation for households, and require a proportion of small-scale sustainable generation, such as that from wind and tidal sources, which could come from independent providers.

Feed-in tariffs for firms and households producing their own electricity from small-scale renewable generation should also be part of the mix. The monopoly public generator could also act as default retailer to ensure there are reasonably priced services for low-income and other households that may be considered undesirable by for-profit retailers.

More energy-efficient power production

New generating capacity should be required to be increasingly renewable, and the need for new capacity should be, as far as possible, replaced by conservation measures. New advances in technology can save hugely in power costs using smaller and more efficient and decentralised power plants, which are also more resilient to natural disasters such as earthquakes.

This seems unlikely to happen with the only incentives being a weak emissions trading scheme which pushes up power prices and creates an incentive for companies to charge more not save more. Regulation is required to force companies to explore other options which will save the country drastically in the long run.

Investment in green technology and jobs

The Green Party and many environmental NGOs have strongly advocated an alternative vision that creates decent jobs, adds resilience to our economy, and protects our natural environment. By retaining ownership in our energy companies, we could focus their profits and research and development investment on renewable energy opportunities.
The global renewable energy sector is growing rapidly into a market worth up to $800 billion by 2015. These power companies have the expertise and the capital to take advantage of this growing industry and create tens of thousands of jobs here in New Zealand. Privatisation will end that opportunity to create investment and employment opportunities in the clean energy revolution.

National energy strategy
The development of a comprehensive national environmental strategy around power generation is necessary to deliver a positive environmental future. A move to privatise the four energy companies will compromise New Zealand’s ability to implement such a strategy in order to give our children the environmental future they deserve.

The State-Owned Enterprises Act provides a ready-made vehicle for the Government to roll out renewable energy and energy efficiency solutions that may not be commercially viable for a profit-driven energy company but may deliver net benefits for the country as a whole. Possible examples include smart meters, electric vehicles and infrastructure, small-scale renewable generation, and bioenergy.

New Zealand Labour Party minority view
Labour agrees with the vast majority of submitters that this legislation is unnecessary and misguided, and will increase power prices, increase asset inequality, increase the government deficit, increase the current account deficit, and leave New Zealand worse off.

These assets were built by generations of New Zealanders and survived during times that were tougher than today. The Government has no mandate to sell them now by the narrowest of parliamentary margins. As one submitter stated, “We are robbing the future by selling off something paid for in the past”.

Process
The unnecessarily rushed methods adopted by the committee in considering this legislation were forced upon submitters and opposition members by the National Party majority on the committee.

At the meeting of the Finance and Expenditure Committee on 30 May 2012, six weeks before the 16 July reporting date, after just
one hour of consideration following the hearing of submissions, the Chair of the committee advised that it was his intention to complete consideration and move to deliberation on the bill on 7 June, five weeks ahead of the reporting date allowed by Parliament. This minority view was required to be submitted prior to the 7 June meeting. The opposition motion that minority views not be required before consideration was completed was opposed and defeated by Government members. This process has meant that opposition parties have not had the normal opportunity to put the bill or our minority views to our caucuses prior to deliberation.

Consideration has been so rushed that we have not even been able to seek proper advice confirming or disproving the evidence given by submitters about average residential electricity prices being $265 per annum cheaper via the publicly-owned SOEs than are charged by privately-owned competitors, nor the evidence from submitters that the share sales will result in the partially privatised SOEs increasing their prices to those charged by the private sector participants.

When opposition members complained that their rights and proper committee processes were being over-ridden, the Hon Nick Smith said we were wrong and asserted a similar process was used by the Labour majority to push through the emissions trading legislation in 2008. In fact the Finance and Expenditure Committee report on that bill shows that the committee heard 58 hours of submissions and took almost 16 hours for consideration.

The treatment of submitters also left much to be desired. Treasury officials wrote the departmental report before all submissions were heard. On many occasions, questions from the committee had to be truncated because of time constraints. Some submitters were treated disrespectfully by National members of the committee, with one asked who he had voted for in the 2011 election. The accessibility of the process was constrained for submitters. Only five minutes were given for some submitters. There was only one half-day of hearings in the South Island, with no hearings in Dunedin. There was very short notice for teleconferences.

Overall it seems obvious to Labour members that the processes adopted by the Government members have been used to minimise the length of the process in order to limit adverse publicity.
than enable the committee to go about its business in a thorough and properly considered way.

As one submitter put it, “The Government has cotton wool in its ears”.

**Fiscally irrational**

Submitters by an overwhelming majority did not accept the economic rationale for the planned asset sales.

Privatisation makes the Government’s deficit worse. Treasury estimated in the pre-budget fiscal update that the Government saves $266 million in borrowing costs yet it loses $360 million a year in profits. That’s a $100 million a year loss to the Crown from selling our assets.

The fact that selling the SOE shares makes the deficit worse was hidden from voters during the election, because Treasury allowed the Government to book the proceeds of asset sales in the pre-election fiscal update without disclosing the loss of profits on the interests sold. This was scandalous, and allowed National to avoid this truth.

External private debt is a bigger issue for the New Zealand economy than public debt, and this will worsen the problem. In the long term this will have a negative effect on New Zealand’s balance of payments as more profits go overseas. Contact Energy, raised by many submitters, is a ready example of how ownership and dividends will head offshore.

Even if “only” 15 percent of the shares are owned by foreigners, that’s $100 million a year in profits going offshore, worsening our current account deficit, and another $2 billion on our country’s net international liabilities. To sell off these assets, the Government is also forking out over $120 million in fees to merchant bankers.

National doesn’t have an accurate idea of what they’re going to get for these assets. Last year the Prime Minister said the sales would free up as much as $10 billion, then it became $7 billion, now it’s $6 billion. Bill English has said the amount is a “guess”. It seems the Government is determined to proceed at any price.

Selling at a time of subdued economic activity and flat capital markets is likely to reduce the price obtained. Selling off four energy companies over three years may also flood the market and lead to
lower prices for the assets than if the sales were staggered over a longer period of time.
The Crown borrows at around 4 percent per annum. These assets are a profitable investment for the Crown, which returns hundreds of millions in dividends, which pay for schools and hospitals. Private investors have a higher cost of capital. The CEO of Contact Energy recently told commercial investors that they shouldn’t invest in energy projects until prices rise because a 6 percent return is not enough to cover their desired 8 percent cost of capital.
Only one of the oral submitters was willing to speak in favour of the legislation as currently proposed. Under questioning they conceded that other options such as the issue of bonds may be a better alternative to asset sales for paying down debt or funding capital spending although they noted that this was not the proposal they were invited to comment on.
Even if selling down holdings in these companies was desirable, a blanket sale of 49 percent is not an optimal figure in any economic sense; it is a political number backed by no analysis of the effect on future efficiency or profitability of the affected companies.

**Economic development**
The power network is, like the water system, of strategic importance to New Zealand’s economy. Many submitters noted that energy and water will be amongst the most critical inputs to our economy in the 21st Century.
The sale of strategic assets is incompatible with the “NZ Inc.” approach; it ignores the importance of energy to growing the economy. Public ownership ameliorates problems with the uncompetitive market in the electricity sector. Excessive profits through excessive prices found by the Wolak Review were returned to the public via Crown ownership.
The prime focus of the so-called market is profit, not security of supply. In the absence of true competition, with profit maximisation as the almost singular aim of private shareholders, there is limited incentive for power companies to improve energy security. Brownouts and the gaming of electricity spot prices, while sometimes profitable for energy companies, can have significant negative effects on productivity and economic growth.
Past privatisations (such as New Zealand Rail) have resulted in asset stripping and the running-down of utilities at the cost of economic development. Similarly Air New Zealand had to be bought back by the last Government after it failed, for reasons of the national interest. Security of supply issues have been predominantly addressed by SOE generators, who have invested more in new generation than their competitors. Since Contact Energy was privatised, its proportion of generation has dropped while its profitability and retail income have increased.

The weighted average charge for domestic electricity users buying from SOEs is $265 per annum less than the average for non-SOE suppliers. It is likely that once privatised the former SOEs will pursue price-maximising strategies which will see their prices rise. This will increase power prices, especially to residential consumers.

The idea that the sell-off is necessary to create investment opportunities for New Zealand investors is a weak one. The Labour Party does not accept that New Zealand capital markets are so inept that they can only succeed through trading what the Government has created. With the right savings, tax, and investment policies in place New Zealand private enterprise will prosper. The sale of the SOEs is no substitute for those policies.

New Zealand’s renewable electricity assets are a point of economic advantage for New Zealand, created by generations of New Zealanders through their Government. They ought to stay in New Zealand control for the benefit of all New Zealanders, and be held on their behalf by the Government.

One submitter cited the example of Norway which retained control of its oil resources, ensuring Norway’s social and economic security in the following decades. New Zealand is a world leader in renewable energy, yet this Government plans to do the opposite of Norway and sell off an industry sector that will provide the backbone of a carbon-constrained 21st-Century economy.

**Inequality**

Public ownership keeps prices down. In 84 percent of lines company areas, the most expensive electricity retailer is privately owned. Nationwide, private power prices are an average of 12 percent higher
than SOE prices. Weakening public ownership will remove a major restraint on power prices.

Several submitters stated that this legislation will cause power price rises, particularly for low-income residential users. Data from the MED presented by Molly Melhuish on behalf of Grey Power shows that an average customer consuming 8,000 kWh per year will pay $265 more per annum to an “average” private electricity company than to an “average” SOE.

Not one electricity generator or retailer submitted on the bill, which was surprising. Some submitters noted this and said it was because there is no answer to the evidence that these sales will lead to increases in electricity prices.

Many submitters were concerned at the impact asset sales would have on “fuel poverty”. One submitter stated that 60 percent of NZ housing stock is below WHO standards and 25 percent of New Zealanders currently live in fuel poverty. The price rises that privatisation would instigate will make this problem worse. As one submitter from Grey Power noted, “There is no doubt in our minds people will die from the cold because of this bill”.

The 2008 Wolak Report was commissioned by the Commerce Commission during the term of the last Labour Government. The report was delivered after National was elected. It found up to $4.2 billion of overcharging in the electricity industry in the 2000s suggesting there are underlying problems with the market. Upon taking office, National largely ignored the report and prices have increased further since, albeit at a slower rate than in the prior decade.

Bill English has admitted that CEO salaries are already going up because of National’s privatisation agenda. Kiwis pay for these extra costs through higher power prices.

Currently, SOEs are legally required to consider the impacts of their actions on New Zealand communities. That means when they think about putting up power prices they have to consider if it will be affordable for their customers, and if it will damage economic growth. National is not replicating that social responsibility clause in this legislation. Many submitters also noted that the removal of the social responsibility clause could encourage price gouging. The submission from the Service and Food Workers Union noted the importance of the social responsibility clause, stating that their members (who are
relatively low-paid) spend up to a fifth of their income on energy. A Dunedin City Councillor submitted on the problems the council had ensuring continued provision of public services after the privatisation of public assets.

The submission from Caritas noted that state ownership is a better way to ensure the provision of essential services, particularly for the most poor and vulnerable consumers. A number of submitters also noted the disparity in the increase of residential and industrial prices since commercialisation of the industry in the 1990s, suggesting that this gap is likely to widen further under privatisation.

**Sovereignty**

National says that “up to” 30 percent of the shares they want to sell will go to foreigners. But there is nothing in this legislation to ensure it won’t be more. Over time it is likely initial purchasers of shares will sell to overseas interests.

John Key made a personal commitment during the campaign that there would be a cap on foreign ownership. This legislation does nothing to deliver on that commitment. In the recent sale of QR National in Queensland, at least 35 percent of the shares went offshore. Although Tony Ryall has raised the possibility of a “loyalty bonus” for domestic investors, (like that used for the sale of QR National) this was not discussed in the committee. Nothing is present in this legislation to ensure that “Kiwis are first in the queue” as the Prime Minister promised during the election campaign.

Many submitters noted that in the sale of public companies to private investors, rather than 49 percent, around 20–25 percent of active shareholding is the “tipping point” at which shareholders have sway over the direction of the company. At 49 percent private ownership, the pressure to maximise profits through price maximisation will prevail. Many submitters also believe the sales will not stop at 49 percent, and that there will be pressure for the proportion of private ownership to increase in the future.

As noted by several submitters the restrictions around the “10 percent” cap on shareholdings is light-handed and no provision has been made for actively policing this loophole.
Individual energy assets, like the Manapouri power station for example, could be sold off into full foreign ownership and control by the companies being partially privatised under this legislation. The submission of the Office of the Ombudsmen stated that no sufficient grounds have been advanced for removing the companies from the reach of the Official Information Act (OIA) while the companies remain in majority Crown ownership. No information of commercial sensitivity would be at risk of disclosure because the Act already allows non-disclosure in those situations. The loss of OIA application could also reduce accountability and increase the risk of cronyism and corruption in these companies.

Some submitters raised concerns about “state capture” suggesting the Government departments involved in the sale process including Treasury were “captured” by the financial services industry and were unable to provide objective, independent advice on the sale of assets. Many submitters also noted their concern that investment rules in free trade agreements will constrain future governments from altering energy policy.

**Mandate**

The vast majority of New Zealanders oppose asset sales. They know it doesn’t make sense to flog off these strategically vital and highly profitable assets.

National does not have a mandate; in 2011 40,000 more people voted for parties that oppose asset sales than support them. It is only the deals National cut with ACT and United Future that are allowing these sales to proceed.

Of the 1,448 submissions listed in the departmental report, 9 were in favour, 1,421 were opposed, which equates to 0.6 percent in favour and 98.1 percent against.

The fact that the asset sales increased the deficit was hidden from view during the election because of the mishandling of the issue in the pre-election fiscal update, as discussed above. Deals with merchant banks to sell off the assets were signed and agreed upon by the Government well before approval of this legislation by Parliament. Furthermore, a website advertising share sales has been “live” for weeks in advance of the legislation being approved by Parliament.
Environment
World leaders of the 21st Century such as China, Google Inc. and Apple Inc. all have long-term vision and are actively investing in renewable energy. The National-led Government is selling a major part of the public’s current interest in renewables. These assets give New Zealand a strategic advantage in renewables, especially with the cost of carbon predicted to rise rapidly over the coming decades.
Privatised and solely focussed on profit, it is possible that power companies will be more open to carbon-intensive energy sources that are counter-productive in the fight against climate change.

Treaty of Waitangi
The Treaty protection provided in the legislation is inadequate; it only applies to the Crown and allows assets of the SOEs to be sold without recourse to Parliament. The Treaty obligations of the Crown are not even being applied to directors appointed by the Crown.
The submission of Ngāti Tūwharetoa was backed by former National MP Georgina te Heuheu, who campaigned for National in the 2011 election. The iwi is concerned the sell-off will infringe property rights it asserts to water and land underlying waterways. It is also concerned consultation has been inadequate.
Ngāti Tūwharetoa emphasised the importance of resolving this issue before the sales proceed. The submission was not taken seriously by the National members and an outdated report was used to rebuff their submission.
In the view of Tūwharetoa public ownership of the power companies provides strength and security and public benefits for New Zealand through collective ownership. This is akin to the Māori principle of kaitiakitanga which is intergenerational and encourages a custodial/guardianship view of business and assets, favouring long-term stability over short-term gain. Tūwharetoa believe that private control of the water resource and structures, and privatisation of the economic benefits which are earned from their use, is in breach of the understandings they had with the Crown when the power stations were developed.
Ngati Tūwharetoa stated this issue risks upsetting Crown–Māori relationships and will trigger arguments over the ownership of water.
Conclusion

There is no evidence that the sale of state assets will improve the economic, social, and fiscal position of New Zealand. Rather, this legislation will increase power prices, increase asset inequality and make New Zealand poorer and more indebted to the world in the long term. This legislation is unnecessary and deeply misguided. The numerous faults in this legislation identified by submitters are compounded by a process of inadequate consideration and pre-emptory deliberation. By failing to properly consider submissions on this bill, the Government has abused the normal processes of the select committee and bequeathed a series of problems for future Governments to rectify.
Appendix

Committee process
The Mixed Ownership Model Bill was referred to the committee on 8 March 2012. The closing date for submissions was 13 April 2012. We received and considered 1,489 submissions from interested groups and individuals. We heard 124 submissions, holding hearings in Auckland and Christchurch as well as in Wellington. We received advice from the Treasury.

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
Report from the Controller and Auditor-General, Draft annual plan 2012/13

Report of the Finance and Expenditure Committee

Contents

Recommendation 2
Introduction 2
Features of the draft work programme 2
Comment 3
Appendix 4
Report from the Controller and Auditor-General, Draft annual plan 2012/13

Recommendation

The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General Draft annual plan 2012/13, 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 that 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 2012/13 the Auditor-General’s work programme proposes to focus on the theme “Our future needs—is the public sector ready?”, to explore topics that appear to be of widespread interest or concern for New Zealand’s future. This work will be in addition to, and will draw on, the office’s core work of auditing almost 4,000 public entities.

The Auditor-General proposes to consider the public sector’s contribution to New Zealand’s future under three broad headings:

- **Services**—how the public sector can plan and deliver effective public services while “future-proofing” them against changing needs. This would cover topics such as child obesity, Māori education, new migrants, technology and service delivery, the ageing population, and reducing reoffending.
• **Resources**—whether the best use is being made of natural resources and other assets in the delivery of public services, and whether they are being managed sustainably. This would involve auditing how public sector agencies are protecting and maintaining biodiversity and natural ecosystems, and dealing with incursions from unwanted organisms. Other proposed topics are asset management by district health boards, integrated land-use planning and transport planning, and the management of significant public-sector assets.

• **Financial**—how the fiscal circumstances of the public sector are being managed to maintain the assets and deliver services for a changing population. Work envisaged includes analysis of local authorities’ long-term plans; reviewing the Treasury’s approach to the next long-term fiscal statement, which is planned for 2013; and reviewing board reporting by Crown research institutes and State-owned enterprises. The office also proposes work on the Christchurch recovery and rebuilding effort, looking at procurement and monitoring, funding flows and controls, accountability and responsibility, and the insurance arrangements of public entities in Canterbury. The office also intends to review insurance cover throughout the public sector.

The Auditor-General expects to complete some performance audits from 2011/12, including audits of road safety enforcement efforts to reduce drink-driving; school boards of trustees’ planning and review; and KiwiRail’s progress on maintaining and improving the rail network.

Finally, the Auditor-General plans to undertake at least two major inquiries: into the Kaipara District Council’s management of the Mangawhai community wastewater scheme, and into aspects of the Accident Compensation Corporation’s board-level governance. Both of these inquiries are expected to be reported during 2012/13.

**Comment**

We wrote to other select committees seeking comment on the draft annual plan. We received comments from the Social Services Committee which we have passed on to the Auditor-General for consideration. The comments included queries and suggestions about the office’s proposed work on new migrant settlement and contribution; the ageing population; reduction of reoffending; and analysis of local authorities’ long-term plans.

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.
Appendix

Committee procedure

The committee met on 13 June 2012 to consider the report from the Controller and Auditor-General, *Draft annual plan 2012/13 (including the Auditor-General’s proposed work programme for 2012/13)*.

We consulted all subject select committees during our consideration of this item of business.

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 Dr Nick Smith
The Finance and Expenditure Committee has examined the Supplementary Estimates of Appropriations for the year ending 30 June 2012, which comprise changes to existing appropriations and new appropriations proposed since the Estimates for 2011/12 were finalised, and the proposed changes to departmental net asset balances. Treasury officials assisted us in our examination.

We have no matters to bring to the attention of the House, and recommend that the supplementary appropriations, as set out in Parliamentary Paper B.7, be accepted.

Todd McClay
Chairperson
Addition to the Supplementary Estimates of Appropriations for the year ending 30 June 2012

Report of the Finance and Expenditure Committee

Contents
Recommendation 2
Introduction 2
Comment 2
Appendix 3
Addition to the Supplementary Estimates of Appropriations for the year ending 30 June 2012

**Recommendation**

The Finance and Expenditure Committee has examined the Addition to the Supplementary Estimates of Appropriations for the year ending 30 June 2012 and recommends that the addition to the Supplementary Estimates, as set out in Parliamentary Paper B.7 Vol. 2, be accepted.

**Introduction**

The Addition to the Supplementary Estimates of Appropriations for the year ending 30 June 2012 contains details of a new appropriation and an increase in an appropriation being sought for Vote Canterbury Earthquake Recovery. These changes to appropriations allow the decisions and expenditure necessary for timely progress on reconstruction after the Canterbury earthquakes.

The changes total an additional $125.660 million, including a new appropriation of $10 million, *Procurement of Rockfall Protection Systems*, to reimburse the Christchurch City Council for the Crown’s share of the Stronger Christchurch Infrastructure Rebuild Team’s infrastructure costs incurred by the council, and an additional $115.660 million for *Acquisition of Canterbury Red Zone properties*, which would bring this appropriation to $569.496 million in 2011/12. The changes would increase the total annual and permanent appropriations for Vote Canterbury Earthquake Recovery by 16 percent, to $897.817 million.

**Comment**

Normally, a moratorium on new expenditure decisions applies in the period preceding a Budget. This is meant to ensure that the Budget documents which the Minister of Finance presents to the House on Budget day reflect accurately all the decisions Ministers have taken up to that point. However, because of the unusual circumstances following the earthquakes, the Canterbury Earthquake Recovery Authority has needed to continue making decisions with expenditure implications to avoid slowing the recovery or creating contractual difficulties. This addition to the Supplementary Estimates covers all decisions taken during the moratorium period and between Budget day and 11 June 2012. We concur with the Government that it is desirable that decisions and expenditure for the earthquake recovery effort not be interrupted, and therefore support the proposed addition to the Supplementary Estimates.

These two appropriations are intended to be inserted in Schedule 1 of the Appropriation (2011/12 Supplementary Estimates) Bill in the committee of the whole House by way of an amendment notified on a Supplementary Order Paper.
Appendix

Approach to this examination

We met on 26 June 2012 to consider the Addition to the Supplementary Estimates of Appropriations for the year ending 30 June 2012.

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 Dr Nick Smith
International Finance Agreements Amendment Bill

336—1

Report of the Finance and Expenditure Committee

Contents
Recommendation 2
Introduction 2
Revised IMF Articles of Agreement 2
Regulation-making power 2
Appendix 4
International Finance Agreements Amendment Bill

Recommendation
The Finance and Expenditure Committee has examined the International Finance Agreements Amendment Bill, and recommends that it be passed.

Introduction
The bill seeks to amend the International Finance Agreements Act 1961, which translates New Zealand’s commitments to global financial institutions such as the International Monetary Fund (IMF) and the World Bank into domestic law.

Revised IMF Articles of Agreement
The changes proposed by the bill would ensure that New Zealand legislation adequately reflected changes made by the IMF to its governing document, the Articles of Agreement, during governance reforms in 2008 and 2010. The reforms were agreed to by IMF Governors (including New Zealand’s Minister of Finance) in 2008 and 2010. They come into effect when the requisite majority of IMF members have ratified them, and New Zealand is then bound by the revised Articles, in accordance with the IMF’s rules, whether or not they have been incorporated into New Zealand legislation. As the 2008 reforms have already come into effect, it is appropriate to adjust the International Finance Agreements Act to reflect the revised Articles of Agreement. Clauses 5 and 6 of the bill would do so by amending Schedule 1 of the Act.

The reforms agreed to in 2008 (clause 5) relate to a realignment of IMF members’ quota shares to reflect their respective economic weight, and to enhance the voting power and representation of low-income countries. The reforms agreed to in 2010 (clause 6) relate to reforming the executive board of the IMF.

Regulation-making power
Clause 4 of the bill seeks to amend the International Finance Agreements Act so that future changes to the Articles of Agreement could be incorporated into the Act by regulation, rather than needing legislative amendment such as that proposed in this bill. The explanatory note to the bill states that the regulation-making power would simplify the process by which New Zealand meets its international obligations, taking into account the fact that New Zealand is bound by amendments to the IMF’s Articles once they have been approved by the requisite majority of IMF members and come into effect.

We have considered carefully whether such a regulation-making power is desirable, and have consulted the Regulations Review Committee. That committee was not concerned about the proposed regulation-making power, on the basis that New Zealand is bound by changes to the Articles of Agreement whether or not they are incorporated into our domestic law. It notes that the power to amend the Act proposed in this bill is about
ensuring that our domestic law correctly reflects New Zealand’s commitments regarding international finance agreements, rather than granting the executive the power to make changes to the law as it has been decided by Parliament. The Regulations Review Committee was further reassured by the inclusion in the bill of the safeguard that any regulations made pursuant to the regulation-making power would be subject to disallowance under the Regulations (Disallowance) Act 1989.
Appendix

Committee procedure
The International Finance Agreements Amendment Bill was referred to the committee on 8 May 2012. The closing date for submissions was 5 June 2012. No submissions were received. We received advice from the Treasury. The Regulations Review Committee reported to the committee on the powers contained in clause 4.

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 Dr Nick Smith
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General, *Public Entities' Progress in Implementing the Auditor-General's Recommendations 2012*, 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
International treaty examination of the Convention between New Zealand and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Report of the Finance and Expenditure Committee

Contents
Recommendation 2
Appendix A 3
Appendix B 4
International treaty examination of the Convention between New Zealand and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

Recommendation

The Finance and Expenditure Committee recommends that the House take note of its report.

The Finance and Expenditure Committee has examined the Convention between New Zealand and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income. The national interest analysis for the convention is appended to this report.

The convention will replace an existing agreement with Canada that dates back to 1980. It updates the existing convention to reflect international developments and changes in each country’s treaty policy since then, to ensure that arrangements governing double taxation between New Zealand and Canada are up-to-date and provide the degree of certainty and protection that taxpayers expect. The main change to the agreement is the reduction of withholding tax rates on dividends, interest, and royalties in line with New Zealand’s wider strategy on treaty withholding tax rates. The revenue cost to New Zealand as a result of the reduction in withholding rates is expected to be relatively small, at approximately half a million dollars per year.

Labour members understand and accept that overseas investors into New Zealand do not receive the full range of government services paid for out of taxes, such as healthcare, and should not pay the full rates of tax paid by New Zealanders who do. Nevertheless, overseas investors do benefit from the societal settings maintained through taxation including a healthy, well-educated population, and enforcement of property rights and the rule of law. Because overseas investors do benefit from taxes, they should pay some tax, albeit at lower rates.
Committee procedure

The international treaty examination of the Convention between New Zealand and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income was referred to us by the Foreign Affairs, Defence and Trade Committee on 28 June 2012. We met on 25 July, and 1 and 2 August 2012 to consider the convention, and received advice from the Inland Revenue Department.

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 Dr Nick Smith
Appendix B

Agreement between Canada and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

National Interest Analysis

Executive summary

The Agreement between Canada 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 an existing agreement with Canada (the existing DTA) that dates back to 1980. Canada is a significant trading partner for New Zealand and an important source of investment. As of March 2011, Canada was our 10th largest investment partner and the total stock of investment between the two countries was worth $3.15 billion. Canada is also our 19th largest bilateral trade partner. In the year to June 2011, total bilateral trade between New Zealand and Canada was worth $1.07 billion.

The new DTA updates the existing DTA to reflect international developments and changes in each country’s treaty policy since 1980. The new DTA represents an improvement on the existing DTA and because of this should be welcomed by taxpayers.

The DTA is expected to enhance New Zealand’s cross-border trade and investment by

- providing greater certainty in respect of the taxation of cross-border income
- reducing compliance costs
- lowering withholding taxes on dividends, interest and royalties (with rates in line with New Zealand’s broader tax treaty strategy).

The new DTA is intended to ensure the arrangements governing double taxation between New Zealand and Canada are up-to-date and provide the levels of certainty and protection that taxpayers expect from a modern treaty.

The allocation of taxing rights under the new DTA for the most part remains unchanged from the existing DTA. The most significant change to the agreement is the reduction of withholding tax rates on dividend, interest, and royalties which, as explained above, have been reduced in line with New Zealand’s new, wider strategy on treaty withholding tax rates. The revenue cost to New Zealand as a result of the reduction in withholding rates is expected to be relatively small, at approximately $0.5 million per year.

On balance, officials are satisfied that the potential advantages to New Zealand from the new DTA with Canada entering into force will outweigh any potential disadvantages.
CONVENTION BETWEEN NEW ZEALAND AND CANADA FOR AVOIDANCE OF DOUBLE TAXATION

It is proposed that the new DTA will 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**

The Agreement between Canada 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 Wellington on 3 May 2012. It was signed in English and French, with both texts having equal authority. The English text of the new DTA is attached at Annex 1.

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 28 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. It is expected that the new DTA will enter into force by the end of 2012.

As each provision of the new DTA comes into effect in accordance with Article 28, 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**

Canada is one of New Zealand’s key trading and investment partners. As of March 2011, Canada was our 10th largest investment partner, and the total stock of investment between the two countries was worth $3.15 billion. Canada is also our 19th largest bilateral trade partner. In the year to June 2011, total bilateral trade between New Zealand and Canada was worth $1.07 billion. Exports to Canada in this period were worth $540 million. (New Zealand export figures to Canada may be higher as exports to Canada via the United States are not reflected in official statistics.) In the same period, New Zealand’s imports from Canada were worth NZ$529.7 million. (Further information about investment and trade flows between New Zealand and Canada is attached as Annex 2.)

Given Canada’s position as one of New Zealand’s key trading partners, it is important for the treaty to be kept up-to-date and reflect each country’s current treaty policies.

The existing DTA was concluded in 1980 and is one of New Zealand’s older tax treaties. As such, the existing treaty does not reflect international developments or developments in New Zealand’s treaty policies and practices. In particular, the withholding tax rates specified in the existing DTA are substantially higher than those in our more recent DTAs.

The new DTA represents an improvement from the existing treaty and will provide the levels of certainty and protection that taxpayers expect from a modern treaty. Amongst
other things, the new DTA includes lower withholding tax rates, similar to those agreed to in the recent Protocol with the United States and the new Australia-New Zealand double tax agreement (DTA). The new DTA reflects New Zealand’s more recent treaty policies.

**What double tax agreements do**

Double tax agreements (DTAs) foster growth in economic activity between countries by reducing tax impediments to cross-border services, trade, and investment. Essentially, DTAs provide bilateral solutions to problems that are difficult to solve unilaterally. They provide greater certainty of tax treatment, provide a basis for sharing the cost of relieving double taxation, provide a bilateral basis for limiting withholding taxes on cross-border investment returns, reduce compliance costs for business, and exempt certain short-term activities from tax in the jurisdiction in which the activities are conducted.

New Zealand concluded its first DTA in 1947 with the United Kingdom. Since then, New Zealand has progressively developed a network of DTAs, predominantly with its main trading and investment partners, and has 37 DTAs now in force.

New Zealand enters into DTAs in large part on the basis of self-interest. That is, because DTAs create favourable conditions for increased economic activity between countries, they are expected to be beneficial to New Zealand in economic and fiscal terms at a national level.

More generally, however, DTA networks also make an important contribution to the expansion of world trade and to the development of the world economy. These are also key objectives of the OECD. The OECD has assumed a leading role, internationally, in promoting the use of DTAs.

In particular, the OECD has produced a Model Tax Convention, together with a comprehensive commentary, for member and non-member countries to use as a basis for concluding DTAs. The OECD Council has also issued an express recommendation to 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…

- when concluding new bilateral conventions or revising existing bilateral conventions, to conform to the Model Tax Convention, as interpreted by the Commentaries thereon.”

DTAs provide the following general benefits:

---

1 The recommendation was issued by the OECD Council on 23 October 1997, but follows similar recommendations that have been in place since before New Zealand joined the OECD.
Benefits to taxpayers. A key concern for any taxpayer wanting to enter into commercial activity in another jurisdiction is the requirement to 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. These issues range from the complex, such as transfer pricing disputes, to the more mundane, such as whether taxes paid in the other jurisdiction are creditable against home jurisdiction tax. DTAs help alleviate many of these problems. For example, they establish a framework for the taxation of cross-border activity, prohibit the application of discriminatory taxes, and establish a mutual agreement procedure for resolving tax disputes. The mutual agreement procedure is a key benefit for taxpayers. It is not a full disputes resolution mechanism as it only obliges the two tax authorities to endeavour to resolve issues. However, it enables tax authorities to have a dialogue about a taxpayer’s issues. It also provides a low compliance-cost alternative to seeking redress through the Courts for taxpayers concerned that they have not been taxed correctly in either or both jurisdictions (including in transfer pricing cases).

Benefits to investors. Investing across an international border often involves risk. Among other things, tax laws tend to be very complex and can change suddenly. DTAs assist investors by specifying the maximum rates of withholding taxes 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 fact that the rates are “locked in” by treaty means that investors can make business decisions with more confidence.

Benefits to governments. Low tax rates can lead to increased foreign investment and a reduction in the cost of importing capital. Countries may lower their tax rates unilaterally. However, a benefit of lowering tax rates in a bilateral treaty setting is that it ensures that the rates are also lowered on a reciprocal basis by the treaty partner. This secures benefits for domestic investors. In addition, the reduced foreign tax can flow through to the New Zealand tax base through a reduced need to provide foreign tax credits.

Relief of double taxation. Double taxation distorts business decisions and generally hinders cross-border economic activity. In recognition of this, most jurisdictions unilaterally relieve double taxation of their tax residents. This is typically achieved by means of a tax credit mechanism, but some jurisdictions prefer an exemption method. 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.
**Bilateral co-operation for administration of tax laws.** It is an internationally accepted principle that countries do not assist each other in the enforcement of tax laws. However, most countries tax their residents on income earned worldwide. International co-operation between tax authorities is also needed to enable tax authorities to verify that offshore income is being correctly reported by their tax residents. DTAs resolve this problem by establishing bilateral treaty arrangements for the exchange of tax-related information such as tax records, business books and accounts, bank information and ownership information. The information that is exchanged assists tax authorities to detect and prevent tax evasion and tax avoidance. More generally, the mere existence of DTAs can deter evasion and avoidance. This is one of the key benefits of DTAs for governments. The recent global financial crisis has highlighted the importance of bilateral co-operation in the form of exchange of information, and there is now a very strong international imperative (driven by the G-20 and the OECD) for all governments to enter into comprehensive exchange of tax information networks with relevant partners.

**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 new DTA involves a trade-off between advantages and disadvantages to New Zealand. On balance the new DTA is expected to be beneficial to New Zealand.

**Advantages to New Zealand of the new DTA entering into force**

DTAs are generally designed to foster increased trade and investment. Canada is a key trading and investment partner. It is important to New Zealand’s interests that a DTA between Canada and New Zealand remains up-to-date and relevant to the prevailing business environment. The new DTA will update existing arrangements to ensure the DTA provides modern levels of certainty and protection with respect to cross-border income earning activities between the two countries.

The allocation of taxing rights under the new DTA largely remains unchanged from existing arrangements. However, withholding tax rates imposed by both New Zealand and Canada on dividend, interest, and royalties have been reduced in line with New Zealand’s new, wider strategy on treaty withholding tax rates.

- **Dividends:** the dividend withholding tax rate will be reduced from 15 percent to 5 percent of the gross amount of the dividends if the dividend is paid to a company that directly owns at least 10 percent of the voting power of the company paying the dividend.

- **Interest:** the interest withholding tax rate will be reduced from 15 percent to 10 percent generally and a rate of 0 percent for financial institutions provided the approved issuer levy is paid by the New Zealand borrower.

---

2 In New Zealand, this principle is stated in Connor v Connor [1974] 1 NZLR 632.
• Royalties: in the case of royalties, the withholding tax rate has been reduced from 15 percent to 10 percent generally. However, a further reduced rate of 5 percent applies for copyright royalties and royalties for computer software and other patent or information concerning industrial, commercial, or scientific experience.

The new DTA has anti-abuse provisions that are aimed at preventing persons who are not entitled to the low treaty withholding tax rates from gaining access to those low rates.

**Disadvantages to New Zealand of the new DTA entering into force**

New Zealand may forgo some revenue because of the reduction on withholding taxes from the existing DTA. However, the reciprocal nature of the DTA means that these revenue costs will be offset by increases in revenue when taxing rights are allocated to New Zealand and Canadian tax is correspondingly reduced or eliminated under the new DTA. The revenue cost to New Zealand arising from the reduction in withholding taxes is estimated to be $0.5 million per year.

The new DTA provides for the assistance in collection of taxes imposed by the other country. Inland Revenue will incur some costs if a request for assistance in collection is made by the Canadian 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. Furthermore, the arrangement is reciprocal which means New Zealand will be able to make a request to the Canadian Revenue for assistance to collect taxes on behalf of New Zealand in Canada.

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 not as relevant for a renegotiation of an existing DTA as many of these disadvantages have already 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.

It would be an option for New Zealand not to enter into the new DTA with Canada. This would mean the existing DTA will continue to apply but would not reflect developments in New Zealand’s treaty policies and practices. In particular, the high withholding tax rates on dividends, interest, and royalties would continue to apply.

**Conclusion**

On balance, it is considered to be in New Zealand’s interests to conclude the new DTA with Canada. It is expected that a more modernised DTA will enhance cross-border trade and investment by providing greater certainty in the taxation of cross-border trade. It will also bring the DTA with Canada in line with New Zealand’s current strategy on withholding taxes.

**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 new DTA will not impose any requirements on taxpayers. The obligations it will impose are on the respective Governments, restricting their taxing rights under domestic
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. The broad framework for allocating taxing rights under the new DTA is essentially unchanged from the existing DTA. The key provisions of the DTA are as follows:

**Business profits (Articles 5 and 7)**

Similar to the existing DTA, the new DTA will ensure that business profits of an enterprise will be taxable only in the jurisdiction where the enterprise is a tax resident unless profits are derived through a permanent establishment in the jurisdiction of source. In that case, the profits may be taxed in the source jurisdiction. A permanent establishment generally exists in the jurisdiction in question when there is a fixed place of business through which the business of an enterprise is wholly or partly carried on. However, article 5 includes a number of clarifying and deeming rules that refine the permanent establishment concept. The clarifying and deeming rules are updated in the new DTA to match New Zealand’s current standard treaty policy.

**Income from services (Article 5)**

A key change from the existing DTA is that the new DTA includes an optional OECD provision (adopted by the OECD in 2008) that deals more comprehensively with the taxation of income from services. An enterprise will be deemed to have a permanent establishment if it performs services in the other jurisdiction and either of the following criteria are met:

- the services are performed through an individual who is present in the other jurisdiction for at least 183 days in any 12-month period and more than 50 percent of the gross revenues attributable to the active business activities of the enterprise during this time are derived from the services performed in that jurisdiction through the individual; or

- the services are performed in that other jurisdiction in relation to the same or connected projects, through one or more individuals, for at least 183 days in any 12-month period. It is now standard treaty practice for New Zealand to seek the inclusion of this provision in DTA negotiations.

**Income from immovable property (Article 6)**

As is the case in the existing DTA, income from immovable property will generally be taxed in the jurisdiction where the property is situated.
Ship and aircraft operations (Article 8)

As is the case in the existing DTA, profits of an enterprise of a country from the operation of ships or aircraft in international traffic will generally be taxable only in that country. However, the new DTA includes a new rule that will ensure that any profits derived from domestic carriage can be taxed by the country of source. This new rule has been New Zealand standard treaty policy since 1995.

Non-resident withholding tax (Articles 10, 11 and 12)

The new DTA reduces withholding taxes, consistent with New Zealand’s broader strategy on treaty withholding tax rates. The main objective of that strategy is to reduce withholding taxes on foreign non-portfolio dividends received by New Zealand residents. This will reduce tax barriers for New Zealand businesses with direct investments offshore, making it less costly to repatriate foreign profits back to New Zealand where they can be reinvested or distributed to shareholders.

The withholding tax rates in the existing DTA stand at 15 percent for dividend, interest, and royalty payments between Canada and New Zealand.

Article 10 of the new DTA limits the rate of withholding tax on dividends on a reciprocal basis to 5 percent if the dividend goes to a company owning at least 10 percent of the company making the distribution, and in all other cases the rate is 15 percent. The rates agreed in this treaty are consistent with New Zealand’s overall policy of seeking to reduce rates of withholding taxes for non-portfolio dividends where possible. Note that, as was the case with the existing DTA, article 10 preserves Canada’s right to impose its branch profits tax. However, the maximum rate of tax that Canada imposes has been reduced from 15 percent to 5 percent in the new DTA.

Article 11 of the new DTA generally limits the rate of withholding tax on interest on a reciprocal basis to 10 percent. For financial institutions, the withholding tax rate will be reduced to 0 percent. However, in the case of a New Zealand borrower paying interest to a Canadian financial institution, the 0 percent rate will only apply where approved issuer levy has been paid in New Zealand.

Article 12 of the new DTA generally limits the rate of withholding tax on royalties on a reciprocal basis to 10 percent per cent generally. However, a rate of 5 percent will apply for copyright royalties and royalties for computer software and other patent or information concerning industrial, commercial, or scientific experience. Note that the definition of royalties in the new DTA is also wider than the definition in the existing DTA – namely the definition in the new DTA includes “know-how payments” (paid for the provision of information concerning industrial, commercial, or scientific experience) and “forbearance payments” (made to secure the exclusive right to use property). These definitions are now a standard feature of New Zealand’s treaty practice.

Alienation of property (Article 13)

As was the case with the existing DTA, gains from the alienation of property will generally be taxable in the country of source. However, gains from the alienation of ships or aircraft operated in international traffic will remain taxable only in the country of residence.
A new addition to the article is a feature that ensures double taxation does not occur in the case of “exit taxes” imposed on an individual who ceases to be a tax resident of one country and immediately becomes a tax resident of the other country. The individual can elect, in the new country of residence, to be treated as having alienated their assets at the time when their place of residence is changed. The mechanism is complex, but is intended to ensure that each country can only tax the amount of gain that represents an increase in value of the asset that occurred while the individual was tax resident in that country. The rule was proposed by Canada, and generally supports Canada’s “exit tax” rules.

**Income from employment (Article 14)**

As is the case in the existing DTA, income from employment will be taxable only in the country of which the employee is a resident, unless the employment is performed in the other country and certain other criteria are met.

**Directors’ fees (Article 15)**

As is the case in the existing DTA, directors’ fees will be taxable in the country where the company paying the fees is resident.

**Entertainers & sportspersons (Article 16)**

The allocation of taxing rights in this article generally remains the same as the existing DTA. That is, the country of source is able to tax entertainers and sportspersons for performances within its jurisdiction, even if the person is only present there for a very short period. The new DTA also includes an anti-abuse rule to prevent individuals from circumventing the article by having their fees paid to a separate enterprise.

**Pensions (Article 17)**

Although the allocation of taxing rights in this article is a departure from New Zealand’s preferred policy position of sole taxation by the country of residence, it remains the same as the existing DTA. Pensions and annuities will be taxable in both the country of source and the country of residence. However, the rate of tax on such payments is limited to 15 percent in the country of source. The article also provides a new provision which preserves any exemption from tax in the country of source on war pensions and allowances. Additionally, taxation of alimony payments in the country of residence will be limited to the amount that would have been taxable in the country of source if the recipient of that payment had been a resident of that country.

**Government service (Article 18)**

As was the case in the existing DTA, salaries and wages for services to a Government of one country will generally be exempt from tax in the other country.

**Students (Article 19)**

As was the case in the existing DTA, students of one country who are in the other country solely for the purpose of their education or training shall not be taxed in that other country on payments from outside that country received for the purpose of their maintenance, education or training.
Other income (Article 20)
The allocation of taxing rights under article 20 remains unchanged from the existing DTA. The country of source retains a right to tax income that is not dealt with in the other articles of the new DTA. As with the existing DTA, Canada retains a taxing right of up to 15 percent on distributions from Canadian trusts, provided that the distribution is taxed in New Zealand.

Non-discrimination (Article 22)
The OECD model includes an article that prohibits discrimination on the grounds of nationality, situs of an enterprise, ownership of capital, and (in limited circumstances) residence. Article 22 of the new DTA lays down an alternative formulation that we have used in a number of other treaties: this requires that non-residents be treated in a comparable manner to other non-residents, rather than as New Zealand residents. The existing DTA does not include a non-discrimination article.

Other administrative requirements
As was 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 21), complying with the mutual agreement procedures set out in the new DTA (Article 23), and complying with the arrangements for the exchange of information (Article 24).

The new DTA also authorises the New Zealand and Canadian tax authorities to assist each other in the collection of taxes. The article is based on an optional article that was included in the OECD Model Tax Convention in 2002. The existing DTA did not contain any similar provision. New Zealand does not seek the inclusion of this article in all DTAs, but does seek its inclusion in DTAs with countries where it can be expected to give rise to real benefits. This is likely to be the case with Canada.

Dispute resolution mechanisms
Similar to the existing DTA, the new DTA also provides for taxpayer disputes to be resolved through “mutual agreement” by the revenue authorities in both countries. Rather than having to pursue a case through the courts – possibly, in both countries – a taxpayer can approach the local tax authority under the mutual agreement procedure set out in Article 23. If that authority considers the case to be justified, and cannot resolve it through its own actions, it shall seek to do so through mutual agreement with the tax authority of the other country. 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 countries.

The mutual agreement procedure is not a true disputes resolution mechanism as it does not require both parties to reach agreement. The obligation is for both parties to “endeavour” to resolve the issue. However, the measure is popular with taxpayers as it is a low-cost option for pursuing tax disputes and it requires both parties to reconsider issues in consultation with each other. It remains open to the taxpayer to pursue the matter through the Courts if the outcome of the mutual agreement procedure is unsuccessful (or if they do not agree with the outcome).
CONVENTION BETWEEN NEW ZEALAND AND CANADA FOR AVOIDANCE OF DOUBLE TAXATION

The mutual agreement procedure also generally requires the tax authorities of the two countries to endeavour to resolve together any difficulties or doubts about the correct interpretation or application of the new DTA, and allows them to consult together for the elimination of double taxation in cases not provided for in the new DTA.

Reservations

The treaty does not allow parties to make a reservation upon ratification.

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

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.

Article 28 provides for the new DTA to be brought into force through an exchange of diplomatic notes between the Contracting States. The new DTA will enter into force on the date of the last of these notes. New Zealand will be in a position to notify Canada that all procedures required by domestic law have been completed once the Order in Council has entered into force, 28 days after its publication in the Gazette.

The provisions of the new DTA will then have effect from various dates, according to the terms of the new DTA. In New Zealand, the provisions relating to withholding taxes will have effect on or after the first day of the second month following entry into force, and for other taxes for income years beginning on or after 1 April following entry into force. In the case of Canada, the provisions relating to withholding taxes will have effect on or after the first day of the second month following entry into force, and for other taxes the new DTA will have effect for taxable periods beginning on or after 1 January following entry into force.

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 of the treaty action

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 Canada are expected to be favourable. The new DTA will enhance the existing
investment and trade relationship by ensuring the arrangements governing double taxation between New Zealand and Canada 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 Canada, in line with internationally recognised norms.

The costs to New Zealand of compliance with the treaty

The principle cost to New Zealand with the new DTA will be the reduction in withholding tax rates on dividends, interest, and royalties. 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. Data limitations prevent officials from precisely estimating revenue costs, including, the likely revenue cost of the reduction in withholding tax rates. However, officials estimate the prima facie reduction of tax revenue as a result of the reduced withholding tax rates with Canada to be $0.5 million per annum.

As discussed, the new DTA will be expected to give rise to favourable economic benefits, such as increased trade and investment. Any costs may also be offset by other impacts of the DTA. For example, there will be some offsetting effect to the New Zealand tax base from the reduction of tax in Canada, and the reduced need for New Zealand to allow foreign tax credits. Overall, it is expected that the economic benefits will outweigh the costs.

It has been noted above that the assistance in collection of taxes provisions of the new DTA will result in some administrative costs for Inland Revenue because of the need to collect Canadian taxes. While these costs cannot be quantified precisely, they are expected to be small. Additionally, the arrangement is reciprocal in nature and any costs incurred will likely be offset by the benefits accruing to New Zealand from the ability to ask Canada to collect taxes on our behalf.

Consultation with the community and parties interested in the treaty action

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 no material concerns were raised. No private sector consultation has been entered into.

Subsequent protocols or amendments to the treaty and their likely effects

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. While 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.
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**

Under Article 29, either country may terminate the new DTA by giving notice of termination on or before 30 June in any calendar.

In such event, the new DTA will cease to have effect for New Zealand for payments made on, or after, the first day of the second month following the notice of termination (in respect of withholding tax), and for any income year beginning on or after 1 April in the calendar year following the year in which the notice of termination is given (in respect of other New Zealand tax).

The new DTA will cease to have effect for Canada for payments made on, or after, the first day of the second month following the notice of termination (in respect of withholding tax), and for taxation years beginning after the end of the calendar year following the year in which the notice of termination is given (in respect of other Canadian tax).

**Agency Disclosure Statement**

Inland Revenue has prepared this extended national interest analysis (NIA). It has undertaken an analysis of the issue of implementing the new DTA between Canada 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.

The allocation of taxing rights under the new DTA for the most part remains unchanged from the existing DTA. It is broadly consistent with the New Zealand negotiating model, which in turn is based on the OECD’s Model Tax Convention. However, withholding tax rates on dividend, interest and royalties have been reduced in line with New Zealand’s new, wider strategy on treaty withholding tax rates. The revenue cost to New Zealand as a result of the reduction in withholding rates is expected to be relatively small, at approximately $0.5 million per year.

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.

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 no material concerns were raised.

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.
ANNEX 2: New Zealand-Canada cross-border investment and trade

Investment

As at 31 March 2011, the total stock of investment between New Zealand and Canada was worth $3.15 billion. Canada is New Zealand’s 10th largest investment partner.

New Zealand’s total stock of investment in Canada was worth NZ$1.29 billion as at 31 March 2011. This represents 0.8 percent of New Zealand’s total investment abroad and is comparable to New Zealand’s total investment in Hong Kong (NZ$1.2 billion). Of this, NZ$60 million was direct investment and NZ$687 million was portfolio.

The total stock of investment from Canada into New Zealand was worth NZ$1.86 billion as at 31 March 2011. A similar amount has been invested by the People’s Republic of China (NZ$1.83 billion). Of this investment by Canada, NZ$1.02 billion was direct, which constitutes 1.1 percent of foreign direct investment into New Zealand. NZ$356 million was portfolio investment.

Trade

In the year to June 2011, total bilateral trade between New Zealand and Canada was worth $1.07 billion. This constitutes 1.2 percent of New Zealand’s total trade, and is comparable to New Zealand’s trade with France (1.2 percent) and Hong Kong (1.0 percent). Canada is currently our 19th largest bilateral trading partner.

Exports to Canada in this period were worth NZ$540 million. This is a 12.8 percent increase over the previous year, although it is a decrease of 7.2 percent since 2001. In the year to June 2011, New Zealand’s main exports to Canada were beef meat (NZ$119.5 million) sheep meat (NZ$112.4 million) and wine (NZ$59.2 million). Canada is New Zealand’s seventh largest export market for meat products and fourth largest market for wine.

In the same period, New Zealand’s imports from Canada were worth NZ$529.7 million. This is a 16.6 percent increase over the previous year, and an increase of 18 percent since 2001. New Zealand’s principal imports from Canada consisted of fertilisers (NZ$74 million), pig meat (NZ$35.5 million), and turbine engines (NZ$32.3 million).
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Financial performance</td>
<td>2</td>
</tr>
<tr>
<td>Operating environment</td>
<td>3</td>
</tr>
<tr>
<td>Strategic priorities</td>
<td>3</td>
</tr>
<tr>
<td>Scrutiny and performance under mixed ownership</td>
<td>4</td>
</tr>
<tr>
<td>Tourism strategy</td>
<td>4</td>
</tr>
<tr>
<td>Airport charges and regulation</td>
<td>5</td>
</tr>
<tr>
<td>Subsidy for Cook Islands route</td>
<td>5</td>
</tr>
<tr>
<td>Change of chief executive</td>
<td>5</td>
</tr>
</tbody>
</table>

**Appendices**

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Committee procedure</td>
<td>6</td>
</tr>
<tr>
<td>B</td>
<td>Corrected transcript</td>
<td>7</td>
</tr>
</tbody>
</table>
Air New Zealand Limited

Recommendation

The Finance and Expenditure Committee has conducted the financial review of the 2010/11 performance and current operations of Air New Zealand Limited and recommends that the House take note of its report.

Introduction

Air New Zealand Limited is a public company listed on the New Zealand and Australian stock exchanges. It is deemed, under a sessional order, to be a public organisation for the purposes of Standing Orders and therefore subject to financial review.

The Crown is the major shareholder in Air New Zealand; at 30 June 2011 it owned just less than 74 percent of the shares. The Crown’s shareholding diminishes each year as it does not participate in Air New Zealand’s dividend reinvestment plan. The Government has announced its intention to reduce its shareholding in Air New Zealand further as part of its plans to extend the mixed ownership model.

The Crown also holds one special rights share, the Kiwi Share, which does not carry general voting rights but requires the Crown’s consent for certain actions by the company. This is designed to maintain Air New Zealand’s status under international aviation agreements as a substantially New Zealand-owned and -controlled company.

Financial performance

Normalised earnings before tax in 2010/11 were $75 million, 45 per cent lower than the previous year.\footnote{Air New Zealand Limited, Annual Financial Results 2011, p. 2. This document, in conjunction with the Annual Shareholder Review 2011, constitutes Air New Zealand’s Annual Report for 2010/11.} While the airline achieved a profit of $112 million in the first half of the year, this was eroded in the second half by reduced demand for travel after the Christchurch and Japan earthquakes, and by rising fuel prices. The average price of jet fuel was 28 percent higher than it had been in the previous year, and has doubled over the past three years.

The company has estimated that its earnings were $70 million lower as a consequence of the Christchurch and Japan earthquakes, which reduced tourist traffic and entailed costs such as providing additional capacity into Christchurch to help the relief effort, and compassionate fares for those affected by the Christchurch quakes.

Because the 2010/11 results are now rather dated (the 2011/12 results are due to be announced on 30 August), our review focused on Air New Zealand’s current performance and the strategic challenges it faces. The interim results for the six months ending 31 December 2011 show that its operating environment continues to be difficult, the weak global economy making it hard to pass on higher fuel costs to passengers. It announced
normalised earnings before tax of $33 million for the six months to December, which it termed a “disappointing” result, and acknowledged that it will be a challenge to repeat the 2010/11 annual result.

The Office of the Auditor-General issued an unmodified audit opinion on Air New Zealand’s financial statements, rating its management control environment and financial information systems and controls as “very good”.

Operating environment

The airline industry is capital-intensive, and highly vulnerable to changes in demand and costs, particularly oil prices. It operates on extraordinarily fine revenue margins; we were informed that IATA projects the industry’s profit margin to be only 0.5 percent in 2012, half that of 2011, which in turn was half the previous year’s.

International demand for air travel has been clearly affected by the economic turmoil in Europe and the slow recovery in Japan. Domestic demand has been mixed but relatively flat, with passenger numbers through Christchurch still 5 percent below the pre-earthquake average, and travel from Wellington reduced as a result of public sector cost savings. Air New Zealand has, however, seen good growth in demand around the Pacific Rim (China, the United States, the Pacific Islands, and Australia, and more recently some growth from Japan), and has introduced new services to Bali and the Sunshine Coast.

The cost of jet fuel has doubled over three years, presenting a major challenge, particularly on the airline’s long-haul routes where fuel can represent 50 percent of total costs. Together, these issues of demand and cost shape Air New Zealand’s strategy for the next few years.

Strategic priorities

Despite the challenges, Air New Zealand has announced publicly that it aims to improve its underlying profitability by $195 million a year by 2015 through cost reductions, efficiencies, and revenue growth. Its main costs are labour and fuel. It is reducing its workforce by 440 employees (about 3.8 percent) in the current financial year, and says that major investment over the past several years in progressively replacing its fleet with more fuel-efficient aircraft has been critical in remaining profitable. It plans to invest a further $2 billion in new equipment over the next five years.

The airline is reviewing its long-haul services, which it says are not operating profitably because of high fuel costs and reduced demand. Over the next five years it plans to focus increasingly on Pacific Rim routes and less on Europe, and to make increasing use of partnerships with other airlines to provide effective services. It sees this as part of a worldwide trend, with airlines focusing increasingly on short- and medium-range services where costs can be more readily controlled, and on alliances and mergers between airlines. The airline stressed, however, that it takes an integrated view of its network, as loss-making routes can be important for feeding into profitable ones.

Air New Zealand has been expanding its Australasian presence. It recently consolidated its alliance with Virgin Airlines by taking a shareholding of just under 20 percent. It explained that this was an efficient approach, equivalent to putting 12 aircraft onto Australian routes.
Air New Zealand’s priorities include continuing to invest in domestic services to a world-class standard, and stimulating domestic demand by offering plenty of low fares. It says that a recent independent survey showed that relative to its population, New Zealand is well served for flights, and domestic fares are among the lowest in the world.

**Scrutiny and performance under mixed ownership**

As Air New Zealand is already a mixed-ownership company, we sought its views on how well the mixed ownership model works. The company’s chairman, John Palmer, said he considers that Air New Zealand’s ownership mix provides a good balance, and he has been a strong public advocate for the model. Having the Crown as a cornerstone shareholder gives the company stability, allowing it to exercise its broader responsibilities to “New Zealand Inc.” as the national flag carrier alongside its commercial responsibility to a wider body of shareholders. Unlike a purely profit-driven organisation, he said, Air New Zealand pursues profit in the context of its wider corporate social responsibilities.

In terms of scrutiny, Air New Zealand is accountable both to Parliament, and to the markets through the New Zealand and Australian stock exchanges. We explored with the company how well it believes this scrutiny works, as some of us are concerned about parliamentary scrutiny being removed from companies under mixed ownership. The company’s chairman said he sees no conflict between the dual accountabilities; appearing before a parliamentary select committee does not compromise the company’s responsibility to the markets. However, he was careful to note that results for the 2011/12 year, just ended, could not be discussed before they were released publicly. On the other hand, as the company’s market disclosure includes opportunities for questions at public meetings, he does not consider that parliamentary scrutiny adds information of value that cannot be gained by other means. He observed that the intense scrutiny undertaken by analysts of the performance of listed companies exceeds that of any public forum, but he also emphasised his view that the most valuable form of scrutiny was that which the management and board demand of themselves.

Some of us are concerned about the removal of companies under mixed ownership from the coverage of the Official Information Act 1982. Air New Zealand is not subject to the Act, but its chairman commented from his experience as chair of Solid Energy that the Act can entail a significant drain on management time and resources, and a balance is needed to achieve the most effective disclosure.

An argument for mixed ownership is that it can help companies raise capital. We sought Air New Zealand’s view about its options should it wish to raise funds. The company said the situation has not arisen, as it manages its balance sheet conservatively. It conceded that the Crown was unlikely to wish to inject equity in the current economic climate, but saw the alternative of debt financing through bonds as undesirable in view of the lessons learned from the global financial crisis.

**Tourism strategy**

Air New Zealand expressed disappointment in the effectiveness of tourism efforts by “New Zealand Inc.”. It accepted a share of responsibility for this, but argued there is an urgent need for all parties in the tourism sector to review New Zealand’s collective approach to developing trade and tourism. In this regard, it noted that the Government’s
focus has tended to be on the supply side—stimulating competition and attracting more airlines and seats on routes to and from New Zealand—whereas Air New Zealand considers the focus should be on increasing demand and thus the number of passengers. With fuel costs high, airlines need 80 percent load factors just to break even, and several carriers have pulled out of the New Zealand market over the past 12 months as low patronage made their services uneconomic. Rather than seeking to stimulate competition in a stagnant market, Air New Zealand believes a clear strategy is needed for the deployment of New Zealand’s tourism resources to develop the markets of greatest opportunity.

**Airport charges and regulation**

The company expressed strong concern about increases in the landing fees charged by New Zealand airports. It noted that such fees represent a significant cost to the business, and are projected to rise steeply over the next five years (by 54 percent in the case of Wellington airport), increasing Air New Zealand’s costs by $200 million.

We were interested to hear that Air New Zealand considers the services provided by the Airways Corporation and Metservice, in contrast, to be well-priced and their approach cooperative and productive. It does not attribute the difference to the fact that they are State-owned enterprises while airports are in mixed ownership, but rather to the regulatory regime which it believes allows airports to abuse their monopoly power. It notes that the recommendations from a Commerce Commission review of airports in 2002 were not acted on, and it hopes that a current review will lead to regulatory change. We are aware that airport charges have long been of concern to the company, and will be interested in the outcome of the Commerce Commission’s review.

**Subsidy for Cook Islands route**

We asked Air New Zealand about the subsidy it receives from the Government of the Cook Islands for its service between Rarotonga and the United States, which amounts to about $13 million in 2012—a significant part of the Cook Islands’ budget. Air New Zealand said the service is not commercially viable, but as the Cook Islands Government considers it vital for the country’s tourism industry, it has for some years covered Air New Zealand’s losses on the route to allow it to break even.

Air New Zealand acknowledged that the subsidy is substantially higher in 2012 (reportedly a 50 percent increase from 2011), but said this is because global conditions have meant fewer passengers on the route, not because Air New Zealand’s costs have risen. The chairman added that the airline’s willingness to provide the service on a cost-recovery basis illustrates its sense of social responsibility. We note that the airline has been commended in international forums for its transparent disclosure of the costs involved.

**Change of chief executive**

We wish to record our appreciation of the work done by Air New Zealand’s chief executive, Rob Fyfe, who has announced that he will step down at the end of December 2012. His dedication to the job and personal touch have been much appreciated. He will be replaced by the current group general manager international, Christopher Luxon, who came to the company in 2011 from an international career with Unilever.
Appendix A

Approach to this financial review
We met on 18 July and 15 August 2012 to consider the financial review of Air New Zealand Limited. We heard evidence from Air New Zealand Limited and received advice from the Office of the Auditor-General.

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 Dr Nick Smith

Evidence and advice received

Organisation briefing paper, prepared by committee staff, dated 18 July 2012.
Appendix B

Corrected transcript of hearing of evidence 18 July 2012

Members
Todd McClay (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
Hon Clayton Cosgrove
Hon Ruth Dyson
Paul Goldsmith
John Hayes
Dr Russel Norman
Rt Hon Winston Peters
Hon Dr Nick Smith

Witnesses
Rob Fyfe, Chief Executive Officer, Air New Zealand
Rob McDonald, Chief Financial Officer, Air New Zealand
John Palmer, Chairperson, Air New Zealand

McClay [Introduction]

Palmer Chairman and committee members, thank you for the opportunity. Chairman, I realise that this is officially a review of 2011, but, given the dated nature of the numbers, the fact that they have been in the public domain for some time, what we thought we'd do as an introduction is to talk about some of the key issues currently facing the company. I will give an introduction. Rob Fyfe, our chief executive, will talk a little bit to that, and we'll talk very briefly about some of the issues that we see facing us, so that the committee can then focus on the issues that they think are important.

I should stress that we are past the end of our financial year. We will be announcing our financial result to the market on 30 August, and clearly, as committee members will be aware, we have to respect both our responsibilities to the market and the issues around that. We will answer the questions of the committee as best we can, but there may be some issues in relation to current financial performance that we are unable to answer.

Cosgrove A process question just on that, so we're not compromising anyone. I take it, Mr Palmer, that your appearance before us, given your responsibilities for disclosure to the market, that your appearance here doesn't compromise the company or yourselves in any way; you're not uncomfortable about appearing before the committee?
Palmer Absolutely not, Mr Chairman. We understand the responsibilities here to the committee, but we also understand that if there are issues of market information and sensitivity, our responsibility is to have already disclosed those to the market, and where they haven’t been disclosed they clearly, until we get to the—

Cosgrove So there’s no compromise, in your view, from appearing here, in your responsibilities to the market?

Palmer Absolutely not.

Cosgrove Thank you very much for that answer.

Palmer Chairman, I thought that I would just talk about some of the key issues facing the company before Rob talks in a little more detail about the business. We have also with us Rob McDonald, our CFO. The three big issues that we see facing Air New Zealand are the issues of demand, cost, and, specifically, fuel. The demand side is clearly influenced by the economic turmoil in Europe, what that’s doing to global economies. One of the consequences we see, not of that, but around the world, is also the very slow recovery from the Japanese market, which has been a challenge for us but is showing signs of recovery. Domestically, demand has been mixed and relatively flat. Some of that is a consequence of the earthquake in Christchurch, and our numbers out of Christchurch are still 5 percent below pre-earthquake levels. And we’re also seeing some effect in Wellington as a result of cost pressures in the Government sector, and the effect on air travel as a result.

We are seeing good growth and demand around the Pacific Rim; China, increasingly some growth now out of Japan, USA, Pacific Islands, and Australia. It’s an area we are focusing intently on, and you may have noticed that we have just recently introduced new services to Bali and Indonesia, and also to Maroochydore on the Sunshine Coast. We are seeing very good results in the Tasman from our alliance with Virgin and the introduction of our new product called “seats to suit”, which was introduced in 2010.

The cost of jet fuel has been very challenging, particularly challenging for an international operator like Air New Zealand, which flies very long sector lengths, where fuel is a larger proportion of your total cost base, and our performance should be seen in the light of the price of jet fuel that has doubled over the last 3 years. What we are seeing, though, is that our fleet investment decisions—some of them made some time ago, more recently the A320 decision, which was made about 3 years ago—have been critical to our ability to reposition the business and to remain profitable despite the challenges that we’re facing. About a $2 billion investment over the next 5 years in new equipment—and what we have seen already is a significant improvement in fuel efficiency from our new fleet.

We’ve also stated publicly and working very hard to take cost out of the business, and our aim is to improve the underlying profitability by $195 million
a year by 2015. That has resulted in some job losses. There are 440 fewer employees as a result of that; the redeployment of some aircraft exiting from Beijing; and, particularly, the exiting of a number of our 747 aircraft and replacement with much more fuel efficient triple-7 aircraft, which have been highly successful. All of those things have been important strategic decisions for us to both improve our efficiency and our competitiveness, and Rob might talk a little bit more shortly about how we see our position relative to one of our major competitors, Qantas, in Australia.

We have set our strategic priorities as being to continually invest in New Zealand, to provide domestically world-class air services; to expand our regional presence in Australasia, which we have done through the Virgin alliance and through our investment in Virgin, where we now hold just under 20 percent of the Virgin share register; and to improve our long-haul business by the growth of airline partnerships, where we can use our skills, presence, and product in association with other people’s balance sheet, to provide a much more effective service than we have historically.

The disappointments, I guess, are, despite all of these efforts, we consider our financial performance is not where we think it should be. We are currently operating on a revenue margin of just over 1 percent—1.4 percent. That is an extraordinarily fine margin to run a business like this, in a high-risk business, and our aim is to continually look into how we can improve that margin. One of the consequences is a disappointing share price, and we don’t think that some of the improvements that we see, looking forward, are yet reflected in the share price.

The other disappointment, which we share some responsibility for, is the fact that tourism and a “New Zealand Inc.” approach to tourism, which requires airlines, airports, the Government, and everybody involved in the tourism sector acting anywhere near effectively enough collectively, and despite some efforts by all of those parties, we think that all of us need to improve our game there, because there is and are gains to be made, and we don’t think that the progress in tourism is anywhere near what it needs to be. As I say, we take our share of responsibility for that not being achieved.

I think the key achievement, though, is that we have been consistently profitable. We perform well relative to our aviation peers, and more recently we have made a new appointment to CEO with the appointment of Christopher Luxon, who has been attracted to the business from a very high-profile international role. He is a Kiwi, and we think that that is an excellent appointment, and we are feeling very positive about that. We should also acknowledge that he will take over from Rob Fyfe, who has made an outstanding contribution to the airline over a number of years, and has been responsible for a lot of the current positioning. So on that basis—Rob.

Fyfe Thanks Chairman, and thanks to the committee for the opportunity to make a few comments. If I can just set the industry context, ours is a very volatile industry. IATA projects that this year, 2012, the industry will make a 0.5
percent profit margin. That’s halved from the previous year, and that year was halved the year before that again. So it is a challenging business in which to make money. That said, Air New Zealand has stated publicly that we expect an improved performance in the coming 12-month financial period starting 1 July, albeit high fuel prices, the instability in Europe, some early signs of slowing growth in China, and continuing intense competition will certainly test us through that period.

Nearer to home, it’s hard to not open the newspaper these days without seeing commentary on Qantas, and the challenges our largest competitor is having across the Tasman with labour relations, competition, and financial performance. I guess it’s very symbolic and characteristic in this industry: if you cannot adapt your business quickly to those changing market conditions, you’ll very soon find yourself struggling.

John outlined our strategic priorities, and at the heart of all of those strategic priorities is growth. Growth is essential to the survival and future of Air New Zealand, and, clearly also, our growth is important to New Zealand in terms of trade and tourism. We have seen a strategy from successive Governments actively looking to entice new airlines and new capacity on to air routes in and out of New Zealand, and we have maintained relatively a very liberal air policy compared with other countries.

Despite that, what you have seen in my time as CEO, which is just coming up to 7 years, is long-haul capacity, total airline long-haul capacity, in and out of New Zealand, has actually declined in that 7-year period. That’s despite air travel globally having grown by 30 percent. So, clearly, we are losing position relative to other key markets, long haul. At the same time, if I look at the number of airlines flying in and out of New Zealand when I arrived in this job almost 7 years ago, we have the same number of airlines flying in and out of New Zealand today—different airlines but the same number: 10 international carriers. So the focus on competition is a good one. It does create the right outcomes in the market.

The challenge for us is that we can attract airlines but we actually need to attract customers to those airlines, because airlines will disappear very quickly if their seats aren’t full. That’s what we’re currently experiencing. To put it in context, it costs half a million dollars to fly one of our wide-body aircraft on a round trip from New Zealand to somewhere in the Pacific Rim and back. So you burn cash very quickly if you’re not supporting that with revenue, and in today’s fuel prices we typically need load factors above 80 percent to get to a break-even position.

We’ve seen the departure of Air Asia, Aerolineas, Royal Brunei, and Qantas from long-haul routes in and out of New Zealand in the last 12 months. We’ve seen United cancel its planned Houston-Auckland service. We’ve seen JetStar reducing capacity on its trans-Tasman and Singapore service, and Cathay Pacific has been reducing capacity on Auckland-Hong Kong as a result of the impact of the new China Southern services.
In light of these contractions, we think there’s an urgent need to review our approach—and when I say “our approach” I’m talking about “New Zealand Inc.”—to the development of trade and tourism routes to and from New Zealand. We’ve submitted to the Government’s review of international air transport policy that we need to move on from a pure supply-led ideology, which is about attracting airlines, to far more of a demand-led approach, which is stimulating demand and interest in New Zealand as a destination. I have no doubt that if we can stimulate that demand the capacity will quickly be added by existing and new airlines.

Our collaboration both domestically with airports, with Tourism New Zealand, with tourism operators, and internationally with other airlines is critical to support that growth. I think there is an opportunity for us all to do better.

Just a couple of comments before I conclude, on the domestic market. On the domestic front we are working hard to stimulate demand. We’ll offer in the coming year over a million fares below $100. If you actually look at the last 5 years in aggregate across domestic and trans-Tasman routes, our fares have fallen by 7 percent in absolute terms, despite the price of fuel having doubled and wages inflating by 12 percent during that period. Underpinning that has been some quite mercurial productivity improvements in the business. We have invested significantly in growth domestically. Our new A320s that are coming in to replace the 737s contribute 28 percent more seats into the domestic market. We have grown our ATR fleet on the regional routes, as well.

Last year an independent review was undertaken of our regional services, and confirmed that New Zealand, for its population, is better served in terms of air network than Australia, Canada, and the US. It also showed that New Zealand, along with Sweden, has amongst the cheapest regional fares globally. On average the fares in Australia on their regional services are 15 percent higher; they are higher again in the US and Canada.

Airport pricing: we clearly comment often on airport pricing. It is a big issue for our business. We spend more than three-quarters of a million dollars per day on airport and air navigation charges. That is about four times our FY 11 profit. Our airport landing fees over the next 5 years, in aggregate, will increase by $200 million. So it’s a very significant cost to our business. In Wellington alone, for example, over the next 5 years, the aeronautical revenue will increase by 54 percent. The consequence of that is increased domestic fares, and the consequence of that is us reducing our aircraft orders, to reflect the demand that is suppressed by those significant profits that are being generated within airports. That is why we comment regularly on that issue.

We don’t see all suppliers or, for that matter, all monopoly suppliers as problematic. In fact, Airways and MetService are classic examples of suppliers collaborating with us to provide very good services at appropriate prices and high levels of productivity. I’ll now hand you back to John, just to conclude our comments.
Palmer Mr Chairman, perhaps just a couple of comments before we go to questions. If we look ahead, say, given the issues around our profit announcement, which I can’t talk about, we are more confident about the coming year. That is a reflection of intense efforts by the company to both position itself competitively in areas where we think we can grow, to pay very close attention to our cost base, and, helped by the hedge position that we’ve had in what has been a rising exchange rate now being neutral, and the fuel position looking a little more positive for us in the coming years. All of those give us some confidence about the position for the company in the coming 12 months.

But given where I started, that the issues for us are cost, demand and fuel, there is not much we can do about fuel, but for the other two we are working hard. The issue around airports is that that is in a position that we think the current regulatory regime has failed. Fortunately, Parliament did timetable a Commerce Commission review for right where we are now. We think that that means that an amendment to the Commerce Act is necessary, because that is, in our view, market voting.

Bennett Thank you, John and Rob, you’ve done a great job building up a very strong company. So well done, and especially to you, Rob, for the great work you’ve done for that company. I think everyone in the room would congratulate you on that.

Fyfe Thank you.

Bennett It is interesting to see the industry, I guess, probably just your perspective, it’s a really tough industry and it’s probably been a little bit dormant in the world scene, as you’ve got a changing world economic environment where probably that long haul is a reflection of the lack of disposable income people have got and the potential growth of some really medium sort of routes, you know, through China, through Asia, that could really take off. How do you see the structure of a company like Air New Zealand fitting into that environment? Do you think that there’s going to be a situation where you see some really big players in that Asian market evolve that are going to then put some tension on the wider market, on the alliances that you have? How do you see that running so that you’re competitive on that long haul long term, so that you can keep a strong company going?

Fyfe They are insightful questions in relation to the challenges we face. I am currently Chairman of Star Alliance and as well sit on the Board of the IATA, so I get a good perspective of those global issues. We are seeing consolidations, so we are seeing a number of airlines start to now acquire their counterparts in other markets. There is a lot of regulation that restricts that from occurring today, in terms of cross-border ownership of airlines. We’ve seen BA acquire Iberian recently, we’ve seen Air France and KLM merge, and a number of other alliances mooted. That will occur.

Your comment about a shift from long haul to mid haul is also a reality. In a market like Croatia, tourism is growing between 15 and 20 percent per year,
and a lot of that is coming out of the likes of the UK and Western Europe. It’s a lot more affordable and it also creates a lot less environmental impact, for example, someone flying a short distance rather than flying all the way down to New Zealand. So we clearly have some challenges. The consequence for us as a company is twofold. One, we need to keep adapting very fast to those changing market conditions. Most importantly, what that means for us is moving our network to where the demand opportunities are greatest. We need to be prepared to move and forgo traditional markets that are moving into decline, and replace those with markets that we see as the growing markets. The focus of our strategy in the coming 3 to 5 years in terms of long haul is very much around the Pacific Rim, and it will shift in a relative sense further and further away from Europe, because we’ll just—the structural impediments are too great for us to be competitive in the long term in that market.

Palmer I think if I could add that it’s interesting to observe that in low-margin businesses you would expect that size and scale would be one of the ways in which you would solve that. Well, if you look at international airlines and global aviation over the last decade, scale has not been an answer. Scale has helped some carriers and has been a dead weight on others. The issue for a company like Air New Zealand: it is the quality of the management and the flexibility that you build into your business so that your positioning can adapt in the way that Rob talks about. That is much more about the quality of the decisions you make than the size of your balance sheet. Coupled with that, one of the things that I think that we have done successfully is we have run a relatively conservative balance sheet, which has allowed us in our investment phases to take advantage of market opportunities and new aircraft purchase, simply because we’ve had the balance sheet to support it.

Clark Firstly, just to reiterate some of David Bennett’s comments to Rob—my question is actually to Mr Palmer, but, Rob, thank you for your work with the company. I know, personally, my father-in-law, whose voting preferences would make Maggie Barry blush with delight, has been very grateful for the personal experience. He has lost some bags, and immediately you were in touch with him. I know he’s a frequent flyer. But that personal touch has been widely recognised, as well as the successes with the business. So thank you for that work.

My question for Mr Palmer: you said at the beginning that this kind of scrutiny with Parliament doesn’t affect the business in a negative way. I don’t know whether you used the words “welcome it”, but you said effectively that the appropriate commercial confidence arrangements are there, such that your disclosure obligations are met, and so on, that your shareholders are looked after, and that this doesn’t compromise you in any way, coming here and appearing before the committee. Given all of that, I guess it’s odd to us that the partial sale of the SOEs in the mixed ownership model is proposing to exclude this kind of parliamentary scrutiny.

We in the Labour Party find that an odd thing, when there is no unfortunate obligation on you; it is an opportunity for transparency and accountability to
the taxpayers of New Zealand, who have a significant stake in your company. I wonder whether you would share the view that it wouldn’t be a bad thing for some parliamentary scrutiny—certainly not negative, for parliamentary scrutiny—to fall in respect of the Mixed Ownership Model Bill as it’s proposed.

Palmer Well, it’s not a specific question I’ve thought about, quite frankly, in relation to Air New Zealand. The question was, did I see that the company was in any way compromised by appearing here today or that there was any conflict, and my answer to that was no. If I was asked the question in a different way, that said was there any value to the company in us appearing here, I think my answer again would be no.

Clark Presumably the benefit today is to the taxpayers of New Zealand, who are getting the opportunity to have their representatives ask you how the company is performing in respect of their interests as the taxpayers, who have a significant stake in the company.

Palmer That may be the case, but the situation is for us as a company, taking our disclosure responsibilities in the market very seriously—and we think that we have gained a reputation for the quality and timeliness of our disclosure—that if people see that the quality of that disclosure is good then that information is clearly publicly available. Now, whether taxpayers in the normal course of events would use market disclosure as a source of information, I’m not sure. But there should be no difference between the quality and extent of the information available by market disclosure and—

Clark With respect, we get an opportunity to ask you on behalf of taxpayers direct questions here, in an environment where there can be a conversation take place that may be reported in the media, and we have the opportunity to ask those questions that are in the public interest, given that it’s a company that has a significant public stake in it. You must surely agree that that can’t be a bad thing.

Palmer Well, I go back to my answer: not negative, no.

Clark Thank you. Can I also ask briefly about your—I understand you’ve written some letters to the editor promoting the mixed ownership model. You’ve said today you hadn’t thought through these particular issues. Firstly, do you think it’s appropriate for someone in your position as the chairman of a public company to be making positive noises about the mixed ownership model at all?

Palmer I think it’s not only proper; the position that I have taken is that I think that, given my experience and my specific experiences, I think I have an obligation to help lead public discussion about the issues around the ownership of these sorts of assets.

Clark With respect, though, you’ve indicated already that you haven’t thought through the issues of public scrutiny that I’ve just raised. Those are pretty
important issues; they certainly are to us. We think that these SOEs like Air
New Zealand should be subject to public scrutiny, because there is a wider
public interest at stake here.

Palmer Well, perhaps it’s because of the answer I’ve just given you, and that is to say
that the extent of the disclosure required by listed companies—and
increasingly now required by SOEs—is something that I take seriously in my
role either as Chairman of Air New Zealand or as chairman of a SOE, and that
the extent of that information, properly disclosed in a timely way, and the
availability of public meetings where those questions can be asked, I think
would elicit all of the information that can be elicited in any other forum.

Smith Can you confirm that the letter to the editor that has raised the question was in
response to a public comment that those supporting the mixed ownership
model were traitors to New Zealand and that in fact it was perfectly proper,
given that level of accusation against your own integrity, as a person who has
given distinguished services to *Trust Bank, to the kiwifruit industry, and now
to New Zealand, that for those to claim that, having had that accusation of a
very strong word—a traitor to New Zealand—it was perfectly proper for you
to respond in the way of a letter to the editor?

Palmer Well, I’ve written more than one letter.

McClay And not just to the editor.

Palmer That particular letter was a response to public comments that I took exception
to as a matter of principle, and I took some exception to personally.

Cosgrove Mr Palmer, just going back to the disclosure issue: The reason we’d like your
opinion is because you’re here today, and you’re here today I think with Solid
Energy in your role as chairman. It’s been put to us that there will be greater
scrutiny through market mechanisms, including continuous disclosure reports,
of State-owned enterprises, or, if not greater, sort of better or higher quality
scrutiny, if an SOE is subject to the mechanisms you are, OK? I accept that
there is a different level of scrutiny with continuous disclosure, having worked
for companies.

Could I put this question to you, given your unique experience, about the fact
that we can have you here today with your chief executive and your executive
team, and the fact that we can have a free-flowing discussion with you and
effectively ask you anything. We could ask you about salaries, we could ask you
about all the sort of colourful things I suspect that the media would like, but
we can have a free-flowing conversation. That is not a level of scrutiny that in
theory you would get from basic continuous disclosure, annual quarterly
reports, and—no disrespect to our media kith and kin—disclosure from media.
This is almost a quasi-judicial forum, if you like—likewise, parliamentary
questions and all those other mechanisms.

I suppose the fact that you are here today, that you’ve been here before, that
you’re comfortable with your executive team participating in that, though you
are constrained on certain bits on information, I would have thought that this exchange would build further confidence in the company, that you can be put on—the feet put to the fire, if you like, in terms of parliamentary scrutiny. We’re told with the MOM Bill that’s all gone, that’s out—no scrutiny, no Ombudsman, no OIA, no parliamentary review, no parliamentary questions, nothing. You’re a different class of organisation, yet there’s going to be a high level of public scrutiny and disclosure of information. What’s your view on that?

Palmer There’s a number of threads there, Chairman, which I think I should answer. The first is that for listed companies—and if I take the Air New Zealand example—the extent of scrutiny by the market takes several forms. So there are the disclosures by the company, but the particular scrutiny by analysts, who are trying to predict the future performance of the company, requires them to understand in some detail the drivers and the numbers for the company, which means that the intensity of that scrutiny is much greater than you will get in any public forum. So in dealing with the pure commercial issues, I am satisfied that the level of that scrutiny will exceed anything that other forums can do.

If we take the specific issues, for example, that you’ve raised about the elements around what is and isn’t in the MOM process—if we just take the issues of confidential information, then I can tell you from a Solid Energy point of view, the number of requests that that company gets under the Official Information Act are a very serious drain on management time, management effort and management cost. I’m not saying that it’s right or wrong, but it is a very, very serious drain. Every time that companies are required to make presentations, whether it is to the board or anybody else, that is a time that is again a serious drain. So I think we’ve got to have a balance between where is the most effective point of disclosure for these sorts of companies.

The question, then, in a political sense probably becomes, if the Crown is going to be a majority long-term holder of these companies, is there a question around the greater New Zealand and political questions that should be served in a different forum? My answer is, possibly yes, but they are not the same commercial questions that relate to the performance.

Cosgrove I suppose the essence of my question is, do you see a conflict—I presume you don’t—between your commercial requirements and the scrutiny that you do have today from all those stakeholders, business analysts and others, and the scrutiny that, if you like, for better or worse, high-quality or low, this forum and the Parliament on behalf of taxpayers can exercise?

Palmer Your question was, do I see a conflict. My answer to that is, no, I do not see a conflict.

Clark Just picking apart the business model a wee bit, if I understand it correctly, the international business must be less profitable because of the greater component of fuel costs in the actual travel, and therefore the loss of a portion
of market share as that market has grown is not necessarily all bad news. That's the part of the venture that's riskiest and the hardest to make profit in. Some would argue that kind of coming back to a smaller model that's domestically based is likely to be more profitable and more successful, where you can dominate the market over time. I wondered, really, if you had thoughts about that. Obviously, there are some benefits to scale, and having those international links will be important, and the market may change—fuel may become a different component of overall costs—and you will have some strategic thoughts around that. I guess it’s an open question, I’m really asking for comment about that.

Fyfe

I would respond in two ways: firstly, if you look at share of inbound long-haul seats coming in and out of New Zealand, actually our share today is about the same as it was 7 or 8 years ago. So, despite comings and goings, we project forward into the current financial year, we see that market share relatively stable. That said, if you look at it from an Air New Zealand perspective, proportionately more of our future investments are going into regional assets than they are going into long-haul assets. So, whilst we’ve kept our share of that market stable, we’ve been growing our domestic market, and through our investment in Virgin we’ve been growing our position in the Australian market.

So we find that we have a far greater ability to compete in those markets to the point that you make, which is that we have greater control of the costs going into the short-haul business than we do the long-haul business. So an aircraft flying to London and back, a triple 7 300—it costs $1¼ million to get that aircraft to London and back, and over 50 percent of the cost is fuel. A 737 flying Auckland-Wellington, about 23 percent of the cost is fuel. So we have a lot greater influence in how we compete in the short-haul markets.

So, as we look forward, our long-haul assets are becoming a smaller part of our portfolio and we are weighting our business to the regional market. Our investment in Virgin Australia was a strategic decision to say we could enter that market in our own right, with our own aircraft, but we would have created a very difficult position. The incumbent players would have responded to that, and we viewed that we would have lost in the near term a substantial amount of money. So buying a 20 percent stake in Virgin was the equivalent of buying effectively 12 aircraft and deploying them into the Australian market without creating that market dislocation. You will see our strategies increasingly orientated towards growing the domestic market.

The final comment I would make is, it’s difficult for us to look at our long-haul routes in isolation. A passenger who flies from London to New Zealand on a service that may not be particularly profitable then flies domestically around New Zealand and on profitable services, so the value of that passenger may be profitable in a network sense even though a particular sector is unprofitable, and if you starve that sector away you actually then undermine the profitability of your business here in New Zealand. So we have to look at it in a fully integrated fashion.
Clark On margins that are, what, 1.4 percent, presumably at some point and to some degree domestic passengers are subsidising international passengers in order to keep those options open?

Fyfe So, in a degree, we have routes that subsidise other routes, that’s absolutely right. Some of our long-haul routes today are making very good money. Some of our short-haul routes actually lose money today. But net-net today we would have probably 30 percent by number of our current routes in isolation do not return their cost of capital.

Goldsmith You’ve talked about the quality of your decision-making being the key to ongoing success, and that’s not unique to your business but with most businesses, I suppose. We’re talking about these institutional arrangements, and the question is, what’s going to keep you on your toes best in terms of continuing to make good-quality decision-making? The sense I’m getting from you is that the collective wisdom and scrutiny of the markets, through the mechanism of the share price and the disclosures that you have, is going to be far more effective and has been far more effective than any parliamentary scrutiny and people coming along asking questions at a select committee. Am I correct in giving that assessment?

Palmer My response to the question—a good question—which I hope is predictable, is: in actual fact the scrutiny that matters is the scrutiny by management and the board that we demand of ourselves, rather than anybody else demands of us.

Goldsmith Just a general comment about the mixed ownership model—I mean you are the living example of that at the moment, in the general sense. What would you regard as its strengths and benefits as a model, in your experience of it over the last few years?

Palmer Perhaps—touching on one of the earlier questions—one of the reasons why I have been a strong public advocate for some time about the model is because of a range of experiences in fully listed companies and very large fully listed companies and in companies with the Air New Zealand structure and in SOEs. The reason why I hold that view is that, if we take the Air New Zealand example, we have responsibilities to our shareholders but, both for the board and for the management, we feel, as the national flag carrier, we have some quite specific responsibilities to “New Zealand Inc.”, if you like, because we are the national flag carrier. To discharge those responsibilities, we don’t always—in fact often—we do not take a harsh commercial view that a pure solely profit-driven organisation would take. We take a profit-driven motive, but we take it in the context of our wider corporate and social responsibilities.

That is helped by having the Crown, where you operate in that sort of environment, by having the Crown as a cornerstone shareholder, and it is helped by the fact that that is balanced by the fact that you have other shareholders and the market to satisfy. So it is a very good balance between, if you like, some substance durability around the nature of your register, so you
are not always looking over your shoulder to see who might be taking you over tomorrow, and knowing that you have a responsibility to a wide range of shareholders. That is, in current parlance, often termed as corporate social responsibility. I think it is taken to a slightly different level in these sorts of companies. We have constant discussion around our board table as to how do we balance the peace between our responsibility, specific responsibility, to our shareholders and our wider community responsibility.

Cosgrove Mr Palmer, was the market satisfied, do you think, when Air New Zealand almost went bust prior to the Government intervening and buying it back?

Palmer Was the market satisfied?

Cosgrove I’m using your words, because, you know, the counter-factual is also true. In private sector hands, as you would be aware, before you and your chief executive took over and got the show right again—

? It’s not the first business in the world to go bust.

Cosgrove The man’s a genius. Well done.

Palmer My answer is that the reason for Air New Zealand getting into the situation it got to with Ansett was the result of, in my view, poor governance and poor management.

Peters I’m looking for some details. Is Air New Zealand guilty of employing Chinese nationals in preference to New Zealanders?

Fyfe I’m probably the best to answer that question. No, we don’t employ Chinese nationals in preference to New Zealanders. We do employ—we have a Chinese cabin crew base that operates our service out of Shanghai, where the vast majority of our passengers are Chinese-speaking customers. As a consequence, we made a conscious decision to ensure the vast majority of our crew could communicate with them in their language of origin.

Peters Who is the employer of that crew in Shanghai, Air New Zealand?

Fyfe No, the regulations in China require us under law to employ those crew through a government body so—

Peters That’s the foreign aviation service—

Fyfe We contract that government body to employ those crew on our behalf.

Peters Then why did you describe them before Immigration New Zealand as “existing employees”?

Fyfe Immigration New Zealand fully understand the relationship between the employer and Air New Zealand. So in that situation, they wear our uniforms, we treat them totally as our employees and part of our community, as a
business, but have fully disclosed to Immigration New Zealand that they are employed through this third party, as required by Chinese regulation.

Peters Either they were employed by FASCO or they were employed by Air New Zealand. Which one was it?

Fyfe As we explained to Immigration New Zealand, and it was fully understood by all the parties, they are employed by FASCO but we treat them as though they were employees of Air New Zealand, because that’s the way we treat any of our third party contractors that work in our uniform, supporting our customers.

Peters How you treat them is a matter for, obviously, your company’s internal policy. I want to know, who was the employer at the time that application was made for those visas—Air New Zealand or FASCO?

Fyfe Again, if I repeat the question, the employer was FASCO. Immigration New Zealand were fully aware that Air New Zealand have the contract of employment with FASCO for those employees, and they fully understood the relationship between Air New Zealand and FASCO and the employees.

Peters Well, you know, in 2009 you effectively got rid of 36 members who were flight attendants and people like that. Not one of them has been re-employed by you, have they?

Fyfe I don’t know the answer to that question.

Peters All 36 say that they have not been re-employed by you, yet you’ve got people employed under the—

? Did you say all 36,000 said that?

Peters No, I said 36.

? 36?

Peters Yes, lost their job in 2009—on a “first to be employed” arrangement under their contracts, yet none has been employed. Yet we have FASCO, which is a Chinese Government corporation, having people here under visas, under the guise that they are Air New Zealand employees, when they are not.

Fyfe That’s a completely different question. The issue that you’re raising is a question where, in the time period that you refer to, these existing staff, that were contracted to Air New Zealand’s employment through FASCO—we had surplus numbers of these staff in China; we were required to pay their salaries, through our contract with FASCO; and we had an employment requirement for a short period of time down here in New Zealand, a matter of months; so we redeployed some of those staff on a secondment for a short period of months, because we were going to be paying their salaries anyway, rather than
incure additional costs by hiring staff short-term here in the New Zealand market.

In relation to whether we will re-employ staff that have previously worked for Air New Zealand, we certainly have re-employed staff that have previously worked for Air New Zealand, albeit, as I say, I can’t comment on the 36 flight attendants. We’ve had many more than 36 flight attendants leave Air New Zealand in the last few years.

Peters All right. If you look at the Cook Islands Government’s latest Budget, it has all the big ticket items—for example, education is $9 million - plus, health there is $9 million - plus—but Air New Zealand’s subsidy is well in excess of $13 million. If you look—and we’ve all been involved over the years in working out what a fair support base for Air New Zealand is, when it comes to the Islands, how can you square that figure with any price or inflation index over that time?

Fyfe The situation, in terms of that subsidy on Rarotonga, is the subsidy that Air New Zealand receives to operate a service between Rarotonga and the USA. On a commercial basis, that service is non-viable. So we have an arrangement with the Government of the Cook Islands that they will subsidise that service to allow us, not to make a profit on that service, to get to break-even. We have full disclosure of all the economics of operating that service, and that is the amount of money it costs to cover our costs of operation. The Cook Islands Government have made a decision that that investment is justified by the value of those tourists that are carried on that service into their market place. On a commercial basis, that service is not viable.

Peters That has always been the basis of those negotiations, going back a number of years. What I do not follow is the huge jump in that cost of subsidy.

Fyfe Sure. Well, the jump in the cost of subsidy is not because our cost base has gone up; it’s because the actual number of passengers carried on that service and the price they’re prepared to pay has gone down. The arrangement is that they effectively cover the losses that we make operating that route.

Palmer Could I just add two comments, because I think this is a classic illustration of the discussion that we are required to have as a company about our corporate and social responsibility in trying to maintain some of these services where we have almost a non-commercial situation. This is one illustration of it. In that period, we should bear in mind that fuel price has doubled.

Hayes Can I also make a comment? I have recently attended the forum of Finance Ministers meeting over in Kiribati, and, absolutely unsolicited, listening to some forum secretariat officials, some Australian officials and some New Zealand officials, they were commenting on the outstanding quality that you guys provide in outlining your costs for those subsidy arrangements for their—So congratulations on doing a great job there—absolutely unsolicited.
Just a few issues: capital raising. If you were to go to the Government now seeking the Government to contribute to a capital raising that you wanted to get engaged in, what do you think your chances of success would be, if you went to the Government now to seek more capital? Has the board considered this issue? If it did consider it, did it think there was a very high likelihood that the Government would come up with large amounts of capital at the moment?

The reality is, consistent with my earlier comments, that we have run a relatively conservative balance sheet, to make sure that we are in a position both to deal with an economic downturn, which has a significant influence on cash flow, and that we can deal with the capital commitments that we see going forward. The issue has not arisen for Air New Zealand because of the way, I’d like to think, we’ve managed our business and particularly our balance sheet particularly well.

It’s therefore a theoretical question. The theoretical question is: in the current environment, do I think it likely that the Crown would see a new investment in Air New Zealand to expand its operations as a priority, given the other issues? My instincts are: probably not.

The reason I asked the question is in relation to the mixed ownership model debate. As I’m sure you’re aware, one of the arguments has been to facilitate the mixed ownership model companies accessing capital. So if you were to issue more equity, or issue more shares, then the Crown would have to buy 51 percent of those shares, if the Crown sold down to 51 percent, in order to maintain it—by law they have to. Would that put a constraint—if you say you want to issue more equity in order to raise more capital but the Crown has to buy 51 percent of all the new shares issued, both voting and non-voting, as the result of an amendment to the bill, does that present an obstacle to you in terms of raising capital through that mechanism?

Well, if I answer the question in the context in which I think it’s been asked: I would have thought that, for the Crown in its current position, fronting up with 51 percent of the capital is a much preferable position to fronting up with 100 percent.

You currently have the option, though, do you not, to issue bonds—to borrow—so you don’t have to have equity to raise capital; your other option is debt, effectively. You have that option currently. That option doesn’t go away, it’s present in either model, right?

As I’ve answered in other forums, one of the issues in the global economic crisis—and I say this given my quite considerable involvement in the banking and finance sector—is people who have taken on too much debt, and debt in inappropriate forms is at the heart of the current global economic crisis.

In terms of the tourism strategy that Mr Fyfe talked about, Air New Zealand would have to be one of the biggest players in the tourism space in New Zealand, yet you kind of argue that we essentially haven’t had a “New Zealand
Inc.” approach. The advantage of having these computers is that you can scan through stuff, and I was looking at some of your earlier reports, where you raised similar issues. Why do you think Air New Zealand hasn’t kind of grasped the nettle on that issue?

Fyfe Let me try to answer that question: I think that the challenge for us is, a purely competitive approach to trying to stimulate demand is very problematic in a very high capital-intensive business like the airline industry. So 70 percent of air routes around the world are operated by one carrier, 91 percent of air routes around the world are operated by one or two carriers. So if you stimulate competition on routes that are already competed for, you tend to find yourself as a business competing to maintain your position on that route and distracted from growing new markets and new opportunities. I think, as an airline linked to our airports and linked to Government, we haven’t succeeded—and we certainly put ourselves at the heart of not being able to effect this outcome—we haven’t succeeded in having a clear strategy of how we deploy our resources in an aligned way to the new markets of greatest opportunity, rather than often trying to stimulate competition on markets that are actually not growing or are potentially even in decline.

Norman My other question is, your comments around Airways and MetService versus the airports I found very interesting. Essentially, they are all monopolies, roughly monopolies of one sort or another, yet Airways and MetService are both SOEs, and in your original statement you said they provide effectively a well-priced service, whereas the private or mixed ownership model airports provide a kind of overpriced service, was what I inferred from what you said. Have I interpreted that correctly?

Fyfe The airport issues that we have, have little to do with a mixed ownership approach. The airport issues that we experience are specifically to the airports that are driven solely by a commercial private sector approach, and we have a situation where they have a statutory right to set prices and earn profits at whatever level they choose, and they are monopolies. In that situation, it is very difficult, in a purely private sector environment, to constrain any abuse of that monopoly. The issue relates to monopoly far more than the ownership state of the business.

Norman Yet the two organisations identified are SOEs that provide a good service.

Peters The nub of this question is in relation to something you said at the start about the cost structure, landing fees, and what have you. You suggested that, well, the system wasn’t working. My question is, that’s very obviously not just your view, it’s the view of others as well. What about a Commerce Commission inquiry, for example? Why don’t we do something about this cost regime, rather than just having to wear it and trying to pass it on to passengers?

Fyfe There was a Commerce Commission inquiry back in 2002. It recommended that it got resolved. That recommendation was not pursued by the
Government at the time. There is another review that is now under way, and we hope we get a more satisfactory outcome.

Smith My question is in terms of overall company performance. You rightly observed that New Zealand has a big stake—not just your shareholders—in the success of our airline. Mr Chairman, you are in the position, quite uniquely, of having chaired both a mixed ownership company with Air New Zealand and a 100 percent-owned business like Solid Energy. Is it your view that, in terms of company performance regardless of shareholder, there are benefits to New Zealand in having a mix of both Government and private shareholding in businesses, given that you’ve had that unique experience in both mixed ownership and 100 percent State-owned businesses?

Palmer Unquestionably, which is consistent with my answer to the earlier question. Can I just use one example: I mentioned earlier that we have just appointed Christopher Luxon as our new CEO. We’ve attracted him out of a very high-profile international role in Korea. I’m entirely satisfied that SOE companies, given the political issues around that organisation, will not attract those sort of people back to New Zealand in the way that we’ve been able to do in Air New Zealand.

Smith You’re advising the committee that if a company was 100 percent owned, such as Air New Zealand, the quality of chief executive that you would get would be less as a consequence of that 100 percent State ownership?

Palmer I’m satisfied that people with that sort of background will not be attracted to come back to work in a totally Government-owned environment, that are attracted to come back into what they see as a commercial environment with the Crown playing a key shareholder role.

McClay Thank you. We’re going to have to finish there. Gentlemen, thank you very much. Rob, just to recognise the work that you’ve put into Air New Zealand, as the committee has expressed our appreciation to you. We wish to do so again, and we wish you the very best of luck.

conclusion of evidence
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General Annual Plan 2012/2013, 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
Visit of a delegation of parliamentarians from the Legislative Assembly of Niue

Report of the Finance and Expenditure Committee

The Finance and Expenditure Committee met with a delegation of parliamentarians from the Legislative Assembly of Niue on 1 August 2012, 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
Customs and Excise (Tobacco Products—Budget Measures) Amendment Bill

22—1

Report of the Finance and Expenditure Committee

Contents

Recommendations  2
Introduction  2
Committee view  2
New Zealand First minority view  5
Appendix  7
Customs and Excise (Tobacco Products—Budget Measures) Amendment Bill

Recommendations
The Finance and Expenditure Committee recommends by majority to the House that the Customs and Excise (Tobacco Products—Budget Measures) Amendment Bill be passed.

The Finance and Expenditure Committee recommends that the Government
- monitor closely the progress made over the next few years toward the goal of a smoke-free New Zealand by 2025, and implement further excise tax increases after 2016 if its achievement is in doubt
- undertake work to assess the compatibility of New Zealand’s duty-free tobacco concession with the goal of achieving a smoke-free New Zealand by 2025.

Introduction
The bill seeks to discourage tobacco consumption and proposes an increase in the price of tobacco to improve the health of New Zealanders. It would amend the Customs and Excise Act 1996 to increase the excise tax on tobacco products by four cumulative increases of 10 percent from 2013 to 2016. It would also amend several other Acts to ensure that recipients of social assistance were not reimbursed for the increases in tobacco prices, as this would counteract the purpose of increasing the tax. The other Acts to be amended are the Children, Young Persons, and Their Families Act 1989, the Education Act 1989, the Income Tax Act 2007, the New Zealand Superannuation and Retirement Income Act 2001, the Social Security Act 1964, and the War Pensions Act 1954. Tobacco product price increases would be excluded from the cost-indexation of social assistance payments otherwise required under these Acts.

Committee view
Most of us support the intention of the bill. After considering advice and submissions, we are not recommending any changes to the bill, but we do make recommendations to the Government for further measures to encourage reducing tobacco use in New Zealand. This is primarily because the bill’s scope does not allow the inclusion of various measures that might help to reduce the incidence of smoking.

The following sections summarise the main issues we considered.

Rate of excise tax increases
We considered carefully whether excise taxes on tobacco should be increased by more than the four 10 percent increments proposed in the bill. Many submitters associated with the health sector favoured much larger staged increases of 40 percent in 2013, followed by three 20-percent increases in 2014, 2015, and 2016. The Green Party supports this option. Another option entailed an initial 30 percent followed by three 10-percent hikes. It was
argued that the large initial price increase would have a stronger deterrent effect, boosting successful quitting attempts; it would also reduce the ability of tobacco companies to maintain sales by absorbing some of the tax increase through budget brands. Those in favour of higher total increases noted that the projected result of the bill’s staged excise increase would still fall short of achieving the smoke-free goal by 2025.

We understand that a higher initial increase of 30 percent followed by three 10 percent increments was considered during the bill’s development. The proposal in the bill is to encourage smokers to quit without punishing unduly those who are unable or unwilling to do so. Another factor considered was that higher excise might increase the possibility of black market activity. While we have heard that there is no evidence that a large black market is likely to develop in New Zealand, we consider there is a real risk of illicit activity, and we expect this aspect of the regime to be monitored carefully.

After balancing the various factors, we are not recommending any change to the excise tax increases proposed in the bill. However, we do not think the increases should stop after the four years covered by the bill. We recommend that the Government monitor closely the progress made over the next few years toward the goal of a smoke-free New Zealand by 2025, and implement further excise tax increases after 2016 if its achievement is in doubt.

**Duty-free tobacco concessions**

Travellers entering New Zealand are allowed to import up to 200 cigarettes, or an equivalent amount of other tobacco products, free of duty and GST. We question whether this duty-free tobacco allowance is consistent with the goal of reducing tobacco consumption to improve health.

We are concerned that the excise increases under the bill may lead to more tobacco being purchased duty-free through the concession. Not only would this entail a loss of revenue without achieving the desired benefits in terms of encouraging people to quit, it could also have the unintended result of increasing pressure on travellers—including non-smokers—to purchase duty-free tobacco. We were surprised to learn that detailed sales statistics are not collected about the amount of tobacco sold in New Zealand duty free. However, we are advised that officials estimate that the duty-free allowance results in a “loss” of tax revenue of $55 million to $66 million in the current calendar year, estimated to rise to $70 million to $84 million in 2016, assuming that the excise proposals in the current bill are enacted. We strongly urge the Government to set about improving the collection of data on duty-free sales, and to monitor it carefully.

It is of interest that several countries have already reduced or removed their duty-free concessions. For example, in 2010 Hong Kong reduced its concession to 19 cigarettes (to allow for an open pack of cigarettes carried by a traveller, but effectively stopping duty-free sales); Singapore has had no concession at all since 1991; members of the European Union have the option of reducing their concession to 40 cigarettes for travellers from outside, and there is no concession for travel within the EU. Recently, Australia announced that it will reduce its duty-free concession to 50 cigarettes from 1 September 2012. We believe New Zealand should consider international regulatory changes to duty-free tobacco sales.

We would like to see New Zealand’s duty-free tobacco concessions reduced substantially, and strongly considered recommending an amendment to this bill which would effect such
a change. However, because of the narrow focus of this bill, such an amendment is outside its scope. We also acknowledge that interested parties should be offered the opportunity to comment on any such proposal.

The tariff concession for tobacco products accompanying inbound passengers or crew, concession 82, is in Part II of the Tariff document under the Tariff Act 1988. We understand that this concession could be changed without the need for any primary legislation, by an Order in Council, under section 9 of the Act. However any such amending order would expire at the end of the year after the year in which it is laid before the House of Representatives unless it was earlier validated and confirmed by an Act of Parliament.

We recommend that work be undertaken by the Government to assess the compatibility of New Zealand’s duty-free tobacco concession with the goal of achieving a smoke-free New Zealand by 2025.

Electronic and de-nicotised cigarettes

Electronic cigarettes (e-cigarettes) may make it easier for smokers to quit. These are devices that allow the user to mimic the smoking habit, but as they are not lit they do not produce the specific harmful effects of inhaling smoke. They come in two main forms: with and without nicotine. Those that do not contain nicotine and do not make any therapeutic claims may be sold legally in New Zealand, but those containing nicotine may not be sold without first being licensed under the Medicines Act 1981 as a smoking cessation medicine or medical device. They may however, be legally imported for personal use.

We understand that e-cigarettes are likely to be safer than tobacco, although their effects have yet to be fully tested, and there is some concern about manufacturing quality and the potential for other harmful substances to be introduced into the cartridges and inhaled by users. There is also concern that if e-cigarettes were more readily available, they might not be regarded and used as a smoking cessation tool, but might be marketed for maintaining, reinforcing, or even initiating smoking. We do not consider that we are in a position to conclude whether or not e-cigarettes are a good idea, but would like to see further research undertaken.

We understand that the World Health Organization recommends that electronic cigarettes be regulated as medicines, and that there is no barrier to e-cigarette manufacturers applying to license their products in New Zealand through Medsafe. We would like to see further research into and safety trials of e-cigarettes containing nicotine, and note that the Government-funded Tobacco Research Tūranga and the Pathway to Smoke-Free 2025 fund announced in Budget 2012 provide mechanisms to support such research, among other innovative approaches to smoking cessation.

We are interested in the potential for de-nicotised cigarettes to help people in their efforts to give up smoking. Although they still deliver the harmful effects of smoke, they do not contain the addictive component of cigarettes, and their use may make quitting easier. Again we note that the Tobacco Control Research Tūranga and the Pathway to Smoke-Free 2025 fund provide for future research and pilots, including further consideration of the appropriateness of taxing the tobacco content of such products at the same rate as regular cigarettes.
New Zealand First minority view

Smoking is harmful. New Zealand First does not encourage, support, or endorse smoking. We favour educational programmes to inform the public of the health risks associated with smoking.

We support sensible steps to discourage smoking. But smoking is not illegal and tobacco is not an illegal product. Yet smokers are now heavily penalised for the privilege of smoking.

The draconian levels of taxation now being levied on tobacco are a major imposition on a large number of New Zealanders—many of whom are on minimum wages and others on low incomes.

Targeting a legal activity in this way is discriminating against the large group of law-abiding people who are smokers.

Smokers should not be branded as second-class citizens.

While calculating the precise numbers of smokers is complex, the Ministry of Health produces a serial cross-section survey on tobacco use in New Zealand:

“Number of current smokers in New Zealand in 2009: Based on the estimate that 21% of people aged 15–64 years were current smokers in 2009, the number of current smokers in New Zealand in 2009 was estimated to be 572,100.”  

This suggests that smoking is widespread among New Zealanders. While smokers are paying a heavy tax load, actual expenditure on smoking cessation programmes is dramatically out of all proportion to the tax collected. The expenditure represents less than 4 percent of total tobacco taxes of $1.3 billion.

This results in some extremely confusing outcomes:

- high excise against tobacco
- high pricing of tobacco products
- very high total taxation on tobacco products
- political and financial attacks arguing for the cessation of tobacco use.

Some anti-smoking campaigners advocate outright prohibition. We should remember that many things are harmful including vehicle exhaust emissions and even food when it leads to obesity. What is concerning is the number of submitters who attended this select committee quoting estimates of tobacco harm without providing the substantial, empirical analytical evidence that would normally be expected to support such claims. They may be correct. But they did not provide the committee with the standard of evidence necessary to substantiate their claims.

---

1 Tobacco Use in New Zealand: Key findings from the 2009 NZ Tobacco Use Survey.
New Zealanders retain the right to smoke. New Zealand First supports anti-smoking educational programmes but we do not support a discriminatory anti-smoking campaign that has become a witch hunt against smokers and threatens a basic freedom.
Appendix

Committee procedure

The Customs and Excise (Tobacco Products—Budget Measures) Amendment Bill was referred to the Finance and Expenditure Committee on 25 May 2012. The closing date for submissions was 22 June 2012. We received 94 submissions from interested groups and individuals. We heard 19 submissions. We received advice from the Inland Revenue Department, the Ministry of Health, the New Zealand Customs Service, and the Treasury.

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 Dr Nick Smith

Kevin Hague replaced Dr Russel Norman for this item of business.
Reports from the Controller and Auditor-General, Reviewing Financial Management in Central Government, and Fraud Awareness, Prevention, and Detection in the Public Sector

Report of the Finance and Expenditure Committee

Contents
Recommendation 2
Introduction 2
Financial management 2
Fraud awareness, prevention, and detection 3
Appendix 6
Reports from the Controller and Auditor-General, Reviewing Financial Management in Central Government, and Fraud Awareness, Prevention, and Detection in the Public Sector

Recommendation

The Finance and Expenditure Committee has considered the reports from the Controller and Auditor-General Reviewing Financial Management in Central Government and Fraud Awareness, Prevention, and Detection in the Public Sector, and recommends that the House take note of its report.

Introduction

These two reports, published by the Controller and Auditor-General in June 2012, have in common the theme of whether public sector organisations have good systems and processes to ensure they make the best use of their resources, and do not waste or misuse them. The Auditor-General notes that such issues are particularly important in the current economic climate, when financial constraints not only increase the need to focus on value for money, but may also increase the risk of fraudulent activity.

Financial management

The Auditor-General decided to review the state of New Zealand’s public-sector financial management system in the context of changes being made following the November 2011 report of the Better Public Services Advisory Group. Work is being done to adjust the way the public service operates to coordinate efforts to achieve results across whole sectors, and to provide better value for money. Key changes involve stronger leadership from the three central agencies (the State Services Commission, the Treasury, and the Department of Prime Minister and Cabinet), acting together as a form of “corporate head office”, and a more strategic financial management approach from public-sector chief executives. The Auditor-General commissioned Ernst and Young to help assess the current system against best practice.

Findings

Overall, the Auditor-General concludes that our financial management system compares well with those of other developed countries such as Singapore, Denmark, the UK, and Australia. However, there is also clearly room for improvement. She notes that most public-sector organisations in New Zealand perform admirably in the essential accountability areas of financial control, budget management, and external reporting, but few go beyond this to focus on “value management”—establishing how well financial resources are being transformed into results.
The Auditor-General also observes that the role of chief financial officer (CFO) tends to be viewed rather narrowly in the public sector, with the focus on control and reporting functions.

**Areas for improvement**

The Auditor-General suggests focusing more on building capability in value management, and on making sure that financial and value considerations are included in decision-making at all levels within organisations, as well as across sectors and throughout government. She notes that the Treasury has a natural leading role in the public sector in promoting financial management, and suggests that it should continue to develop its role as the “CFO of government” to share good practice and encourage a focus on performance and results. The Auditor-General says her office will continue to work with central agencies to promote stronger financial management in the public sector.

We concur with the Auditor-General that the public sector’s financial management should be strengthened, and should move beyond accountability to focus more on assessing value for money and results. We are pleased that the Treasury has started to move in this direction by organising a forum of public-sector CFOs to develop financial management practices in government. We would, however, like to see its work move beyond the exchange of ideas to more specific action in areas such as developing tools and techniques for measuring value in whole sectors.

**Fraud awareness, prevention, and detection**

This report by the Auditor-General summarises the results of a survey it commissioned from PricewaterhouseCoopers in 2011. It was not prompted by specific concerns; the Auditor-General notes that New Zealand generally has a “clean” image when it comes to fraud, and this perception was validated by the survey results. As no survey had previously covered the whole public sector, and the Auditor-General was aware that the risk of fraudulent activity increases in difficult economic times, she considered a survey worthwhile. PricewaterhouseCoopers surveyed nearly 1,500 public servants, and considers the results a reliable guide to perceptions and practices in detecting and preventing fraud in the public sector. It also drew comparisons with similar recent surveys in Australasia.

The survey indicates that New Zealand’s public sector has a strong commitment to protecting public resources, and its policies and approaches are generally appropriate. The incidence of fraud appears relatively low in our public service, with less than a quarter of respondents aware of any fraud in their entity within the past two years. (Because survey responses were anonymous, however, multiple reporting of the same incident cannot be avoided.) Most incidents involved a single internal person acting alone.

**Types of fraud**

We sought more information from the Auditor-General about the types of fraud revealed by the survey, as it seemed to us that the report provided fairly superficial coverage. It noted that the most frequent types of fraud in New Zealand’s public sector were

- theft of cash (21 percent)
- theft of plant, equipment, or inventory (17 percent)
• fraudulent expense claims (14 percent)
• payroll fraud, such as falsifying timesheets (9 percent)
• false invoicing (8 percent).

We asked in particular what the study had revealed about fraud involving procurement, immigration, or the benefit and health systems, as these would appear from reported instances to be areas of particular risk. While we consider that New Zealand generally has high standards of probity, it is important that fraud prevention efforts cover all areas of known risk, and that any breaches of standards are dealt with strongly. We were told that the report was backed by a substantial amount of detail, and more information was subsequently provided.

Fraud detection and reporting

How fraud is detected and reported is of particular interest. The survey indicated that internal controls are the single largest means by which frauds are discovered. Further, reporting to the Police appears to be effective in preventing more fraud from being committed in an organisation. It is therefore disappointing that only 39 percent of fraud incidents referred to in the survey had been reported to enforcement authorities. We are pleased that the Auditor-General is publicising the study’s findings to emphasise the need for agencies to have strong internal controls, and to send a clear “zero-tolerance” message by reporting any serious instance to the Police.

Interestingly, the survey suggested that tip-offs by whistle-blowers were not a significant factor in New Zealand’s detection of fraud, although a survey of the Australian public sector found that 29 percent of frauds were identified by whistle-blowers. Logic suggests that tip-offs from within an organisation are likely to be an effective means of bringing fraud to light, so we find it a cause for concern if people who are aware of fraud are reluctant to blow the whistle for whatever reason. It may be that protected disclosure policies are not sufficiently well understood or implemented, and people fear repercussions if they act on knowledge of a fraud. Such concerns may apply particularly if an employee suspects fraud by a manager—a less common type of fraud, but one that tends to involve far larger sums of money than fraud by more junior employees.

We would like to see the Auditor-General do more to ensure that people feel able to report serious suspicions of fraud without fear of repercussions. A first step is clearly to ensure organisations have well-publicised protected disclosure policies. However, we are aware that people may still be reluctant to come forward in a small office, or if they are, say, a supplier whose livelihood depends on maintaining good working relationships with the organisation. We suggest that the Auditor-General could be more active in publicising the fact that her office can receive complaints, and can initiate an investigation if the circumstances appear to warrant it. We consider it important that whistle-blowers do not have their future careers jeopardised from exercising their public duty.
Role of the Auditor-General and external audits

The Auditor-General notes in her report that only about 1 percent of frauds are detected by external audit, as the auditor’s role is to assess the fairness of an entity’s financial statements, not to detect fraud. Auditors can, however, play an important role by sharing information with entities about fraud risks, trends, and prevention measures in the course of their work.

We accept that the prevention of fraud is primarily the responsibility of each entity’s governing body and management. We commend the Auditor-General’s efforts, by means such as this survey, to increase awareness among public entities of the risk of fraud and steps they can take to prevent it. We believe, however, that there is scope for the Auditor-General to be more active about fraud, for example by publicising her office as an avenue for people to lodge serious complaints, and by making more use of her ability to undertake performance audits and inquiries. We have sought more information about the Auditor-General’s activities in this area, and intend to follow up our discussion when we next undertake a financial review of the office’s performance.
Appendix

**Committee procedure**

The committee met on 22 August and 12 September to consider the reports from the Controller and Auditor-General *Reviewing Financial Management in Central Government*, and *Fraud Awareness, Prevention, and Detection in the Public Sector*. We heard evidence from the Office of the Controller and Auditor-General.

**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 Dr Nick Smith
Reserve Bank of New Zealand 
(Covered Bonds) Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Reserve Bank of New Zealand (Covered Bonds) Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction
The bill aims to support financial stability by improving the ability of New Zealand banks to access the international market for covered bonds, which are considered to be a relatively stable source of long-term funding. Covered bonds are financial instruments which provide their holders with both an unsecured claim on the issuing bank and a secured interest over a specific pool of assets, called the cover pool. Covered bonds are common overseas; New Zealand banks have been issuing them for two years under contractual arrangements, but the absence of a legislative framework in this country has put New Zealand issuers at a disadvantage relative to their counterparts elsewhere.
The bill seeks to amend the Reserve Bank of New Zealand Act 1989 to establish a registration regime for covered bond programmes, supervised by the Reserve Bank, and to provide legal certainty about the treatment of the cover pool assets in the event that an issuing bank was placed into liquidation or statutory management. The amendments we are recommending to the bill are generally in the nature of clarification; this commentary discusses the more significant of them. It does not discuss minor, technical, or consequential amendments.

**Meaning of issuer**

In clause 9, we recommend amending new section 139C to make the meaning of “issuer” clearer, and to cover the situation where a bank’s registration is cancelled. In the event that a bank with a covered bond programme had its registration cancelled, it would continue to be treated as an issuer under this legislation unless it transferred all the rights and obligations of the programme to another issuer. The proposed new definition would mean that new section 139F(2)(a) was no longer required, and so we recommend its deletion.

**Registration of covered bond programmes**

We recommend amending clause 9 to extend proposed new section 139D(2)(b) (which requires registration of covered bond programmes) to include reference to assets that have yet to be transferred into the relevant cover pool. This would allow for changes in the cover pool assets without a change to registration requirements, as long as those assets met the eligibility criteria of the covered bond programme as registered.

The amendments we recommend to sections 139D(4) and (5) are mainly for purposes of clarification, but we also recommend the inclusion of a new section 139D(5)(a)(ii), which would enable the Bank to remove a covered bond programme from the register if the security interest over the cover pool had been enforced (subject to the consent of the relevant bond trustee and security trustee).

For clarity, we recommend moving section 139E(1) to become new section 139E(4A), and extending it to include situations where the issuer “permitted” the issue of a covered bond (that is, where a registered bank was not itself effecting the issue of covered bonds, but
was allowing their issue). We also recommend inserting new section 139E(5)(ab) to establish a corresponding new offence, and amending clause 10 (new section 156AB(2)(ga)) to make it clear what the penalty relating to that offence would be.

**Determination of application for registration**

We recommend amending clause 9 to insert new sections 139F(2)(d) and 139F(2)(da) to make it a requirement of registration that the issuer maintain a register of cover pool assets, and that it specify in the covered bond programme certain procedures and internal controls to ensure the register is accurate and consistent with any asset class designation.

Further to this change, we recommend amending new section 139H(1)(b) to require the issuer to keep the register up-to-date, and section 139I(1)(c) to require a cover pool monitor to assess the issuer’s compliance with the requirement to maintain the register, and its associated procedures and internal controls.

**Cover pool monitor**

The bill as introduced would require the appointment of a cover pool monitor to verify the information provided by the issuer about the cover pool assets (new sections 139F(2)(c) and 139I). While the monitor would be appointed by the issuer under contract, it would have to be independent of the issuer, and either a licensed auditor, a registered audit firm, or a class of persons otherwise approved by the Reserve Bank. We recommend some amendments to section 139I to specify the respective duties of the monitor and of the issuer.

In particular, we recommend amending section 139I(1)(c) to clarify that the onus is on the issuer to ensure that the cover pool monitor provides a report, at specified intervals, on the matters specified in section 139I, namely the arithmetical accuracy of the issuer’s calculation of the asset coverage test and compliance with the requirements to maintain an accurate register of cover pool assets. Consequential to these changes, we recommend deleting new sections 139I(2) to (5), as their provisions would be incorporated into the contractual requirements of the issuer vis-à-vis the cover pool monitor.

As to the specific role of the monitor, we do not believe it was intended that a cover pool monitor should be required to undertake a
higher level of review than an agreed-upon procedures review, or to check and verify the accuracy of every single entry in the register, which would be likely to increase compliance costs without significant benefit to investors. We note that such intensive oversight is not general market practice, but believe it is implied in the wording of the bill as introduced. We therefore recommend amending new section 139I(1)(c) to make it clear that, under its contract of appointment, the role of the cover pool monitor can be adequately performed through an agreed-upon procedures review.

Other amendments we recommend to section 139I are for purposes of clarification. For example, we recommend that new section 139I(1)(c) require the cover pool monitor to assess compliance “at a given point in time”, rather than “at any point in time”, as we do not believe the intention was to require continuous assessment. We do, however, agree that the monitor should be required to report more frequently than usual if it detects any problems; our suggested amendments to section 139I retain the requirement for 3-monthly reporting in such circumstances.

Requirements of registered programmes
The bill would require the Reserve Bank to ensure that covered bond programmes met certain requirements before registering them, including the cover pool assets being owned by a “special purpose vehicle” so that they could be clearly identified and separated from the issuer’s other assets. This segregation of assets is particularly important to provide certainty to investors in the event of a bank’s failure. The bill would also place certain on-going requirements on the issuer, some of which the special purpose vehicle would be contractually required to fulfil in the event that the issuer defaulted.

In the bill as introduced, an issuer would be required to notify the Reserve Bank of any material changes that “may” result in a failure to comply with the requirements. We recommend amending the threshold to “would be likely” to result in a failure to comply, as we consider this a clearer and more appropriate test (clause 9, new section 139H(1)(c); previously numbered as 139H(1)(d)).

We recommend inserting new section 139H(1A) to make it clear that the issuer’s obligations would end in the event that the issuer defaulted; in that event, the special purpose vehicle would be required
to provide the Reserve Bank with any information it requested regarding the covered bond programme.

**Transitional provisions**
We recommend that the transition period specified in clause 11 be extended from 6 months to 9 months to take into account the 60 working days allowed for the Reserve Bank to consider applications.

**Statutory management, etc, of issuer**
We recommend amending new section 139J(4), and the Schedule to the bill, to make it clear that a covered bond special purpose vehicle is not an associated person or subsidiary for the purposes of the Insurance (Prudential Supervision) Act 2010.

**Other issues considered by the committee**

**Risks for unsecured creditors**
We have given careful thought to the ways in which covered bonds may affect the risks faced by ordinary depositors. Because the holders of covered bonds would have preferential access to certain of the issuing bank’s assets in the event of default, this would subordinate the claims of depositors and other unsecured creditors on the assets placed in the cover pool. We have sought to weigh up this increased risk for unsecured creditors against the benefits offered by issuing covered bonds. The main benefit is the reduced likelihood that a bank will default in times of financial market stress, because the ability to issue covered bonds improves banks’ access to longer-term, relatively secure funding. Another potential benefit is that the reduced funding costs for banks from issuing covered bonds may be passed on to unsecured creditors if banks can pay higher deposit rates.

On balance, we consider that the risks to unsecured creditors are justified provided their application is limited to a conservative proportion of a bank’s assets.

**Limit on issuance**
Since 2011, the Reserve Bank has imposed a limit of 10 percent on the proportion of a bank’s assets that may be encumbered in favour of covered bonds. The limit is imposed as a condition of banks’
registration, under section 74 of the Reserve Bank of New Zealand Act 1989. The bill does not specify any limit, as it is proposed that the current arrangement would continue.

We have considered whether the 10 percent limit on the extent to which assets may be encumbered by covered bonds is sufficiently conservative, and whether the limit should be specified in primary legislation by way of this bill.

We note that Australia imposes a slightly lower limit, at 8 percent, but our examination suggests that this is comparable to the New Zealand requirement as the Australian limit only applies at the time of issuance, whereas New Zealand’s applies on an ongoing basis, and banks tend to stop short of 10 percent to ensure they do not exceed the limit. We understand that a low limit of 4 percent, as applied in some countries, such as Canada, would be likely to preclude all but the largest New Zealand banks from issuing covered bonds.

It is of interest that ratings agencies have assessed the issuance of covered bonds by New Zealand banks with a 10 percent limit as “ratings positive” for unsecured debt; that is, that the benefits outweigh any risks to unsecured creditors. After considering all these factors, we have concluded that a 10 percent issuance limit as currently imposed is appropriate.

**Enforcement of limit**

We note that changing market circumstances could make it desirable for the limit to be revised. For example, if funding conditions tightened, it could be considered prudent to allow banks to encumber assets above the limit for a period. We have therefore considered whether the issuance limit should be imposed as a condition of bank registration, as currently enforced by the Reserve Bank, or by means of primary legislation.

Some of us consider that the issuance of covered bonds involves a matter of policy, given the increased risk for ordinary depositors entailed in a bank encumbering assets in favour of covered bonds. Some of us therefore consider that any increase in the limit is a matter that should be authorised by regulation at the direction of the Minister, rather than left to the delegated authority of the Governor of the Reserve Bank; this would provide an appropriate additional check on, and transparency in, such a decision.
The majority of us, however, consider that the current arrangement provides an important element of flexibility, which would prove advantageous in any financial crisis, when rapid responses to market developments are likely to be needed. The majority of us note that the Reserve Bank has been entrusted with discretion in relation to the prudential requirements it places on banks in order to maintain financial stability, and believe a similar situation applies here. We therefore do not recommend any change to the current arrangement for specifying and enforcing the limit.
Appendix

Committee process
The Reserve Bank of New Zealand (Covered Bonds) Amendment Bill was referred to the committee on 22 May 2012. The closing date for submissions was 3 July 2012. We received and considered 6 submissions from interested groups and individuals. We heard 4 submissions.

We received advice from the Reserve Bank of New Zealand.

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
Climate Change Response (Emissions Trading and Other Matters) Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation
The Finance and Expenditure Committee has examined the Climate Change Response (Emissions Trading and Other Matters) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Climate Change Response Act 2002 to make changes to the New Zealand emissions trading scheme (ETS). The ETS is the main means by which New Zealand meets its international commitment to limiting greenhouse gas emissions. It was designed in the context of the international climate change framework established under the Kyoto Protocol. The Government appointed a panel to review the ETS, and to consider in particular how it should evolve after 2012, as the first commitment period under the
Kyoto Protocol ends at the end of 2012 and there is uncertainty about the international framework beyond then.

The changes proposed in this bill represent the Government’s response to the recommendations of the Emissions Trading Scheme Review Panel, and to international developments. The Government’s main objectives with these amendments are

• to ensure that the ETS supports the Government’s economic growth priorities more effectively
• to ensure that the ETS is flexible enough to cater for various potential international outcomes in the period from 2013 to 2020
• to improve the operation and administration of the ETS.

The following are the main amendments proposed in the bill:

• It would retain indefinitely the current transitional measures, which the majority of us believes mitigate the scheme’s effect on costs to businesses and households. These measures are a one-for-two surrender obligation (which allows participants from non-forestry sectors to surrender one emissions unit for every two tonnes of emissions, effectively reducing the obligation by 50 percent) and a $25 fixed-price option (which allows ETS participants to meet their obligation by paying the Government $25 per New Zealand unit (NZU), effectively capping the price of carbon at $25 per NZU). The bill also seeks to extend these transitional measures to the waste, agriculture, and synthetic greenhouse gas sectors. In addition, the bill would suspend the planned phasing out of allocation to emissions-intensive trade-exposed industrial activities until other transitional measures ended.

• The bill would remove a specified entry date for surrender obligations on biological emissions from agriculture, currently set for 1 January 2015.

• It would introduce forest offsetting within the ETS as an option for pre-1990 forest landowners, to give them more flexibility.

• It would introduce a power to allow auctioning within an overall cap on the amount of New Zealand units, to mitigate concerns about the current lack of flexibility over the supply of NZUs into the ETS and concerns that, in future, more inter-
national units may be surrendered to the Government than it needs to meet any emissions-reduction target.

• It would change the current treatment of some parts of the synthetic greenhouse gas sector in the ETS to reduce the administrative costs faced by importers and manufacturers.

The bill would also make a number of technical and operational changes to make the scheme more workable and flexible. For example, it would remove deforestation liabilities where forest cannot be re-established because of erosion or other natural disturbance, and it would ensure that minor clearing of forest boundaries was not counted as deforestation. The bill would better allow for natural regeneration and re-establishment of poplars and willows, and support efforts to control tree weeds (wildings) by preventing tree weeds on post-1989 forest land from further participating in the ETS. Technical changes would also address eligibility issues for the less-than-50-hectare exemption for trustees, including the Maori Trustee and trustees appointed under the Te Ture Whenua Maori Act 1993.

This commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amendments. For example, we propose amending or deleting several clauses—such as clauses 7(4), 15 to 17, 25, 37, and 60—in order to clarify their meaning or because they are unnecessary or inconsistent with international rules. Although such changes appear substantial, we are satisfied that their effect is not significant.

Managing the Crown’s Kyoto obligation

We recommend some amendments to enable the Crown to manage the risks involved in meeting its international obligations. The Act provides for New Zealand units to be converted into assigned amount units (AAUs) for export. AAUs are a form of Kyoto unit that can be sold on international markets, as NZUs are not yet accepted in other trading schemes. However, such conversion would potentially diminish the Crown’s ability to square up its obligations for the first commitment period under the Kyoto Protocol, which is expected to be required in the second half of 2015. To mitigate this risk, we recommend the insertion of clause 17A to specify that the Crown’s
obligation to convert eligible NZUs would apply only if designated AAUs were available in a Crown holding account.

As the Kyoto framework is unclear beyond the first commitment period at this stage, we are also proposing a change to provide more flexibility for conversion of NZUs in the event that no further AAUs were issued in the future. We recommend amending clause 18(1), inserting new section 30G(1)(q), to provide a discretionary regulatory power allowing the Minister for Climate Change Issues to specify other Kyoto units to which exportable NZUs could be converted if AAUs were not available in the Crown holding account. The rest of the changes we propose to clause 18(1) are essentially a rearrangement, to set out clearly the matters relating to this new power (new section 30GB), and those relating to the power already provided for in the bill under section 30G(1)(p), which would allow the Minister to sell New Zealand units by auction (new section 30GA).

**Forestry-related provisions**

**Eligibility of pre-1990 forest land for offsetting**

At the suggestion of the Minister for Climate Change Issues, we have considered the desirability of making the rules on offsetting for pre-1990 forest land more flexible. In essence, offsetting rules allow a landowner to change the use of their land from forestry to an alternative use without incurring liability for deforestation, provided they plant a new forest in another location. The bill as introduced provides that a new offsetting forest must be established on land that was not forested at 31 December 1989 (clause 81, inserting new section 186B(1)(a)(ii)).

We have considered the situation of land that was in forest at 31 December 1989 but subsequently deforested; we understand that about 60,000 hectares fall into this category. We see merit from an environmental perspective in allowing this land to qualify as an offsetting forest should the landowners choose to replant it in forest. We therefore recommend broadening the definition of “post-1989 forest land” in clause 7(4) and amending clause 81, inserting new subparagraphs in section 186B and deleting subsections 186D(4) and (5), to include land that was forest at 31 December 1989 but has since been deforested and any liabilities paid.
We note that such a change would be a departure from the Flexible Land Use rule agreed at Durban in November 2011 for the second commitment period, but we understand that it is not inappropriate for countries to apply the rule in a way suited to their domestic circumstances.

**Unrelated trusts under the same trustee**

We recommend amending clause 7, inserting new section 4(7), to broaden the definition of “landowner” in order to allow unrelated trusts under the same professional trustee or trustees to have access to the 2-hectare de minimus deforestation threshold allowed under the Act. This amendment would give effect to the original policy intent.

**Allocation of units in respect of pre-1990 forest land**

We recommend the insertion of clause 30A to improve the bill’s workability regarding the transfer of units for forestry allocations. Section 72 of the Act requires the Environmental Protection Authority to distribute allocated units by 31 December 2012. This timing could prove impractical if the person involved had not yet opened a holding account into which the units could be transferred; our proposed amendment, inserting new subsection 77(8A), would assist with logistics in such circumstances.

**Procedure for regulations relating to field measurements**

Clause 70 concerns the procedures to be followed for various regulations, including regulations which require field measurements to be taken. In order to accommodate the limited pool of contractors skilled in field measurement, it would be helpful to extend the date by which participants must submit measurement data for the new Field Measurement Approach, from 31 December 2012 to 31 March 2013. This would entail suspending the usual 3-month stand-down period before regulations came into force after they were gazetted, so that the extension of time became effective promptly. We recommend amending clause 70 to do so, and note that this clause already provides a similar waiver of the stand-down period to accommodate the practicalities of implementing offsetting.
Permanent Forest Sink Initiative

Under the Permanent Forest Sink Initiative, which operates outside the ETS, landowners who establish permanent new forests earn AAUs for carbon sequestered during the first commitment period (2008 to 2012). The type of unit they will receive for carbon sequestered after 2012 is yet to be specified in regulations, and will depend on consultation and decisions yet to be taken on the future Kyoto framework. Participants who were allocated NZUs in future would be disadvantaged, as the Act prohibits the export of NZUs or their conversion to another kind of unit. We therefore propose amending the bill to avoid this potential inequity, but without anticipating the decision as to which units participants would receive after 2012.

We recommend amending clause 73 to insert new section 178C(2)(c), which would allow NZUs allocated under the Permanent Forest Sink Initiative to be converted and exported.

Eligibility for less-than-50-hectare exemption

Clause 78 of the bill, amending section 183 of the Act, would correct an anomaly in the current legislation whereby a sole professional trustee acting for several unrelated parties whose landholdings total more than 50 hectares cannot apply for the exemption that would otherwise be available to unrelated parties with forest landholdings of less than 50 hectares. This has been particularly problematic for the Maori Trustee. The Act also does not recognise trustees appointed under Te Ture Whenua Maori Act 1993 as professional trustees, so they are not eligible for an exemption for small forest blocks if their pre-1990 forest landholdings total more than 50 hectares. Clause 78 of the bill would correct these issues by refining the provision regarding the required statutory declaration, and amending the definition of professional trustee.

While we support the change proposed in the bill, we note that some trustees may have already applied for an allocation of New Zealand units to meet their deforestation obligations under the Act as it stands. For reasons of equity, we therefore recommend the addition of clause 78A, inserting new section 183A, to allow such trustees to apply for a less-than-50-hectare exemption and, if it is granted, to repay their allocation.
Synthetic greenhouse gases
The bill (clause 100) would insert a new Part 7 in the Act, replacing with a levy the ETS obligation on the importation of synthetic greenhouse gases in goods and motor vehicles. This is designed to balance the costs to importers and manufacturers more proportionately to their environmental impact, and would have the effect of reducing costs for small-scale importers. For motor vehicles containing air-conditioning units, the levy would be charged at the time the vehicle was first registered for on-road use in New Zealand; all other goods containing synthetic greenhouse gases would be levied at import. Importing and manufacturing synthetic greenhouse gases in bulk would remain in the ETS. We recommend the following amendments to improve the workability and equity of these provisions.

Exemption for samples
For consistency with the practice of the New Zealand Customs Service and with the Kyoto Convention, we recommend amending clause 100, section 232, by deleting subsections (3)(d) and (3)(g). This would exempt from the levy samples of goods containing synthetic greenhouse gases, echoing the treatment that already applies to a duty under the Customs and Excise Act 1996.

Calculation of levy
Clause 100, section 233, sets out the formula for calculating the levy rate. We recommend some amendments to improve the workability and equity of this formula.
To align the costs faced by ETS participants more closely with those covered by the levy, we recommend providing a power for ministerial discretion in choosing the methodology for calculating the levy rate and setting the rate. This discretion would allow the Minister to take into account the carbon prices over the last financial year, the current carbon prices, and the price of any New Zealand units auctioned. The methodology the Minister chose would be set out in regulations. This would provide greater certainty for businesses as methodologies evolve.
We also recommend broadening the formula’s reference to the amount of synthetic greenhouse gas in a specific good or vehicle, to provide for the occasional item containing large amounts of such a
gas (such as an air-conditioning unit for a large building, or a freezer on a new fishing vessel), where the formula’s averaging component would be inappropriate.

**Levy refunds or exemptions**

We see some risk that, if a car were manufactured or assembled in New Zealand, the synthetic greenhouse gases contained in its air-conditioning system could be charged for twice, as the gases would come under the ETS when imported in bulk, and the levy would then be imposed when the car was first registered. Also, the synthetic greenhouse gases contained in imported air-conditioning systems, which would be subject to the goods levy, could also be covered by the motor vehicle levy. To prevent such gases from being charged for more than once, we recommend inserting new sections 241A and 241B in clause 100, which would allow any excess charge to be refunded or exempted.

**Disposal of goods containing synthetic greenhouse gases**

Clause 100, section 261, would make it an offence to knowingly release synthetic greenhouse gases when installing, operating, servicing, modifying, or dismantling equipment containing such gases. For clarity, we recommend amending this clause to include "disposing of" goods containing the gases in the offence.

**Defence for releasing synthetic greenhouse gases**

Clause 100, section 262, specifies circumstances in which there may be lawful justification and excuse for releasing synthetic greenhouse gases. Although the bill does not limit the justification to the circumstances specified, we understand there is some concern that a business could be prosecuted for a release that occurred in the course of its normal operations despite its compliance with best practice. We therefore recommend amending this provision to remove reference to particular circumstances, and to state simply that the justification would apply where the release of the gases could not reasonably have been avoided.
Other issues considered by committee

Transitional measures and exclusion of agriculture

Under existing legislation, the transitional measures designed to mitigate the initial impacts of the ETS (the one-for-two surrender obligation and the $25 fixed-price option) would expire at the end of 2012. Also, surrender obligations would start to apply for biological emissions from agriculture from the beginning of 2015. (Since January 2012, agricultural emissions are required to be reported but there is no requirement to surrender corresponding emissions units.)

The bill would amend the Act by continuing indefinitely the transitional measures, and removing the specified start date for surrender obligations on biological emissions from agriculture. These provisions are set out in the following clauses:

- Clause 28, inserting new section 63A, would continue the one-for-two surrender obligation, requiring ETS participants from non-forestry sectors to surrender one emissions unit for every two tonnes of emissions
- Clause 73, inserting new sections 178A and B, would maintain the $25 cap on the price of New Zealand units
- Clause 96 would amend section 219, delaying indefinitely the introduction of surrender obligations for biological emissions from agriculture.

The Government has stated that it intends to review the continuation of the transitional measures in 2015. We consider it worth noting that amending legislation would be required to end these measures, or to start imposing surrender obligations on agricultural emissions.

Restrictions on international units

The New Zealand emissions trading scheme is based on the principle of achieving emission reductions at least cost, and so places no restrictions on emitters purchasing international units to meet their obligations. We are aware of concern about this approach, particularly about the low price of international units, which reduces the price of NZUs and thus the incentive to reduce domestic emissions, and about the environmental integrity of certain types of international units. We considered the possibility of a restriction on international units, possibly along the lines of the 50 percent restriction that applies in Australia.
The Act (section 30G(1)(c)) already contains a power to make regulations placing quantitative or qualitative restrictions on the surrender of units. This power was in fact used in 2011 to restrict Certified Emissions Reduction units from certain industrial gas destruction projects. The majority of us consider this regulation-making power an appropriate and effective tool for use when circumstances warrant, and do not consider that further amendment to the Act is necessary.

Calculation of deforestation emissions
We considered recommending a change to the method by which deforestation liabilities are calculated for pre-1990 forests. At present, the regulations require owners of pre-1990 forests to use default look-up tables when calculating emissions from deforestation. Occasionally, however, this approach can lead to a manifestly unfair outcome if a plantation’s actual emissions are significantly less than the default tables indicate because of damage from factors such as wind, fire, insects, or disease.

We considered providing for regulations to be made giving the Environmental Protection Authority discretion to use alternative methods for calculating deforestation emissions. We concluded, however, that section 60 of the Act already provides an avenue for redress in such a situation, as it allows the Minister to recommend exemptions for particular cases. A participant who considers their actual emissions to be significantly less than those in the default look-up tables can request they be exempted from a portion of their emissions.

Custodian trustees
We are aware of concern on the part of custodian trustees about their potential liability under the emissions trading scheme for actions outside their control. As the legal owners of land in their trust, custodian trustees bear liability under the Act for any obligations arising from deforestation. However, activities on the land are controlled by the managing trustees specified in the trust deed. We acknowledge that custodian trustees have a valid concern, and have considered several possible ways by which the incentives for custodial and managing trustees to comply with the Act might be aligned. We do not, however, consider any of them a satisfactory solution at this stage. The
law of trusts is a complex area, and it is important that any approach taken for the emissions trading scheme is consistent with the law’s broader application. As the Law Commission is currently undertaking a comprehensive review of trust law, we do not consider it appropriate to recommend ad hoc solutions in the context of the emissions trading scheme before this review is completed.

**Green Party minority view**

The Green Party opposes this amendment bill which will eviscerate an already weak emissions trading scheme to the point of irrelevance. The two main purposes of the bill, as stated, are to ensure that the ETS (i) supports economic growth; and (ii) flexibly caters for a range of international outcomes in the period 2013 to 2020.

- The first objective misconstrues climate change policy. An ETS is a mechanism to reduce greenhouse gas emissions. That goal is compatible with economic growth only when material growth (GDP) and emissions are decoupled and “green growth” ensues. The bill reflects an ongoing ignorance of this fact.

- The design of the ETS for 2013–20 does not require “flexibility” to respond to the uncertainty of global negotiations; it requires strengthening to meet New Zealand’s binding obligation under the Framework Convention (article 4.2(a)) to limit “its anthropogenic emissions” and demonstrate that developed countries are taking the lead in modifying longer-term trends. The purpose of the ETS, as specified in the 2002 Act, is to assist New Zealand to meet its international obligations and reduce its net emissions below business-as-usual levels. The amendments will thwart those objectives. The proposed legislation displays strategic errors to which this Government has become prone:

  - It disregards the wider context provided by the latest findings on the extent and pace of climate change.

  - It ignores the international community’s failure to mitigate emissions sufficiently to prevent dangerous climate change, thus positioning its obligation to “do its fair share” in the context of inadequate global action.

  - It misperceives its national mitigation obligations as placing a financial burden on selected economic sectors, rather than
an opportunity to assist them to switch, at an internationally-competitive pace, to a green, high-tech, low-carbon economy in which all sectors ultimately benefit.

- It displays economic misjudgement and fiscal irresponsibility through deferring the phase-in of sectoral obligations and development of a genuine carbon market at an appropriate pace.

The global scientific context

The merit of the Government’s amendment bill can be meaningfully judged only in the context of the evidence on climate change recorded since the ETS was introduced in 2008, and revised in 2009.

The original 2008 bill and the 2009 amendment were based on the scientific findings conveyed in the United Nations’ IPCC 4th Assessment Report of 2007. Findings since then show that the recorded impact and revised scenarios are more serious than those entertained five years ago.

This year’s mid-summer Arctic polar ice-melt is far in excess of earlier predictions; what was anticipated to occur around mid-century appears likely now to occur within the next decade. Arctic ice-melt is both consequence and cause of global warming, exposing more heat-absorbent ocean surface which adds, in turn, to regional and global temperature rise. This heightens, and makes more imminent, the risk of new activity in the sources, sinks, and reservoirs that could breach the known tipping-points, specifically:

- methane release from the northern tundra soil and seabed clathrates
- deforestation and fires in the temperate boreal and tropical rain forests
- disruption to tropical monsoon cycles (West and North Africa, Indian Ocean) and the Southern Oscillation
- faster ice-melt in Greenland and West Antarctica.

Taken together, and to cite some scientific comment within recent months, it appears that humanity is moving from a recent period of global concern over climate change (1992 to 2012) to one of global alarm. Humanity has entered an ecological crisis where orthodox approaches to societal behaviour, economic activity, and policy-making at national and international levels will not suffice. Climate change now requires transformational, rather than transactional, thought and
policy. The next half-decade will prove critical to the success of responding to the challenge of global climate change—before the negotiations for a comprehensive global legal agreement are concluded.

The need for “forceful mitigation action”

In his report to the General Assembly on climate change in 2009, the UN Secretary-General concluded:

The international community … must take bold action on climate change mitigation, for without slowing the rate of climate change, the threat to human wellbeing and security will greatly intensify. The importance to the future of the planet of forceful mitigation action cannot be overstated.

In his statement to the Security Council in July 2011, the Secretary-General stated:

The facts are clear. … Climate change … not only exacerbates threats to international peace and security; it is a threat to international peace and security. … Minimalist steps will not do. Ambitious targets are needed to ensure that any increase in the average global temperature remains below 2.0°C. … Developed countries must lead, while emerging economies must shoulder their fair share.

In a statement of September 2012, the European Commissioner for Climate Action has observed that “climate change and weather extremes are not about a distant future; formerly one-off extreme weather episodes seem to be becoming the new normal.” A recent study commissioned by 20 governments concludes that climate change is already contributing to the deaths of nearly 400,000 people a year and costing the world more than $1.2 trillion, wiping 1.6 percent annually from global GDP.

It is estimated that emissions must peak before 2015 and halve before 2050 to have even a 50 percent chance of meeting the 2°C threshold by 2100 (Nature Climate Change, Vol. 2, March 2012, p. 143). The voluntary pledges of all parties to the UN Framework Convention on Climate Change equate to only 50 percent of what is required to meet the threshold (UNEP: Bridging the Emissions Gap, November 2011). At the UN General Assembly debate last month, President Dabwido of Nauru declared “we are all staring a global catastrophe right in the face”.

New Zealand is part of the global emissions gap. The required mitigation by Kyoto Annex I parties to reach the 2°C threshold, identi-
fied in the AR–4 (2007), is 25 percent to 40 percent reductions off 1990 levels by 2020. Its two “annual targets” off the 1990 baseline (2020: 10–20 percent; 2050: 50 percent) are far below the UN Secretary-General’s call, demonstrably below New Zealand’s “fair share”. The amendment bill will make it less likely that New Zealand’s current inadequate targets will be met. The cabinet paper makes it clear that the Government already has new targets in mind and that a decision whether or not to join any second Kyoto commitment has been made, but is withholding these from public, and parliamentary, scrutiny.

The select committee hearings and the proposed amendments to the ETS

The submissions to the committee reflect the concerns of two broad categories: specific economic-corporate interests and general environmental concern. The Government states that, in drafting the bill, it has listened to all stakeholders. The ultimate stakeholder is the next generation, whose interests require a rapid strengthening, not slow unravelling, of the NZETS.

The independent review panel refuted two fallacies in submissions of 2011:

- It is argued that New Zealand should receive some form of leniency on mitigation levels because of its “unique” profile (47 percent agricultural emissions). This has already been accounted for in international negotiations (including the Kyoto Protocol).
- It is argued that New Zealand emissions comprise a tiny proportion of global emissions. The Panel finds this a “poor excuse for inaction” since New Zealand emissions are large, both per capita and on carbon intensity. [p. 24]

The Green Party supports two measures in the bill:

- The introduction of explicit power to allow auctioning within an overall cap on the supply of NZUs.
- The alignment of international greenhouse gas accounting standards with the latest global warming potential matrices.

Apart from these, the bill emasculates an already weak emissions trading scheme. The review panel was “not surprised the ETS has not had a significant impact to date” [p.18]. Despite uncertainty over
future international negotiations and carbon markets, the panel saw it as in New Zealand’s long-term economic interests to continue to change behaviour through increased costs on emissions. The Government should send a “clear signal” for the future evolution of the ETS, so business and households have greater certainty and confidence in investment and purchasing decisions [p. 6]. The amendment bill does precisely the reverse.

Most of the principal measures for strengthening the ETS are in fact weakened in the bill:

Transition measures

- The review panel recommended that the price cap should increase by $5 per annum from 2013 to 2017, starting at $30 per NZU in 2013 and reaching $50 in 2017. The bill defers a price increase indefinitely.
- The review panel recommended that the one-for-two surrender obligation should scale up to one-for-one by 2015 (for fossil fuels, stationary energy, and industrial processes, to join forestry). The bill defers any scale-up indefinitely.

Agriculture

The Review Panel recommended that surrender obligations for agriculture commence in 2015, as currently legislated. The bill defers agriculture indefinitely, effectively removing agricultural emission mitigation from the ETS. Future legislation will now be required for agriculture to enter into force.

Forestry

The bill will introduce flexibility for pre-1990 forests to switch to other land-use and reforest elsewhere. This will encourage further deforestation in favour of dairy development (notwithstanding a modest disincentive through the proposed claw-back of the second tranche).

Limitations on international trading

Despite restrictions on trading international units by our partners (30 percent in the EU, 50 percent in Australia), the bill will allow unrestricted trading “to ensure the ETS price of carbon continues to re-
flect the international price”. In fact there is as yet no “international price”, and both the Australian and European market prices are in excess of the New Zealand price.

*Fiscal impact*

The fiscal impact of the bill is $328 million, comprised mainly of softening of surrender obligations for liquid fuels, stationary energy, industrial processes, and their deferral in agriculture. The New Zealand household is paying for (subsidising) businesses and farms by this amount, either as consumer or (primarily) taxpayer.

In calibrating its position on the ETS, the Government emphasises two main concerns:

- New Zealand should not have a strong ETS so long as its “main Asian trading partners” lack one.
- New Zealand must protect its carbon-intensive, trade-exposed (CITE) companies, through free allocations.

The Green Party reminds the Government that the basis of the principle of “common but differentiated responsibility” in the Framework Convention and its Kyoto Protocol is that Annex I states take the lead in emissions mitigation. A comprehensive global agreement introducing binding obligations on all states is not envisaged until 2020. Meanwhile, New Zealand has a binding legal obligation to maintain a strong ETS that reduces emissions independent of the climate change policies of its Asian trading partners (except Japan as an Annex I state).

Protection of “carbon-intensive, trade-exposed” enterprises is best served by adopting a clear and predictable carbon pricing phase-in through an overall quantitative cap, with R&D assistance in making the transition to a low-carbon level and some financial assistance to companies as required on the basis of an appeal mechanism to an independent authority. It is revealing, even ironic, that the Minister has advised Cabinet that

> Even with the ETS in place, New Zealand’s emissions are projected to continue to increase significantly over the longer term. This creates longer term risks for New Zealand’s competitiveness—on the assumption that, over time, countries and consumers will take and expect action; and that New Zealand may face new international obligations in future. Therefore we may need to consider other measures that could
help to reduce NZ emissions over the long term, whilst also increasing productivity.

Conclusion
The New Zealand ETS, through the first Kyoto commitment period, has done nothing other than protect New Zealand’s short-term commercial interests at the risk of medium-term economic and societal interests. Supplementary measures will be required to compensate for the failure of the ETS in its current form.

The Green Party opposes this bill.

New Zealand First minority view
New Zealand First does not support this bill because it will worsen an already inadequate response to the challenge to reduce gross emissions. The proposals under this bill demonstrate an inappropriate and deleterious reliance on the purchase of overseas credits masquerading as part of the solution and creating serious adverse effects to appropriate local solutions.

Appropriate local solutions would retain wealth in New Zealand whilst undertaking real climate action.

New Zealand First believes that members were seriously disadvantaged by the substantial withholding of critical information on both the issues of subsidies and emissions, as raised by the Sustainability Council. In short, the process was not transparent and raises the question of why so much secrecy on the financial performance of the ETS when this information, as pointed out by the Sustainability Council, should be public both domestically and internationally if domestic and international solutions are the objective.

New Zealand Labour Party minority view
We recommend that the bill should not proceed. It is fundamentally flawed and will do nothing to curb the growth in New Zealand’s gross greenhouse gas emissions. We agree with the submission of the Parliamentary Commissioner for the Environment which stated “The ETS is the main system New Zealand has for reducing our greenhouse gas emissions. Hollowing it out like this makes a farce of our climate change commitments.” If the bill proceeds in its current form
we do not believe the Government will be able to meet its stated target of a 50 percent reduction in greenhouse gas emissions from 1990 levels by 2050.

Process
We are concerned at the speed with which this legislation has been rushed through the select committee process. Instead of the usual four to six months that a piece of legislation would normally be afforded for the calling and hearing of submissions and detailed consideration of the content, this bill received only seven weeks. Given the highly technical nature of the bill this timeframe is completely inadequate and makes the important select committee process look like nothing more than a rubber stamping exercise. Officials worked hard to get advice to the committee in a timely fashion but this was often received far too late for members to be able to adequately review the large amounts of information before meetings. The Government has stated that the short select committee process was justified because it was preceded by an extended period of ministerial consultation with key stakeholders. However those stakeholders did not include environmental organisations, the general public, or members of opposition parties who rely on a genuine select committee process to hold the Government of the day to account.

Labour members are also concerned that the long term fiscal projections for the emissions trading scheme provided to the select committee in the final week of consideration are based on the current legislative provisions and had not been updated to reflect the impact of the changes being introduced in this bill.

Transitional measures
This bill extends the current one-for-two surrender obligation subsidy for polluters and $25 price cap indefinitely. It also removes the agriculture sector from the ETS entirely. While they are described as “transitional measures” under this legislation they will become permanent features of our ETS legislation.

Labour members are concerned that while the Government promised that the changes in this bill would be fiscally neutral, they are in fact costing taxpayers over $300 million over the next four years at a moderate carbon price. With the Government’s finances in a parlous state
and the current carbon price sitting around $3, Labour does not believe that the unending continuation of these subsidies can be justified.
The decision to continue the subsidies departs from the ETS review panel’s suggestion of phasing out the transition measures over time, which would have provided better certainty for business and less cost to taxpayers.

**Agriculture**
The bill suspends the introduction of agriculture into the scheme indefinitely. New Zealand’s ETS was designed to be an “all-sectors all-gases” scheme. Without the inclusion of the agricultural sector, which produces 48 percent of our gross emissions, the scheme simply cannot function as intended.
Labour believes it is fundamentally unfair that agriculture is the only sector that will now not be included in the ETS. Without its participation New Zealand will struggle to meet our emission reduction targets, thereby placing more pressure on other sectors of the economy to pick up the slack. We agree with the many submitters who pointed out the inherent unfairness of excluding agriculture given the sector already has more emissions mitigation options available to it, and more being developed through targeted research funding, than other emitting sectors that are already in the ETS.
The main argument for not including agriculture in the scheme is that the cost to the sector would be prohibitive. However figures supplied to the committee show that at a carbon price of $10 and with 90 percent free allocation as was proposed by the previous Labour Government’s scheme, the cost to a typical dairy farm would be around $1,140 per annum or $570 with the current Government’s one-for-two surrender obligation subsidy. Given the current carbon price of $3, a typical dairy farm would be paying less than half this amount if the Government were to bring them into the ETS in this amendment bill.
We are also concerned that the trigger for agriculture’s eventual entry into the ETS is completely undefined and meaningless. The Government has said that it will legislate to bring the sector into the scheme when the science has been discovered to mitigate the sector’s emissions and when our trading partners have also moved to progress
their emissions trading schemes. However attempts to clarify what level of emissions mitigation “science” would need to achieve, or how many of our trading partners would have to move on implementing emissions trading schemes to trigger the sector’s inclusion, were unsuccessful. It is apparent from the lack of detail that there is no intention to bring agriculture into the ETS.

Forestry

Labour members are particularly concerned about the impact on the forestry sector as a result of this legislation. While the Government has talked up the introduction of off-setting as being enormously positive for the sector, submitters told us that there is unlikely to be much uptake of off-setting and that the bill as it stands will result in no new forestry being planted and deforestation accelerating.

New Zealand’s gross greenhouse gas emissions have continued to rise and are not projected to peak any time soon. It has only been by offsetting those emissions increases that we are currently in a net positive position with respect to New Zealand’s Kyoto commitments.

New Zealand is heavily reliant on the forestry sector to provide that offsetting.

We know that from 2020 there will be high levels of deforestation as the “wall of wood” planted in the 1990s is harvested. Given the long lead-in time for forestry to secure investment and then the four to five years it takes to start sequestering carbon at any meaningful level, it is critical that new forests are being planned now in order to replace those scheduled to be felled in seven years’ time. If this does not happen then we will see a blowout in the Government’s carbon deficit.

This bill locks in subsidies for polluters and excludes agriculture from the ETS. Both these measures reduce the demand for NZUs that the forestry sector has earned in order to on-sell to help polluters meet their ETS obligations. This was confirmed by submissions which showed that trading in NZUs from forestry has dried up. At $3 there is incentive for foresters to take advantage of the low carbon price to deforest and exit the ETS altogether.
International credits
In a speech to the Climate Change Iwi Leaders Group national hui on 11 April 2012 Minister Groser stated: “The Government also proposes to enable in legislation the introduction of a mechanism that would place a restriction on the proportion of international units a participant can surrender to meet their ETS obligations. Under current settings, there is a serious danger of NZ essentially exporting capital for no good reason resulting in a loss of economic welfare.” Labour agrees with this sentiment and is disappointed that the Government has since backed away from this commitment.

This legislation does nothing to protect New Zealand from an impending tsunami of cheap international credits that are predicted to flood the New Zealand carbon market. All other emissions trading schemes around the world have restricted or are planning to restrict the importation of these units—including the Australian and European schemes.

The simplest way to achieve this would be to follow the example of other countries and require a percentage of units surrendered in New Zealand to be domestically sourced (NZUs). Both the European and Australian schemes have adopted this approach. This would also leave open the possibility of future alignment with those schemes.

Such a move would not automatically result in an excessively high New Zealand carbon price as has been suggested. At the current NZU and UN Offset prices a 50 percent restriction would result in an average carbon price of around NZ$2.75 per tonne. If the NZU price were $25, a 50 percent restriction would result in an average carbon price of around NZ$13.75 per tonne.

If the Government does not move to put restrictions in place then we will see a further collapse of the carbon price in New Zealand as we become a dumping ground for tens of millions of cheap international units that will have nowhere else to go due to significant restrictions on their inclusion in other schemes. The implications for the forestry sector are catastrophic, and the wider effect will be to have no effective price on carbon at all, despite that being the central reason for having an ETS in the first place.
Pass-on costs of carbon

We are told that the reason the Government wants to continue the transitional subsidies and does not want to restrict international units (thereby firming up the New Zealand carbon price) is to protect businesses and households from the cost of carbon during recessionary times. However there is no evidence to suggest that the benefits of these policies are in fact being passed on to consumers. As Gull stated in their submission on the ETS review in May this year:

Gull notes that when it tendered to make fuel purchases from opposition oil company terminals in the Wellington Region, as recently as October 2011, one of the companies priced carbon at $25 per tonne despite the market at that point being at $14 per tonne. This $11 per tonne difference between response to tender and actual market is approximately 1.5 cents per litre. Note if the same deal was offered now with the market at under $7 per tonne the effective price difference would be 2–3 cents per litre.

This observation was supported by submitters who noted despite the collapsing carbon price, electricity and fuel prices have not dropped accordingly. Submitters raised concerns that carbon prices in excess of $15–20 are still being passed on to consumers despite companies currently being able to purchase off the spot market at $3, which the Government further subsidises to $1.50.

Carbon deficit

There appears to be little concern in Government about future liabilities and the fact that New Zealand’s carbon accounts are currently significantly in deficit. While we are meeting our current Kyoto commitments thanks to offsetting practices such as forestry (leaving us with a surplus of 23 million tonnes of CO₂ equivalent), officials estimate the ETS will be 74 million tonnes CO₂-equivalent in deficit by the end of 2012. This leaves a 51-million-tonne hole in our carbon accounts, which at a carbon price of $25 would be worth $1.3 billion. The changes being introduced in this bill essentially freeze revenue from the ETS at current low levels, meaning that if a future government needs to purchase credits to cover the external deficit in our carbon accounts (which Treasury predicts will exceed 1.1 billion tonnes by 2050) instead of this being raised via the ETS, at a carbon price of $25 it would cost New Zealand taxpayers $28 billion.
Summary
The primary goal of climate change policy should be to achieve the reduction of gross greenhouse gas emissions needed to avoid global warming, in keeping with New Zealand doing its fair share, at lowest economic and social cost. An emissions trading scheme should put a price on carbon that drives behavioural change amongst consumers by advantaging low-carbon alternatives.
This bill continues the National Government’s record of undermining climate change policy by significantly diluting the effectiveness of the ETS and putting at risk the forestry sector which the Government is uniquely reliant on to meet its stated emission reduction targets. These changes must also be seen in the wider context of Government changes which have seen nearly all support for renewable and low-carbon technologies stripped out and decisions made right across Government which favour the expansion of fossil-fuel-intensive industries and technologies over the development and use of low-carbon alternatives.
This bill will have a significant negative impact on the New Zealand economy and environment for many years to come. It should not proceed.
Appendix

Committee process
The Climate Change Response (Emissions Trading and Other Matters) Amendment Bill was referred to the committee on 23 August 2012. The closing date for submissions was 10 September 2012. We received and considered 758 submissions from interested groups and individuals. We heard from all 73 submitters who indicated a wish to be heard in person. This included holding hearings in Auckland, and by teleconference and videoconference with submitters in other parts of the country.

We received advice from the Ministry for the Environment, the Ministry for Primary Industries, and the Treasury. The Regulations Review Committee considered the regulation-making powers contained in the bill and had no issues that it wished to raise.

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
Dr Kennedy Graham replaced Dr Russel Norman for this item of business.
Moana Mackey was a replacement member for this item of business.
Briefing on major defence projects

Report of the Foreign Affairs, Defence and Trade Committee

Contents

Recommendation 2
Introduction 2
Operational capabilities 2
Savings programme 3
White paper 3
Risk management 3
Planning 3
Conclusion 4
Appendix 5
Briefing on major defence projects

Recommendation

The Foreign Affairs, Defence and Trade Committee received a briefing from the Ministry of Defence and the New Zealand Defence Force on their second Major Project Report, and recommends that the House take note of its report.

Introduction

In 2010 the Ministry of Defence and the New Zealand Defence Force (collectively, “Defence”), in consultation with the Office of the Auditor-General, produced their first Major Project Report. It aimed to improve reporting on big defence acquisition projects, in response to a report from the Office of the Auditor-General which had criticised the way such projects were being managed.

Defence has just released a second Major Projects Report. It builds on the first report, covering developments in the year ending 30 June 2011:

- the delivery of four out of five Augusta 109 training utility helicopters
- the delivery of the first two upgraded C-130 Hercules
- arranging to upgrade the remaining three C-130 aircraft
- the delivery of the first upgraded P3 Orion and the commencement of testing on it
- the delivery of upgraded close-in weapons systems for the frigates, and the installation of one on HMNZS Te Mana
- progress on the New Zealand Defence Force defence command control system project.

One new project began this year: work to remedy deficiencies in the Project Protector vessels and ensure the HMNZS Canterbury achieves the capability it was designed for. Funding for this purpose came from mediation with the ship’s builders.

Operational capabilities

We asked about the priorities of Defence’s long-term planning. Defence considers it has three main areas of business: day-to-day business such as the routine nation-building support in the Pacific; intelligence work; and operational work, which involves readiness to respond to contingencies, including natural disasters. All three of these areas have implications for capability.

Defence stressed capability decisions had to take into account the fact that New Zealand forces operate over vast oceans and in places with extremes in weather conditions. Another critical factor is inter-operability with the Australian Defence Force as most of their operations are undertaken jointly.
Savings programme
Defence said that its drive for savings and reinvestment is to ensure proportionately more money is available for operations. Any changes would need to be assessed against defence priorities.

Close-in weapon system upgrade
We asked about the proposed Phalanx close-in weapon system upgrade for the Royal New Zealand Navy’s ANZAC frigate fleet, and specifically the implications of not proceeding with the purchase. Defence said in order to meet policy objectives, the ANZAC frigates must be capable of operating in environments such as the Persian Gulf and the South China Sea where there is a risk of attack from anti-ship missiles and fast inshore attack craft. To operate in such environments without undue risk or constraint, the frigates must be equipped with means of self-defence against such threats. The proposed system would provide a substantial proportion of the necessary capability.

White paper
Defence has also been implementing the recommendations from a white paper. They relate largely to processes for the governance and management of projects. We asked how the white paper affected the way they run their operations. Defence said that the white paper had made it prioritise specific strategic areas, developing a plan which emphasised joint projects in an amphibious mobile environment.

Risk management
NH90 helicopters
The Major Projects Report mentioned the risk that the NH90 medium utility helicopters may have insufficient spare parts to support the fleet’s planned operation. We asked what Defence planned to do to mitigate this risk, and heard that Defence sees the situation as becoming progressively less critical. As the NH90 is a new craft, many countries are still purchasing them and support systems are yet to be set up. Once they are widely in service, however, spares should be relatively easy to obtain. In the short term Defence has an arrangement with the manufacturers. They stressed that recognising risks is positive, so that problems can be anticipated.

Delays
We were pleased that projects have come in largely under cost, and the appropriate capabilities were achieved. We were however concerned about delays and wanted to know the extent to which timing was within Defence’s control. Defence said problems started early, because some contractors were too optimistic. Most of the delays could be traced to technical issues. They suggested that a solution would be to narrow the range of choices much earlier, and not deviate from decisions.

Planning
The five C-130H Hercules aircrafts operated by the Royal New Zealand Air Force are due to be replaced in about eight years’ time. Defence said that planning for the replacement process had already started. It is considering two principal options: replacing the Hercules
with aircraft of similar capabilities, or with craft that offer differing capabilities. The first step in this process will be determining needs and priorities.

We asked about a replacement for the current fleet replenishment tanker (HMNZS *Endeavour*) which after 2013 will no longer comply with international maritime regulations for tankers because it has a single hull, rather than a double-skinned hull. Defence said they would assess the needs of their current fleet before deciding on a replacement.

**Conclusion**

The Major Projects Report is part of a broad set of reforms being undertaken by Defence. It highlights problems related to capability. We are pleased that Defence has improved the transparency of its reporting, and recognises the Major Projects Report as a valuable tool allowing parliamentarians to track the progress and risks of defence acquisitions.
Appendix

Committee procedure
The committee received a briefing from the Ministry of Defence and the New Zealand Defence Force on 5 April 2012.

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 United Nations Convention Against Corruption

Report of the Foreign Affairs, Defence and Trade Committee

### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Purposes of the convention</td>
<td>2</td>
</tr>
<tr>
<td>Obstacles to ratification</td>
<td>2</td>
</tr>
<tr>
<td>Appendix A</td>
<td>3</td>
</tr>
<tr>
<td>Appendix B</td>
<td>4</td>
</tr>
<tr>
<td>Appendix C</td>
<td>16</td>
</tr>
</tbody>
</table>
International treaty examination of the United Nations Convention Against Corruption

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the United Nations Convention Against Corruption and recommends that the House takes note of its report.

Introduction

The United Nations Convention Against Corruption was adopted by the United Nations General Assembly on 31 October 2003 by resolution 58/4. The convention was signed by 140 countries, including New Zealand. New Zealand, like a number of other signatory countries including Germany and Japan, has not ratified the convention.

Purposes of the convention

The purposes of the convention are to

- promote and strengthen measures to prevent and combat corruption more efficiently and effectively
- promote, facilitate, and support international cooperation and technical assistance in the fight against corruption, including asset recovery
- promote integrity, accountability, and proper management of public affairs and public property.

Obstacles to ratification

Responsibility for the issues addressed by the convention lies with the Minister of Justice. The Minister wrote to the previous Foreign Affairs, Defence and Trade Committee in October 2009 and noted that the convention raises some substantive matters that will require thorough consideration before the Government could consider ratification. Attached as Appendix C is a letter from the Ministry of Justice, which outlines the legislative impediments to ratification of the convention.

We understand that the Government is still considering the convention. Consequently, we do not have any matters to bring to the attention of the House. We may revisit the convention and its associated issues if circumstances change.

The national interest analysis is appended to this report.
Appendix A

Committee procedure
The treaty was referred to the previous Foreign Affairs, Defence and Trade Committee for examination on 27 August 2009. Public submissions on the convention were called for with a closing date of 17 September 2009. No submissions were received. The treaty was reinstated by the House as an item of business before this committee on 21 December 2011.

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 - United Nations Convention Against Corruption

Executive Summary


2. Corruption is a threat to the stability and security of societies. It undermines democracy and the rule of law, distorts markets, impedes international trade and facilitates activities such as organised crime and terrorism. The Convention is the first global response to corruption. As of May 2009, 136 countries have ratified the Convention.

3. The Convention requires signatory States to undertake a wide variety of measures to combat corruption. These measures include the development and implementation of administrative and legislative elements including: instituting regulatory and supervisory regimes for financial institutions, whistleblower protection, the criminalisation of all forms of active and passive domestic bribery, and increased cooperation between States, particularly in relation to foreign bribery.

4. New Zealand supports strong measures against corruption, and currently ranks among the least corrupt countries in the world. Ratification of the Convention will not only affirm our international standing as a world leader in this area, but also acknowledge the need for diligence in maintaining this position.

5. Ratification of the Convention is in New Zealand’s interests as a trading nation. It represents a positive statement of New Zealand’s trading integrity and that it values a free and fair trading system, which in turn supports New Zealand’s international influence and market access agendas.

6. New Zealand already complies with most mandatory and optional requirements of the Convention, and needs to make only minor legislative adjustments to comply with outstanding mandatory requirements, the most significant of which is extending the foreign bribery provision to capture ‘passive’ bribery (i.e. the offence committed by the official who accepts or solicits a bribe).

7. A Crimes (Anti-Corruption) Amendment Bill will be introduced into the House after the Treaty Examination Process is completed. Passage of this Bill will ensure that New Zealand is able to ratify the Convention.
TREATY EXAMINATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

Nature and Timing of Proposed Binding Treaty Action


9 New Zealand signed the Convention on 10 December 2003.

10 New Zealand proposes to complete binding treaty action by depositing an Instrument of Ratification with the Secretary-General of the United Nations after Parliament has considered the Convention in accordance with Standing Orders and subsequently passed the implementing legislation. The Convention will enter into force for New Zealand thirty days after the deposit of its Instrument of Ratification in accordance with Article 68(2) of the Convention.

11 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. Consultation is currently on-going with Tokelau and is expected to be concluded before New Zealand would be in a position to ratify the Convention.

Reasons for New Zealand Becoming Party to the Convention

Background

12 Corruption is a threat to the stability and security of societies. It undermines democracy and the rule of law, distorts markets, impedes international trade and facilitates activities such as organised crime and terrorism. It is also regarded as one of the most corrosive impediments to sustainable economic development worldwide. The World Bank estimates that more than US$1 trillion is paid in bribes each year, with the figure not including the amounts of public funds embezzled and plundered by senior government officials. The amount of money extorted and stolen each year from developing countries is over 10 times the approximately US$100 billion in foreign assistance being provided by all the governments and civil organisations in the world. The General Assembly Resolution 58/4 (31 October 2003) states that corruption undermines democracy, ethical values and justice, and endangers sustainable development and the rule of law.

13 UNCAC requires States to criminalise corruption in all its forms, both in the public and private sectors. The Convention leaves it to States to determine how to define corrupt conduct within the traditions and conventions of the States’ legal systems.

14 Article 1 sets out the purposes of the Convention as being:

“(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international corruption and technical assistance in the prevention of and fight against corruption, including in asset recovery;
15 Perceptions of corruption in particular countries range over a wide spectrum. New Zealand has consistently been in the top three countries perceived as being the least corrupt (Refer 2008 Corruption Index from Transparency International, a non-governmental organisation dedicated to combating corruption).


**Key reasons for taking the treaty action**

17 There are three key reasons for ratifying the Convention.

18 Firstly, progressing ratification of UNCAC entails significant benefits overall for New Zealand with minimal cost. UNCAC represents the first globally accepted benchmark of measures for addressing corruption. Only limited changes are required to enhance New Zealand’s anti-corruption framework to comply with UNCAC, all of which provide benefits in their own right. Adopting UNCAC’s principles will ensure that New Zealand’s domestic anti-corruption measures remain robust and meet current international best-practice benchmarks.

19 Secondly, ratifying UNCAC would present a positive statement that New Zealand values a corruption-free and fair international trading system. This is important for maintaining New Zealand’s reputation as a trustworthy trading partner, and influence in international fora. While New Zealand is perceived as among the least corrupt countries, we cannot be complacent in this regard. New Zealand’s key trading partners - Australia, the United States and China (along with the majority of European Union and OECD countries) - have ratified UNCAC.

20 Thirdly, ratification will better enable New Zealand to contribute to the collective response to corruption by extending extraterritorial jurisdiction over selected UNCAC offences, and by providing a legal basis for extradition and mutual legal assistance between State Parties in respect of UNCAC offences. Ratification will mean that New Zealanders who commit UNCAC crimes outside New Zealand can be held to account, and will also help to ensure that those who have committed UNCAC offences do not find a safe haven in New Zealand.

**Advantages and Disadvantages to New Zealand of the Convention Entering into Force and not entering into force for New Zealand**

**Advantages to New Zealand of the Convention Entering into Force**

21 Ratifying the Convention has the following advantages for New Zealand:
• It will enhance New Zealand’s international reputation. 140 countries have signed the Convention and New Zealand is one of only four countries yet to ratify.
• It will strengthen the rule of law and signal New Zealand’s support for the international fight against corruption;
• Corruption is a global phenomenon from which New Zealand’s geographical isolation does not insulate it, particularly given a desire to maintain an export based economy;
• The extraterritorial scope of Convention offences and the legal basis the Convention provides for extradition and mutual legal assistance ensure that New Zealand can play its part in bringing offenders to justice for crimes committed anywhere in the world and prevent offenders from finding a safe haven in this country;
• Implementing the Convention in New Zealand domestic law will help consolidate New Zealand’s existing anti-corruption laws and assist in making them compatible with other Convention countries;
• By extending extraterritorial jurisdiction (as recommended in the Convention) over selected Convention crimes, New Zealand will help ensure that New Zealand nationals and residents who commit Convention crimes outside New Zealand are held to account;
• It will facilitate New Zealand’s ability to work together with other nations in order to combat corruption.

Disadvantages to New Zealand of the Convention Entering into Force
22 There are no major disadvantages to ratifying UNCAC.

Overall Assessment of the Advantages and Disadvantages to New Zealand
23 On balance, it is considered that the advantages of ratifying the Convention significantly outweigh the disadvantages.

Legal obligations which would be imposed on New Zealand by the Convention, the position for reservations to the treaty, and an outline of any dispute settlement mechanisms
24 The obligations that the Convention imposes are outlined below. Some of the obligations are mandatory while others are merely encouraged or requested. New Zealand will implement all mandatory guidelines before ratifying the Convention, and will implement only those requested obligations that are consistent with New Zealand’s domestic legal framework.

Preventive Measures
25 Articles 5 and 6 require that State Parties have coordinated anti-corruption policies and an independent agency to prevent corruption and disseminate information regarding the prevention of corruption.

26 State Parties must ensure recruitment and employment in the public sector are based on principles of merit, accountability and transparency, and that public sector employees
are appropriately educated to deal with issues of corruption (Articles 7 and 8). The procurement of and management of public finances must be based on a transparent and accountable process (Article 9). Public administration must be transparent and take into account issues of personal privacy when making information available to the public (Article 10). Parties must take necessary measures to strengthen integrity and prevent opportunities for corruption in the judiciary (Article 11). Parties have an obligation to enhance auditing and accounting standards in the private sector including appropriate civil and criminal penalties if such standards are not complied with (Article 12).

27 Article 14 requires Parties to operate a regulatory and supervisory regime for banks and other financial institutions to combat money-laundering. Parties must ensure that the necessary authorities are able to exchange information both domestically and internationally.

Criminalisation of corruption

28 The Convention requires State Parties to criminalise corruption and related offences in both the public and private sectors.

29 For public officials, the Convention requires State Parties to criminalise the direct or indirect bribery of national public officials, and the acceptance by national public officials of such bribes (Article 15).

30 State Parties are required to criminalise the direct or indirect bribery of a foreign public official or an official of an international organisation (Article 16), as well as the embezzlement, misappropriation or other diversion of property by a public official (Article 17). State Parties are required to criminalise the conversion of proceeds of crime and the concealment of the origin of proceeds of crime.

31 Article 25 requires State Parties to criminalise unlawful interference in the giving of testimony or in the exercise of official duties by a justice or law enforcement official with regard to Convention offences. State Parties are required to adopt measures to establish the criminal or civil liability of legal persons for participation in Convention offences. State Parties are also required to establish effective and proportionate criminal and non-criminal sanctions for legal persons held liable for such participation (Article 26). Article 27 requires State Parties to criminalise the participation in, preparation for, or attempt to commit, Convention offences. State Parties are required to ensure that Convention offences attract adequate sanctions having regard to the gravity of each offence.

32 State Parties are required to take measures to confiscate property and equipment used in offences covered by the Convention, as well as to confiscate the proceeds of such crimes (Article 31). State Parties are also required to take measures to enable the identification, tracing, freezing or seizing of the proceeds of crime, property or equipment covered by the Convention, including empowering courts to order the production of bank, financial or commercial records (Article 12(7)).

33 Under Article 32, State Parties are required to provide, effective protection for witnesses, their families, experts and victims; and ensure the views and concerns of victims are heard at criminal proceedings. The Convention also requires that victims of corrupt
acts have the ability to take legal action against those responsible for that damage in order to obtain compensation (Article 35).

Under Article 36, State Parties are required to have an independent agency specialised in corruption law enforcement. State Parties are also required to encourage participants in corruption related offences to cooperate with competent authorities in order to deprive offenders of the proceeds of crime and to aid in the recovering of such proceeds (Article 37). Article 38 provides for cooperation between a State Party’s public authorities and authorities responsible for investigating and prosecuting criminal offences, while Article 39 provides for State Parties to encourage cooperation between national enforcement agencies and the private sector, particularly financial institutions. To facilitate the exchange of information relating to corruption, Article 40 requires State Parties to ensure mechanisms are in place to overcome obstacles arising out of the application of bank secrecy laws.

Article 42 requires State Parties to establish jurisdiction over corruption related offences where they are committed within the State boundaries, on board a vessel that is flying the national flag, or on an aircraft that is registered under the laws of that State Party.

**International cooperation in combating corruption**

Article 44(4) provides that all Convention offences shall be deemed to be included as an extraditable offence in any extradition treaty existing between the State Parties. (Article 44(7)) requires State Parties that do not make extradition conditional on the existence of a treaty to recognise Convention offences as extraditable offences. Article 44(11) requires a State Party that denies an extradition request on the ground that the fugitive is a domestic citizen shall, at the request of the State Party seeking extradition, submit the case for domestic prosecution.

Under Article 46, mutual legal assistance shall be afforded to the fullest extent possible in investigations and prosecutions of Convention offences. Article 46(7) provides that in the absence of a mutual assistance treaty between the requesting and requested States, the procedures set out at Paragraphs 9 to 29 of Article 46 will govern mutual legal assistance between State Parties to the Convention.

Article 48 requires State Parties to cooperate with other State Parties to improve the law enforcement of Convention offences. Measures cover; enhancing communication, joint investigations, the provision of material for analytical or investigative purposes, and exchanging information on methods used to commit Convention offences.

**Asset recovery**

Article 52 requires State Parties to take measures that provide for financial institutions to detect suspicious transactions and provide such information to competent authorities. State Parties must take measures necessary to require financial institutions within their jurisdiction to:

(1) verify the identity of customers;

(2) take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and
(3) conduct enhanced scrutiny of accounts of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.

40 State Parties are required under Article 52(2) to issue advisories regarding the types of persons and accounts to which greater scrutiny should be applied. State Parties are also required to ensure that financial institutions maintain adequate records of accounts and transactions involving such persons (Article 52(3)).

41 State Parties are required to cooperate with one another to prevent and combat the transfer of proceeds of offences established under the Convention, and are encouraged to establish a financial intelligence unit to facilitate this (Article 58).

42 Article 54 requires State Parties to cooperate with other Parties for the purposes of confiscation of the proceeds of crime, property and equipment referred to in Article 31. Article 57 requires State Parties to give priority to requests from other State Parties for the return of confiscated assets. Where public funds are embezzled, the confiscated property would be returned to the State Party requesting it.

43 Article 60 requires State Parties to develop training programs for law enforcement personnel responsible for preventing and combating corruption, and encourages State Parties to assist developing countries with technical expertise, resources or both (Article 62).

Dispute resolution

44 Article 66(2) provides for the submission of a dispute concerning the interpretation or application of the Convention to arbitration if the dispute cannot be settled through negotiation. If the arbitration process fails, the State Parties involved may refer the dispute to the International Court of Justice.

45 Article 66(3) allows a State Party to declare that it will not be bound by the disputes resolution process in Article 66(2). It is not proposed that New Zealand make such a reservation.

Conference of the Parties to the Convention

46 Article 63 establishes a Conference of the Parties to the Convention which aims to promote and review the Convention’s implementation and improve the capacity of State Parties to combat corruption. New Zealand would be required to provide information to the Conference of the Parties relating to domestic programs, plans and practices, as well as legislative and administrative measures taken to implement the Convention (Article 63(6)).

Reservation Statement

47 Aside from the reservation provision concerning dispute settlement, there is no specific provision for reservations in the treaty. It is not proposed that New Zealand make any reservations to the Convention.
Measures which the Government could or should adopt to implement the treaty action including specific reference to any implementing legislation


49 The Criminal Proceeds (Recovery) Act, which comes into effect in December 2009, fulfils the Article 23 requirements of the Convention for seizure, confiscation and forfeiture of the proceeds of corruption.

50 The Anti-Money Laundering and Countering Financing of Terrorism Bill, currently before Parliament, provides for compliance with Article 14 and Article 52 obligations by requiring financial institutions to have robust customer identification, account monitoring, and suspicious transaction reporting processes. The Bill is expected to be enacted by October 2009 thereby fulfilling these obligations.

51 Minor legislative amendments are required to comply with outstanding mandatory Convention requirements. These include amendments to the:

51.1. Secret Commissions Act 1910 to increase the penalties for private sector corruption, and

51.2. Income Tax Act 2007 to ensure that what is tax deductible is more consistent with the objectives of criminal legislation.

51.3. Crimes Act 1961 to broaden the existing definition of foreign bribery to include offences relating to the provision of international aid, the solicitation and acceptance of bribes by foreign public officials, and trading in influence over public officials

51.4. Mutual Assistance in Criminal Matters Act 1992 to include UNCAC, to enable New Zealand to provide the necessary legal assistance to member countries in regard to UNCAC offences.

Article 12 Private sector

52 This Article seeks to prevent corruption involving the private sector by ensuring that countries maintain robust accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

53 New Zealand generally complies with this Article. One area requiring improvement is the private sector corruption offence penalties provided by the Secret Commissions Act 1910. Compared to other corruption offences in the Statute, the Secret Commissions Act 1910 penalties are considered insufficient in terms of the objectives of being effective, proportionate and dissuasive. In addition, the penalty levels are currently not sufficiently long enough to trigger asset confiscation under the Criminal Proceeds (Recovery) Act 2009.
54 The offences contained in the Secret Commissions Act closely resemble those of bribery and corruption in the Crimes Act. For example, they relate to agents accepting gifts to do or not to do something in relation to their principal’s affairs, or agents not disclosing pecuniary interests in contracts. However, whereas the Crimes Act 1961 corruption provisions have maximum penalties of 7 years and some of 14 years (e.g., s. 100, s. 102), the Secret Commissions Act 1910 penalties are a maximum of 2 years imprisonment or a fine of up to $2,000.

55 Importantly, increasing the penalties for private sector corruption to the level of those for public sector corruption would enable the seizure of proceeds of corruption under the Criminal Proceeds (Recovery) Act 2009, ensure New Zealand’s anti-corruption framework is internally consistent, and comply with the Article 30 requirement that sanctions should reflect the gravity of the offence. It is therefore proposed that the Secret Commissions Act penalties provisions be increased to bring them into line with similar offences in the Crimes Act.

56 Article 12 also requires that State Parties not allow tax deductibility of expenses that constitute bribes or other expenses incurred in furtherance of corrupt conduct. New Zealand already largely complies with this requirement, but in order to fully meet obligations that all bribes not be deductible, it is proposed to amend the Income Tax Act 2007 to make the tax deductibility of bribes more consistent with criminal legislation.

Bribery of foreign public officials and officials of public international organizations

57 Article 16 has a mandatory obligation in Article 16(1) requiring countries to criminalise bribery (including offers of bribes) to foreign public officials and public international organization officials in return for an undue advantage in relation to the conduct of international business.

58 New Zealand already largely complies with the requirement (refer section 105C Crimes Act 1961). The Convention requires (refer interpretative notes) that “international business” include the “provision of international aid”, however it is not clear whether the existing legal definitions of “business” include the provision of international aid. Potentially those who bribe international aid agencies or their employees will not be held to account for their offending. Expanding the definition of “business” to include “the provision of international aid” is not likely to have any foreseeable compliance implications, but would ensure that charges of corruption and bribery within the international aid sector would have a clear legal basis for prosecution, extradition, and mutual assistance by New Zealand.

59 Accordingly, it is proposed that for the purposes of the bribery and corruption provisions of the Crimes Act 1961 the definition of “business” be expanded to include “the provision of international aid”.

60 Article 16 also has a non-mandatory obligation in 16(2) to criminalise ‘passive’ foreign bribery (i.e. solicitation or acceptance of bribes by a foreign public official). Currently, the Crimes Act criminalises the act of bribing a foreign public official only, [refer section 105C] not the solicitation or acceptance of a bribe by that official. Consequently, a foreign public official who, while in New Zealand, solicited or accepted a bribe, would not be subject to any criminal sanctions in New Zealand.
The creation of a new criminal offence outlawing the solicitation or acceptance of bribes by foreign public officials would provide a level of deterrence for such behaviour. The new offence would not cover foreign public officials in New Zealand that have immunity under international law (such as accredited embassy and consular officials resident in New Zealand).

It is therefore proposed that, as the definition of a foreign public official is analogous with that of an official, a foreign public official who accepts or solicits a bribe should be subject to the same penalty as a domestic official; namely a term of imprisonment not exceeding seven years.

Trading in influence

“Trading in influence” refers to the exchange of undue advantages between a public official and a member of the public. For example, a public official may promise to use his or her real or supposed influence to the benefit of another person in exchange for money or other favours. Article 18, though not mandatory, encourages the criminalisation of trading in influence.

New Zealand’s current Crimes Act 1961 offence provision for bribing an official (section 105 refers) largely complies with this Article, but does not extend to ‘the other person’ (such as a close family member or associate of an official) who uses his or her influence to obtain an undue advantage. Further, the Crimes Act 1961 provision does not fully cover the offence of trading in influence as it only criminalises the actions of an official when he or she accepts or solicits a bribe, not the actions of an official who exerts his or her supposed influence.

Whether or not it is an official who accepts or solicits a bribe to act or omit to act in a certain way, or it is another person who accepts or solicits a bribe to influence an official’s action, there is no reason why the penalties should be different.

To ensure greater consistency and robustness of New Zealand’s anti-bribery and corruption framework, it is proposed to create a new offence criminalising trading in influence. This offence will criminalise the solicitation or acceptance of a bribe by any person with intent to influence any official in respect of any act or omission by the official in their official capacity. The penalty for trading in influence will be a term of imprisonment not exceeding seven years.

Mutual Legal Assistance

This Article requires that New Zealand provide the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention.

Currently, New Zealand is not able to provide the fullest international cooperation as the Convention has not yet been ratified and is therefore not listed in the Schedule to the Mutual Assistance in Criminal Matters Act.

The object of the Mutual Assistance in Criminal Matters Act 1992 is to facilitate the provision and obtaining, by New Zealand, of international assistance in criminal matters. Under this Act, if a Convention country requests assistance in investigations, prosecutions
and judicial proceedings in relation to an offence, and that offence is listed in column 1 of the table in the Schedule to the Act, and the request relates to criminal matters arising from the commission or suspected commission of an offence that, if committed within the jurisdiction of New Zealand, would correspond to an offence listed in column 2 of that Schedule, then international assistance may be facilitated.

70 To ensure that New Zealand is able to give the fullest cooperation possible in international investigations, prosecutions and judicial proceedings, it is proposed that the Convention be listed in column 1 of the table in the schedule to the Mutual Assistance in Criminal Matters Act 1992 and that the corresponding New Zealand offences are listed or described in column 2 of that Schedule.

**Legislative timetable**

71 A Bill containing the required legislative amendments will be introduced following completion of the treaty examination process.

**Economic, Social, Cultural and Environmental Effects of the Convention Entering into Force for New Zealand**

72 There are no direct economic effects of the entry into force of the Convention anticipated for New Zealand. It is generally accepted that economies operate more efficiently in corruption-free societies. As other States implement the Convention, there could be benefits for New Zealand from economies currently affected by corruption overcoming those problems in the longer term. As their domestic situations improve, their economies may open up to trade and other opportunities for New Zealand.

73 There are no direct social or cultural effects expected from compliance. New Zealand has a tradition of low tolerance of corrupt activity. Ratification will reflect and reinforce society’s strongly held views on the subject, and emphasise New Zealand’s commitment to a corruption free society.

74 There are no direct or indirect environmental effects as a result of the Convention entering into force.

**The Costs to New Zealand of Compliance with the Convention**

75 There will be a minor financial commitment under Article 63, which requires that there be regular Conferences of State Parties to review the implementation of the Convention. New Zealand will be expected to attend these meetings. The obligations are similar to those currently undertaken for compliance with other Conventions, such as the peer review process for compliance with the OECD Anti-Bribery Convention. These costs would be minor and met from within baseline funding.

76 The obligations in the Convention to develop national policies and training programmes will be addressed by the development of a coordinated anti-corruption strategy by Police and the Serious Fraud Office, in consultation with the Ministry of Justice. It is not expected that the strategy will have any additional financial implications.

77 Other provisions in the Convention that may involve additional costs are not mandatory. These include providing assistance to developing countries and voluntary
contributions to the United Nations Office on Drugs and Crime. Some government agencies (e.g. the Inland Revenue Department and the Serious Fraud Office) already participate in existing foreign assistance programs within their own budgets or existing aid budgets. In making decisions on future initiatives, the obligations under the Convention will be taken into account.

**Completed or proposed consultation with the community and parties interested in the treaty action**

78 The following Government agencies have been consulted and their views incorporated into this paper: Inland Revenue; New Zealand Police; Serious Fraud Office, and the Ministries for Foreign Affairs and Trade and Economic Development.

79 The Department of Prime Minister and Cabinet, State Services Commission, New Zealand Trade and Enterprise, New Zealand Aid, Office of the Auditor General and the Treasury have been informed.

80 There will be an opportunity for public submissions on the provisions that require legislative change before those amendments become part of New Zealand law and before ratification takes place.

**Subsequent Protocols and/or Amendments to the Convention and their likely effects**

81 Under article 69 of the Convention, amendments can be proposed five years after the Convention enters into force (14 December 2010).

82 Failing consensus, an amendment may be adopted by a two-thirds majority of the State Parties at a meeting of the Conference of the State Parties.

83 Amendments are subject to ratification, acceptance or approval by State Parties that have expressed consent to be bound. Amendments to the Convention would be subject to the Parliamentary Treaty Examination process.

**Withdrawal or Denunciation provision in the Convention**

84 Article 70 of the Convention allows a State Party to denounce the Convention by notifying the Secretary-General of the United Nations in writing. The denunciation takes effect one year after the date of notification. Any decision by New Zealand to denounce the Convention would be subject to the Parliamentary Treaty Examination Process.

**Adequacy statement**

85 The lead agency, the Ministry of Justice, has determined that this NIA is adequate.

Lead Agency: Ministry of Justice
Date: 16 July 2009
30 April 2012

John Hayes
Chairperson
Foreign Affairs, Defence and Trade Committee
PARLIAMENT BUILDINGS

INTERNATIONAL TREATY EXAMINATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

1. Thank you for your letter of 22 March 2012 to Andrew Bridgman, Secretary for Justice, in which you request an update on any obstacles that might preclude completion of the ratification process for the United Nations Convention Against Corruption (UNCAC) by the end of this year.

2. The National Interest Analysis, tabled in August 2009, provides that:

   2.1. New Zealand already complies with the majority of the mandatory UNCAC requirements.

   2.2. The UNCAC obligations regarding seizure, confiscation and forfeiture of the proceeds of corruption are fulfilled by the Criminal Proceeds (Recovery) Act 2009 which came into force in December 2009.

   2.3. The Anti-Money Laundering and Countering Financing of Terrorism Bill (Anti-Money Laundering legislation) would provide for compliance with the obligations in UNCAC regarding:

       2.3.1. anti-money laundering measures; and

       2.3.2. enhanced scrutiny of people entrusted with prominent public functions.

   2.4. Other legislative amendments required to comply with outstanding mandatory UNCAC requirements include amendments to the:

       2.4.1. Secret Commissions Act 1910 to increase the penalties for private sector corruption;

       2.4.2. Income Tax Act 2007 to ensure that what is tax deductible is more consistent with the objectives of criminal legislation;

       2.4.3. Crimes Act 1961 to broaden the existing definition of foreign bribery to include offences relating to the provision of international
aid, the solicitation and acceptance of bribes by foreign public officials, and trading in influence over public officials;

2.4.4. Mutual Assistance in Criminal Matters Act 1992 to enable New Zealand to provide legal assistance to member countries in regard to UNCAC offences.

3. As you are aware, the Anti-Money Laundering and Countering Financing of Terrorism Bill was enacted in October 2009. That Bill, as introduced, contained a provision requiring enhanced due diligence of foreign and domestic Politically Exposed Persons (PEPs). This provision was intended to meet the mandatory obligation in Article 52 of UNCAC for enhanced scrutiny of persons entrusted with prominent public functions. It was also intended that the provision meet a recommendation issued by the Financial Action Taskforce\(^1\) requiring enhanced due diligence for PEPs.

4. The reference to domestic PEPs was subsequently removed by the government on the recommendation of the Foreign Affairs, Defence and Trade Committee. This means that enhanced due diligence in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 applies to foreign, but not domestic, PEPs.

5. Officials continue to analyse the requirement in Article 52 of UNCAC for enhanced scrutiny of prominent domestic public functionaries. We hope to provide advice to the Committee on this requirement in the near future.

Yours sincerely

MALCOLM LURÉY
Acting General Manager
Crime Prevention and Criminal Justice
Ministry of Justice

---

\(^1\) The Financial Action Taskforce is an inter-governmental policy making body that establishes international standards for measures to combat money laundering and terrorist financing. The Financial Action Taskforce also monitors countries’ compliance with these international standards.
Defence Amendment 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 Defence Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The Defence Amendment Bill seeks to amend several aspects of the Defence Act 1990. The bill would generally embed and enable organisational reform in the New Zealand Defence Force (NZDF) and the Ministry of Defence. These reform goals were set out in the Defence White Paper, and the bill aims to establish them in legislation. This reform is expected to improve the efficiency of both organisations, and help them work together effectively.

The bill would have specific effects in a number of areas: capability management; information sharing; the appointment, removal and performance of the Chief of Defence Force (CDF); senior NZDF appointments and accountabilities; Civil Staff; civilianisation; reserves and territorial forces; and the defence advisory board. It also seeks to clarify a number of the Act’s minor provisions.
This commentary covers the amendments we recommend to the House, and the key issues we discussed. We also recommend some minor technical amendments to clarify the intent of the bill and to correct drafting omissions, which are not discussed in this commentary.

**Appointment and reappointments**

We recommend amendments to separate the processes of appointment and reappointment set out in clauses 17 and 18 so that the State Services Commissioner and the Government do not have to undertake a full appointment process when making a reappointment of the Chief or Vice Chief of the Defence Force. This would also be consistent with section 35 of the State Sector Act 1988, which empowers the Commissioner to make a recommendation for reappointment of a Public Service chief executive without first notifying the impending vacancy, examining other applicants, or establishing a selection panel.

**Information sharing**

Concern was raised that clause 22 of the bill does not set out which categories of personal information could be shared or the uses to which information could be put. We recommend an amendment to specifically address the treatment of personal information and compliance with privacy legislation.

**Transfer of functions from Armed Forces to Civil Staff**

We recommend an amendment to clause 37 to make it clear that a former Service person who has been transferred to the Civil Staff would not be subject to the 90-day trial provisions of the Employment Relations Act 2002.

We also recommend amending the clause to cover a person who has been discharged from the Armed Forces because of a transfer of functions to the Civil Staff, whether or not they held a position of which the particular functions were transferred. This is because a person affected by the transfer of functions would not necessarily have been the incumbent in the transferred function, but would still have the required skills for the position.
**Chiefs of Service Committee**

Section 29 of the Defence Act establishes a Chiefs of Service Committee. We recommend that clause 20 of the bill be amended to repeal section 29 to disestablish the committee. This committee does not meet regularly at present and its activities are largely redundant, as the role, duties, and powers that it undertook in the past are now largely exercised by other non-statutory committees convened by the CDF or his designate. Therefore repealing section 29 would make the Act consistent with the amendment to section 8(3), which vests command of the Armed Forces singularly in the CDF.

**The authority of the Chief of Defence Force**

Clause 6 seeks to substitute a new subsection (3) in section 8 of the Act, which states that “the Chief of Defence Force shall command the Armed Forces”. It would replace the previous requirement that the CDF command “through the Single Service Chiefs”.

Concern was raised at the proposed removal of the requirement for the CDF to command the services through the chiefs of service, and we debated it at length.

It was suggested that this amendment could have the effect of concentrating too much power in one individual, especially combined with the proposed amendment in clause 19 of the bill (substituting a new section 28 of the Act), which would take away the single service chiefs’ right of referral to the Minister of Defence in the event that any one of them disagreed with the CDF; it was argued that this might result in an a potential absence of contesting advice to the Minister.

It was also argued that the current command structure constitutes a worthwhile safeguard (although it is not likely to be needed in practice) and is consistent with the hierarchical character of the armed forces. Some of us consider that the combined effect of these changes might be to erode the status of Chiefs of Service and to remove constitutional checks and balances on the CDF.

The intent of the proposed new clause is to ensure unity of command, and to underpin the CDF’s ability to develop and maintain a “one-force—three services” NZDF. It reflects the fact that in military operations single services no longer have primacy. The CDF is expected to have considerable experience in the joint operations typical of modern military deployments. The present situation, where
the CDF commands the NZDF through the chiefs of service, entails of its nature a plurality of authority. This implies a potential for lack of clarity as to where the command and hierarchical accountability lie, and for uncertainty as to the status of conflicting directions. In this regard we do not recommend any amendment to this provision.
Appendix

Committee process
The Defence Amendment Bill was referred to the committee on 6 March 2012. The closing date for submissions was 13 April 2012. We received and considered six submissions from interested groups and individuals. We heard one submission in Wellington.

We received advice from the Ministry of Defence and the New Zealand Defence Force.

Committee membership
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Petition 2011/1 of Edwina Hughes and 904 others

Report of the Foreign Affairs, Defence and Trade Committee

Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Background</td>
<td>2</td>
</tr>
<tr>
<td>Evidence from the Ministry of Foreign Affairs and Trade</td>
<td>3</td>
</tr>
<tr>
<td>Conclusion</td>
<td>3</td>
</tr>
<tr>
<td>Appendix</td>
<td>4</td>
</tr>
</tbody>
</table>
Petition 2011/1 of Edwina Hughes and 904 others

Recommendation

The Foreign Affairs, Defence and Trade Committee has considered Petition 2011/1 of Edwina Hughes and recommends that the House take note of its report.

Introduction

We have received and considered the petition of Edwina Hughes, which requests that the House of Representatives, as a matter of urgency, address my petition calling on the House to urge the government to actively engage with “like-minded” governments committed to abolishing nuclear weapons to launch, without delay, an initiative to start the process of negotiating a nuclear weapons convention – a treaty to prohibit the development, production, testing, deployment, stockpiling, transfer, threat of use, and use of nuclear weapons.

In a submission to the committee the petitioner, the coordinator of Peace Movement Aotearoa, pointed out the leading nuclear disarmament role the New Zealand Government took by passing the New Zealand Nuclear Free Zone, Disarmament and Arms Control Act in 1987. She also noted that New Zealand was one of six governments that led the Oslo Process to ban cluster bombs, which resulted in the 2008 Convention on Cluster Munitions, and called on the Government to take a similar leading role in bringing about a nuclear weapons convention.

On 22 March 2012 we received and heard evidence from the Ministry of Foreign Affairs and Trade advising that the prospects of successfully negotiating such a treaty at present are poor.

Background

Peace Movement Aotearoa, established in 1981, provides national coordination for the International Campaign to Abolish Nuclear Weapons Aotearoa New Zealand (iCAN ANZ). Along with Peace Movement Aotearoa, 17 other non-governmental organisations and three other iCAN national organisations wrote letters in support of the petition. These letters were appended in a list of supplementary information to the main submission.

Peace Movement Aotearoa submitted that a fast-track diplomatic process for abolishing nuclear weapons was necessary because existing lines of negotiations such as the Conference on Disarmament and the treaty on the Non-Proliferation of Nuclear Weapons were deadlocked and unable even to decide on a possible programme of work. They argued that there was overwhelmingly high public opposition to nuclear weapons, as well as the considerable state support (146 governments support the immediate commencement of negotiations leading to a nuclear weapons convention, and only 26 are opposed) and that negotiations for a nuclear weapons convention need to be commenced urgently.
Peace Movement Aotearoa believes the New Zealand Government is well placed to play a leading role to secure a nuclear weapons convention as it is one of the few states with legislation prohibiting nuclear weapons. It is also held in high regard for its past disarmament and arms control efforts. Among the states most supportive of a nuclear weapons convention are Austria, Costa Rica, Ireland, and Norway. These states, together with New Zealand, led the processes for the Mine Ban Treaty and the Convention on Cluster Munitions, and, it was argued, would make ideal partners to lead negotiations on a treaty to similarly ban nuclear weapons.

Evidence from the Ministry of Foreign Affairs and Trade

The Ministry of Foreign Affairs and Trade told us that there are no serious moves afoot at an international government level to initiate negotiations on a convention. In their view a nuclear weapons convention was not comparable with those on cluster munitions, as nuclear weapons are central to strategic defence postures, and the major powers would be reluctant to participate in any such negotiations.

The ministry believes that New Zealand needs to deploy its resources where they would have the most effect—at present, on practical measures to lessen the importance and number of nuclear weapons and reduce the threat they pose. New Zealand is currently involved in two separate groupings of countries that debate these issues. One, the New Agenda Coalition group of countries (New Zealand, Ireland, Sweden, Egypt, South Africa, Mexico, and Brazil) works within the United Nations on nuclear disarmament in the context of nuclear non-proliferation treaties. In another such grouping (New Zealand, Switzerland, Chile, Malaysia, and Nigeria), New Zealand has been working to address the number of nuclear weapons in existence.

Conclusion

On balance we believe that the time is right for the New Zealand Government to support a nuclear weapons convention. We see New Zealand’s geopolitical role as one of pushing the boundaries towards peaceful resolutions. It has been traditionally ahead of the pack in matters of disarmament, and this is a good opportunity to take an active role regarding the abolition of nuclear weapons, as it did regarding cluster munitions. New Zealand has had a significant impact in this area and we look for this to continue.

While New Zealand is involved with the New Agenda group, their talks are at an impasse. This presents an opportunity to align ourselves with like-minded countries such as Costa Rica and Malaysia. While the ministry says our energies are best spent on measures to achieve small practical steps, we believe a more forthright and proactive approach to the issue is appropriate. The President of the United States recently provided momentum by articulating a vision of a world without nuclear weapons, and we believe now is an opportune time to push for all countries to abandon such weapons.

While we acknowledge the difficulty, complexity, and cost of negotiating a convention, we believe New Zealand should move beyond a position of general support to the forefront of negotiations towards a nuclear weapons convention.
Appendix

Committee procedure
The petition was referred to us on 21 December 2011. We received written submissions from the petitioner and the Ministry of Foreign Affairs and Trade. We heard evidence from the petitioner and from the Ministry of Foreign Affairs and Trade on 22 March 2012.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
## New Zealand observation delegations to the 2012 Timor-Leste general election

Report of the Foreign Affairs, Defence and Trade Committee

### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Report of the delegations</td>
<td>2</td>
</tr>
<tr>
<td>Appendix</td>
<td>4</td>
</tr>
</tbody>
</table>
New Zealand observation delegations to the 2012 Timor-Leste general election

**Recommendation**

The Foreign Affairs, Defence and Trade Committee has considered the report of the New Zealand observers of the 2012 Timor-Leste general election and recommends that the House take note of its report.

**Report of the delegations**

The delegation would like to thank the Ambassador to Timor-Leste, HE Tony Fautua, and the Embassy’s staff for their assistance during our visit to Timor-Leste.

This report considers two issues:

- Was the election conducted according to Timor-Leste’s electoral law?

- Was the international observation conducted in accordance with Timor-Leste’s Code of Conduct and other international Codes of Conduct?

**Background**

Three New Zealand Members of Parliament, Jacqui Dean, Dr Kennedy Graham, and Barbara Stewart, accepted an invitation to be part of the New Zealand Bilateral Election Observation Delegation to Timor-Leste for their parliamentary election held on 7 July 2012. The bilateral delegation was in Timor-Leste at the request of the Timor-Leste Government, and was hosted by the New Zealand Embassy.

Two other New Zealand Members of Parliament, Lindsay Tisch and Hon Phil Goff, also observed the elections as part of the ASEAN observer mission.

**Findings**

Our delegation found that the election appeared to have been well organised and well executed on the day. We found it was managed professionally and with a high level of public transparency.

We observed no significant irregularities that would materially influence the election or the results. What appeared to us as possible minor irregularities are recorded below:

1. The position of the voting booth varied according to the interpretation of the individual supervisor, rather than according to the general principle of privacy for the voter, but visibility to the observer.
It appeared to us on several occasions that party political agents (scrutineers) were overly “enthusiastic” in ushering voters towards the registration table and appeared to have assumed the role of the STAE official sitting passively next to them.

Our freedom as observers was generally accepted. One minor variation was the different decisions made by the station manager regarding the taking of photos.

Apart from these minor points, it appeared to us that all other electoral rules were adhered to.

**Other comments**

We noted the extraordinary role of scrutineers in ensuring transparency in the vote counting process, providing a cross party authentication of the physical vote counting. Each vote was announced, the paper held up to the scrutineers for visual confirmation, and then votes were publically recorded on a whiteboard.

In contrast to previous elections, it appeared to us on the day that the general public were happy with the entire process of the running of the election along civilian lines, the police playing a constructive role, and the military out of sight.

**Area of discussion**

Two approaches:

- Bilateral role
- Broader role to take into account UN international standards

One approach is to confine a New Zealand assessment to the compatibility of the actual election with Timor-Leste’s laws and regulations.

A broader approach is to offer the (New Zealand) assessment of the Timor-Leste election in the context of accepted international standards, e.g. UN Electoral guidelines.

Opinions differed among the delegation members on this issue.
NEW ZEALAND OBSERVATION DELEGATIONS TO THE 2012 TIMOR-LESTE GENERAL ELECTION

Appendix

We met on 2 August and 16 August 2012 to consider the report from the observers of the 2012 Timor-Leste general election.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment 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 Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Third Protocol institutes a new emblem, known as the Red Crystal, to be used in a similar way to the Red Cross, Red Crescent, and
Red Lion and Sun. The new emblem is intended to have no religious or political connotations, which have made the existing emblems difficult to use in some conflicts. The Red Crystal would give users the same protection from hostile acts in armed conflicts as the other emblems under the Geneva Conventions framework.

**Order of the definitions**

We recommend an amendment to clause 4(1) to delete “The Third Convention” and replace it with “The Second Protocol”. Reprints of the Geneva Conventions Act 1958 reordered the definitions of the Geneva Conventions and Protocols. Our amendment would follow the revised order of the definitions, thus avoiding the potential misconception that the Third Protocol is linked only to the Third Convention.

**Perfidious use**

We recommend the insertion of new clause 4A(3) to amend section 3(2) of the Geneva Conventions Act, to make it clear that perfidious use of the Red Crystal emblem constitutes a grave breach of the Third Protocol for the purposes of the Act. The Third Protocol does not itself specify that the perfidious use of the new emblem is to be treated as a grave breach, but we agree that this is a reasonable interpretation of the obligation to treat all four emblems as having equal status under the Geneva Conventions framework.

**Updating gender references**

Finally, we recommend a series of amendments to update gender-specific references throughout the Geneva Conventions Act to reflect current gender-neutral drafting practice.
Appendix

Committee process
The Geneva Conventions (Third Protocol—Red Crystal Emblem) Amendment Bill was referred to the committee on 28 June 2012. The closing date for submissions was 27 July 2012. We received and considered one submission from the International Committee of the Red Cross.
We received advice from the Ministry of Foreign Affairs and Trade.

Committee membership
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Enable the Bank to Operate in Countries of the Southern and Eastern Mediterranean, and the Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Allow the use of Special Funds in Recipient Countries and Potential Recipient Countries

Report of the Foreign Affairs, Defence and Trade Committee

Contents
Recommendation 2
Appendix A 3
Appendix B 4
Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Enable the Bank to Operate in Countries of the Southern and Eastern Mediterranean, and the Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Allow the Use of Special Funds in Recipient Countries and Potential Recipient Countries

**Recommendation**

The Foreign Affairs, Defence and Trade Committee has conducted international treaty examinations of the Amendment to the Agreement Establishing the European Bank for Reconstruction and Development to Enable the Bank to Operate in Countries of the Southern and Eastern Mediterranean, and the Amendment of the Agreement Establishing the European Bank for Reconstruction and Development to Allow the Use of Special Funds in Recipient Countries and Potential Recipient Countries and recommends that the House take note of its report.

In 1991 New Zealand ratified the Agreement Establishing the European Bank for Reconstruction and Development, and it is one of the 63 member states of the bank. The bank has the current goal of facilitating the transition toward open market economies and to incentivise private-sector investment in Central and Eastern Europe.

These new amendments to the agreement will allow the bank to operate in North Africa and the Middle East, and to permit the use of special funds which will become eligible for investment in the new region as soon as 80 percent of the bank’s members have ratified the treaty changes.

There is no cost to New Zealand in complying with the amendments, and compliance will reaffirm to the bank New Zealand’s commitment to the economic reform and development of these regions.

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

The National Interest Analysis for these amendments is attached as Appendix B to this report.
Appendix A

Committee procedure

These amendments were referred to the committee for examination on 21 August 2012. We met on 23 August and 13 September 2012 to consider them.

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—European Bank for Reconstruction and Development Amendments

Executive summary

1 The Amendment of the Agreement Establishing the European Bank for Reconstruction and Development in order to enable the Bank to operate in Countries of the Southern and Eastern Mediterranean (the “Extension Amendment”) and the Amendment of the Agreement Establishing the European Bank for Reconstruction and Development in order to allow the use of Special Funds in Recipient Countries and Potential Recipient Countries (the “Special Funds Amendment”) (collectively the “Amendments”) were agreed by the Board of Directors of the European Bank for Reconstruction and Development (“the EBRD”) in 27 July 2011. The purpose of the Amendments is to extend the EBRD’s operations to countries in North Africa and the Middle East and to allow the use of Special Funds.

2 The EBRD was established in 1991 to facilitate the transition toward open market economics and to incentivise private-sector investment in Central and Eastern European nations. The EBRD provides loans for projects such as agribusiness, natural resources, power and energy, telecommunications and transport. All projects that receive EBRD funding must benefit the local economy through private sector development. New Zealand is one of 63 member states of the EBRD.

Nature and timing of the proposed treaty action

3 In 1991 New Zealand ratified the Agreement establishing the European Bank for Reconstruction and Development 1990 (the “Agreement”). The Amendments amend the Agreement to allow the EBRD to operate in North Africa and the Middle East and to allow the use of Special Funds.

4 The Extension Amendment will amend Article 1, concerning the Purpose of the Agreement. This will mean that the recipient countries of the EBRD will include countries in North Africa and the Middle East.

5 The Special Funds Amendment will amend Article 18 of the EBRD Agreement to allow for the use of Special Funds in the new recipient countries. Special Funds refers to €1 billion of funds (less than 15 percent of the bank’s general reserves) which will become eligible for investment in the new region as soon as 80 percent of EBRD members have ratified the treaty changes (as opposed to the use of ordinary resources which would require the bank to wait until all members have ratified the changes).

6 It is proposed that New Zealand notify the EBRD, the Depository for the EBRD Amendments, of acceptance of the Amendments. For the Extension Amendment and the Special Funds Amendment an Instrument of Acceptance, as well as evidence that the Amendments have been accepted in accordance with New Zealand’s law, will be deposited with the Depository.
The Extension Amendment will enter into force seven days after the date on which the EBRD has formally confirmed to its members that the requirements for accepting the Extension Amendment, set out in Article 56 of the Agreement, have been met. Article 56 requires all members to accept an amendment to Article 1. Accordingly, the Extension Amendment cannot enter into force without New Zealand’s acceptance.

With regard to the Special Funds Amendment, it will enter into force seven days after the date on which the EBRD has formally confirmed to its members that the requirements for accepting the Special Funds Amendment, set out in Article 56 of the Agreement, have been met. For the Special Funds Amendment, Article 56 requires the acceptance of not less than three-fourths of the members (including at least two countries from Central and Eastern Europe listed in Annex A to the EBRD Agreement), having not less than four-fifths of the total voting power of the members.

Reasons for New Zealand to amend the Agreement

The Amendments have been drafted so that no additional capital contributions will be required from the EBRD’s members, including New Zealand. The Extension Amendment will not compromise the EBRD’s operations in existing recipient countries and the EBRD’s actions will be coordinated with international financial institutions that are active in the region.

The Amendments are expected to be beneficial to the countries of North Africa and the Middle East. The extension of the EBRD’s scope will allow the EBRD to provide loans for projects involved in agribusiness, natural resources, power and energy, telecommunications and transport in these areas.

Accepting the Amendments will reaffirm New Zealand’s commitment to the EBRD and to the economic reform and development of these regions.

Advantages and disadvantages to New Zealand of the Amendments entering into force and not entering into force for New Zealand

Advantages of accepting the Amendments include that by accepting, New Zealand has the opportunity to reaffirm its commitment to the EBRD. Accepting the Amendments also has the potential to strengthen New Zealand’s ties to countries in North Africa and the Middle East. Although New Zealand’s role in the EBRD is modest, acceptance of the Amendments can be seen as a show of support for these countries.

There are no disadvantages to New Zealand of accepting the Amendments. There will be no cost to New Zealand.

Therefore, since there are no disadvantages, New Zealand should accept the Amendments.

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 Amendments.
AMENDMENTS TO THE AGREEMENT ESTABLISHING THE EUROPEAN BANK

Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

16 No legislative changes are required to implement the Amendments.

Economic, social, cultural and environmental costs and effects of the treaty action

17 There are no economic, social, cultural or environmental costs arising from the Amendments.

The costs to New Zealand of compliance with the treaty

18 There are no costs to New Zealand of complying with the Amendments.

Completed or proposed consultation with the community and parties interested in the treaty actions

19 Treasury has been consulted on the proposal to accept the Amendments.

Subsequent protocols and/or amendments to the treaties and their likely effects

20 There are no other amendments to the Agreement that are currently contemplated.

Withdrawal or denunciation provision in the treaties

21 Article 37 of the Agreement allows for any member to withdraw from the Agreement by transmitting a notice in writing to the EBRD at its principal office. This equally applies to the Agreement as amended by the Amendments.

Agency Disclosure Statement

22 Not applicable.
International treaty examination of the United Nations Industrial Development Organization (UNIDO)

Report of the Foreign Affairs, Defence and Trade Committee

Contents

Recommendation 2
Introduction 2
Reasons for withdrawal 2
Labour Party minority view 3
Green Party minority view 4
Appendix A 6
Appendix B 7
International treaty examination of the United Nations Industrial Development Organization (UNIDO)

Recommendation
The Foreign Affairs, Defence and Trade Committee has conducted the international treaty examination of the United Nations Industrial Development Organization, and recommends that the House take note of its report.

Introduction
The United Nations Industrial Development Organization (UNIDO) is a specialised agency of the United Nations with a mandate to promote and accelerate sustainable industrial development in developing countries and work towards improving living conditions in the world's poorest countries.

New Zealand has been a member since the UNIDO constitution was signed and ratified in 1985. Membership entails the payment of an annual contribution, the amount set by each biennial UNIDO General Conference. In 2012 the cost of New Zealand's membership was $456,900. The Government is now proposing that New Zealand withdraw from membership of UNIDO.

Reasons for withdrawal
The majority of us believe that New Zealand’s withdrawal is in the national interest, as it would mean the funds now invested in UNIDO could be invested in United Nations agencies that can demonstrate effective delivery and meet expectations. The proposal to withdraw also reflects UNIDO's marginal role in the international aid system and the reduced relevance of its work to New Zealand's aid priorities. A New Zealand withdrawal from UNIDO would also help minimise the dispersal of our international agencies engagements, targeting resources to places where New Zealand’s support can achieve most, particularly in the Pacific.

Withdrawal is preferred to the cessation of funding, which would adversely affect New Zealand’s international reputation, and might encourage other nations to withdraw. Any risks are mitigated by the very small scale of New Zealand’s financial contribution to UNIDO.

New Zealand’s ability to influence UNIDO’s performance is also limited. A New Zealand withdrawal would not preclude future cooperation with UNIDO on specific programmes if this became appropriate.

The Cook Islands and Niue have been consulted as both countries are bound by New Zealand’s ratification of the UNIDO Constitution. No objections were articulated by either government, and they would remain eligible for UNIDO assistance; and many of New
Zealand’s geographical and political neighbours have withdrawn, or are in the process of withdrawing, from UNIDO.

On balance, the majority of us believe that the advantages of a New Zealand withdrawal are not outweighed by the potential disadvantages of its action encouraging other nations to do likewise, or that it may signal less engagement with the United Nations system.

Withdrawal would involve depositing an instrument of denunciation of the UNIDO Constitution with the treaty’s depository, the Secretary-General of the United Nations. We note that the proposal is for New Zealand to do so by 31 December 2012, and the withdrawal would then take effect on 31 December 2013. New Zealand would be required to fulfil its financial obligations until withdrawal takes effect.

The National Interest Analysis for the proposal is attached as Appendix B to this report.

**Labour Party minority view**

Labour believes that the Government’s decision to withdraw from membership of UNIDO is wrong. It is both wrong in terms of the value the organisation provides to developing countries, and strategically counterproductive in terms of how many countries may see New Zealand as a result of its withdrawal of support.

**Value of UNIDO**

The New Zealand Government has based its decision less on its own analysis than on one analysis by the British Government which had previously reported that UNIDO was one of the most effective institutions it had reviewed. It seems not to have considered UNIDO’s rebuttal of most recent analysis. Nor has it considered reports such as that by the Norwegian Government which reaches the opposite conclusion.

UNIDO’s main strength, Norway said, was “the provision of high quality technical expertise and ability to respond to urgent problems at country level”. It said recipients with few exceptions “were highly satisfied with the quality of the advice they received”.

Even the British report conceded it did useful work; its financial accountability was good; it shows keen control of staff overheads and programme costs; its Director-General is regarded as an effective, competent leader; it has a good reputation; it shows a positive attitude to reform; and its change management programme is expected to improve its performance.

**Strategically counterproductive**

The Government is withdrawing from an organisation whose strategic direction is consistent with New Zealand’s development goals.

UNIDO is a leading expert on poverty eradication through industrial development. It stresses development consistent with the need to be environmentally sustainable and tackle climate change issues. It emphasises integration of developing countries with international trade. It targets corruption and abuse of human rights.
The Government says withdrawal allows it to concentrate more on the Pacific, but organisations like UNIDO enable New Zealand to deliver assistance to, and show concern for, areas where we cannot effectively deliver assistance bilaterally, such as Africa. To get elected to the UN Security Council in 2014, we need to show interest in and concern for the problems of countries beyond our own region.

The Government’s intended action sends the wrong message. Withdrawal using as a justification that we are following the example of the US, UK, Canada and Australia brands us in a negative way. It suggests that we are part of a small, privileged grouping, that we follow rather than lead and don’t take an independent stance reflecting our own judgement and values.

This detracts seriously from the impression we need to create to win support for our 2014 bid to be elected on the Security Council. It also damages our branding more generally. It signals New Zealand is less engaged in the UN system. All of this damage is sustained for the saving of a meagre amount of money, less than $500,000.

Green Party minority view

The Green Party opposes the apparent decision of the New Zealand Government to withdraw from UNIDO.

Such a move casts doubt on New Zealand’s international standing and is reprehensible on substantive grounds. The decision also reflects poorly on procedural method within the Ministry of Foreign Affairs and Trade.

The decision casts doubt on New Zealand’s international standing. Imperfections within the UN require reform rather than repudiation. The decision to withdraw comes at a time when New Zealand promotes its candidacy for the UN Security Council – a sad and ironic juxtaposition of self-interest. The withdrawal has the potential to jeopardise New Zealand’s bid for a seat – other member states tend to have regard, in making their judgements, not for what we invite them to consider but what they choose to consider. This applies with greatest force to those countries on which New Zealand will depend most for success. It will not be lost on them that the cost-savings New Zealand makes in pulling out of UNIDO are tiny in comparison to the money the New Zealand Government is spending on a new embassy in Beijing, $7 million.

The decision is reprehensible on substantive grounds. The signal New Zealand will be sending to the international community is that it is indifferent to United Nations programmes that assist in aid and development around the world. The developmental objectives of UNIDO are in fact closely consonant with those of the New Zealand Official Development Assistance programme. If the Government harbours concerns over the way some UN organisations are run, then it needs to work with other member states to investigate and reform the organisation rather than cutting and running. Nordic states pursue this approach, and have considerable international influence on UN reform as a result. It needs to be acknowledged, however, that such a policy is coterminous with a strong commitment to international development through a sizeable ODA programme in each case – from 0.8 percent to 1.0 percent of ODA/GNI, compared with New Zealand’s meagre 0.27 percent.
The decision reflects poorly on MFAT’s procedural methods. It appears to have been taken on the basis of a critical UK examination and report on UNIDO. It seems there exists a separate New Zealand report within MFAT which mirrors the British report, though despite requests from the Committee this was not forthcoming. Officials were unaware of (i) a study undertaken by Denmark on UNIDO, and (ii) a written response to the British report by UNIDO’s Director-General. It is clear that MFAT failed to undertake a thorough and comprehensive examination before coming to its conclusion.
Appendix A

Committee procedure
The treaty examination was referred to the committee for examination on 25 July 2012. We met on 16 August, 27 September, and 18 October 2012 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
Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
Su’a William Sio
Lindsay Tisch
Appendix B

National Interest Analysis -- Withdrawal from the United Nations Industrial Development Organization (UNIDO)

1. Executive summary

1. It is proposed that New Zealand withdraw formally from membership of the UNIDO. UNIDO is a specialised agency of the United Nations. Its overall mandate is to promote and accelerate sustainable industrial development in developing countries and economies in transition, and work towards improving living conditions in the world's poorest countries. UNIDO’s thematic priorities are: poverty reduction through productive activities; trade capacity building; and environment and energy.

2. New Zealand has been a member of UNIDO since signature and ratification of the UNIDO Constitution in 1985.

3. Membership entails the payment of an annual, assessed, contribution towards the regular budget. This amount is set by the biennial UNIDO General Conference. The New Zealand contribution for the 2012 (1 January — 31 December) UNIDO fiscal year (this corresponds to the New Zealand 2011/12 financial year) is 289,492 Euros (NZ$456,900). New Zealand’s assessment rate for 2012 was 0.415 percent.

4. A New Zealand withdrawal is in the national interest as it means the funds allocated to the International Agencies Programme of the New Zealand Aid Programme can be invested in agencies that are able to demonstrate effective delivery on the ground and meet expectations around value for money and performance. It also reflects UNIDO’s marginal role in the international aid system and the reduced relevance of its work to New Zealand’s aid priorities.

2. Nature and timing of proposed treaty action

5. New Zealand has been a member of UNIDO since signature and ratification of the UNIDO Constitution in 1985. The formal date that New Zealand’s membership took effect was 19 July 1985. The UNIDO Constitution entered into force when at least 80 states, having deposited instruments of ratification, acceptance or approval, had notified the United Nations Secretary-General that they had agreed, after consultation among themselves, that it should enter into force. For those states, the Constitution entered into force on 21 June 1985.

6. Under Article 6 of the UNIDO Constitution, withdrawal is executed by depositing an instrument of denunciation of the UNIDO Constitution with the treaty’s Depository, the Secretary-General of the United Nations. Withdrawal takes effect on the last day of the UNIDO fiscal year (1 January — 31 December) following that during which the instrument was deposited. It is proposed New Zealand deposit notification of its withdrawal by 31 December 2012. Under the UNIDO Constitution, this withdrawal would come into force on 31 December 2013.
7 Under the UNIDO Constitution, members are required to fulfil their financial obligations until withdrawal takes effect. This means New Zealand would be required to pay the assessed contribution for the 2013 UNIDO fiscal year (New Zealand’s 2012/13 financial year). The assessed contribution for 2013 will be identical to that for 2012. The Government has advised UNIDO that it will honour its financial obligations under the UNIDO Constitution.

8 New Zealand has consulted with the Cook Islands and Niue as both countries are bound by New Zealand’s ratification of the UNIDO Constitution at the time of ratification, both Governments requested that the Constitution should also extend to Niue and the Cook Islands.

9 No concerns were articulated by either Government. The Cook Islands noted their interest in UNIDO’s energy work, and indicated that they would consider the costs and benefits of membership in their own right (the Cook Islands are already a member of the United Nations Educational, Scientific and Cultural Organization, the World Health Organisation and the Food and Agriculture Organization of the United Nations for instance). Niue did not indicate any intentions with regard to its own future relationship with UNIDO. Regardless of their future membership status, the Cook Islands and Niue would remain eligible for UNIDO support, although the level and quality of any assistance could be affected by membership status.

3. Reasons for New Zealand withdrawing from the Treaty

10 It is proposed that New Zealand withdraw from the UNIDO Constitution. This proposal is based on an assessment that UNIDO’s role in the international aid system is marginal and less relevant to New Zealand’s current priorities, its Pacific footprint and relevance is minor, and its overall performance is mediocre.

11 Withdrawal will help ensure that the funds allocated to the International Agencies Programme of the New Zealand Aid Programme are invested in agencies that are able to demonstrate effective delivery on the ground and meet expectations around value for money and performance. UNIDO’s role in the international aid system, and its relevance to New Zealand’s international development and broader foreign policy interests, is more marginal than that of other United Nations system agencies supported under the International Agencies Programme. UNIDO’s Pacific footprint and relevance is minor; and both MFAT and a number of other donor assessments indicate overall agency performance and impact is mediocre.

12 Withdrawal, as opposed to the cessation of funding, is preferred. If a country ceases to pay its annual contribution to the regular budget but does not withdraw, non-payment is treated as an outstanding contribution in UNIDO’s financial reporting. Non-payment for over two years will result in the relevant member’s voting rights being suspended. Such a scenario would entail adverse reputational implications.

13 The United States (withdrawal effective from the end of 1996), Canada (withdrawal effective from the end of 1993) and Australia (withdrawal effective from the end of 1997) are no longer members. The United Kingdom and Lithuania are withdrawing from UNIDO (these withdrawals effective from the end of 2012). A number of other states have
never been members of UNIDO – these include Singapore, Iceland, Estonia, Latvia, and in the Pacific: Kiribati, Solomon Islands, Palau, Micronesia, Marshall Islands and Nauru.

4. Advantages and disadvantages to New Zealand of the treaty action.

Advantages

14 UNIDO’s role in the international aid system, and its relevance to New Zealand’s interests is more marginal than that of other UN agencies supported under the International Agencies Programme. UNIDO’s Pacific footprint is minor, and MFAT and other donor assessments indicate agency performance is mediocre. New Zealand’s ability to influence agency performance is limited. A New Zealand withdrawal from UNIDO would also contribute to the reduced dispersal of our International Agencies engagements targeting resources to where New Zealand’s support can achieve the greatest impact, particularly in the Pacific.

15 A New Zealand withdrawal would not preclude the possibility of future appropriate non-core cooperation with UNIDO on specific programmes. A possible example of this includes a proposal to support UNIDO work on seaweed processing in the Maluku province in eastern Indonesia which is currently being assessed. UNIDO may also continue to derive benefit from New Zealand support in those instances where programme contributions are directed towards broader UN programmes. A recent example where UNIDO has benefitted from such support is represented by funding to the United Nations Development Programme (UNDP) led conflict reconstruction programmes in Maluku where UNIDO implemented some of the programme activities.

16 Consultation with the Cook Islands and Niue indicates that a New Zealand withdrawal will not entail any detrimental consequences for either country. Regardless of future membership status, the Cook Islands and Niue would remain eligible for UNIDO assistance.

Disadvantages

17 174 nations are currently members of UNIDO. There is a risk of an adverse reaction from some member states, in part because of the possibility that a New Zealand withdrawal may encourage a number of other member states to withdraw. In addition, some of UNIDO’s developing country members may perceive a withdrawal as signalling less engagement by New Zealand in the UN system.

18 These risks are mitigated by the very small scale of the New Zealand financial contribution to UNIDO; our recent decision to allow UNIDO to retain for future use unspent New Zealand funds in contrast to the approach adopted by most members on this; a history of limited New Zealand engagement with UNIDO, including in its governance bodies; continued strong New Zealand core funding support to other, more critical, components of the UN development and humanitarian system; continued, appropriate outreach to UN member states reinforcing our commitment to the UN system; and the increase in the overall New Zealand aid programme.

19 On balance, the various advantages of a New Zealand withdrawal outweigh the disadvantages, and therefore withdrawal is proposed.
5. Legal obligations which would be imposed on New Zealand by the treaty and an outline of the dispute settlement mechanisms

20 These are confined to the requirement under the UNIDO Constitution for members to fulfil their financial obligations until withdrawal takes effect. This means New Zealand would be required to pay the assessed contribution for the 2013 UNIDO fiscal year (New Zealand’s 2012/13 financial year). The assessed contribution for 2013 will be identical to that for 2012.

21 The most recent UNIDO financial situation report (31 March 2012) advises that assessed contributions outstanding from current members total €74.9 million. The arrears of 39 members were of sufficient duration to entail the suspension of their voting rights (members affected by suspension include Argentina, Costa Rica, Papua New Guinea, Ukraine and Vanuatu). In addition, UNIDO is pursuing arrears owed by one former member, the United States (for 1994 – 1996) totalling almost €69.07 million and those of the former Yugoslavia (about €2.08 million in total).

6. Measures which the Government could/should adopt to implement the treaty action

22 The instrument of denunciation would be deposited with the UNIDO Depository after the Parliamentary treaty examination process is completed. This would occur by 31 December 2012.

7. Economic, social, cultural and environmental costs and effects of the treaty actions

23 In general, no costs or effects pertaining to the above categories are foreseen. New Zealand nationals or permanent residents seeking employment or contract work with UNIDO may be disadvantaged, but numbers affected are likely to be low.

8. Costs to New Zealand of compliance with the treaty.

24 None.

9. Completed or proposed consultation with the community and parties interested in the treaty actions

25 No consultation has been undertaken or is proposed in a domestic context. The relationship with UNIDO is managed by MFAT. No other New Zealand Government agencies have articulated any interest in UNIDO in recent years. Treasury has been consulted on the proposal to withdraw. The Ministry of Economic Development has also been advised of the proposal to withdraw and had no comment.

26 The Government, via the mission in Vienna, has advised UNIDO and several Vienna-based missions (the United Kingdom, Netherlands, Japan, Austria, Republic of Korea and the European Union delegation) of the proposal to withdraw.

27 The Government, via our resident missions, consulted with the Cook Islands and Niue of the proposal to withdraw, including the reasons for this.

28 Public approaches to date have been confined to one overseas media inquiry.
10. Subsequent protocols and/or amendments to the Treaties and their likely effects

29  Not applicable.

11. Withdrawal or denunciation

30  Under Article 6 of the UNIDO Constitution, withdrawal is executed by depositing an instrument of denunciation of the UNIDO Constitution with the Depository. Withdrawal takes effect on the last day of the UNIDO fiscal year following that during which the instrument was deposited. Under the UNIDO Constitution, members are required to fulfil their financial obligations until withdrawal takes effect.

12. Agency disclosure statement

31  Not applicable.
Crown Entities Reform Bill

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Crown Entities Reform Bill and recommends that the bill be passed with minor amendment.

Introduction
This bill is an omnibus bill that proposes to amend the New Zealand Public Health and Disability Act 2000, the Smoke-free Environments Act 1990, the Mental Health Commission Act 1998, the Health and Disability Commissioner Act 1994, the Remuneration Authority Act 1977, and the Charities Act 2005; and repeal the Alcohol Advisory Council Act 1976. It is intended that, at the Committee of the Whole House stage, this bill will be divided into the following bills: a New Zealand Public Health and Disability Amendment Bill, a Mental Health Commission Amendment Bill, and a Charities Amendment Bill.

Part 1 of the bill proposes to disestablish the Alcohol Advisory Council of New Zealand (ALAC), the Health Sponsorship Council, and the Crown Health Financing Agency. Part 1 would also establish as
a Crown agent a new Health Promotion Agency, which would carry out health promotion functions including those currently performed by ALAC and the Health Sponsorship Council.

Part 2 of the bill proposes to bring forward the disestablishment date of the Mental Health Commission to 1 July 2012. Part 2 would also establish a new Mental Health Commissioner as a deputy commissioner under the Health and Disability Commissioner, and would give the Health and Disability Commissioner new monitoring and advocacy functions in respect of mental health and addiction services.

Part 3 of the bill proposes to disestablish the Charities Commission and transfer its functions to the Department of Internal Affairs except for its charities registration function, which would be carried out by an independent board of three people, supported by the department.

Amendments to the bill

Definition of “health”

We considered clause 6 of the bill as introduced, which replaces section 58 of the New Zealand Public Health and Disability Act 2000 with a new section 58. It was agreed that all references to “health” in the Health Promotion Agency’s functions, duties and powers should be accompanied by “… and wellbeing”, so as to ensure that the agency is not narrowly focused on medical considerations, and to explicitly reflect the Ottawa Charter, an international best-practice agreement on health promotion established by the World Health Organisation.

Minor amendments considered

We considered a few minor amendments to two schedules to the bill. The amendments take into account recent changes made to the Charities Act 2005 by the Charities Amendment Act 2012. The first amendment is to omit references to the “Commission” in each place they appear in section 17(1) of the Charities Act 2005 and substitute the words “chief executive” in each case. The second amendment is to replace references to the “Commission” with “chief executive” in sections 40(2)(a), 40(2)(b), 41(2), the heading of section 42, 42(1), 42(2), 44(3), 45(2), and 72A of the Charities Act 2005. The third amendment would insert “or the chief executive” after “Commission” in each place it appears in section 16 of the Charities Amend-
ment Act 2012. The fourth amendment would insert the words “or the chief executive, as the case may be,” after “Commission” in sections 17(2) and 18 of the Charities Amendment Act 2012. These amendments were not agreed to; however some of us recommend that they be made in the Committee of the Whole House.

**Creation of the Health Promotion Agency**

The proposed Health Promotion Agency would carry out the health promotion functions currently performed by ALAC and the Health Sponsorship Council. The agency is also intended to carry out some health promotion programmes currently delivered by the Ministry of Health. We considered the merits of concentrating health promotion activities in a single stand-alone health promotion entity and weighed them against the disadvantages of disestablishing the two well-regarded existing agencies. We are aware of some concern that their disestablishment might result in loss of expertise, momentum, and focus.

However, we believe that the Health Promotion Agency would maintain the achievements of its predecessor bodies, and would also be able to conduct other health promotion work not currently carried out by either agency, drawing on wider expertise, utilising a fuller range of existing relationships, and leading the health sector on health promotion issues.

**Disestablishment of the Mental Health Commission**

Part 2 of the bill would bring forward the Mental Health Commission’s disestablishment date to the close of 30 June 2012 and transfer its monitoring and advocacy functions to the Health and Disability Commissioner’s office, where the new Mental Health Commissioner would be located as a deputy commissioner.

We considered whether the Mental Health Commission’s functions ought to be retained in a stand-alone agency, since we recognise that there is a great need for mental health advocacy and monitoring.

Clause 38 of the bill as introduced would amend section 14(1) of the Health and Disability Commissioner Act 1994 to provide new functions to the commissioner to monitor mental health and addiction services and advocate for their improvement. We believe that the commissioner’s new functions adequately cover the core functions
of the Mental Health Commission. We note that the proposed Mental Health Commissioner’s functions are inclusive and broadly stated. Some of us believe that the proposed functions do not adequately reflect the Mental Health Commission’s present functions. We are also concerned that the “blueprint funding” rollout, which has not met the rollout target in the last two years, may be further reduced. We consider that the proactive approach the commission applies to its auditing and advisory functions may not be well-suited to the Health and Disability Commissioner’s more reactive complaints resolution orientation.

**Disestablishment of the Charities Commission**

We acknowledge the strong concern expressed by submitters in relation to the disestablishment of the Charities Commission, an autonomous Crown entity, and the transfer of its functions to an independent board within the Department of Internal Affairs, which would compromise the commission’s independence and autonomy. The bill was introduced at the end of the previous Parliament and submissions were called without a closing date. We were unable to call for further submissions due to time constraints. We had requested an extension of three months, but were granted an extension of one month. This led to confusion about the status of submissions. We further acknowledge the frustration felt by submitters, some of whom were unaware of submissions being called. This highlights a problem with the process associated with bills at the end of Parliament, because they cease being an item of business until reinstated in the new Parliament. We gave consideration to all written submissions.

We note that Part 3 of the bill contains a number of provisions designed to support the independence of the charities registration function. Clause 45 of the bill as introduced would insert a new section 8(4) into the Charities Act 2005, requiring each board member to act independently in exercising their professional judgment, without direction from the Minister.

Nevertheless, some of us are convinced that the legislative safeguards provided in the bill would be insufficient to maintain the degree of independence that the Charities Commission provides. We also believe that the charities-related functions will be less accessible to the public, and that the charities sector work will be carried out less trans-
parently if the commission’s functions are transferred to the Department of Internal Affairs.

**Review of the Charities Act 2005**
A review of the Charities Act is due to take place following the current review of the Incorporated Societies Act 1908. Government members believe that transferring the commission’s current functions to the Department of Internal Affairs will create a more robust, resilient agency, and endorse the intention to do so now rather than after the review of the Charities Act. Labour and Green members believe that the transfer of the functions from the Charities Commission to the Department of Internal Affairs should not occur. No decisions on either legislative or operational change should be made until the review of the Charities Act and the Incorporated Societies Act are completed. Further, the independence and integrity that the Charities Commission has given to the process must be retained and we do not believe that this is possible under the proposal to move the functions of the Charities Commission to the Department of Internal Affairs.
Appendix

Committee process
The Crown Entities Reform Bill was referred to the committee on 4 October 2011. The chairperson of the previous Government Administration Committee made an open call for submissions prior to the 2011 election. We received and considered 43 submissions from interested groups and individuals. We heard 17 submissions. We received advice from the State Services Commission, the Ministry of Health, and the Department of Internal Affairs.

Committee membership
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker
We have considered Petition 2008/119 of Donald James Rowlands and 891 others. The petition asks: “Me whakaee te Paramata ki te 5 Whiringa-a-rangi hei ‘Te Rangi Whakamana o Parihaka’ kia whakamaumahara ai he maungarongo ki te whenua o Aotearoa. We request that Parliament formally recognise 5 November as Parihaka Day to commemorate the peaceful resolution of conflict in New Zealand.”

We are aware of other initiatives that seek to celebrate the peaceful resolution of conflict symbolised by Parihaka, which will involve engagement with the Parihaka community. We believe that the intent of this petition should be considered alongside these initiatives. We have no other matters to bring to the attention of the House.

Chris Auchinvole
Acting Chairperson
Electronic Identity Verification Bill

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Electronic Identity Verification Bill and recommends that it be passed with the amendments shown.

Introduction
The Electronic Identity Verification Bill is intended to regulate the operation of the Electronic Identity Verification Service. This service gives individuals using the internet the option of using a secure channel to verify their identities, to access services from approved Government and non-Government agencies. The system uses electronic identity credentials, which are electronic records that contain minimal personal information. These credentials are passed, with the individuals’ consent, to authorised agencies, which use them to confirm the identity of their holders.

Since December 2009, people have been able to use the service to authenticate their identities in their interactions with the Department of Internal Affairs’ Births, Deaths and Marriages registry, but in a very limited capacity. The provisions of this bill would expand the
availability of the service to all members of the public, and allow more agencies to use the service to identify their clients.
This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

**Application of penalty regime to organisations**
We recommend amendments to clauses 56 and 58, to set higher penalties for organisations that offend against this legislation. The bill as introduced makes no distinction between individuals and organisations.
The penalty regime in the bill as introduced recognises that the use of a false electronic identity credential and the wrongful accessing of, or otherwise interfering with, the service database can have serious repercussions for agencies that use the service and for credential holders. We consider that the penalties in the bill are adequate to punish individuals who misuse the service or identity credentials, and deter others from doing so.
However, we doubt that this penalty regime will deter organisations from misusing the service. Organisations may, for example, hack into the service’s database and steal the identity information of service users. Organisations cannot be imprisoned, and the maximum fines provided for in clauses 56 and 58 are unlikely to deter or punish sufficiently such offending by organisations. We recommend the imposition of fines that would have severe financial repercussions for organisations that misuse the service, and would thus deter other organisations from doing so.
We also recommend inserting a definition of “organisation” in clause 7. The definition is intended to capture a wide array of organisational bodies, so that any body that commits an offence under the Act could face a fine.

**Law enforcement access to usage history records by search warrant**
We propose deleting clause 21(1)(b) and inserting clause 21B, to require law enforcement agencies to obtain a search warrant as a condition of access to the service’s records of an individual’s usage history.
The bill as introduced provides that law enforcement must satisfy the chief executive that access to an individual’s usage history record is required to avoid prejudice to an investigation or prosecution of a specified offence. However, we consider that this is too much power to grant to a departmental official. We believe that access to records initiated by law enforcement agencies should be granted only by way of a search warrant.

We recommend inserting new clause 21A, which would allow the chief executive to disclose an individual’s record of usage history to law enforcement if he or she suspected, on reasonable grounds, an offence had been committed and the records were necessary to investigate this. We recognise that the chief executive needs to be able to alert law enforcement agencies to the potential illegal use of the system, in order to report suspicious behaviour so that it can be investigated.

Regulation of information

Retention of information following cancellation, revocation or expiry to be prescribed by regulation

We recommend inserting new clause 65A. This would allow regulations to prescribe the length of time electronic identity credentials, photographs, records of usage history, status information and technical codes are retained after their cancellation, revocation or expiry. It would also require the Minister to consult the Privacy Commissioner on recommendations for these regulations. New sub-clause 40(4) would require the chief executive to delete the record of usage history at the end of the period prescribed in regulation.

As introduced, the bill would apply information privacy principle 9 in section 6 of the Privacy Act 1993. This principle states that an agency cannot keep personal information for longer than required for the purposes for which the information may lawfully be used.

We are concerned that this principle could in effect require the indefinite retention of identity credentials and other personal information by the service. A balance must be struck between cancelling people’s credentials promptly and retaining the information of cancelled credentials in order to apprehend criminals who use the system. We believe that time limits set by regulation would allow flexibility in responding to changing risks and to technological advances in the
detection of fraud. The requirement for the Minister to consult the Privacy Commissioner and the oversight of the Regulations Review Committee would act as checks against unreasonable regulations.

**Credentials of children to have a different duration**

New clause 65A would also allow a different duration to be set by regulation for electronic identity credentials issued to children under 14 years of age.

As introduced, clause 10 states that an electronic identity credential will exist for the period prescribed by regulations, and that its duration is subject to cancellation under clauses 27 or 29, or revocation by the chief executive or by a court. Clause 10 and the regulation-making power under clause 67 do not allow the setting of a different duration for electronic identity credentials of children under 14 years of age.

New clause 65A would allow the duration of identity credentials issued to children under 14 years of age to be different from others. We believe that this is necessary as children’s appearances change dramatically as they age, and they generally hold few identity documents, which can limit the effectiveness of biometric checks.

**Information not to be disclosed except as provided for in bill**

We recommend inserting paragraph 4(1)(g). We believe that the legislation’s principles need to state clearly that core identity information held in electronic identity credentials, photographs, or usage history records may be disclosed by the service only in accordance with this Act.

**Amending and updating electronic identity credential**

We recommend adding sub-clauses 26(5B), and (5C), to allow an individual whose application to amend his or her information had been refused by the chief executive to request action to indicate that the information in a credential is contested. The bill as introduced does not have a specific mechanism to indicate that credential information is disputed. We believe it is important that agencies that have dealings with an individual are made aware of any such dispute. Our proposed amendments would require the chief executive to take rea-
sonable steps to indicate that information recorded in a credential was disputed.

We also recommend amending clause 28(1)(c) to allow mandatory updating of identity credentials as a result of any means the chief executive uses to ensure the ongoing accuracy of electronic identity credentials.

As introduced, the bill states that information must be updated if an individual’s identity information has changed because of, among other reasons, information produced by a comparison undertaken in accordance with clause 35(4). We propose removing this reference to a comparison, to ensure that an identity credential would be updated if necessary regardless of the means used to discover it.

**Legal requirements to apply to participating agencies**

We recommend amendments to clause 19 to clarify the legal effect of using an electronic identity credential. As introduced, clause 19 outlines how a legal requirement for an individual to supply information about their identity would be met. Our amendments would clarify how a legal requirement would be met by the service when it supplies the information in a credential to a participating agency. This change would ensure that agencies needing to meet legal requirements to obtain or to verify identity details about an individual could do so.

**Standards, specifications and reports to be published online**

We recommend inserting paragraph (2)(c) and sub-clause (3) into clause 39. This would require the chief executive to publish online the standards and specifications for the use by participating agencies of electronic identity credentials, with the proviso that information may be withheld in accordance with the provisions of the Official Information Act 1982 or to protect the security or integrity of the service. We also recommend inserting clause 39(2)(d). This would require that any reports the chief executive required third parties to produce under clause 44 be published online by the chief executive, with the proviso that information may be withheld in accordance with the provisions of the Official Information Act 1982. We consider that this change would increase the transparency of and thus trust in the system.
Privacy

Reporting to the Privacy Commissioner
We recommend inserting paragraph (da) into clause 53(2). This would allow the Privacy Commissioner to require the chief executive to include information about the number of times the usage history of an electronic identity credential had been accessed in his or her report to the Privacy Commissioner.

Clause 53(2) as introduced lists examples of matters on which the Privacy Commissioner could request a report from the chief executive, but access to usage history is not specified.

Application of Privacy Act 1993
We recommend deleting sub-clause 55(2) and substituting sub-clauses (2), (2A), (2B) and (2C). Sub-clause (2) specifies that the right to request the chief executive to indicate that information in a credential is contested applies instead of information privacy principle 7(3) of the Privacy Act 1993. New sub-clause (2B) makes it clear that regulations made under the Act would apply instead of information privacy principle 9 of the Privacy Act 1993. Sub-clause 55(2C) clarifies that any disclosure of core identity information, photographs, or records of usage history would be made under this Act rather than information privacy principle 11 of the Privacy Act.

As introduced, sub-clause 55(2) stipulates that information privacy principle 11 does not apply to personal information held in accordance with the provisions of the bill. We consider that the scope of this clause is too broad; our amendments specify the information to which the bill’s controls would apply.

We recommend that paragraphs 55(3)(a) and (b) be amended to include reference to the “use” of personal information among the circumstances in which an information privacy principle of the Privacy Act 1993 is deemed to have been breached. We consider that this amendment is desirable for completeness.

We also recommend inserting sub-clause (3A) into clause 55, and sub-clause (1B)(a) into clause 61, to clarify that the bill does not exclude the Privacy Act’s provisions for investigating and taking action against a breach of privacy.
Appendix

Committee process
The Electronic Identity Verification Bill was referred to the committee on 7 February 2012. The closing date for submissions was 30 March 2012. We received and considered 12 submissions from interested groups and individuals. We heard two submissions. We received advice from the Department of Internal Affairs.

Committee membership
Hon Ruth Dyson, Chairperson
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker
Gareth Hughes replaced Holly Walker for this item of business.
Statutes Amendment Bill (No 3)

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation
The Government Administration Committee has examined the Statutes Amendment Bill (No 3) 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 bill seeks to amend 16 statutes.

We recommend five amendments to the bill as drafted. These are outlined below.

Children, Young Persons, and Their Families Act 1989
We recommend changes to Part 2 of the bill inserting new sub-clause 10(2) and amending clauses 12 and 13 to clarify the intent of changes to the expiry provisions for two types of custody orders.

Section 296 of the Children, Young Persons, and Their Families Act 1989 sets out when certain orders made by the Youth Court expire.
As introduced, clause 10 would extend the application of this section to two types of custody orders made by the Youth Court: custody orders made to allow young persons to undertake an alcohol or drug rehabilitation programme, and those to allow other types of programme or activity to be provided to a young person. These custody orders are to expire when the child or young person in question reaches 18 years of age, unless they are specified to expire earlier. The insertion of sub-clause 10(2) would clarify the intent of the clause and resolve any conflict with the expiry provision for custody orders in section 108 of the Act.

The proposed amendments to clauses 12 and 13 are consequential on the changes made in sub-clause 10(2).

**Real Estate Agents Act 2008**

We recommend one change to Part 13 of the bill, deleting a reference in clause 64 to section 54(a) of the Real Estate Agents Act 2008. Section 54(a) states that the Registrar of the register of licensees must cancel a person’s licence and remove that person’s name from the register if he or she has died. We believe that if a person has died it is unnecessary to specify that they are prohibited from holding a licence in the future.

**Social Security Act 1964**

We recommend one amendment to Part 15 of the bill, inserting new clause 77A, which would repeal section 135(5) of the Social Security Act 1964 and insert new subsection (5). This amendment is to ensure that the subsection refers to schedule 9.
Appendix

Committee process
The Statutes Amendment Bill (No 3) was referred to the committee on 16 February 2012. The closing date for submissions was 13 April 2012. We received and considered four submissions from interested groups and individuals. We received advice from the Ministry of Justice.

Committee membership
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Eric Roy
Holly Walker
The Government Administration Committee has examined the Report from the Controller and Auditor-General, *Realising benefits from six public sector technology projects*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Hon Ruth Dyson  
Chairperson
The Health Committee has considered the report from the Controller and Auditor-General on New Zealand Blood Service: Managing the safety and supply of blood products, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Dr Paul Hutchison
Chairperson
Medicines Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation
The Health Committee has examined the Medicines Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Medicines Act 1981 in order to modernise the definitions of medicine, medical device, and therapeutic purpose; to amend the medicine approval process to make it less prescriptive and to make some changes to the prescribing framework, and some minor or technical changes.

The bill is an interim measure intended to address some problematic provisions of the Medicines Act, in advance of a comprehensive overhaul of the medicines legislation. The comprehensive overhaul will be undertaken via the Therapeutic Products and Medicines Bill which is intended to be progressed in 2013 and is a key part of the legislative infrastructure required to establish the Australia New Zealand Therapeutic Products Authority (ANZTPA).

ANZTPA will replace Australia’s Therapeutic Goods Administration and the New Zealand Medicines and Medical Devices Safety Authority (Medsafe). It will create a single market for therapeutic products
by administering a single regulatory scheme across both countries. It will regulate the full range of therapeutic products including prescription medicines, over-the-counter medicines, medical devices, and biological medicines.

This commentary covers the main amendments we recommend to the bill.

**Commencement clause**

We recommend that the default commencement date for the provisions in the bill that would come into force by Order in Council be amended. Any provision relating to the medicines approvals process that had not come into force earlier would come into force on 1 July 2017, and any other provision in the bill that had not come into force earlier would come into force on 1 July 2014.

The bill seeks to remove the provisions in the Act that deal with the process for medicines approvals and replace them with a regulation-making power. The new regulations would be expected to include a new approval process for medicines. Setting an earlier commencement date for these provisions would require the development of a New Zealand-only medicines approval process, concurrently with the development of a medicines approval process for the joint ANZTPA regulatory scheme. Any New Zealand-only scheme would be in force for a short time before being replaced by the ANZTPA regulatory scheme before 1 July 2017. The extended commencement date means that legislative change and prolonged consultation can be avoided.

Setting the commencement date at 1 July 2017 recognises that if negotiations on ANZTPA progress according to schedule, the medicines approvals provisions in the bill will be superseded. If negotiations are prolonged, however, the bill provides an alternative avenue for making the desired amendments to the medicines approvals process.

**Definitions**

There was general support for updating the definitions of medicine, medical device, and therapeutic purpose to align them with international norms. We do not consider full alignment with the regulatory definitions used in Australia appropriate. The definitions in the
bill have been developed to reflect New Zealand’s current regulatory framework, and will be reviewed and updated by the Therapeutic Products and Medicines Bill, which is required to establish the Australia New Zealand Therapeutic Products Agency.

**Delegated prescriber**

The delegated prescriber category would enable a registered health professional to prescribe within limited parameters, under the sanction of an authorised prescriber. The intention of delegated prescribing is to give patients more convenient, efficient access to medicines by broadening the range of practitioners who may prescribe, while ensuring patients’ safety. A delegated prescribing order is the mechanism by which specific conditions and restrictions on prescribing would be imposed for an individual delegated prescriber. The limits on prescribing by delegated prescribers would reflect their required level of qualifications, training, and competency. Delegated prescribing would be monitored by the authorised prescriber who issued the order.

An application for delegated prescribing rights would require the support of the relevant responsible authority and the approval of the Minister of Health. We recommend that the implementation of delegated prescribing rights be via regulation. Requiring a regulatory mechanism enables scrutiny by the Regulation Review Committee and reflects the significant responsibilities that accompany any form of prescribing.

To ensure clarity about the controls on delegated prescribing, we recommend adding more detail to section 105D, which sets out the kinds of regulations that could be made relating to delegated prescribers. Regulations could then be made granting delegated prescribing rights, regulating how delegated prescribing orders are issued, setting out the supervisory responsibilities of authorised prescribers, and imposing other requirements on delegated prescribers.

We recommended inserting new section 105DA to ensure that the prescription medicines that may be prescribed under a delegated prescribing order be specified by the Director-General of Health by notice in the *Gazette* rather than specified in delegated prescriber regulations. Specifying the list via *Gazette* notice would enable the list to be updated more efficiently in response to changes in best practice.
and to changes in product funding within a therapeutic group. This would also require the Director-General of Health to consult with the relevant organisations or bodies that are considered representative of persons likely to be substantially affected before specifying the prescription medicines by notice in the *Gazette*.

**Temporary prescribing**

As introduced the bill contains provisions for temporary prescribing rights. However, it has since been determined that designated and delegated prescribing regulations can specify a time limit, as well as other conditions that would enable the authorisation of temporary prescribing rights. Accordingly a separate provision for temporary prescribing is superfluous. We therefore recommend the deletion of new section 47C.

**Regulations relating to designated prescribing**

Clause 34 makes changes to the regulation-making powers in section 105 of the Act. This section of the Act allows regulations to be made authorising designated prescribing and specifying the prescription medicines that can be prescribed. We recommend amending the bill to reinsert a deleted reference to description of medicines in section 105(1)(qa) to ensure flexibility in drawing up the list of medicines. We further recommend that the medicines that designated prescribers can prescribe be specified by the Director-General by notice in the *Gazette*. As noted previously, specifying the medicines via *Gazette* notice would enable the list to be updated more efficiently.

**Functions, powers and procedures of the Medicines Review Committee**

Clause 8 seeks to amend section 13, to give the Medicines Review Committee the power to investigate any objections to the Minister’s decisions on the distribution of medicines. We consider the wording of new section 13(1)(a) too narrow, and believe it should also allow appeals against the imposition of conditions on approvals. Accordingly we recommend amending section 13(1)(a) to ensure that the committee provides an avenue for appeal in this respect.
Applications for Minister’s consent
Sections 21 and 23 (inserted by clause 12) set out the criteria to be applied when the Minister determines whether to give consent, or provisional consent, to the distribution of a new medicine. We believe that the term “applicant” in section 21(1) and 23(1) needs to be defined more clearly, as the provision as introduced implies that an overseas manufacturer could submit an application, which is not the intention. Therefore, we recommend amending new sections 21(1) and 23(1) to include a requirement that the applicant for consent be a person or company in New Zealand. We recommend an equivalent amendment to new section 24(3) (inserted by clause 14), regarding consent for distribution of changed medicines.

Grant of licenses
We recommend amending clause 27 to allow the licensing authority to take determinations of professional conduct committees into account when assessing an applicant’s fitness to hold a license. We note that new section 51(1A) does not preclude other considerations than those specified being taken into account for this purpose.

Amendments to Misuse of Drugs Act 1975
We recommend the insertion of new clauses 38A to 38E and 39A which make consequential amendments to the Misuse of Drugs Act 1975.

These amendments would ensure nurse practitioners retain their current controlled drug prescribing rights once the Medicines Amendment Bill is enacted and nurse practitioners are named as authorised prescribers.

This section would also ensure that the current mechanism allowing prescribing authorisation via regulation is retained for optometrists once the Medicines Amendment Bill is enacted and optometrists are named as authorised prescribers.

We were concerned about the reference to midwives prescribing pethidine as it is no longer the preferred pain medication during childbirth. We recommend removing the reference to midwives prescribing pethidine. Midwives’ prescribing rights regarding controlled drugs would be set out in regulations.
Appendix

Committee process
The Medicines Amendment Bill was referred to the committee on 28 February 2012. The closing date for submissions was 13 April 2012. We received and considered 43 submissions from interested groups and individuals. We heard 19 submissions in Wellington. We received advice from the Ministry of Health.

Committee membership
Dr Paul Hutchison (Chairperson)
Shane Ardern
Dr Jackie Blue
Dr Cam Calder
Kevin Hague
Iain Lees-Galloway
Andrew Little
Barbara Stewart
Hon Maryan Street
Dr Jian Yang
Natural Health Products Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation
The Health Committee has examined the Natural Health Products Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The bill seeks to regulate low-risk natural health products in New Zealand. Part 1 of the bill defines a natural health product according to how the product is consumed, its ingredients, and the type of claim of health benefit made. It also proposes the establishment of a regulatory authority within the Ministry of Health, which would recognise decisions made by other authorities, create an advisory committee to advise the authority, and maintain an online database of natural health products. Finally, part 1 requires the notifier of a natural health product to be resident in New Zealand.

Part 2 sets out the regulatory scheme. It proposes that before products can be marketed, they would have to be notified on an online database. This process would require the applicant to declare that the product met the scheme’s requirements, and the product notifier to hold evidence supporting any claim of health benefit. It provides
for the authority to audit, suspend, or cancel notifications; prohibit ingredients; issue export certificates and compliance notices; undertake safety assessments of ingredients; and prescribe fees. Part 2 would establish penalties, a code of manufacturing practice, and mechanisms for appeal and the recall of products. It would also require product notifiers to inform the authority about any serious adverse reactions to products, and any ingredients which were not previously notified.

Natural health and supplementary products are widely consumed around the world. They are used and produced on a personal basis. They are also produced for mass use, in a global trade, by significantly sized businesses.

While some of these products have clear scientific evidence of efficacy, others do not. This caused an obvious divide between many submitters on this bill.

A large number of products rely on traditional evidence for their appeal and many consumers believe they are good for them. The committee had a difficult task to achieve a bill that balances the demand for consumer choice, protects public health safety, ensures regulations and compliance costs are light when there is low risk, and responds to the increasing need to have a sound scientific evidence base underpinning the use of natural health and complementary medicine. We consider that over time there is a strong case to increase through research the scientific evidence that underpins the use of natural and complementary medicines, as this will assist consumers, health practitioners, and policy makers alike. We also consider it important for the outcomes of this legislation to be carefully monitored so that any appropriate adjustments can be made over time.

Our commentary covers the main amendments we recommend to the bill and some of the matters we discussed in our consideration of the bill. It does not cover minor or technical amendments.

**Title**

We recommend amending clause 1 to change the bill’s title to read “Natural Health and Supplementary Products Bill”. This reflects the fact that the range of products dealt with in this bill includes natural and synthetic, and that these products might also be encapsulated, and contain binding agents and other excipients. We recommend adding
“and supplementary” to every reference to natural health products throughout the bill.

**Commencement**

As introduced, the bill was to be brought into force by Order in Council. The Regulations Review Committee commented that an Order in Council should only be used in exceptional circumstances, and that a final date should be specified by which the Act must commence. We therefore recommend an amendment to clause 2 requiring the Act to come into force no later than 3 January 2014.

**Principles**

We recommend inserting new paragraph 4(d) to set out an underlying principle of the bill, that either scientific or traditional evidence should support health benefit claims made for natural health or supplementary products. As the distinction is set out in the interpretation section of the bill, scientific evidence is produced from empirical studies or repeatable experiments, whereas traditional evidence is evidence derived from use of a substance based on knowledge, beliefs, or practices passed down through generations.

We heard concern expressed that the bill would “allow untrue claims and prevent true claims”. This was because some low-risk natural products with associated health claims for named conditions, for which there was scientific evidence, would be required to be registered as medicines. It would however be permissible to make a health claim for products based on traditional evidence, but without scientific evidence.

**Interpretations and definitions**

In the bill as introduced, the interpretation of “health benefit” excludes the relief of symptoms of a serious condition. We recommend amending part (e) of the interpretation of “health benefit” to read “relief of symptoms”. This should prevent claims that could lead to delays in treating conditions that require clinical intervention. Claims of health benefit for named conditions are dealt with in clauses 12A, 12B, and 12C. While we acknowledge that people with serious conditions may find relief from natural health or supplementary products,
we consider it highly advisable that New Zealanders visit registered health practitioners in the first instance. We recommend inserting an interpretation of “label”. The proposed interpretation has been taken from the Food Bill, which is currently awaiting its second reading, and has been modified to reflect this bill. We recommend amending clause 6 to modify the definition of a natural health or supplementary product. We recommend removing methods of administration from this clause and inserting them into new clause 19B. This would make the method of administration a matter of compliance rather than part of the definition of natural health or supplementary product.

It can be difficult to distinguish between a natural health or supplementary product and a food or medicine. For example, honey could be considered to be all three, depending upon the claims that were made for the particular product. We are very wary of making the bill so prescriptive that items such as herbal teas, claiming to offer qualities such as clarity or to be aids for sleeping or as a pick-me-up, should be unnecessarily burdened by compliance and regulatory requirements when their claims are not weighty and their consumption is common. We suggest referencing such products back to the Food Bill, as referred to above, and see such products as another example of the porosity between this bill and the Food Bill. To that end, we recommend amending clause 6 to define a natural health or supplementary product as a product which is not, or is not presented as, a food. Under the bill as amended, food is anything that is ordinarily used, or represented for use, as food or drink for human beings. We further recommend amending clause 6 to define a natural health or supplementary product as a product that is not any medicine, related product, or medical device for which the Minister of Health or the Director-General of Health has given consent for distribution under the Medicines Act 1981.

We were concerned that a product such as honey could be registered as a medicine, which would then remove it from coverage under the bill. If a particular honey product were approved for distribution as a medicine, it could not also be notified as a natural health or supplementary product. However, honey could continue to be used as an ingredient in natural health or supplementary products. A product approved for distribution as a medicine is not included in the definition of a natural health or supplementary product in the bill as amended.
The term “product” refers to the total product, including ingredients, packaging, and claims. There are many hundreds of products made from honey. It is likely that most of them would be classified as natural health products, but if significant health benefit claims were made and appropriate testing had been carried out, the notifier might wish to register the product as a medicine.

We were concerned that the term “manufacture” implies that a product undergoes a transformation before sale, and considered recommending an amendment to also include the term “presented” to cover products which had not been processed or tableted, such as raw Chinese herbs that have been dried and packaged for sale. However, the interpretation of “manufacture” for the purpose of this bill includes the concept of presentation, so we decided an amendment was unnecessary.

We recommend amending the interpretation of “serious adverse reaction” in clause 17 to include reactions which result in hospitalisation, are life-threatening or fatal, or require intervention to prevent permanent disability. We also recommend including allergic reactions. This amendment would align the bill with the World Health Organisation’s definition of a serious adverse reaction, which is widely used by the Ministry of Health.

**Natural Health and Supplementary Products Regulatory Authority**

**Establishment of the authority**

The authority’s office is to be administered by the Ministry, and we were concerned that it might not be sufficiently independent. We were assured that the authority will be separated from Medsafe. We heard that while the authority would be able to delegate powers to any person as he or she saw fit under clause 45(1), section 41 of the State Sector Act 1988 allows only public service chief executives, in this case the Director-General of Health who would delegate on behalf of the authority, to delegate powers to public service employees. In addition, the Government is committed to keeping the authority and Medsafe separate.

We recommend amending clause 10 in two ways. First, we recommend inserting new subclause 10(2A) to require the authority to consult the Minister of Health before making any appointment to the
committee. Second, we recommend replacing subclause 10(4) to require the advisory committee to have amongst its members significant experience regarding natural health or supplementary products, at least one member with experience in the manufacture of such products, and at least one with experience in the field of science. The bill as introduced would require the authority to ensure only that each advisory committee member had relevant expertise in at least one area related to natural health products. We believe that these amendments would strengthen and balance the membership of the Natural Health and Supplementary Products Advisory Committee, ensuring adequate representation of the sector.

**Powers of the authority**

Under the bill as introduced, the authority could declare a person or body a recognised authority for the purpose of the Act and for a specified purpose or provision of this Act. We were concerned about the risk involved in granting complete recognition to another authority. We therefore recommend amending paragraph 9(1)(a) and deleting subclause 9(2). Subclause 9(3) would allow the authority to declare a person or body to be a recognised authority for a specified purpose or provision of this Act, thereby covering the deleted provisions.

We recommend inserting new paragraph 31(1A)(b) to allow the Authority to recognise audits conducted by another person.

We recommend inserting new clause 31A to give the authority power to enter a manufacturing facility and take samples. We believe that specifying a threshold at which the authority could enter a facility is appropriate. The proposed amendment would allow the authority to enter a facility only for the purpose of assessing an application for a licence to manufacture or assessing compliance with the code or conditions of the licence. In addition, the amendment would provide for reasonable search powers, which are consistent with the New Zealand Bill of Rights Act 1990. This section has been modelled on section 64 of the Agricultural Compounds and Veterinary Medicines Act 1997.

We recommend inserting new clause 45A to allow the authority to declare products to be natural health or supplementary products. This clause also sets out the administrative processes for a declaration.
We also remain concerned about the significant regulatory powers of the authority and the role of the advisory committee. We consider it important that natural health and supplementary products be regulated in a way that reflects their generally low risk, ensures public health safety, allows appropriate health claims when supported by scientific evidence, and maintains New Zealand’s credibility as an exporter and manufacturer.

We would expect the expert advisory committee and the authority to exercise informed professional discretion to ensure the principles of the bill are adhered to.

Products would be allowed as natural health and supplementary products proportionate to the risks associated with their use, the level of health benefit claims, and the level of scientific evidence supplied. Where there are high level health benefit claims, the product would be required to be classified as a medicine.

**Regulation of natural health and supplementary products**

**Health benefit claims**

We recommend inserting new clauses 12A, 12B, and 12C to guide procedure for allowable health claims. New clause 12A would prohibit the inclusion of claims relating to a named condition in product notifications, on natural health or supplementary product labels, or in the summary of evidence supporting a health benefit claim, other than allowable claims. New clause 12B would provide the authority with the power to determine whether allowable health benefit claims related to named conditions, taking into consideration the principles of the bill, the nature and quality of the supporting evidence, and related risk. Under new clause 12C, a named condition is any disease, disorder, condition, ailment, or defect that is recognised by the World Health Organisation.

The authority will assess the evidence available, and make a judgement on whether a health benefit claim is reasonable on the basis of the quality of the evidence. However, in the case of some claims for low-risk conditions, the authority is expected to be satisfied with the evidence of traditional use. For example, it is likely that a claim for milk thistle, which has traditionally been used for the treatment of mild digestive disorders, would be accepted. We recommend in-
serting new schedule 2 to specify the approved pharmacopoeias from which traditional evidence would be accepted. In addition, it is possible that inclusion in another recognised pharmacopoeia could be accepted as evidence for traditional use.

**Product Notification**

We recommend inserting new clause 11A setting out who would be required to notify a product to the authority in various situations.

We recommend inserting new clause 13A setting out which products would not require notification. This clause would replace and expand on subclause 13(6) of the bill as introduced. It would exempt natural health or supplementary products in which the active ingredient is in a concentration not more than 20 parts per million. We were concerned that homeopathic products would not be regulated by this bill. The dilutions of homeopathic products are such that the concentration of active ingredient is typically too small to be detected. Therefore, we believe that requiring a notification for such products would be impractical because it would be impossible to audit the product itself. However, we note that homeopathic products will still be subject to manufacturing requirements and audits. We understand that currently there is no accepted scientific evidence for the effectiveness of homeopathy and therefore that health benefit claims should not be made for homeopathic products on this basis.

We consider that exemptions should be made only where necessary, and in exceptional circumstances. We recommend an amendment to clause 14, specifying the appropriate reasons for and guiding the use of exemptions. We took advice from the Regulations Review Committee, and recommend that an appropriate reason for exemption be required: for example, that it was impractical to notify a particular product. We also recommend providing that the authority must not exempt a product unless it has received advice from the advisory committee and is satisfied that there is no risk to public health from doing so.

We recommend replacing clause 16 with a new clause 16 and new clauses 16A and 16B, to provide for immediate suspension of notifications and a more formal process preceding cancellation of notifications. The proposed amendments would require the authority to inform the product notifier of the details of and reason for a suspension,
and also whether it had decided to cancel or reinstate the product before the end of the suspension period. Upon cancellation, no person could sell the product or distribute it for sale, and the product notifier could not notify again the same product unless the authority was satisfied that the grounds for cancellation, and any other concerns it might have, had been addressed.

Under the bill as introduced, a new notification would be required for any change in a product’s manufacturing arrangements. We recommend inserting new subclause 18(1A) to require a new notification only when there is a change in manufacturer or the location overseas in which the product is manufactured. We also recommend amending subclause 18(1) to require the product notifier to act on a change in circumstances “as soon as practicable”. This amendment provides for these procedures to be carried out more quickly than the bill as introduced.

We recommend inserting new clause 19A to allow the authority to cancel a product notification if it is no longer necessary. In this situation, the authority must give the product notifier time to respond, and consider any submission from the product notifier.

We recommend inserting new clause 19B to prohibit the sale of natural health or supplementary products that are administered by injection, parenteral infusion, or application to the eye. While most products meet the sterility requirements of recognised manufacturing practice for therapeutic goods, we consider this clause a necessary safeguard against those which do not.

**Code of practice for manufacture of natural health and supplementary products**

We recommend amending paragraph 27(2)(b) to require the authority when developing the code to consult only persons or organisations representative of the interests of those likely to be affected by the code. The bill as introduced requires the authority to consult any person likely to be affected.

**Fees**

We recommend amending clause 35 to insert new subclauses 35(1A)–35(1F) to guide the authority’s setting of fees. Some of
these subclauses were taken from the Food Bill which is currently awaiting its second reading, and have been modified to align with it.

**Offences**
We recommend inserting new paragraph 36(ba) to provide that it is an offence to alter a label so that it no longer complies with this legislation.

We recommend inserting a definition of “sale” in subclause 37(5) to clarify what would constitute a sale under the Act. Under this definition, a sale would include the commercial distribution of products, including distribution free of charge, for example at seminars. This definition has been modelled on similar definitions in the Maori Commercial Aquaculture Claims Settlement Act 2004 and the Agricultural Compounds and Veterinary Medicines Act 1997.

We recommend inserting new clauses 40A, 40B, and 40C to enhance the offence provisions of the bill. They would make it an offence to manufacture or sell a natural health or supplementary product that contains prohibited ingredients, or is a dietary supplement that does not contain permitted ingredients, and to advertise that any product may be administered illegally or used to treat a serious condition.

**Appeal**
We recommend amending clause 42 to set out the procedure to be followed when appeals are made. We also recommend clarifying that appeals could be made to the High Court only on a question of law.

**Regulations**
Having received advice from the Regulations Review Committee, we recommend several amendments.

As introduced, paragraph 47(1)(a) contains a Henry VIII power which would allow the primary legislation to be overridden by regulations. We recommend inserting new paragraphs 47(1)(a), 47(1)(ab), 47(1)(ac), and 47(2A) as safeguards to control the use of the Henry VIII power.

As introduced, paragraph 47(1)(g) provides for matters of policy to be determined by regulation. We recommend deleting this paragraph to prevent this happening.
We recommend amending paragraph 47(1)(i) to ensure that requirements relating to the code of practice for manufacture of natural health or supplementary products are included in regulations prescribing product manufacturing requirements.

We consider that the quality of the regulations setting the standards of evidence required in support of a health benefit claim to be fundamentally important. Subclause 47(3) requires different levels of evidence for specified kinds of claim. A product that claims to treat health conditions, for example, would require more evidence to support the claim than one which claims to be good for health. We recommend inserting new subclause 13(2A) to require product notifiers to publish a summary of evidence to support the claims they make for their products. We believe that New Zealand’s reputation as an exporter of regulator-approved foods and natural health and supplementary products is at risk if this legislation is not adequately supported by regulation. This is crucial given the central role of food exports in New Zealand’s economy. Natural health and supplementary products are currently estimated to be a billion-dollar export business.

Requirements for the labelling of natural health or supplementary products are prescribed by paragraph 47(1)(f). As a minimum, we believe that product labels should be consistent with overseas requirements; but we consider requirements in this area should not be overly prescriptive. The information provided should be required to be accurate, but style, such as font size for example, should not be prescribed. Under these circumstances, we heard that overseas labels would easily meet the New Zealand requirements.

**Green Party minority view**

The Green Party supports the overall objective of this bill, which is to bring in a simple low-cost system for protecting consumers of natural health and supplementary products. However, we have concerns about some sections of the bill and how it will be applied. The bill gives significant powers to the authority. This means that it is difficult to assess exactly what the impact of the bill will be on products currently on the market. We outline some of our specific concerns below.
Allowable claims

The new clauses 12A–12C set up a pre-approval system for allowable claims, so that all claims for any named condition are prohibited unless allowed. We have significant concerns about this section. We are worried that if applied rigorously it would have the effect of disallowing claims for a wide range of everyday minor named conditions for which many products currently make claims, including acute pharyngitis (sore throat), acute nasopharyngitis (common cold), and constipation.

An initial list of common conditions suitable for self-treatment, for which it is expected that claims will be permitted (with evidence), has gone some way to alleviating these concerns. Advice that further expansion of this draft list during the transition period until the bill comes into full effect should go some way to providing a system which protects consumers while not putting an overly onerous burden on the natural health sector.

We were also advised that a broad interpretation would be taken of “affecting or maintaining the structure or function of the body”; so that for example reference to “supporting cardiovascular health”, “promoting circulation”, “supporting healthy liver function” and so on are likely to be accepted if the authority was satisfied with the supporting evidence.

We consider that retaining the flexibility to add to and remove from this list without having to go through regulation will help encourage a more permissive list, resulting in better outcomes for consumers and the natural health sector.

We remain concerned that an unintended consequence of this section may mean that some producers will opt for more generalised claims about their product, which may make it harder for consumers to make accurate, informed decisions around which natural health product is most appropriate for them (for example vegans choosing B12 supplements).

While we fully understand that there is concern from the Ministry that some consumers of natural health or supplementary products may fail to seek appropriate medical treatment for conditions that are poten-
tially serious, we believe that this situation mainly arises not because of (true) claims being made on the products but because of

• misleading or wrong information and claims on the internet that are out of the control of the producer of the product
• misleading or wrong advice from unqualified, untrained, or unscrupulous self-styled health “experts”
• the cost of visiting the doctor, which is a significant barrier for many people.

We are mindful that the primary purpose of the bill is to ensure that natural health and supplementary products are true to claim, not to stop true claims from being made, and are keen for the authority to adopt a permissive approach in the interpretation of this section.

We strongly support the proposed addition of a schedule of approved pharmacopoeias and the proposed clauses 12B(3)(a) and 12B(3)(b) which allow the authority to accept theses as sources for traditional evidence in support of health benefit claims. This will help ensure that it is relatively simple for many products relying on traditional evidence to obtain approval for health benefit claims.

**Permitted ingredients list**

Currently only classes of permitted ingredients are listed in the bill. We had sought a list of permitted ingredients, to be included as a schedule in the bill. We feel that to have an initial list of permitted ingredients commonly used by the industry would allay industry and consumer fears and be helpful to the transition process. We suggested that this could be simply done through recognising comparable overseas jurisdiction ingredients lists.

We heard advice that while it was expected that most ingredients in the recognised pharmacopoeias were expected to be permitted, it was known that some pharmacopoeias also contained references to known toxic substances such as arsenic. We accepted that it is important that these substances are identified and placed on the prohibited ingredients list before publishing a permitted ingredients list. Our preferred position would have been to have had this work done prior to passing the bill and a list included in a schedule.
Cost recovery
The proposed fees-based system for cost recovery favours producers which produce a large volume of a small range of products over smaller operators with smaller turnover but a wide range of products. We heard from many submitters that they were concerned that their access to the current range of natural health products would be limited by the bill because some operators may find it too costly to maintain their current range. The Green Party has always held the position that provision for a levy should be included within the bill. Provision for turnover based fees would go some way to addressing our concerns.

Recognition of Te Tiriti
The Green Party is committed to legislation that honours Te Tiriti and ensures Māori participation in decision-making processes that affect them. Any system that will potentially regulate Māori taonga (such as the traditional use of plants) needs to be administered in a way that is consistent with the Treaty. While the bill exempts products made on a 1-1 basis, such as occurs with Rongoa, from notification, it still has the potential to affect the use of traditional plants. Our desired addition to the bill is to insert a clause that states, “In achieving the purpose of this Act, all persons exercising functions and powers under it shall honour the articles of Te Tiriti o Waitangi.”
Appendix

Committee process
The Natural Health Products Bill was referred to the committee on 15 September 2011. The bill was reinstated in the 50th Parliament on 21 December 2011. The closing date for submissions was 24 February 2012. We received and considered 739 written submissions from organisations and individuals. The committee also received 108 form submissions. We heard 67 of the submissions orally, which included holding hearings in Auckland and Wellington.

We received advice from the Ministry of Health and the Parliamentary Counsel Office. The Regulations Review Committee reported to the committee on the powers contained in clauses 2, 14, and 47 of the bill.

Committee membership
Dr Paul Hutchison (Chairperson)
Shane Ardern
Dr Jackie Blue
Dr Cam Calder
Kevin Hague
Iain Lees-Galloway
Andrew Little
Barbara Stewart
Hon Maryan Street
Dr Jian Yang

Mojo Mathers replaced Kevin Hague for this item of business.
Petition 2011/10 of Wendy Matthews and 5,454 others

Report of the Health Committee

Contents
Recommendation 2
Introduction 2
Background 2
Diagnosis 3
Research 3
Centre of excellence for ME/CFS 3
Education and understanding 4
Support 4
Treatment 5
Conclusion 5
Appendix 6
Petition 2011/10 of Wendy Matthews and 5,454 others

Recommendation

The Health Committee has considered Petition 2011/10 of Wendy Matthews and 5,454 others, and recommends that the House take note of its report.

Introduction

We have considered Petition 2011/10 of Wendy Matthews and 5,454 others requesting that the House of Representatives:

consider the needs of those with Chronic Fatigue Syndrome (CFS)/Myalgic Encephalomyelitis (ME), and Fibromyalgia (FM), and support the following outcomes:

1. To establish dedicated research, assessment, treatment, and respite care facilities.
2. To provide support and funding for patients and carers.
3. To promote education for both health professionals and the public, thereby rectifying the misunderstanding that many with these illnesses are experiencing, due to the lack of appropriate information regarding their cause and treatment.
4. To rectify the misconception that these are psychological illnesses, and to acknowledge, and validate the enormous physical and emotional suffering of those afflicted with them.

Background

Chronic Fatigue Syndrome (CFS) and Myalgic Encephalomyelitis (ME) are different names for the same debilitating illness, which is recognised as a neurological disorder by the World Health Organisation. It is characterised by unexplained, persistent, or relapsing severe fatigue associated with muscle aches, weakness, pharyngitis, lymphadenopathy, headaches, depression, sleep disturbance, memory difficulties, and confusion.

Fibromyalgia is a very common musculoskeletal condition, affecting an estimated 2–4 percent of people worldwide. Common symptoms are chronic, diffuse, deep musculoskeletal pain, and tenderness. It is also associated with fatigue, stiffness, sleep disturbances, headaches, bowel and bladder dysfunction, anxiety, and depression.

The petitioner told us that ME/CFS directly affects around 20,000 people in New Zealand, including children. We heard that patients suffering from these disorders can be more functionally impaired than those suffering from diabetes, heart failure, or kidney disease.
Many sufferers have a fluctuating course of illness with some recovering or improving significantly in less than two years, while others remain severely ill for several years. Similarly, some will experience a relapse of the illness, while others do not experience remission at all, and others continue to deteriorate.

**Diagnosis**

Currently there is no specific diagnostic test for this condition, and diagnosis is made by a thorough history assessment and examination. Other serious illnesses have to be ruled out, which makes this a diagnosis of exclusion and may mean subjecting the patient to multiple tests.

Research has indicated that several biomarkers are implicated in this illness, but further research is needed before they can be used as a diagnostic test. We understand that the development of a successful diagnostic test would bring numerous benefits to sufferers, as doctors would be able to detect the illness earlier, and consequently start treatment earlier, preventing the symptoms from worsening.

**Research**

The petitioner explained the urgency of the need for understanding the causes of ME/CFS in order to develop a definitive diagnostic test; this would entail research into immune system abnormalities.

Biochemist Professor Warren Tate of the University of Otago has initiated a study, which seeks to develop ways of accurately detecting molecular changes within cells relevant to ME/CFS. Significant progress has been made towards identifying biomarkers and establishing a blood bank from expertly diagnosed ME/CFS sufferers for research; however funding is needed for this important project to continue. If the government could support this programme through the Health Research Council, New Zealanders suffering from ME/CFS would have better health outcomes, and a better quality of life. The benefits would also be extended to the international community.

**Centre of excellence for ME/CFS**

The petitioner argued the need for a specialised, multi-disciplinary centre of excellence dedicated to ME/CFS. It was pointed out that the diagnosis of these conditions is itself time-consuming, involving at least an hour with a patient.

The petitioner proposed that such a centre could also undertake education, conduct seminars to raise awareness of these conditions, and provide training programmes for carers and nurses to address the current lack of clinical guidance. Such a centre could also collect statistics and undertake clinical trials.

The government funds 28 days of respite care for sufferers at present, but we were told that finding suitable places to care for those suffering from ME/CFS is difficult, as severely ill ME/CFS patients may be unable to feed themselves, sit up, turn over in bed, tolerate light or sound, or communicate, for days, months, or even years. The petitioner told us that suitable respite care is needed for these patients, and hospitals and rest homes can not always provide the appropriate level of care.
**Education and understanding**

The petitioner would like medical schools to ensure that their curriculum covers the diagnosis and treatment of ME/CFS adequately. If general practitioners can recognise the condition at an early stage, make and follow it with appropriate intervention, the prospect of improvement and recovery improves. We consider that ME/CFS should be covered in appropriate detail in medical and nursing syllabuses, and this would help reduce the provision of inconsistent information to patients and their families.

The ministry supports the provision of up-to-date training and information for general practitioners, as the international literature suggests that the key to successful management of ME/CFS lies in the knowledge, skills, and attitude of the patient’s general practitioner. Uncertainties about diagnosis and management combined with a lack of clinical guidance have hampered appropriate intervention. Education based on the growing body of research would help to alleviate uncertainty, reduce the adverse social and psychological impacts of the illness, and promote early recovery.

The petitioner suggested a patient guide setting out important information for doctors and people suffering from ME/CFS. The Association of New Zealand Myalgic Encephalopathy Societies (ANZMES), a national support organisation for sufferers and their carers, is seeking financial assistance for the provision of online information, and a support hub for sufferers, carers, and their families. ANZMES would use a portion of any funding to provide all general practitioners in New Zealand with a booklet outlining the pertinent clinical issues.

**Support**

There is a perceived funding gap regarding home help for people disabled by ME/CFS; the petitioner believes that the threshold for funding is not consistent across the country. Before 2003 the ministry recognised ME/CFS as a disability, allowing sufferers to obtain funded home help from their local Needs Assessment Service Centre. We understand that in 2003 the ministry ruled that ME/CFS is a chronic health condition, and not a disability, even though the majority of those suffering from ME/CFS fit the Ministry of Health’s own definition of a disability. We found this interpretation difficult to understand given that this condition could be classified as a disability (after six months) and/or a chronic health condition.

The ministry told us that in 2006 long-term supports and on-going support requirements were established for people under the age of 65 with chronic health conditions. Because of the high threshold for eligibility, the number of people with ME/CFS accessing the support is likely to be small. This group of patients can apply to the Ministry of Social Development for benefits and allowances; but we were told that some Work and Income case managers are prejudiced against sickness benefit claimants suffering from ME/CFS.

The ministry acknowledges that patients suffering from ME/CFS may be severely disabled by the symptoms of the illness and handicapped by the lack of medical support and understanding, and therefore need easier access to home help and personal care.
Treatment

A number of published studies have assessed the effectiveness of interventions and treatments used in the management of ME/CFS, and now form the basis of clinical guidelines which were published by the United Kingdom’s National Institute for Health and Clinical Excellence in 2007. We were informed by the Ministry of Health that in primary care, early management of symptoms, and advice on activities and occupation are emphasised. Along with specialist care, cognitive behaviour therapy and graded exercise therapy show the strongest evidence of benefits.

Conclusion

We believe that ME/CFS places a significant burden on sufferers and their families. This burden should be duly recognised and acknowledged by health professionals, employers in the education and government sectors, and society as a whole to validate the physical and emotional suffering those afflicted with the disorders experience. We consider that the Ministry of Health should, within resource limits, develop best practice guidelines for diagnosis and management. We recognise the need for greater public awareness and further research. We will continue to monitor developments in this area and have no other matters to bring to the attention of the House.
Appendix

Committee procedure
The petition was referred to us on 22 March 2012. We heard evidence from the petitioner and from the Ministry of Health on 19 September 2012.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Dr Jackie Blue
Dr Cam Calder
Kevin Hague
Iain Lees-Galloway
Andrew Little
Barbara Stewart
Hon Maryan Street
Dr Jian Yang
Petition 2011/20 of Alexander Milne

Report of the Health Committee

Contents

Recommendation 2
Background 2
Transportation of specimens 2
Staff memorandum 3
Bay of Plenty District Health Board 3
Ministry of Health 4
Conclusion 4
New Zealand Labour minority view 4
New Zealand First minority view 6
Appendix 7
Petition 2011/20 of Alexander Milne

Recommendation

The Health Committee has considered Petition 2011/20 of Alexander Milne and recommends that the House take note of its report.

Background

We have considered Petition 2011/20 of Alexander Milne requesting that the House of Representatives note that 4,141 people have signed a petition asking that the Bay of Plenty District Health Board be directed to reinstate the routine microbiology department at Whakatane Public Hospital, and also redirect microbiology specimens from family doctors in the Eastern Bay of Plenty back to Whakatane Hospital for processing, and that the House support this request.

In July 2010, the Bay of Plenty District Health Board contracted Pathlab to take over full management responsibility for the Whakatane Hospital laboratory. In September 2011, Pathlab advised that they intend to process non-urgent routine hospital microbiology samples at their specialist microbiology laboratory in Tauranga, maintaining microbiology capability in Whakatane Hospital to process urgent microbiology samples. Urgent samples are cerebro-spinal fluid and blood cultures, which are tested for life-threatening disease such as meningitis and septicaemia.

The petitioner told us that this has resulted in the loss of a vital laboratory service and expert microbiology laboratory scientists, placed significant strains on staff, and caused dangerously low staff morale. The petitioner alleges that the decision to courier specimens to Tauranga for processing has resulted in serious delays in the reporting of dangerous pathogens.

We heard from the petitioner that hospital doctors complained about the risks to patients associated with this closure, and paediatricians and other senior medical officers complained about the risks to children, and the lack of consultation by the Bay of Plenty DHB.

Transportation of specimens

The petitioner told us that specimens should be delivered to the laboratory immediately after collection to preserve the viability of organisms that require highly specific growth conditions. This prevents the multiplication of harmless bacteria, which could be erroneously interpreted as clinically significant. The petitioner said that the maximum time between collection and receipt in the laboratory should be less than two hours.

The petitioner believes that microbiology specimens should be processed within minutes of collection, and that all Eastern Bay of Plenty specimens arrive in Tauranga unacceptably late, with 50 percent arriving more than two hours after collection. The Tauranga
laboratory is over 100 kilometres away from Whakatane, and the petitioner alleges that some organisms die in transit to the laboratory before identification is made and advice on antibiotics can be given.

A further concern raised by the petitioner was that late reporting leads to the use of inappropriate and expensive antibiotics, which contributes to the development of antibiotic resistance by pathogenic bacteria.

**Staff memorandum**

We understand that senior medical officers from Whakatane Hospital signed a memorandum to the Chair of the Bay of Plenty DHB, which contested public comments made by the DHB and Pathlab. The memorandum said that a serious burden was placed on the medical staff and laboratory scientists at the hospital. It argued that the reduction in staff numbers placed unreasonable strain on staff. Senior medical officers were uncertain whether the laboratory would be able to provide emergency microbiology cover, since only one microbiologist remained on site.

The memorandum detailed Whakatane’s relative isolation, and vulnerability to road closures as a result of floods, slips, and earthquakes. Serious concerns were raised that the Eastern Bay community was unlikely to receive best-practice treatment in the processing of microbiology samples, because of avoidable delays.

The memorandum sought the immediate resumption of a full microbiology service and the return of community microbiology work to the hospital, and alleged that best practice will never be possible without a fully functioning microbiology department on site.

**Bay of Plenty District Health Board**

The Bay of Plenty District Health Board asserts that the microbiology services have been improved, because processing is now being conducted in a state-of-the-art-facility, with direct access to oversight and advice from a specialist pathologist. The DHB believes there has been no reduction in quality, timeliness, or access to service, and turnaround times for reporting to the referring hospital doctor have been shortened.

The DHB’s submission asserted that Pathlab and its facilities meet International Accreditation New Zealand (IANZ) standards, and that they are confident the service configuration is safe, effective, and clinically appropriate. IANZ considers Pathlab in the Bay of Plenty to be amongst the top-performing medical laboratories within New Zealand, as a result of its robust quality management system.

Regarding the transportation issues raised by the petitioner, the DHB told us that these systems are designed to maintain the viability of pathogens, and reduce normal flora overgrowth during the time between collection and plating. In the event of a natural disaster affecting transportation, non-urgent tests can be performed in Whakatane until transport links are restored.

The DHB told us that they addressed the concerns raised in the memorandum by the senior medical officers in 2011, and this has been acknowledged by the senior medical officers.
Ministry of Health

The Ministry of Health informed us that the microbiology service offered by Pathlab in Whakatane complies with best-practice guidelines; urgent samples are handled on site, and routine work transferred quickly to Tauranga. The ministry also explained that new molecular technology does not rely on living organisms, and detects more cases, so the processing of samples represents an improvement in service for the Whakatane area. The ministry told us that the cost of the technology required to test all samples on site in Whakatane would be prohibitive for a small provincial laboratory.

It was explained that samples which fall outside the guidelines are either not processed or are processed with a warning in the report to the referrer, explaining that conditions were not ideal, and the result should therefore be interpreted with caution. This might happen as a result of transport delays or issues with sample collection.

Conclusion

We acknowledge the challenge of maintaining sufficient expertise on site in the Whakatane laboratory to enable the processing of urgent samples. We heard from the petitioner in person and accepted numerous additional written submissions. We also sent the information received in response from the Bay of Plenty DHB to the petitioner to allow him to reply.

We requested further advice on the best-practice standards for the acceptable time between the collection of various samples, such as urine, faeces, blood, spinal fluid, and genital swabs from a patient and processing in the laboratory. The ministry sought the advice of Dr Rosemary Ikram, a microbiology representative on the Medical Technical Advisory Committee of IANZ, who is responsible for accrediting medical laboratories in New Zealand. Dr Ikram is a highly qualified specialist microbiologist (pathologist) who disclosed possible conflicts of interest with respect to previous employment.

Dr Ikram noted that “all microbiology laboratories establish procedures to prioritise the processing of microbiology samples. Urgent samples are those which represent potentially life-threatening illnesses, which require immediate attention. In this instance these samples are to be handled on site in the Whakatane laboratory. The challenge is to maintain the expertise of the on-site scientists to enable them to perform this function, as this is not the role of the clinical microbiologist (pathologist) from Tauranga.”

Dr Ikram concluded that “from the information provided the microbiology service offered by Pathlab in Whakatane is within best-practice guidelines, with urgent samples handled on site, and routine work transferred to Tauranga in a timely fashion”.

The advice we have received from the ministry and Dr Ikram led most of us to believe that the arrangements made by the Bay of Plenty DHB for processing microbiology specimens are “within best practice guidelines”. We consider that as a committee we have provided the petitioner with a good opportunity to have his views heard and analysed.

New Zealand Labour minority view

The Labour Party wishes to register a minority view on this petition. It is important in our view to acknowledge that the people on the ground in Whakatane who have been involved
in the delivery of microbiology services, past and present, feel very strongly that the service currently offered in Whakatane is less than optimal, despite all assurances to the contrary. In fact, there is such disagreement between the petitioner and supporters, and the Bay of Plenty District Health Board, on matters of fact as well as perception, that it is hard to know how the two positions might ever be reconciled. At every point, information provided by the DHB has been contested.

One of our members took the time to visit both Tauranga and Whakatane Hospitals to talk with both the DHB Chief Executive and senior clinicians, and the petitioner and others who support the petition. It is clear from that visit that the concerns of the petitioner and others are genuinely and deeply held. They are not frivolous or vexatious. The concerns arise from senior laboratory staff and some general practitioners in the community being very anxious about the potential for contamination of specimens due to delays arising from the distances travelled between pick-up of what is deemed to be a routine specimen and its arrival in the laboratory at Tauranga. In addition, the microbiology specimens deemed urgent, which are tested at Whakatane Hospital, are frequently tested by competent but not specialised laboratory staff, because numbers of microbiology staff have left Whakatane Hospital laboratory since the transfer of specimens to Tauranga. There is only one trained microbiologist left at Whakatane Hospital. It may be that a microbiology specimen is being tested by a haematologist or a cytologist and not a fully trained microbiologist. That causes the staff anxiety because they fear missing something in testing a specimen which may turn out later to be critical to a patient’s health. Compromised specimens and compromised testing equal compromised health care in their view.

On the other hand, the Bay of Plenty DHB contends that laboratory services have not been diminished in any way by the transfer to Tauranga Hospital and have in fact been improved by the removal of specimens to a state-of-the-art facility there. It cites IANZ accreditation of Pathlab BOP as a laboratory which provides accurate and valid test results for diagnostic purposes, and says that it is considered by IANZ to be amongst the top-performing medical laboratories in New Zealand. In its Annual Report 2011, the DHB is emphatic that Whakatane Hospital Laboratory tests meet all targets, with a score of 100 percent for each of six measures of performance (p. 53). The Ministry of Health response to the committee’s request for best practice guidelines and some assessment of Whakatane Hospital’s performance against those guidelines concludes that “from the information provided the microbiology service offered by Pathlab in Whakatane is within best practice guidelines; with urgent samples handled on site and routine work transferred to Tauranga in a timely fashion”.

These two views are not reconcilable. The Labour Party’s concern is that where committed professionals disagree over the level of risk to public health outcomes, it is the Government’s responsibility to make its best efforts to assess that level of risk and address it.

**Conclusion**

The Labour Party believes that while the Health Committee has discharged its technical duties with respect to this matter, it has not resolved the issues at the core of the petitioner’s concerns, hence this minority view. We would urge the Minister to consider this matter closely because both parties cannot be right. Either the laboratory services currently being delivered by Whakatane Hospital (urgent) and Tauranga Hospital (routine)
conform to best practice guidelines or they do not. Our concern is that the people of Whakatane and its environs should receive the best possible health care in a timely and appropriate way. If organisms are at risk of contamination because of travel required, then that is a risk worth assessing and addressing, in our view.

The Labour Party recommends the Minister require that an independent enquiry be conducted to consider and action the following with respect to the delivery of microbiology services at the DHB:

- Comprehensive consultation between all affected and interested parties willing to participate, including past and present DHB laboratory staff, other relevant clinicians, the DHB Chief Executive or his nominee, and qualified representatives of the Ministry of Health.

- A set of best practice guidelines agreed between senior microbiologists and pathologists, which can be applied universally.

- An audit of laboratory practice at both Whakatane and Tauranga Hospitals against the agreed best practice guidelines.

- Any necessary changes in practice to conform with the agreed best practice guidelines.

**New Zealand First minority view**

New Zealand First believes that the Health Committee has carried out its duties when considering this petition; however we believe it has not resolved the underlying issues of Mr Milne’s and the 4,141 others’ concerns. If there is any risk of contamination of laboratory specimens due to delivery times this risk must be investigated. The parties involved have disagreed over the risk to health outcomes. The utmost care must be taken when considering this matter to ensure that a patient’s health is not compromised in any way. New Zealand First believes that the people of Whakatane and the surrounding areas are entitled to the best possible health care the Bay of Plenty DHB can offer, and in a timely manner.
Appendix

Committee procedure

The petition was referred to us on 8 May 2012. We received written submissions from the petitioner, the Bay of Plenty District Health Board, and the Ministry of Health. We heard evidence from the petitioner and the Ministry of Health on 29 August 2012.

Committee members

Dr Paul Hutchison (Chairperson)
Shane Ardern
Dr Jackie Blue
Dr Cam Calder
Kevin Hague
Iain Lees-Galloway
Andrew Little
Barbara Stewart
Hon Maryan Street
Dr Jian Yang
Prisoners’ and Victims’ Claims (2012 Expiry and Application Dates) Amendment Bill

12–1

Report of the Justice and Electoral Committee

Contents

Recommendation 2
Labour Party minority view 2
Green Party minority view 3
Appendix 6
Prisoners’ and Victims’ Claims (2012 Expiry and Application Dates) Amendment Bill

Recommendation

The Justice and Electoral Committee has examined the Prisoners’ and Victims’ Claims (2012 Expiry and Application Dates) Amendment Bill and recommends that it be passed.

The Prisoners’ and Victims’ Claims Act 2005 is due to expire on 30 June 2012. This Act

- restricts the circumstances in which the courts can award compensation to persons under the control of the state (prisoners) for breaches of their human rights
- simplifies the process for victims of prisoners to make claims against compensation awarded to prisoners, before anything is paid to the prisoners.

Two sunset clauses in this Act are due to take effect on 1 July 2012. These clauses will remove the restrictions on awarding compensation and the victims’ claims process will stop operating. The Prisoners’ and Victims’ Claims (2012 Expiry and Application Dates) Amendment Bill would change the current expiry and application dates to 1 July 2013. This bill is intended to bridge the gap between the expiry of the Prisoners’ and Victims’ Claims Act and progression of the Prisoners’ and Victims’ Claims (Redirecting Prisoner Compensation) Amendment Bill, which has been introduced to Parliament, but has not yet received a first reading. The Prisoners’ and Victims’ Claims (Redirecting Prisoner Compensation) Amendment Bill proposes to make the existing victims’ claims process permanent, and redirect remaining prisoners’ compensation to fund general services and entitlements for victims of crime, rather than pay it to the prisoner.

Submissions

We received five submissions, only one of them in support of the bill. Submitters opposing the bill were primarily concerned about the human rights implications of the provisions in the Prisoners’ and Victims’ Claims Act and in the Prisoners’ and Victims’ Claims (Redirecting Prisoner Compensation) Amendment Bill. As these concerns were outside of the scope of the bill, which relates only to an extension of the expiry and application dates for one year, we have not considered them in relation to this bill.

Labour Party minority view

The principal motivation for initiating the legislation that became the Prisoners’ and Victims’ Claims Act (the substantive Act) was the need to deal with the consequences of behaviour in the Department of Corrections, including the operation between 1998 and 2004 of the Behaviour Modification Regime (later known as the Behaviour Management Regime or BMR). A large number of claims for compensation was expected as a result of judicial criticism—as manifested in the decision of the High Court in the Taunoa case—of such behaviour. There was a clear public expectation that in the face of substantial awards
of compensation to inmates, the wider pool of victims of offending would not be left out of pocket.

The intention was always that the legislation would expire once claims resulting from behaviour such as the BMR had flowed through the system, hence the sunset clause in the Act with an activation date of 1 July 2012. The present government has decided to consider replacing the substantive Act, but has not moved the proposal forward in sufficient time to ensure its enactment before the expiry of the substantive Act, hence this bill to extend the sunset clause of that Act by one year.

We are not satisfied that the current replacement proposal is fit for purpose. The decision of the Supreme Court in the *Taunoa* appeal, which reduced substantially the amount of compensation available in an abuse claim by an inmate, does not appear to have been taken into account in its drafting. Moreover, as the New Zealand Law Society has pointed out, there is no adequate explanation in the regulatory impact statement or otherwise for how the substantive Act was allowed to come so near to its automatic expiry date. Nor is it apparent why the proposed replacement provisions are not being restricted to claims arising from the BMR, given that the systemic abuse of prisoners should have been addressed by the Department of Corrections by now and should cease to be an expected ground for claiming compensation.

Accordingly, we have sought and received a written assurance from the current Minister of Justice that the government will work with us to ensure that any replacement legislation—if any proves to be needed—will be fit for purpose. This is the only basis upon which we have been willing to agree to support this bill, whose sole purpose is the one-year extension of the sunset clause in the substantive Act.

**Green Party minority view**

**Introduction**

The Green Party support neither the intent of, nor the majority of the details within, the bill. Original support given to the principal Act by the Green Party was largely conditioned upon the sunset clause established in that legislation which this bill now seeks to extend. This perpetuates what the Green Party perceived as largely undesirable mechanisms until the Government’s own redirection measures are passed in the form of the Prisoners’ and Victims’ Claims (Redirecting Prisoner Compensation) Amendment Bill. For this, and for the following reasons, the Green Party believes that the expiry date should be allowed to lapse and a more thorough, principled review of replacement legislation undertaken.

**Insufficient advice**

It ought to be noted that there has not been, with this bill and the other antecedent extensions of the principal legislation, sufficient timeframes for the Government or select committee to receive well-thought-out advice. The Ministry of Justice’s regulatory impact statement was prepared in an extremely short timeframe, without wide ranging consultation and, consequently, does not represent quality advice. Indeed, as the submission from the New Zealand Law Society highlighted, there may in fact be fairly substantial errors of fact presented in the RIS. It is not in the interests of good parliamentary process or justice for such inaccuracies to be allowed to stand and inform legislation that will impact upon individuals’ human rights.
Moreover, as the New Zealand Law Society also raised, having chastised the previous Attorney-General for failing to make a Bill of Rights Act Section 7 report in regards to the principal Act, the Green Party would like to highlight that there has similarly been no such report on this bill made by the current Attorney-General. That it is merely an extension of previous inconsistencies with the Bill of Rights Act does not mean it is any less a denial of the right to an effective remedy guaranteed under that legislation.

**Perverse incentives**

Principled law-making should not create perverse incentives. Unfortunately that cannot be said of this bill. This bill in fact perpetuates two perverse incentives simultaneously; the first being that it could feasibly encourage abuse of prisoners, the second that where abuses do occur prisoners are disincentivised from making claims at all.

Because of the redirection of compensation funds towards victims of crime there is a direct payoff to abusing the human rights of those in state custody. The sunset clause was introduced into the principal Act with the intention of adding an incentive to reduce human rights abuses within prisons before the expiry. Extending that expiry date undermines that process. Moreover, by creating the impression of a positive outcome through money going to victims of crime, there is an active incentive to trample on the human rights of prisoners.

Compounding the problem is the fact that where the abuses happen, prisoners are less likely to make a claim because they will not ultimately benefit from doing so. While a ruling against the state might in principle achieve some therapeutic good, the lack of material compensation removes sufficient motivation to bring state abuse to the attention of the judiciary and, by extension, the public. Making prisoners less likely to claim compensation therefore reinforces the deleterious incentive to commit human rights abuses by lessening the chances of punishment against the perpetrators.

In the final analysis these injurious measures combine towards the denial of an effective remedy which is guaranteed under the Bill of Rights Act for which there has been no substantive reasoning given to justify their continued existence in New Zealand’s legislative architecture.

**International obligations**

New Zealand has obligations under international law to provide for an effective remedy for all people who suffer from human rights abuses, including prisoners. These include Article 8 of the Universal Declaration of Human Rights which guarantees the right to an effective remedy and Article 2 of the International Covenant on Civil and Political Rights which makes a similar guarantee with the extra provisions that an effective remedy is obtainable regardless of whether the abuse took place in an official capacity and that the competent authorities enforce those remedies when granted. Also, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, laid out minimum standards for the treatment of prisoners including the right to make a complaint against the proper authorities. It is the view of the Green Party that the principal legislation and its subsequent extensions are found wanting in respect to these commitments. While an argument that the provisions of this legislation meet the bare minimum requirements might be conceivable, there can be little doubt that it amounts to a
restriction on the capabilities of prisoners to make a complaint in the first instance and leaves no doubt whatsoever that, having done so, they are severely less able to realise an effective remedy. This legislation is not in the spirit of New Zealand’s commitments to the protection of human rights and is in direct contradiction to its international commitments and domestic legislation reflecting that spirit. For these reasons the bill should not be commended to the House.
Appendix

Committee procedure
The Prisoners’ and Victims’ Claims (2012 Expiry and Application Dates) Amendment Bill was referred to us on 2 May 2012. The closing date for submissions was 11 May 2012. We received and considered five submissions from interested groups and individuals.

Committee members
Tim Macindoe (Chairperson)
Dr Jackie Blue
Dr Cam Calder
Charles Chauvel
Hon Lianne Dalziel
Julie Anne Genter
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Privacy (Information Sharing) Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Privacy (Information Sharing) Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The Privacy (Information Sharing) Bill is an omnibus bill that proposes to amend the Privacy Act 1993 and the Tax Administration Act 1994, to improve public service delivery by facilitating information sharing between agencies.

The bill seeks to

• allow information sharing when it would facilitate the provision of public services
• ensure that individual privacy remains highly protected
• increase agencies’ certainty about sharing information.

It is intended that the bill be divided into two separate bills at the committee of the whole House stage.
Privacy Act 1993
Part 1 of the bill seeks to make two principal amendments to the Privacy Act to improve information sharing.

The first amendment would broaden the exceptions to information privacy principles 10(d) and 11(f). At present, these principles forbid an agency to use information it holds on an individual for any other purpose than that for which it was collected, or to disclose that information to any other party, unless doing so would prevent or lessen a “serious and imminent threat” to public health or safety, or to the life or health of an individual. This bill seeks to remove the requirement that a threat be “imminent”, and would require agencies to consider the time at which the threat may be realised, the likelihood of the threat being realised, and the severity of the consequences if the threat is realised, when determining whether the threat was serious.

The second proposed amendment would allow information-sharing agreements to be approved by Order in Council. These Orders in Council could modify and clarify the application of the information privacy principles to allow agencies delivering public services to use and share information.

Tax Administration Act 1994
Part 2 of the bill seeks to amend the Tax Administration Act, to allow the Inland Revenue Department to disclose personal information about an identifiable individual under an approved information-sharing agreement.

At present, the Inland Revenue Department shares information through ad hoc legislative amendments. This process is slow and can lead to inconsistencies; and amending these arrangements is time-consuming and often requires further legislation. This bill proposes an amendment to the Tax Administration Act to enable the Inland Revenue Department to share information in a more timely and flexible way.

Our commentary covers the major amendments we recommend to the bill. Minor and technical amendments are not discussed.

Determining “serious threat”
We recommend amending the definition of “serious threat” in clause 4, by adding the word “and” after paragraphs (a) and (b) of the def-
inition. We consider that the bill as introduced does not make it sufficiently clear that any agency determining whether there was a “serious threat” (for the purposes of principle 10(d) or 11(f) of the Privacy Act) would be required to have regard to all three aspects of the definition of “serious threat”—likelihood, severity, and timing. Our proposed amendment would make it explicit that all three aspects of the definition would have to be considered.

We also propose amending paragraphs (a) to (c) of the definition to refer to the likelihood, severity, and timing of the threat being “realised”, as opposed to “occurring”. We consider that the proposed amendments capture the intended meaning more accurately.

**Reordering new Part 9A**

We recommend that some provisions of new Part 9A inserted by clause 8 be reordered to bring forward those relating to parties, the responsibilities of lead agencies, and the form and content of information-sharing agreements. This would make new Part 9A clearer and easier to navigate, but would not affect its substance. We also recommend deleting new section 96A. This section is an overview of new Part 9A. We consider it to be unnecessary as new Part 9A is divided into subparts and has adequate cross-headings to indicate content.

**Removing “rule of law”**

We recommend removing references to the “rule of law” from the bill. We consider reference to by or under any enactment sufficient.

**Clarifying relationships of parties to agreements**

We recommend inserting new section 96fA in clause 8 (formerly new subclauses 96T(1) to (4) in the bill as introduced). New section 96fA would specify who could be parties to an information-sharing agreement. To clarify that information can be shared within an agency, this provision would be amended to provide that at least one of the agencies that enters into an information-sharing agreement may be part of a public sector agency that is a department.

New section 96fB (formerly new section 96T(6) and (7) in the bill as introduced) provides for representative parties. In some situations,
the number of parties who might wish to share information would be so great (for example, doctors or teachers) that it would be more practical to nominate a representative party (for example, the Medical Council of New Zealand, the New Zealand Teachers Council). To enable this, new section 96FB would allow an agency to enter into an information-sharing agreement as a representative of a “class of agencies”.

New subclause 96FB(2) would require that agencies in the represented “class of agencies” that were parties to the agreement be identified in a schedule to the agreement. We consider that the bill as introduced does not sufficiently explain the relationships of parties to information-sharing agreements. Our proposed amendment would clarify these relationships. The amendment would also make it clear that an information-sharing agreement cannot compel any party to share information.

Broadening required content of agreements
We recommend adding a new subparagraph to new section 96FD(2) in clause 8 (formerly new section 96U(2) in the bill as introduced) to stipulate that an information-sharing agreement must contain a statement of purpose specified “with due particularity”, to ensure compliance with Government policy.

Broadening the definition of “costs”
We recommend amending the definition of “costs” in section 92K(2)(d) in clause 8 to “financial and other costs”. As introduced, the bill requires that, before recommending an Order in Council, the relevant Minister must be satisfied that “the benefits of sharing personal information under the agreement are likely to outweigh the costs of sharing it”. We consider that this does not make sufficiently clear the intention that any likely negative effects on children, or other social and cultural costs, be considered before an information-sharing agreement is approved. Our proposed amendment would make the broader definition of costs explicit.
Amending an approved information-sharing agreement

We recommend that new section 96OD(2)(b) in clause 8 be amended to provide that amendments to information-sharing agreements must be made available by the lead agency, free of charge, at the lead agency’s head office and also accessible, free of charge, on a website. As introduced, the bill requires the lead agency for an information-sharing agreement to make the agreement publicly “available” in these ways, but includes no similar requirement for amendments to agreements. Our proposed amendment would align the bill with the policy intention.

As introduced, section 96S(5)(c)(i) would allow parties to an information-sharing agreement to amend it without requiring an Order in Council, provided the changes were “minor or incidental in nature”. We recommend deleting this provision, as only changes affecting the privacy implications of the agreement would require an Order in Council. The remainder of this provision is now contained in new section 96OD(5)(c).

Labour Party minority view

Labour believes in an effective and efficient public sector. The swift sharing of information between public sector agencies, accompanied by appropriate safeguards, is an important component of this.

But this bill takes a piecemeal approach to dealing with information sharing, and may not stand the claims that have been made as to the need for it. In particular, it is unlikely to do much to enhance the protection of vulnerable children. We agree with the New Zealand Law Society, and with other submitters, that there are better approaches than simply enacting some cherry-picked aspects of the Law Commission’s review of privacy law. A standalone statute dealing with the welfare of vulnerable children when they are most at risk is a preferable approach.

We would have preferred to see a standalone statute for the protection of at-risk children, accompanied by the complete enactment of the recommendations arising out of the Law Commission’s review of the Privacy Act. This would have ensured that our privacy legislation—now nearly two decades old—is up to date with technological developments, changing social mores, and the barriers to ensuring
safety of the most vulnerable in society. A comprehensive rewrite of the Act on the basis of all of the Law Commission’s work is essential. In particular, we are concerned that some of the Law Commission’s key suggestions, such as those regarding the Privacy Commissioner’s power to investigate and enforce, may not be taken up by the government. Given the ever-widening powers of agencies to share information, let alone the implications of new technologies, it is important that the Commissioner’s role allow her to ensure compliance with up-to-date legislation.

We will support the bill because we do not think it is likely to actively cause harm. However, we think there are alternative approaches that could have done much good. And we are very concerned that enacting only part of the Law Commission’s recommendations poses the risk that the rest of them will languish, in whole or in part, postponing an overdue overhaul of privacy law, and upsetting the carefully calibrated balance between efficiency and safeguards that the Commission recommends.

Green Party minority view

Introduction

People require a sense of security if they are to feel comfortable within their society and one important facet of security is the capacity to control information about oneself. Therefore the principles of privacy, as a means of controlling that information, are vital contributors to the individual’s sense of security. Privacy is thus a fundamentally important human right.

The Privacy (Information Sharing) Bill will increase the amount of information sharing that government agencies can undertake in order to accomplish an ill-defined goal of better public service gains. While another stated goal is to ensure that privacy remains highly protected, the corollary of increased information sharing between government departments is actually that the individual enjoys less control over their personal information.

Because of the centrality of the public service to this bill the individual’s relationship with the state is a pivotal concern. Moreover, the reduction in the individual’s core right to protect their information is met with no attendant requirements as to the responsible use of that information, nor does it empower the Privacy Commissioner
with adequate means to assist in developing a more responsible culture within information sharing.

**Relationship between individual and the state**

Technology is often touted as a reason for privacy laws to be updated, and with good reason. As advancements in technology promulgate, legislation that was not designed to cope with such advancements becomes quickly outdated. But this bill does not relate to technology but rather seeks a readjustment of core privacy principles that impact upon the rights of the individual vis-à-vis the state.

One particularly concerning element is in the empowering of the executive to create information sharing agreements by regulation. This could result in agreements that are not in keeping with the principles of the Privacy Act and, by extension, give the public less reason to be confident in the integrity of that legislation.

Scrutiny of the agreements is also a potential issue because copies will only be made available on the internet, which some people do not have access to, or in the head office of the lead agencies, which imposes its own set of access issues for those not in the vicinity. Though these do not raise the barriers to availability so high as to constitute complete inaccessibility for most individuals they do mean a core protection will be several steps removed from the most vulnerable.

Moreover, the decision not to carry over 96T has serious implications because it increases the likelihood that information will be passed to agencies not envisioned in the original agreement. Diluting the requirements for when private sector agencies can participate in the information sharing might contribute to a misplaced sense of certainty on the part of the agencies but it does not contribute to a certainty for the individual on how their information is to be disseminated and used responsibly.

**Law Commission recommendations**

The Law Commission’s landmark report on privacy law in Aotearoa New Zealand made two key recommendations for empowering the Privacy Commissioner to protect against the sorts of breaches that are highly possible in an environment of increased information sharing. First of these was that the Commissioner should be able to issue compliance notices to agencies deemed to be in breach of the Privacy Act.
Second was the power to require an audit of an agency’s practices and systems for handling private information. Implementing these would have brought the New Zealand Privacy Commissioner’s powers in line with the majority of comparable overseas bodies charged with the protection of privacy.

These measures are not, however, included in this legislation which gives rise to the Green Party’s primary objection that this bill does not include strong enough protection to privacy to correspond with the increase in information sharing. In separating and fast-tracking the sharing elements of the Law Commission’s recommendations this Bill creates a deleterious imbalance between the scales of information sharing and protecting that information from irresponsible use. New sections in Part 9A setting out the Privacy Commissioner’s functions in relation to the information sharing agreements, as conferred by clause 6, are considered by the Green Party as lowest-denominator protections which fall well short of the mark set by the Law Commission’s recommendations. Though they technically confer new powers on the Privacy Commissioner these are consultative only and provide no measures to bind agencies into reviewing their handling of personal information. Even the case of a report being tabled with the Minister concerned through section 96Q and its subsequent reporting in the House under section 96R does not then put in place measures to redress it, merely that the Government has to report on their response which leaves privacy protection purely at the whim of the Government of the day.

The Green Party cannot commend this bill back to the House without the surety of the Law Commission’s other recommendations regarding increased powers for the Privacy Commissioner and requirements for the state to treat the information with additional care.
Commentary

Privacy (Information Sharing) Bill

Appendix

Committee process
The Privacy (Information Sharing) Bill was referred to the committee on 8 February 2012. The closing date for submissions was 23 March 2012. We received and considered 20 submissions from interested groups and individuals. We heard five submissions. We received advice from the Ministry of Justice.

Committee membership
Tim Macindoe (Chairperson)
Dr Jackie Blue
Dr Cam Calder
Charles Chauvel
Hon Lianne Dalziel
Julie Anne Genter
Alfred Ngaro
Denis O’Rourke
Jan Logie replaced Julie Anne Genter for this item of business.
Victims of Crime Reform Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Victims of Crime Reform Bill and recommends that it be passed with the amendments shown.

Introduction

The Victims of Crime Reform Bill is an omnibus bill, which proposes to amend the Victims’ Rights Act 2002; the Children, Young Persons, and Their Families Act 1989; the Parole Act 2002; and the Sentencing Act 2002, to implement the Government’s reform package for victims of crime. The objectives are to

- strengthen existing legislation to provide better for victims of crime
- broaden the rights of victims of serious offences
- provide more opportunities for victims to be involved in criminal justice processes
- ensure victims are better informed of their rights
increase responsible government agencies’ accountability and responsiveness to victims
• apply consistent victim rights in adult and youth criminal jurisdictions.

Our commentary covers the major amendments we recommend to the bill. Minor and technical amendments are not discussed.

Delaying commencement of the Act
We recommend amending the commencement of the Act in clause 2 of the bill, so that it would come into force 6 months after it received the Royal assent, rather than 3 months as provided for in the bill as introduced. Our proposed amendment would allow the Police enough time to prepare to meet the requirements of the Act when it came into force.

Victims’ Rights Act 2002
Amending definition of “address”
We recommend amending the definition of “address” in clause 4(1) of the bill to remove reference to “text messaging”. We consider that it is difficult to confirm that a text message has been sent and received, text messages are easily accessed by people other than the intended recipient, and cellphone numbers change frequently and may be reassigned. We do not consider it desirable to specifically promote text messaging as an electronic means of sending notices.

Restricting reference to victims’ contact details in court
We recommend amending clause 10 of the bill to clarify that reference to a victim’s contact details in court would be restricted—not just their address, as provided in the bill as introduced.

Updating victim notification system information
We recommend amending clause 17 of the bill to require that if an agency that no longer has responsibility for the offender is notified of a victim’s change of address, that agency is required to forward that information to the appropriate agency. Both agencies would then be required to inform the victim that his or her new address informa-
tion has been forwarded. Similarly, if an agency that no longer has responsibility for the offender receives a withdrawal of request notification, that agency must forward that information to the appropriate agency, but is not required to notify the victim. We consider it reasonable to expect agencies to follow this procedure.

**Improving notification system for victims of crimes where the person or offender is detained in a hospital or facility**

In clause 21 of the bill, we recommend amending section 37(2) to specify that a victim of a crime committed by a person or offender who is compulsorily detained in a hospital or facility must be given two notifications about a person’s leave: their first unescorted leave of absence outside of the grounds of the hospital or facility, and their first unescorted overnight leave of absence. We believe that current leave notification is inadequate for victims of crimes committed by perpetrators detained in facilities other than prisons. Our proposed amendments would mean that these victims would be informed when the perpetrator was reaching a stage in their treatment involving a transition back into life in the community.

**Children, Young Persons, and Their Families Act 1989**

**Enabling better victim support at Youth Court hearings**

We recommend amending clause 38 of the bill to allow victims and their representatives to bring “1 or more support persons (subject to any limitation on numbers imposed by the Judge)” to Youth Court hearings. As introduced, the bill would require the support persons to seek permission from the judge before attending the hearing. We think that this would introduce an unnecessary barrier to victims receiving the support that they deserve, and would place an administrative burden on Youth Court Judges. Our proposed amendment to new section 329(1)(jb) of the Act would allow victims to bring support people without seeking prior permission, while allowing the judge to restrict numbers if necessary in a specific case.
Improving notification system for victims of offences committed by a child or young person

We recommend inserting new clauses 38A and 38B into the bill as introduced. New clause 38A would provide that victims of offences committed by a child or young person would be notified when the child or young person absconded from a youth justice residence. New clause 38B would provide that victims of offences committed by a child or young person would be notified when the child or young person dies in a youth justice residence. We think that the bill as introduced does not provide adequate notification for victims of offenders detained in a youth justice residence.

Amending the definition of “victim”

We recommend amending clause 39 of the bill, to modify the definition of “victim” in Schedule 1 of the Act, so that when applying sections 7 and 8 of the Victims’ Rights Act 2002 to youth justice proceedings, “victim” includes “a person who, through or by means of an offence committed by a child or young person, suffers any form of emotional harm”. The purpose of this amendment is to align the definition of victim in the Children, Young Persons, and Their Families Act with that in the Victims’ Rights Act.

Parole Act 2002

Restoring rights and entitlements

We recommend amending Part 3 of the bill to restore rights and entitlements that were inadvertently removed by the Parole Amendment Act 2007. The provisions that would be reinstated relate to victims’ participation in the parole hearing process. Specifically

- victims would be informed about the process and how they may participate in it
- victims would be informed of their right to be interviewed if a hearing is to be unattended
- anyone who received notice that a hearing is to be unattended would have the right to request that the decision be reviewed
- victims and offenders would have the right to attend an interview before an unattended hearing.
The amendments would restore these rights and entitlements to the Act, in line with the original intent.

**Sentencing Act 2002**

**Improving restorative justice process**

We recommend amending clause 44 of the bill, which would insert new section 24A into the Act. As introduced, new section 24A requires the court to adjourn proceedings to allow an inquiry to determine whether restorative justice is “appropriate in the circumstances of the case”. We think that it is important that consideration be given to whether a victim wishes to participate in a restorative justice process. For this reason, we propose amending the clause to explicitly include the wishes of the victims among the matters the inquiry must consider. The proposed amendment would reassure victims and support agencies that any decision to initiate restorative justice proceedings would take into account the victim’s wishes.

**Labour Party minority view**

Since 1987, the New Zealand Parliament has dealt a number of times with the rights and interests of those who suffer as a result of criminal offending. Previous enactments—the Victims of Offences Act 1987 and the Victims’ Rights Act 2002—were Labour Government initiatives. Both adopted a broadly similar approach to this one—incremental amendments to the existing system to try to make it more responsive and more sensitive to the victims of crime and their families.

We have no doubt that the situation of victims, in law and otherwise, has greatly improved since Parliament first dealt with the issue in 1987, and we do not oppose this Act. Most of the evidence indicated that the reforms it will enact will be helpful to a greater or lesser extent. But that evidence also left us convinced that it is time to do more than just put in place further incremental change.

An aspect of the evidence that particularly moved us was the position of those who suffer the death through criminal wrongdoing of a family member. They must witness criminal processes, including trial, and often appeals, in which the reputation of their deceased family member is transformed beyond recognition as the defence seeks the
acquittal of the accused. The families’ distress is exacerbated as this becomes for them simply a process of re-victimisation.

The repeal during the 49th Parliament of the partial defence of provocation went some way to remedying this situation. But it still happens. Further substantial reform to address and eliminate or minimise this practice is in our view clearly required. A reference asking how to best accomplish this should go as a matter of priority to the Law Commission.

Our adversarial criminal system is at present bipartite and recognises only the accused and the prosecution. The latter stands for the interests of society in general, including the victim. Even with modifications such as the introduction some years ago of victim impact reports prior to sentencing, and the modifications that this legislation will make, this remains the formal legal position. We are mindful of the wisdom of warnings from the Chief Justice and others that any change must not violate the due process guarantees that have been built up over centuries via statute and the common law. This is especially relevant at a time of big cuts to legal aid expenditure.

Done carefully, however, the creation of a formal statutory position of advocate for the victim need not violate the balance inherent in the adversarial system. The role should include a duty to explain the process and their legal and other rights at all of its stages to victims and their families. It should include a right to be heard when statements touching on the victim’s interests and reputation are made. It should involve assistance with the preparation and presentation of Victim Impact Statements.

Some of this is done already by Victims’ Support, and we applaud their work. Along with being required to service advocates for the victim, Victims’ Support should be given better statutory recognition, and more secure funding.

Taken together, we think these three changes, which are not provided for by the bill, would mark a significant advance in victims’ rights in New Zealand.
Appendix

Committee process
The Victims of Crime Reform Bill was referred to the committee on 4 October 2011. The closing date for submissions was 17 February 2012. We received and considered 34 submissions from interested groups and individuals. We heard 12 submissions.
We received advice from the Ministry of Justice.

Committee membership
Tim Macindoe (Chairperson)
Dr Jackie Blue
Dr Cam Calder
Charles Chauvel
Hon Lianne Dalziel
Julie Anne Genter
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
The Justice and Electoral Committee has considered Petition 2011/8 of Peter McKenzie on behalf of the Barnabas Fund (NZ). The petition requests that the House note that 1,600 people have signed a petition that calls on “our national government to support all efforts by Muslims to have the apostasy law abolished, so that Muslims who choose to leave their faith are no longer liable to any penalty but are free to follow their new convictions without fear, in accordance with the United Nations Universal Declaration of Human Rights”.

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

Tim Macindoe
Chairperson
Petition 2011/23 of Tina Nilson and 988 others

Report of the Justice and Electoral Committee

Contents
Recommendation 2
Appendix A 3
Appendix B 4
Recommendation

The Justice and Electoral Committee has considered Petition 2011/23 of Tina Nilson and 988 others, and recommends that the House take note of its report.

We have considered Petition 2011/23 of Tina Nilson and 988 others requesting that the House of Representatives “support the proposed amendment to the Alcohol Reform Bill which seeks to restore 20 years of age as the minimum legal age for all categories of liquor purchases in New Zealand”.

We invited the petitioner to provide us with a written submission in support of the petition, which we received on 13 August 2012. We have attached the submission to our report.

A conscience vote on the minimum legal age for liquor purchases is about to be taken in the House. Given the immediacy of the issue, we feel it would be appropriate to report the information provided to us by the petitioner to the House as soon as possible, in order for it to be available to members in a timely fashion.
Appendix A

Committee procedure
The committee requested that Tina Nilson provide a written submission on the petition. The closing date for the submission was 29 June 2011. The committee met between 28 May 2012 and 16 August 2012 to consider the petition.

Committee members
Tim Macindoe (Chairperson)
Dr Jackie Blue
Dr Cam Calder
Charles Chauvel
Hon Lianne Dalziel
Julie Anne Genter
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Appendix B

Submission of Tina Nilson

Hello and welcome,

Thank you for giving me the opportunity to convey my deepest and sincerest thoughts and opinions to go with my petition to increase the purchase age of alcohol to 20 years of age, to articulate to all mp.s, the devastation, destruction, waste and wreckage that Alcohol and minors can cause.

My name is Tina Nilson, I am almost 40 years old, born and breed and proud to be a New Zealander. I wear many hats; however the most important to me is that of motherhood.

It was with enormous devastation on the 28th of May 2011, we had the devastating door knock of the Waikato police at 4.30 am to inform us that my husband had to accompany them to the Waikato hospital morgue to identify our first born and only son Shaun. He was 5 weeks off 18 and was passenger in a vehicle travelling at great speed at one am by a drunk 16 yr old on a restricted licence and found almost 6 times over the legal limit at the time (zero tolerance has been introduced since then)

Still to this day we cannot comprehend our son’s part in this, as he always had morals, integrity, pride, commonsense, love, boundaries, goals and ambition. He was planning to join the air force to obtain either mechanical engineering or the arms defense squad.

He himself had had only 2 drinks, he thought boy racers were try hard’s and absolutely hated drunk drivers. On more than one occasion, I had seen first hand and his peers have told me since, he was usually the one who would ensure the driver was sober, kept an eye on the driver all night, he even made them walk the straight line. He was even known to take the keys off one and always ensured there was a sober driver when organizing outings. He at this stage was only allowed out one night a weekend every second weekend, with a limited amount of money and with us knowing his whereabouts and plans before we allowed him to go. He always believed we were hard on him and tried to justify himself by saying no other parents make it so hard, everybody else can do what they want, man I cant wait till im 18 then I can do whatever I like. I remember using that same line on my own parents as a teen.

That night Shaun was only staying in town for his soccer match in the morning and we believed he was in a safe environment and he was where he was meant to be right up till one am.

Sadly now our son is a statistic, a horrendous statistic to us, however one of far too many statistics caused by the misuse of alcohol in the hands of teens.

Now its not the fact our son was tragically taken so young that I believe their needs to be a change in the purchase age of Alcohol, it certainly pushed me in the right direction to do something about it and hearing that the alcohol reform bill was being looked into at the
beginning of this year, I knew I could not sit back and do nothing about it and complain in the background when this was not addressed or passed through quickly and quietly.

First of all the petition was only run over a 2 mth period and coincided with the opening of the Thames bridge for which a vast array of generations were asked to sign. I was also advised that this should be in by the beginning of Feb. 2012 to ensure it was in before the next sitting was heard; otherwise I would still be collecting signatures.

The majorities of people through out NZ asked, were very happy to sign and were satisfied that they could also be seen to try and make a difference; they wished me success to get the amendment changed.

There were a minority that said if they are old enough to vote, they are old enough to go to war, so they are old enough to buy and drink alcohol.

Another was stop picking on the children; it’s the adults who don’t know how to handle the alcohol.

Another was man they should do that and stop putting up the prices of alcohol it doesn’t affect the young ones they still seem to be able to find money for it, but us adults struggle already.

There are also 18-20 year olds who have signed, they said by the time this goes through it wont effect them, however they see what alcohol does on a weekly basis and even at their young age can see the destruction their peers are causing after binge drinking in the weekends and said they knew it was not right, but if the government see’s us as adults and allow it then it must be alright so we’ll drink and as everything we do, we do at 100 % except the school work ha-ha.

A Few who were asked but could not sign as they reside in England and others who lived here but from England all said, look we have always been allowed to drink at the age of 18, there ‘s no problem there.

I beg to differ seeing the riots and behaviors of the teens I see a huge problem and would hate to see NZ accept this culture like normal behavior.

A CONSIONOUS DECISION NEEDED BY THE NZ GOVERNMENT OVER ALCOHOL PURCHASE AGE

We have let the children rule the roost for too long. Twelve years have passed since Jenny Shipley ran the country when she declared 21 were too old to start being an adult and 18 would be the new age.

In 1999 I was only 27 happily married with a 6 yr old boy and 2 1/2 yr old girl.

I worked then for the NZ Royal Plunket Society as a community Karitane and there were up roars around all the regions offices when it was determined to lower the drinking age to 18, get there full licience, be able to vote at 18, and be classed as an adult. Positive parenting was also introduced in the same period. It has its great advantages as a parenting guideline, but it also underachieves and it let the children get into control.
There was some believe to positive parenting and yes it could work well if it was followed well and it obviously hasn’t helped the abuse problem in our society, what it did do was cause more confusion for the parent, what it did do was give the child more rights than the parent, what it did do, was to increase a ‘I want it now society.’

This gave the child full control, it gave them the ability to get what they wanted, it gave them the reins, the thinking behind it should be merited, but when you advocate that the word ‘no’ should not be used by the parent, that if a child wants to cross the road without a parents hand, they should be allowed to discuss it first, that they need to think about it, and if you do not have the right answers they can do it, now how many kids on the side of the road under five stop to think let alone a teenager.

Time out was even suggested not to be a good idea at the time; it only hindered your child by putting them into isolation. What the??

Many parents not only have one child to attend to and when children are pushing the boundaries they can become the most obnoxious mix between both parents and upbringing, imagine the discussions of a two year old wanting the chocolate milk or the gold fish out of the bowl or the plug out of the socket. And that’s only 2 minutes out of the day, Nec minute the child’s had the chocolate milk because your told to pick your battles, the fish is jumping over the floor, cos they couldn’t understand the parent saying it wasn’t a good idea and then the child’s fried with the plug in his hand because you were busy picking up the fish while explaining the reason it was not a good idea.

Too late for time out. And the word NO was not meant to be said.??

Perhaps when the child wasn’t responding to all those you shouldn’t do that because or do you think that’s a good idea, what if we?

They should have had timeout then a discussion on the rights and wrongs. Positive parenting underachieves and it let the children get into control.

So at a young age this generation pretty much ruled the parents as these parents struggled through on advise from the wise only to realize that when these kids became fully fledged adults at 18 they say I’m an adult now, I can do what ever I like, that the parent still has no control and are left standing behind the scene, hoping they have taught there child enough to let them make there mistakes, to let them venture into the big wide world.

Many in our society have lost the control from under five, even more so as they hit teenage hood.

AT 16 they can leave school, have sex, have complete confidentiality in the health system and are classed as adults to them. Get there licience etc.

Parents need more control to be able to win there kids back, we know that all children need shelter, food and love, now love should be unconditional, however children need boundaries and consequences, to feel full love.

I know of a lady who at 14 opted to live with her grandparents because all she wanted was boundaries so she could feel loved, At 14 she was allowed to do anything she wanted.
I think we went into a society of just giving them what they want and everyone will be happy.

Jenny Shipley decided to allow 18yr olds to vote giving them adulthood at an earlier age and introduced the 18 yr purchase age at the same time,

Was this a voting tactic on her behalf?? And has this lead the nation into a downward spiral!!

There are so many facts and figures that I’m sure you have been made aware of that alcohol causes, from teen pregnancies, physical and verbal abuse,

A&E costs, stress, heartbreaks, family breakups/violence, child abuse and lets not forget the overall cost to the tax payers for court fees, emergency departments, prisons and out care patients for drug and alcohol rehabilitation just to name a few.

For the hospital costs, there have been huge increases to community services for the 20-30 year olds. They are the beginners of Jenny’s changes.

So we should be prepared for the next generation to at least double in the care that will be needed for rehabilitation and health issues due to binge drinking and alcoholics alike.

But wait there’s more, now our children are allowed the alcohol and so easily accessible and put into ‘lolly pop drinks’, they think they need more just so they can rebel at something so hand in hand with alcohol comes the drug scene, and holy shit lets put it in the corner dairy next to the lolly pops.

I asked 32 children aged 16-18 if they had taken any form of drug, legal high or illegal. I was most surprised especially by the stereo type I asked, the response was most alarming all 32 had tried, illusion (still available) and Kronic (the one taken off,) Plus an array of other types available. Only 5 had tried Marijuana. The reasoning was it was legal, my mate’s brother/sister got it for us, grass is too hard to get and it can be detected if we play sports etc.

I also asked why do you need this if you can drink all you want, cos its there, cos it makes you have more fun, because everyone’s doing it, because its cheap and gives you a real buzz, it makes you feel free and all your worries are gone.

When asked do you realize it could have stuff in it that can cause you real harm because its chemically made and could effect your brain, it could even have rat poison in it, they said, bullshit nobody would let it be on the shelf if it caused harm, if it could medically damage your brain, then wouldn’t we be all messed up?

The most alarming response- well it hasn’t damaged me yet, so it can’t be that bad aye. One opened up and said well I’ve seen a guy take it three times, the first time he was all good, the second time he spun out and got agro, the last time he was frothing at the mouth and collapsed, the person next to her said yeah but he had a bottle of vodka too.

They said the buzz didn’t last long, it was good tho, but you have to keep having it all night like every hr or so, when asked compared to a normal joint what’s the difference the
majority of the response was dunno. The other 5 said man a joint is heaps better it last longer and you only need a little bit and it takes ya all thro the night and ya slow down on the drinking, the others said man the legal ones make ya really thirsty.

Now remember this was 16-18 yr olds asked. All still at school.

One of my arguments with the purchase age of alcohol is that if you are underage you still know somebody at school who is 18 or someone who knows an 18 yr old; the parents are none the wiser. They can’t be in the know it’s organized at school.

At 18 we give the adolescent everything at the same time, full driving licence, career decisions, adulthood, alcohol and drugs as they are now classed as fully grown adults, and us as parents have little say or control,

So the youths think.

For parents it makes it a hard call, we have to introduce alcohol in a safe and controlled environment before 18 so they know what to expect and how to handle alcohol safely. At the age of 18 most are still at school and in the school yard it is easy to approach an 18 year old to obtain alcohol.

It is a scientific fact that at 18 their brains are not fully developed and will not be until their early 20’s.

We have trialed this for over a generation now, it is obvious that the teens cannot handle their alcohol or the intake of alcohol and the side effects it brings or the maturity of judgment calls made while under the influence.

Now is the time to make a change. A full change, not a half hearted politically correct suggestion, but a real change for the good of our children and their children.

For the future of our nation!

When you read that a 70 year old was beaten for loose change by an intoxicated 18 yr old, or a 12 year old the youngest offender to be caught drinking and driving, or a girl is raped after walking home from sports by a 16 yr old under the influence or the streets after midnight in built up areas are danger spots for all who are there, Etc etc.

Don’t alarm bells go off in the parliament that these kids just cant handle alcohol; you know once upon a time Dunedin could have their street parties without to much havoc, now the teens have ruined it for them.

They simply cannot control there behaviors to even save the event this year. SAD.

I commend the fact that one part of the amended bill being passed will not allow our children to buy alcohol in a wholesalers (it stops some of the nations concerns), however allowing our teens to go out into the streets intoxicated and drugged by corner dairy legal highs to let them wander in the early hours of the morning is ..........

The statistics are horrendous, and the proof is in the pudding so to speak.
It is easy to make or obtain fake I.D.’s. This must make the jobs of the bouncers and the night establishments very difficult to tell the difference between 15 – 18 year olds. The girls especially!!!

For some parents it is just too hard to say no.

In today’s society you only need to watch a police programme on television to see how our teens are behaving on the streets, nightclubbing or pubing.

A 21-27 year old feel old inside a nightclub and cant be bothered with the immature antics in and around these establishments, so they don’t bother going out.

There are more youth crime rates, rapes; deaths, mental illnesses, depression and bullying and we are far too tolerant.

The Justice System have little to say as in the Youth Court the children are the parents responsibility, and I firmly believe if you do the man crime you do the man time, however in the medical system, along with youth workers guidance councilors/psychologist and Dr’s the child once 16 I believe is classed as an adult – CRAZY.

And once again the parents are left standing on the wing of their children’s lives along with the police and justice system.

In our case: the driver was 3 weeks of 17, we are lead to believe he had had a box of Cody’s, been allowed to leave and purchase another box of Cody’s, consumed them, all the while becoming more and more abusive, agro and confrontational, not only with the others there but also the neighbors, he was taken away by the only remaining caregiver (21) and put into his parents custodian at a drinking establishment. He was then given a crate of Waikato and money for a taxi ride. He returned to the gathering where the 8 others had settled in watching video’s by this stage.

5 of these were then forced to leave after planning to stay the night due to the harassment and behaviors of the driver. Two stayed in bed and Shaun somehow after ensuring his girlfriend was one of the five to leave, ten minutes later he was dead in a stolen car.

The driver has left us in puzzle time, with no answer to why Shaun was even in the vehicle or where they were headed and he never has to tell us under the justice system of today.

This boy (the driver) could have got home detention. He could have been done in the youth court, it was only that he got a manslaughter charge that it was taken to high court and still then he could have got home detention

…..SCARRY THOUGHT…… the whole court system was a real eye opener and thank the lord there are people like Garth McVicar and sensible sentencing to ensure that the victims also get the chance to be in a little control, to be herd and believe this justice has come along way in the last ten years.

It was the drivers elders/parents who allowed him the alcohol, they also knew he had false ID, after his first box 2 sets of parents/guardians there were going to allow this 16 year old to drive to the bottle store. He was stopped…. By our son, (sober) who was then allowed
to drive him there, which again, Shaun was on a restricted licence and they allowed 2 underage teens to drive to get more alcohol.

What I guess I’m trying to say is perhaps the responsibility should fall onto the parents/guardian and these parents/guardians should have some sort of prosecution/fine along with the offender, therefore making the elders responsible for the whereabouts and misuse of substances, which are the onset of other criminal activity.

At present it is way too easy for those under 18 to get away with anything saying they are only children and for the parents to pass the buck and blame.

Our teens who were 18 in 1999 onwards celebrated with much cheer and the boy racers became the craze.

Those children are now 20 – 30 year olds.

Our health bill for long term mental illnesses, depression, drug and alcohol dependency, hospital admissions, kidney failure, prison admissions, crime etc, has been soaring through the roof for this age group alone.

This is just one simple truth we could change for the next generation. These 20 – 30 year olds are now having children and they will be 18 one day.

Each individual MP gets to make a conscious vote on the amendment of the purchase age of alcohol. Remember it’s not the drinking age, as there is no rule on what age you can drink;

This in itself is crazy I’ve always as most are lead to believe that you can’t drink till you’re 18, But to find out its only the purchase age floored me, to know if you are the custodian and think its all right to give any aged minor alcohol than that’s okay.

It is the age one can purchase alcohol.

Let’s face it a 20 plus is easier to distinguish just in maturity alone.

We lost our son to a drunk driver who was only 16 and more than 5 times over the then legal limit. Our son had had only 2 drinks and was 5 weeks off 18 and even then we said it doesn’t matter that you’ll be 18 while you’re still at school and living under our roof we will give you Love, Warmth, Shelter, Guidelines, Boundaries and Limitations, so I please ask of you, our

Government of this generation, when you consciously make your decision, think of today’s society and culture, and then seriously consider the future children’s society and future culture of our country.

We have trialed it and the youth are proof today that they aren’t managing the use of alcohol let alone the legal and illegal drugs they simply just can’t handle/control it.
They are still adolescents; their maturity grows rapidly from 18- 21 – 24. Rapid brain development hindered by substance abuse in its prime is just asking for trouble and concerns for our entire future nation.

Gone of the days where 21st were such a big deal, 18ths are the new 21st’s and 16 are no longer the sweet 16th. This seems to be the knew age to allow our minors into the world of adulthood, lets keep our kids kids for as long as we can, by increasing it back to 20 these kids will start At 18 but not be in full flight like they are today or starting even younger 12, 13, 14, 15.

The herald held a Digi poll for which more than 80% were in agreement the alcohol purchase age has to be increased to the age of 20. Only 25% supports the split the age.

Yet the polls taken from the House of Representatives were alarmingly the opposite. To the M.P’S who are deemed to make this call for us we are saying change it and change it now for the good of our youth’s, their families and the entire country, to one rule across the board. Set the standards and watch them rise.

I would like to see this as a nation’s conscious vote or referendum.

I was dumbfounded to read that justice minister Judith Collins, who is in charge of the reforms, said that she thought it was ridiculous if we had police officers aged 18 who can go into bars enforcing the laws and they can’t actually drink themselves in a bar.

You must be 18 to graduate Police College and hold a full drivers licence, it takes a minimum of 6 mths to step through the recruitment process just to reach the candidate pool, then approx 8 weeks waiting time, when only a select number of applicants from the candidate pool as per the needs and priorities of the police district and can be placed back into the pool. Once qualified (19 weeks) from the college you are required to work as a probationary constable for two years.

They accept applicants, regardless of the culture, faith, gender or sexuality, Recruits require the ability to understand the community, you serve and more importantly the ability to identify and examine the problems that lead to crime.

Wouldn’t a night in town at the pubs and clubs be classed as this? Wouldn’t an 18 yr old who has put themselves through the rigorous training and requirements of joining the force be above the fact that they themselves can’t drink and are making a change to their age groups culture and ensuring they are safe and secure? It is vital for a police officer to be able to make tough judgment calls and instill confidence in the wider community.

I find this a very lame excuse of Judith Collins and wonder where our police force is heading if we are employing 18 yr olds to stop the criminals of today’s day and age which on most occasions involves alcohol. Let’s face it they’re not going in on their own and still have a senior supervising them and their ability as well.

Our sons death reached far and wide, his peers were shattered and unable to comprehend the massive grief they were all too young to have to go through this. Many have utilized this to empower their lives and make changes accordingly and have grown up very fast. They were all in their prime of their schooling years, a lot missed out on their NCEA at all
levels, due to the accident happening at the mid year and the court case dredging it all up again which was during their final exams and vital credits. A few have turned to the bottle for condolence and have pent up anger waiting for a trigger; others have made life altering changes to become psychologists, counselors and join the police force.

The other positive about this is it brought families closer, they talked about love and appreciation, what they were up to and where they were going, the teens were able to see why their parents had a right to be concerned for them and the school now has an S.A.D.D. group present. All these students now know that life is precious and it’s the actions you take which give’s you the outcome you want.

It must cost the nation an absorbent amount in health, police, court systems, counseling and community funding alone.

I believe each regional council should also have the ability to amend what they would like for their regions and communities.

Look at southland for example, they don’t have an array of liquor outlets on every street, you can’t buy alcohol in the supermarket or corner dairy. They have a cut off hour and they have an abundance of recreational outlets available. The ancestors were wise and had this made legal many moons ago. The kids still drive the old heavy slow cars too and get ousted for having a tin can boy racers speedster.

Now you’ve got Hamilton at the other end of the spectrum, alcohol outlets in every suburb, almost every nz made programme makes a banter at the Hamilton culture, calling it Hamil-tron, party city, the hosts with the most, you get the picture….. one thing I do find intriguing is that where a liquor outlet is set up it is more likely to be found in the lower social economic communities, and schooling areas. Makes you think doesn’t it, who are they targeting?

It would be interesting to find out the statistics of southland vs. Waikato in all areas of crime, mental illnesses, hospital administration, drink drivers, road deaths, teen pregnancies and other alcohol related stats of this age group 16-20.

The House of representatives cannot justify by saying what about the teens that can purchase alcohol now as it’s not fair to stop them – work out a system where if you are 18 as from 1st July 2013 or earlier you maybe served in a liquor establishment other than bottle stores or supermarkets, there after you need to be 20, but I would like to see 21 again. I remember in my time we tried to purchase alcohol and tried to get into pubs, but it was very hard to find acceptance, and always had to have someone over 21 to look after you. At 18 you didn’t know too many 21 year olds.

That was 20 years ago, however it was hardly unheard of to have 14, 15, 16, 17, 18 year olds drunk and disorderly let alone driving drunk. Now we’ve just got drunk 20 yr olds teaching 18 and under how to drink with a vengeance.

18 – 21 was a different story as our generations parents introduced us to alcohol and adulthood we were just starting and trialing alcohol and not in full flight like the teens of today. We also did not have the choices of alcohol as there was only beer or wine to choose from, and a hit flask if we could afford one. I believe the first RTD after Miami
wine coolers was purple goanna, don’t know if it really made you drunk but it certainly kept you up all night and full of energy.

The young ones of today have the lollypop premixes at 8% that are so easy to drink but have a VERY powerful kick that sneaks up quickly.

We are also asking our children to make adult decisions and choices while under the influence of alcohol and adults find that hard enough.

I also believe as an early child educator that parent of today need to be just that. Parents, monitor your children’s whereabouts, guide them in knowing right from wrong, punishment (not physical) to show them boundaries, give them curfews, be firm but fair. Children need to feel loved, if you do the creativity in fun environments that doesn’t involve alcohol every time, show the limitations and respect for alcohol. After all if you don’t have respect for alcohol it certainly won’t have respect for you. With parents setting a higher standard, and the Government amending the bill back to 20 to be able to purchase alcohol. (The government sets the standards) we could once again be a nation of happy, healthy teens within 3 – 5 years. ********

If you want to change New Zealand’s drinking culture then you start with the young. They are our future.

Thank you for your time and please ensure that you make an informed and thoughtful, attentive, sympathetic unselfish and educated decision on such an important, significant and vital course of action for the parents, for the children, for those who have to deal with this drinking culture on a daily basis and for all of our nation’s future.

I have also included on the next page what I believe is a good start to parents and suggestion the house of representatives to include as a mandate to help reduce abuse and crime.
Parental responsibility

Any solo parent must attend parenting courses to be able to claim any benefit.

All dads have to be named on the birth certificate, other than rape victims or no benefit. (so many are claiming they don’t know the dad so they don’t have to have him pay for his child, we the tax payers do)

All under 20 year olds pregnant attend parenting courses, budgeting and first aid courses to receive the benefit.

Mandatory:

A guideline booklet signed by the parents upon the birth of their child, outlining what a parent is expected and the responsibility of your child, e.g., love, shelter, food, warmth etc. A definition for each one, along with the expected parenting guidelines. This can also be explained by the lead maternity career and signed by them as witnesses or advocates and sent to be held in the national registrar.

The baby birth certificate cannot be finalized to this is done: if it is not done then no benefit.

Therefore when NZ children are subjected to abuse etc, the parents have to be accountable and take responsibility as they understood what it means to be a parent and have signed on for this responsibility and position.

We need to protect our children’s welfare. This is an easy no nonsense commonsense approach to what’s becoming an increasingly common problem.

If there is anything I can do in the future or an M.P. would like to discuss anything further than please contact me as I am very passionate about this, our children and their futures.

Kia kaha - God bless

Tina Nilson.
The Justice and Electoral Committee has considered Petition 2011/22 of Naginbhai Neil Ghelabhai Patel and 881 others, requesting that the House of Representatives “incorporate into the Sale and Supply of Liquor Act 1989 liquor licenses for dairies, grocery stores, convenience stores and those currently with licenses and keep the minimum drinking age at 18 for on and off licenses”.

We referred the petition and the named petitioner’s submission to the Secretary for Justice and sought and received a response on its contents. We were particularly interested to hear the Ministry on the submission that up to “70 off-licence renewals have been held up by the Liquor Licensing Authority in an overt attempt to keep licenses away from dairies and smaller grocery stores”. Our concern was the suggestion that the Authority was assuming that the Alcohol Reform Bill would pass in its present form, and exercising its powers on the basis of that assumption, rather than on the basis of its existing statutory powers. This would, of course, be unconstitutional. We are satisfied, however, on the basis of the Ministry’s response that the Authority is not acting in the manner alleged.

We were mindful that, otherwise, the petition relates to matters that are likely to be dealt with directly by the House, at least partially by way of a conscience vote. Accordingly, we have no other matters to bring to the attention of the House.

Tim Macindoe
Chairperson
Briefing on the activities of the Office of the Judicial Conduct Commissioner in 2010/11

Report of the Justice and Electoral Committee

Contents
Recommendation 2
Introduction 2
Numbers of complaints 2
Proposed amendment to the Act 3
Parliamentary scrutiny 4
Appendix 5
Briefing on the activities of the Office of the Judicial Conduct Commissioner in 2010/11

Recommendation
The Justice and Electoral Committee received a briefing from the Office of the Judicial Conduct Commissioner on its activities in 2010/11, and recommends that the House take note of its report.

Introduction
We initially received a briefing from the Office of the Judicial Conduct Commissioner regarding its activities in the 2010/11 financial year. However, as the annual report for 2011/12 was due to be presented to the House within a month or so of the initial hearing, we resolved to hear from the Office of the Judicial Conduct Commissioner again when more up-to-date information was available.

About the office
The Office of the Judicial Conduct Commissioner was established in August 2005, under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004. The office deals with complaints about the conduct of judges, to enhance public confidence in New Zealand’s judicial system and protect its impartiality and integrity. The Act allows the public to make complaints about judges of the various courts, including temporary, associate, and acting judges, but not former or retired judges.

The Judicial Conduct Commissioner is appointed by the Governor-General on the recommendation of the House of Representatives, in consultation with the Chief Justice. The role is not an avenue of appeal; the Act prevents the commissioner from calling into question the “legality or correctness” of any judgements or decisions made by judges during legal proceedings. The commissioner’s role is to receive, assess, and categorise complaints about the conduct of judges, and to recommend a judicial conduct panel to conduct a full investigation if he or she determines this is necessary. The judicial conduct panel may recommend to the Attorney-General that a judge be removed from office. The commissioner also advises the public on the complaint process.

The first commissioner, Ian Haynes, held office from 1 August 2005 to 12 July 2009. The current commissioner, Sir David Gascoigne, has held office since 3 August 2009. The role of Deputy Judicial Conduct Commissioner was established under an amendment to the Act that came into effect on 23 March 2010. The Deputy Judicial Conduct Commissioner, Alan Ritchie, has held office since 30 June 2011.

Numbers of complaints
In 2010/11 the commissioner received 181 complaints. This figure rose to 328 in 2011/12, an 81 percent increase. In 2011/12, 146 complaints were carried over from 2010/11, bringing the total number of live complaints to 474. Of these, eight were referred to Heads
of Bench, 97 were unresolved at the time the annual report was published, and the remaining 369 were either dismissed (269), had no further action taken (95), or were withdrawn (five). The commissioner did not recommend the appointment of a judicial conduct panel to address any complaints. We note that many of the complaints fall outside the scope of the commissioner’s jurisdiction and can not be upheld for that reason. This may be addressed by ensuring that people who contact the office are given sufficient information about the matters the commissioner can investigate, as a means of avoiding unnecessary or inappropriate applications.

The commissioner told us that the 81 percent increase in complaints between 2010/11 and 2011/12 was not as alarming as it might seem when considered in context. The 255 judges in New Zealand are estimated to make an average total of 586,500 judgements per year. The 328 complaints make up a very small proportion of the total, which suggests that our judicial system is not fundamentally “broken”.

The Act also came into effect relatively recently, in 2005, and the commissioner expects a growing public awareness to be reflected in the number of complaints received. He suggested that the large recent increase might perhaps be attributable to the publicity surrounding his 7 May 2010 Decision of the Judicial Conduct Commissioner as to Three Complaints Concerning Justice Wilson and the subsequent judicial conduct panel investigation, which ultimately led to the resignation of Justice Wilson. This case, which attracted significant media interest, effectively publicised the system for making complaints about the conduct of judges. The commissioner expects the number of complaints to reach a plateau in the next few years, following the pattern in other jurisdictions that have introduced similar systems.

We heard that the complexity of complaints is increasing as well as the number. We were concerned to hear that a number of vexatious litigants appear to be using complaints to the commissioner as a tactic for delaying court cases. We understand that some judges are unhappy at the time it takes for such complaints to be cleared, because of the commissioner’s workload. The commissioner suggested addressing these problems by amending the Act to allow the appointment of more than one commissioner, along the lines of provisions in the Ombudsmen Act 1975. He observed that a simpler and cost-effective interim solution would be to amend the role of deputy commissioner.

Proposed amendment to the Act

The Act states that the role of the deputy commissioner is to deal with complaints where the commissioner has a conflict of interest, or is absent or incapacitated. When the role was created, Parliament did not foresee the volume and complexity of complaints that the commissioner would eventually have to address.

To help make the handling of complaints more efficient, the commissioner and deputy commissioner provided us with a suggested amendment to the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004. The amendment would insert the following new paragraph into section 8B(1) of the Act, which sets out the deputy commissioner’s functions:

(iv) where, in the interests of the efficient discharge of the Commissioner’s functions, the Commissioner decides to refer a complaint to the Deputy Commissioner
This amendment would allow the commissioner to delegate the handling of complaints to the deputy commissioner, to lighten the commissioner’s increasing workload. We see considerable merit in this proposed amendment.

**Parliamentary scrutiny**

The office is not a department, an Office of Parliament, a Crown entity, or state enterprise, which means that it is not subject to financial review and there is no formal procedure for its parliamentary oversight, although it has a statutory obligation to report annually to Parliament on the discharge of its functions. We asked the commissioner if he thought more regular interaction between the office and the Justice and Electoral Committee might be beneficial. He expressed the view that such an arrangement would be to everyone’s advantage. We are aware that Australian experience has been to involve parliamentary committees more deeply with scrutiny bodies, and see merit in considering this model in more detail. We have found the discussion of the office’s activities valuable, and find that the commissioner and deputy commissioner are doing an excellent job in challenging circumstances. Consistent with the approach we have taken of more systematic scrutiny of entities operating in the justice sector, we wish to continue to interact regularly with the Office of the Judicial Conduct Commissioner.
Appendix

Committee procedure
The committee received a briefing on the activities of the Office of the Judicial Conduct Commissioner in 2010/11 on 21 June 2012, and heard further evidence from the Office of the Judicial Conduct Commissioner on 27 September 2012. We met on 18 October 2012 to consider the briefing.

Committee members
Tim Macindoe (Chairperson)
Dr Jackie Blue
Dr Cam Calder
Charles Chauvel
Hon Lianne Dalziel
Julie Anne Genter
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Habeas Corpus Amendment Bill

Member’s Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Habeas Corpus Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Habeas Corpus Act 2001 to make procedural changes to the writ of habeas corpus ad sub judiciem, as recommended in the Law Commission’s 2007 report, *Habeas corpus: refining the procedure*. Habeas corpus is a writ for a person’s release from unlawful detention.

Our commentary covers the major amendments we recommend to the bill. Minor and technical amendments are not discussed.

Precedence of other matters
We recommend clarifying clause 5 of the bill to ensure that only a judge would have the power to direct that another matter take precedence over a habeas corpus application or an appeal against a de-
cision made on such an application. As introduced, the bill would allow courts or their judges to make decisions on the precedence of other matters over habeas corpus. We note that “court” could be interpreted to mean either a judge or a registrar. We agree with the Law Commission’s original intention that only a judge should have this power, and recommend this clarification to avoid any uncertainty.

Timing of applications
We also recommend removing subclauses (2) and (3) from clause 5 of the bill to retain the 3-day timeframe within which a habeas corpus application must be heard. The bill as introduced would allow a judge of the High Court to extend this period. We understand that there is little evidence that the current timeframe is problematic. We also note extending the timeframe could expand the court’s jurisdiction regarding habeas corpus, potentially leading it to determine matters that might be more appropriately dealt with by another procedure. This could have the unintended consequence of removing current rights of appeal against successful applications. Our proposed amendment would retain the status quo and protect current rights of appeal.

Powers of judges
We recommend removing clause 6. As introduced, this clause would allow a judge to convene a conference of the parties to a habeas corpus application and determine how proceedings would advance, including whether appearances would be made by remote means. In effect, this provision restates the High Court’s existing rules regarding the power of judges. We consider this to be unnecessary and potentially confusing, and recommend removing reference to these powers by deleting clause 6.

Remote participation
We recommend omitting clause 8 of the bill and substituting a new clause to the effect that the provisions of the Courts (Remote Participation) Act 2010 apply to habeas corpus proceedings (which are civil proceedings). Clause 8 as introduced would insert a new section enabling a judge to allow habeas corpus applications to be heard by video link or other court-authorised technology. The Courts (Remote
Participation) Act allows audio-visual links to be used in courts and sets out decision-making criteria for different types of cases. This Act had not been enacted when the Law Commission recommended this amendment.

We support hearing habeas corpus applications by audio-visual link in appropriate cases. However, we think that having different requirements for audio-visual links in the principal Act and in the Courts (Remote Participation) Act could lead to confusion in interpretation. We also consider that as technology changes it would be simpler to make any future amendments solely to the Courts (Remote Participation) Act. Given the importance of the Habeas Corpus Act, we think that it should be amended as infrequently as possible. Our proposed amendments would confirm that the provisions in the Courts (Remote Participation) Act also apply to habeas corpus proceedings.
Appendix

Committee process
The Habeas Corpus Amendment Bill was referred to the committee on 15 August 2012. The closing date for submissions was 28 September 2012. We received and considered five submissions from interested groups and individuals. We heard one submission.
We received advice from the Ministry of Justice.

Committee membership
Tim Macindoe (Chairperson)
Dr Jackie Blue
Dr Cam Calder
Charles Chauvel
Hon Lianne Dalziel
Julie Anne Genter
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Legal Assistance (Sustainability) Amendment Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Legal Assistance (Sustainability) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The Legal Assistance (Sustainability) Amendment Bill is an omnibus bill. It seeks to amend a number of statutes providing for Crown criminal and civil legal services, including legal aid, lawyer for child, and youth advocate services, to ensure that these services remain affordable to provide and available to those who need them.

Part 1 of the bill seeks to amend the Legal Services Act 2011 and Part 2 seeks to amend other Acts that allow a court-appointed lawyer to represent children. The proposed amendments would limit eligibility for legal aid and the number of legal aid grants, increase the amount that people receiving legal aid must pay, reintroduce a user charge for
civil and family legal aid, and allow interest to be charged on legal aid debts.

On 27 February 2012, the Minister of Justice wrote to request that we defer further consideration of the bill until the Family Court Review had reported to Cabinet in May 2012, to allow legal aid reforms to be consistent with any resulting decisions about the Family Court. On 10 October 2012, the Minister of Justice referred to us supplementary order paper 134, with a request that we consider the proposed amendments alongside the bill.

The supplementary order paper addressed many matters raised in submissions, with proposals including retaining the existing appointment frameworks for lawyers for the child and youth advocates, removing the proposal to use Orders in Council to change proceedings for which civil legal aid is available, removing the tighter financial means test for less serious criminal cases, and removing household goods from the calculation of eligibility for legal aid. The Minister also indicated changes to be introduced in regulations, including reducing the proposed user charge for family and civil cases from $100 to $50, and charging interest 6 months after a legal aid debt is finalised rather than immediately. The supplementary order paper also introduced several new provisions, including the ability to refuse to grant civil or family legal aid and the ability automatically to deduct repayments from wages and benefits if the applicant is in arrears for repayments on previous legal aid debt.

We invited further submissions on the proposed amendments set out in the supplementary order paper from all previous submitters on the bill.

Our commentary covers the major amendments we recommend to the bill. Minor and technical amendments are not discussed.

Title of bill

We recommend changing the name of the bill to the Legal Assistance Amendment Bill.

As introduced, the bill is named the Legal Assistance (Sustainability) Amendment Bill. The intention of this change is to reflect extensive amendments proposed to the bill in response to submissions. These proposed amendments reflect the refocusing of the bill on the out-
comes for legal aid clients, rather than solely on the financial savings to be achieved.

**Tighter financial means test for criminal matters**

We recommend removing the tighter financial means test for less serious criminal cases (those resulting in sentences of 3 years or less) and retaining the status quo.

As introduced, clause 6 of the bill, inserting new sections 8 and 8A into the principal Act, would change the financial means test for offences punishable by a prison sentence of 3 years or less. For such offences, the Legal Services Commissioner would be required to refuse to grant legal aid if the applicant’s income or disposable capital exceeded thresholds prescribed in regulations, unless satisfied that special circumstances justified granting legal aid. We consider that this change would restrict access to justice too severely and could breach a person’s right to a fair trial, also potentially increasing the number of self-represented litigants. Therefore, we recommend removing clause 6 and retaining the existing means test for criminal legal aid.

**Schedule of proceedings eligible for civil legal aid**

We recommend removing the provisions placing eligible civil proceedings in a schedule to the Legal Services Act, which could be amended through Order in Council.

As introduced, clause 6 of the bill inserts sections 7, 8, and 8A into the principal Act. New section 7 provides that civil legal aid is only available for matters prescribed in proposed new Schedule 1A. Clause 9 of the bill as introduced, inserting new section 13A, contains a Henry VIII regulation-making power, providing that the list of proceedings eligible for civil legal aid outlined in new Schedule 1A could be amended by Order in Council, on the recommendation of the Minister. The Regulations Review Committee has recommended that, unless there are exceptional circumstances for not doing so, the Henry VIII power in clause 9 be removed or that further controls be added, such as requiring all regulations amending this schedule in the principal Act made under this provision be confirmed by Parliament. We are not convinced that circumstances justify the bill overriding the important constitutional principle of non-delegation of legislative power, and recommend removing these provisions. It is important
that Parliament, not the government of the day, determine the proceedings to be funded by legal aid.

**Additional eligibility criteria for civil legal aid**

We recommend allowing the Commissioner to refuse civil legal aid if the applicant is in arrears for repayments on previous legal aid grants. However, we recommend controlling this discretion by reference to an interests-of-justice test.

Our proposed clause 7(2), amending section 10 to include new subsection 3A, would further amend the eligibility criteria for civil legal aid. The purpose of this amendment is to encourage legally aided people to recommence repayments. Once they began making repayments, they would become eligible for legal aid again. This provision would be unlikely to reduce significantly the number of people receiving legal aid, and would apply as an additional consideration to be balanced against the other factors the principal Act requires the Commissioner to consider. We considered carefully the likely effects of this provision on vulnerable people, and were reassured that domestic violence, mental health, refugee, and protection cases would be exempt from this provision.

**User charge for family and civil legal aid**

We recommend exempting proceedings under the Protection of Personal and Property Rights Act 1988 from the proposed user charge.

The Protection of Personal and Property Rights Act is part of the definition of “specified application” set out in new clause 4. We consider that applications under this Act should be treated in the same way as other care-and-protection proceedings, such as those under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Therefore, we recommend that proceedings under this Act be exempt from the proposed user charge in clause 10.

As introduced, clause 10 inserting new section 18A into the bill seeks to introduce a user charge for family and civil legal aid, although specified recipients would be exempt. The amount of the charge would be set by regulations. We are aware of a widely-held view that introducing a user charge would discourage people from accessing legal aid, reducing access to justice and increasing the number of self-represented litigants. However, we note that the intention
of the user charge is to encourage applicants to consider carefully whether they will pursue a case, similar to the “reasonable litigant” test that privately funded litigants consider. Determining a level for the user charge is outside the scope of this bill. However, we note that the Government has agreed to reduce the level of the proposed user charge from $100 to $50 (GST inclusive).

After carefully considering the implications of a user charge, we consider that the proposed $50 user charge would neither significantly discourage people from accessing legal aid nor increase administrative costs. However, we think that applications under the Protection of Personal and Property Rights Act should be exempt from the user charge, as this legislation is part of the Family Court’s protective jurisdiction and concerns vulnerable people.

We also recommend further consequential amendments to exempt proceedings under this Act: specifically, that proceedings be exempt from the higher threshold set by new clause 7(1), inserting new section 10(2); and from the new discretion set out in new clause 7(2) to refuse grants to applicants who are in arrears, inserting new section 10(3A).

**Charging interest on unpaid legal aid debt**

Most of us recommend amending clause 12, replacing section 40 of the Act, so that interest may be charged on all unpaid final legal aid debt.

Clause 12 of the bill as introduced would require a person receiving legal aid to pay interest on outstanding legal aid debt, at a rate set by regulations. As introduced, the wording in clause 12 would require interest to be paid on any amount that was payable. “Amount payable” is defined in section 33 of the principal Act, but this definition does not capture all final debt. Most of us recommend amending clause 12 to reflect more accurately the Government’s policy decision to allow interest to be charged on all unpaid final debt.

The intentions behind charging interest are to incentivise prompt repayment, increase Crown income to help offset legal aid costs, and reduce expenditure relating to debt held by the Crown for long periods. We considered these benefits alongside other issues, such as whether this proposed amendment would create additional financial hardship for those least able to meet costs and potentially increase
the number of self-represented litigants, and whether it would be likely to cause legally aided people to stop making debt repayments altogether. However, most of us do not consider these adverse effects to be likely outcomes of the proposed amendment. Most of us are persuaded that most people will continue to repay their legal aid debt regardless of interest being charged.

**Commissioner to issue deduction notices**

We recommend enabling the Commissioner to issue deduction notices to recover legal aid debts.

Our proposed clause 12A would introduce new sections 41A–J to the Act to provide for deduction notices. A deduction notice would be a written notice requiring a third party to deduct legal aid repayments automatically from a person’s wages or benefit, as a last-resort action to recover debt. Although it is unknown whether applications for costs by defendants would increase as a result of this proposed amendment, we understand that such applications are rare so it is unlikely that any change would affect court resources. Our proposed change would simplify the existing administrative process. The Commissioner’s new powers would be similar to those of the Commissioner of Inland Revenue and the Chief Executive of the Ministry of Social Development.

**Grounds on which legal aid must be declined**

We recommend clarifying the grounds on which the Commissioner must decline payment to a legal aid provider for legal aid.

Clause 17 of the bill as introduced would amend the grounds on which the Commissioner may approve, defer, or decline a claim, prescribed by section 99(4) of the principal Act. We consider that it is unclear whether section 99(4) would give the Commissioner discretion to approve or decline a claim, or whether it would simply set out the options of grounds for declining a claim. We do not think that discretion is warranted for claims to the extent that they exceed the maximum grant, excessive or inaccurate claims, or unapproved disbursements. Our proposed amendments would clarify these points.
Review rights for legal aid providers
We recommend amending the bill to give legal aid providers reconsideration, review, and appeal rights for decisions by the Commissioner to decline payment of invoices submitted outside the specified timeframe.

The principal Act grants these rights to legally aided people, but the bill as introduced would not extend them to legal aid providers. Under the Legal Services Act 2000, legal aid providers were also entitled to these rights. Under the principal Act, legal aid providers’ only formal avenue for redress is judicial review, which concerns the process used by decision-makers rather than the merits of the decision itself. The Regulations Review Committee found that standing order 315(2) envisages a right of review on the merits of the decision, but the principal Act does not empower it. Therefore, we recommend inserting new clauses 13A and 13B into the bill to grant legal aid providers rights to appeal and to seek reconsideration or review of decisions to decline payment of late invoices.

Reimbursing Commissioner for costs of lodging a caveat
We recommend enabling the setting of regulations to require a person receiving legal aid to reimburse the Commissioner for costs incurred in lodging a caveat. We also recommend validating the existing understanding of the practice of lodging caveats under the principal Act.

The principal Act authorises caveats to be lodged on the titles to land of legally aided people, stopping dealings in that land for the time being. However, there is no express requirement for legally aided people to reimburse the Commissioner for the costs incurred in lodging the caveat. We understand that there has been a general understanding that the reference to fees and expenses relating to charges in section 114(1) of the principal Act and regulation 13 of the Legal Services Regulations 2011 also included caveats. The Minister’s policy intention is to encourage the use of caveats in preference to charges, because caveats may financially benefit legally aided people; they are more flexible and do not require amendment if debt levels change. Our proposed amendment to clause 19 would introduce a regulation-making power to allow the Commissioner to require reimburse-
ment for the costs incurred in lodging such a caveat, to recognise the Minister’s policy intention to encourage their use. Our proposed clause 23AA would validate the existing understanding of the use of caveats and thus provide a retrospective legal basis for recovering the costs of lodging a caveat from legally aided people.

**Definition of “disposable capital”**

We recommend removing the requirement to consider household furniture and other low-value assets when assessing disposable capital. As introduced, clause 20 of the bill would amend Schedule 1 of the principal Act to include the value of an applicant’s household furniture, appliances, personal clothing, and tools of trade in calculating disposable capital to determine eligibility for legal aid. We consider that any items necessary to maintain the quality of someone’s life or livelihood should not be counted as disposable capital. We also consider that assistive technology and related items used by people with disabilities should not be taken into account when determining eligibility for legal aid. Our proposed amendment would remove this provision from the bill.

**Lawyer for the child and youth-advocate services**

We recommend retaining the existing approval frameworks for court-appointed lawyers representing children or young people, or acting as youth advocates.

As introduced, the bill would require lawyers for the child and lawyers acting as youth advocates to be approved to provide these services under the principal Act, and would require amending a number of other Acts accordingly. Currently, youth advocates are approved under a dedicated Youth Court protocol and lawyers for the child are appointed under a dedicated Family Court Practice Note.

We consider that the existing approval frameworks for lawyers for the child and youth advocates are effective and ensure high-quality services are provided. We have not been persuaded of any need to change the existing system. In fact, we think that increasing the number of youth advocates could result in the benefits of specialisation being lost, and quality might decline accordingly. We also consider that it would be an unconstitutional restraint on the jurisdiction
of the Family Court for the Ministry of Justice to determine which lawyers the Family and Youth Courts may appoint. Our proposed amendments would address these concerns by removing a number of clauses from the bill as introduced.

**Payment for lawyer for the child**

We recommend exempting permanent foster parents from contributing to the cost of lawyer for the child when they apply for orders or defend an application under the Care of Children Act 2004. As introduced, clauses 26, 27, 33, and 46 of the bill would require parties to pay a proportion of the fees of court-appointed lawyers for the child. The proportion would be set by regulations. The court would be able to decline to make an order if satisfied this would cause serious hardship to the party or the dependent child of the party. Almost all lawyer-for-the-child appointments to which these provisions would apply are made under the Care of Children Act. The main principle of this Act is to provide for the welfare and best interests of the child. As any decisions about payment must take this principle into account, we do not consider that the proposed measures would have a negative effect on children or discourage appointments of lawyer for the child. However, we do not consider that foster parents applying for, or defending an application for, parenting orders should have to contribute to the cost of lawyer for the child.

**Definition of “dependent child”**

We recommend amending the definition of dependent child to refer to a child whose care is substantially the responsibility of the party. As introduced, the definition of dependent child (in clause 27 inserting new section 131A to the Care of Children Act, and in clause 46 inserting new section 162C to the Family Proceedings Act 1980) refers to a child “primarily” in the care of the party, and does not take into account proposed changes to the child support regime or shared-care arrangements. Our proposed amendments would address these concerns.
Labour and Green Party minority view

As introduced, this bill contains a series of drastic reductions to entitlements to State-provided legal assistance. Extremely low thresholds for eligibility for such assistance would have applied; the value of an applicant’s clothing, household furniture and tools of trade would have had to be taken into account in deciding eligibility; specification of the types of legal proceeding for which assistance would be available would have been stripped out of the statute and determined instead by ministerial fiat; heavy restrictions would have come into effect on the availability of counsel for the child in Family Court cases—one of the most important protective features for vulnerable children in the current system; and the very valuable work performed by youth advocates in our court system would have been denied recognition. All this—as the original title of the bill indicates—was in pursuit of cost savings out of the legal aid scheme, with scant regard for the catastrophic effect on low-income New Zealanders’ ability to access the justice system that these changes would have represented. Our deep concern about the effect of the bill on access to justice led us to oppose it strongly, at its first reading and since.

We welcome the fact that, consequent on a change in ministerial personnel, the Government has re-thought the amendment, and there is no doubt that an improved bill has emerged out of the resulting changes that have been signalled. The proposed cuts detailed above have in large part been abandoned. However, there are a number of key aspects of continuing concern in the bill, detailed below, which lead us to conclude that we cannot support it, even in its modified form.

First, the bill proposes that an application for legal assistance may be turned down if the applicant is in arrears in repaying any part of a previous grant of aid that he or she may have received. If legal assistance is to be largely made on the basis of a loan scheme, we can see the wisdom of a provision of this nature. The committee agreed to recommend amendments to the bill in order to require assistance to be granted where the interests of justice require it. We are concerned that this may not be a sufficient safeguard and would prefer that it require a grant of assistance to be made where a refusal would result in hardship. Especially, as here, where the very rationale for the bill is cost containment, we think that in cases where arrears have arisen through unforeseeable circumstances, or where turning down
an application would cause hardship, no discretion to turn down an application should exist. The Government’s refusal to countenance sufficient limitations is a major factor in our continued opposition to the bill.

Secondly, the bill’s original proposal for the re-introduction of a user charge for applications for legal assistance remains, although a figure of $50 rather than $100 is now mooted. We have spoken to many providers of legal aid who had experience of the reality of a legal aid user charge the last time a National-led government introduced one in the 1990s. We have been told that in many cases, legal aid providers simply paid the charge, since their clients could generally not afford to do so. The charge was then absorbed into the provider’s baseline costs and in effect passed back to the Crown when services were invoiced. This may be more difficult to do under the fixed fee for service model now being implemented, but the end result is that the user charge will be paid for either by the Crown, or by other clients of service providers, or failing all of that by service providers themselves. At a time when more and more providers are exiting the business of providing legal aid, this seems like self-defeating and bad public policy.

Thirdly, we are concerned about the bill’s provision that interest is to be charged on arrears of legal aid. Again, if legal assistance is to be largely made on the basis of a loan scheme, we can see the wisdom of a provision of this nature. There will be a general discretion to waive the requirement for repayment of arrears, and we are advised that this will extend to interest charges. However, we think that the discretion should be better controlled, again by requiring waiver in cases where hardship will otherwise result.

Fourthly, provisions which are intended to have retrospective effect are proposed to validate the recovery of the costs incurred by the administrators of the legal assistance scheme to caveat property to secure grants made wholly or partially as loans. As with the provision enabling the refusal of assistance where an applicant is in arrears, if legal assistance is to be largely made on the basis of a loan scheme, we can see the wisdom of a provision of this nature, provided the work is done cost-effectively. We are concerned that no incentive for this efficiency is created by the bill. We also oppose the retrospective validation provision. If cost recovery was not lawful at the time it
occurred, the Government should not be able to rely on any resulting revenue.

Taken together with existing reductions to the availability of legal assistance, proposed reductions in accessing the Family Court and related counselling services, and the delays that now exist in our court system (especially in Auckland) for the disposal of cases, we remain very concerned about the effect of even the modified reductions to entitlements that this bill will bring into effect. We support an efficient as well as an effective legal aid scheme. But there are better ways than continuing to chip away at the entitlements to assistance of the most vulnerable New Zealanders by which to achieve such a scheme.
Appendix

Committee process
The Legal Assistance (Sustainability) Bill was referred to the committee on 16 August 2011. The closing date for submissions was 30 September 2011. We received and considered 25 submissions from interested groups and individuals. We heard 15 submissions. The Minister of Justice referred to us supplementary order paper 134 on 10 October 2012. We considered the proposed amendments alongside the bill.

We received advice from the Ministry of Justice. The Regulations Review Committee advised us on the regulation-making powers in the bill, and reported to the committee on the powers contained in clause 9.

Committee membership
Tim Macindoe (Chairperson)
Dr Jackie Blue
Dr Cam Calder
Charles Chauvel
Hon Lianne Dalziel
Julie Anne Genter
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Arms Amendment Bill (No 3)

248--1

Report of the Law and Order Committee

Contents

Recommendation 2
Introduction 2
Provisions 2
History of the bill 2
Current position 3
Conclusion 4
Minority view of the Labour Party and of the Green Party 4
Appendix 6
Arms Amendment Bill (No 3)

Recommendation

The Law and Order Committee has examined the Arms Amendment Bill (No 3) and recommends that it not be passed.

Introduction

The Arms Amendment Bill (No 3) was introduced on 18 February 2005 during the 47th Parliament and was reinstated by the 48th, 49th and 50th Parliaments. The bill has two primary goals: improving the effectiveness and clarity of the Arms Act 1983, and enabling New Zealand to comply with the minimum legislative requirements of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (the Firearms Protocol), supplementing the United Nations Convention against Transnational Organised Crime.

The bill does not include provision for establishing a comprehensive firearms registration regime, as this is not considered necessary in order to meet the minimum requirements of the Firearms Protocol. A dealer's license would be required by anyone who sold, hired or supplied, or repaired firearms; sold, hired or supplied ammunition; or manufactured firearms or ammunition for sale, hire, or supply.

The Law and Order Committee called for submissions in 2005, and received them from 234 people. Most submitters were unhappy about further controls over gun ownership, but approved of the bill because it would not require universal registration. A minority of submissions criticised the bill for not going far enough to restrict the proliferation of weapons.

Provisions

The bill seeks to introduce the new penalties of the suspension of a firearms licence or a dealer's licence, and the suspension of an endorsement on a firearms licence, in addition to fines and imprisonment. A suspension would be for a period set by the courts, but could not be for less than three months (similar to disqualification in the Land Transport Act 1998). In addition to penalties for new offences, the bill proposes new maximum penalties.

The bill seeks to create a number of new offences regarding the possession, purchase, and sale of body armour, which is defined as articles specifically designed to provide protection from missiles. It is not the intention of the bill to make stab-resistant body armour and protective clothing such as that worn by motorcyclists, for example, illegal. A number of submitters felt that provisions about body armour have no place in firearms legislation.

History of the bill

As the bill is now eight years old some of the supporting legislation and treaty obligations have become outdated. Some issues that have arisen since the bill was initially developed in 2003–2004 are in the following areas:
ARM AMENDMENT BILL (NO 3)

- the definition of “firearm”, “ammunition”, and “military style semi-automatic firearm”
- the drafting of the exclusion provisions in section 3 of the Arms Act, whereby listed government employees are freed from restrictions in the Act
- the grounds for revoking a dealer’s licence
- sales of firearms through the internet
- whether the Arms Act should include provisions relating to the possession and use of crossbows or high-powered laser pointers.

We also note that changes to the terminology are required, to reflect the Policing Act 2008.

The Firearms Protocol

In 2004 the Law and Order Committee conducted an international treaty examination of the protocol against the Illicit Manufacturing of and trafficking in Firearms, their parts, Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime. They could not reach agreement on whether the Protocol should be ratified.

The Minister of Police has informed us that no final decision has been taken by the Government not to accede to the protocol.

Supplementary order paper

On 24 March 2005 supplementary order paper 345 was introduced into Parliament. The main amendments proposed on the SOP would establish a defence (to any charge relating to possession, carriage, or use of firearms under the Arms Act) of defence of person or property.

Many submissions received on the bill in 2005 were in favour of the proposed amendments. The Law and Order Committee of the day received advice that the matters to which the proposed amendments related were difficult and complicated, and that considerable rewording of the bill would be required to incorporate the intent of the amendments on the supplementary order paper.

Current position

We are advised that in 2010 the Government decided that the Arms Amendment Bill (No 3) was not to proceed and Cabinet approved the contents of a new Arms Amendment Bill (No 4). The Parliamentary Counsel Office has received drafting instructions on it. We understand that the proposals in the new bill that differ from the Arms Amendment Bill (No 3) relate mainly to safeguards to ensure that sales by mail order or over the internet are to licensed firearm owners.

Arms Amendment Bill (No 4)

We are advised that the Arms Amendment Bill (No 4) does not include the provisions from the Arms Amendment Bill (No 3) that were included specifically to enable New
Zealand to comply with the legislative requirements of the Firearms Protocol. Instead, the new bill will include the establishment of three new offences relating to

- the illicit manufacturing of firearms and their parts
- the illicit trafficking of firearms, their parts, and ammunition
- the removing or altering of official identification firearm markings without lawful excuse.

The new bill will also include amendments to the Mutual Assistance in Criminal Matters Act 1992 and the Extradition Act 1999 to include reference to the Firearms Protocol.

**Conclusion**

We recommend that this bill not proceed. One of the primary goals of the bill is no longer relevant until a decision is made by the Government on whether to accede to the Firearms Protocol. We are confident that the proposed Arms Amendment Bill (No 4) will improve the effectiveness of the Arms Act 1983 while taking into account legislation that has come into effect since 2004.

**Minority view of the Labour Party and of the Green Party**

The Government has determined not to proceed with this legislation because it has not yet made a decision whether to accede to the UN Protocol Against the Illicit Manufacturing of, and Trafficking in, Firearms.

This means that provisions in the Arms Amendment Bill (No 3) which were included specifically to enable New Zealand to comply with the minimum legislative requirements of the Firearms Protocol will not be carried over to the proposed Arms Amendment Bill (No 4):

- The establishment of three new offences relating to illicit manufacturing and trafficking of firearms and removal of official markings.

Urgency has not been given to acceding to the UN Protocol largely because there is no evidence of current illicit supply of weapons through New Zealand.

However the Labour Party and the Green Party believe that accession to the Protocol and legislating to implement its specific provisions would both reduce the risk of such activities occurring in future and be consistent with New Zealand’s international obligations as a responsible global citizen. It would encourage other small Pacific States to do likewise. The fiscal impact of the implementing legislation would be minimal. It would not require any new system of firearms restriction. Compliance measures would focus on ensuring that New Zealand has effective control systems and record keeping for the export, import and manufacture of firearms.

The Labour Party and the Green Party believe that the Government has had long enough to make the decision about acceding to the Protocol and should not procrastinate further.
They believe that the Government decision should be to accede and to pass the Arms Amendment (No 3) Bill to allow this to happen.
Appendix

Committee procedure
The Arms Amendment Bill (No 3) was referred to the Law and Order Committee of the 47th Parliament on 12 April 2005. The bill was reinstated by the 48th, 49th, and 50th Parliaments. Submissions were invited from the public with a closing date of 8 June 2005. 234 submissions were received and considered from interested groups and individuals, and 56 submissions were heard.

Advice was received from New Zealand Police.

Committee members
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch
Jonathan Young
Report from the Chief Ombudsman and an Ombudsman, Investigation of the Department of Corrections in relation to the Provision, Access and Availability of Prisoner Health Services

Report of the Law and Order Committee

The Law and Order Committee has considered the report from the Chief Ombudsman and an Ombudsman Investigation of the Department of Corrections in relation to the Provision, Access and Availability of Prisoner Health Services, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Jacqui Dean
Chairperson
Interim report on the Corrections Amendment Bill

330–1

Report of the Law and Order Committee

Contents

Recommendation 2
Introduction 2
Proposed amendments 2
Appendix A 3
Appendix B 4
Interim report on the Corrections Amendment Bill

Recommendation

The Law and Order Committee recommends that the House take note of its report.

Introduction

The Law and Order Committee is considering the Corrections Amendment Bill, which seeks to remove barriers to the effective and efficient operation of the corrections system. The Minister of Corrections has written to the committee asking that it consider, alongside the bill as introduced, further amendments proposed on a draft Supplementary Order Paper.

Proposed amendments

The purpose of this interim report therefore is to make the proposed amendments available to the public. It proposes the following changes to the bill:

- Allowing the Department of Corrections to require a phone company to provide it with the personal unlock codes or keys to SIM cards.
- Within legislative parameters, allowing prison managers to authorise non-custodial staff to read prisoners’ mail (for the purpose of ascertaining whether it might be withheld).
- Requiring that the drinking water made available to prisoners be of a standard reasonably equivalent to that supplied to the public.
- Requiring that any prisoner being segregated because of a risk of self-harm be strip-searched on admission to an At Risk Unit.
- Allowing the department to keep recordings of prisoners’ phone calls for up to two years before having to erase them, except in some defined circumstances.

We would welcome the views of interested parties, to be taken into account in our consideration of the bill. The Supplementary Order Paper can be found in Appendix B of this report.
Appendix A

Committee procedure
The bill was referred to us on 28 February 2012. The closing date for submissions was 12 April 2012. We received and considered 18 submissions from interested groups and individuals. We received advice from the Department of Corrections.

Committee members
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Appendix B

Supplementary Order
Paper
DRAFT FOR CONSULTATION

House of Representatives

Supplementary Order Paper

Tuesday, 26 June 2012

Corrections Amendment Bill

Proposed amendments

Hon Anne Tolley, in Committee, to move the following amendments:

Clause 23
In clause 23 (after line 11 on page 10), insert:

(1A) Section 72(1) is amended by omitting “that complies with any drinking water standards for the time being issued by the Ministry of Health or in force under any enactment” and substituting “must be made available to every prisoner whenever he or she needs it”.

Clause 27
In clause 27 (after line 25 on page 11), insert:

(4A) Section 98 is amended by inserting the following subsections after subsection (7):

“(7A) Every prisoner who is subject to a direction under section 60(1)(b) because of risk of self-harm must be required to undergo a strip search conducted by an officer—

(a) when the prisoner is first placed in a segregation area pursuant to the direction; and

(b) each time the prisoner is returned to the segregation area after the prisoner has been in a part of the prison that is used by prisoners who are not subject to a segregation direction.

“(7B) In this subsection and subsection (7A),—

“segregation area” means any confined area of the prison for the accommodation of prisoners who are subject to segregation direction

“segregation direction” means any direction under section 60.”
Clause 29
Replace clause 29 (lines 1 to 3 on page 12), with:

29 Interpretation
Section 103A is repealed and the following section substituted:

"103A Interpretation
In this section and in sections 104 to 110A, unless the context otherwise requires, authorised person means—
(a) a prison manager; or
(b) a staff member authorised by the manager, in writing, to read correspondence for the purpose of section 107."

Clause 30
Replace clause 30 (lines 4 to 6 on page 12), with:

30 General considerations relating to mail
Section 104 is amended by omitting "authorised officers" and substituting "staff members".

New clause 31A
After clause 31 (after line 12 on page 12), insert:

31A Reading of correspondence
(1) Section 107(1) is amended by omitting "officer" and substituting "person".
(2) Section 107(2), is amended by omitting "officer" and substituting "person".

Clause 32 new section 109
In clause 32 new section 109, (line 18 on page 12), replace "officer must not read any correspondence or withhold any mail" with "person must not read any correspondence and a prison manager must not withhold any mail".

Clause 33 new section 110(1)
In clause 33 new section 110(1), (lines 31 and 32 on page 12), replace "officer must not read any correspondence or withhold any mail" with "person must not read any correspondence and a prison manager must not withhold any mail".

New classes 33A and 33B
After clause 33 (after line 2 on page 13), insert:

33A Restrictions on disclosure of mail
(1) Section 110A is amended by omitting "authorised officer" in each place it appears and substituting "authorised person".
(2) Section 110A(b) is amended by omitting "officer" and substituting "authorised person".
33B Destruction of recordings
Section 120 is amended by repealing subsection (1) and substituting the following subsection:
“(1) The chief executive must take all practicable steps to ensure that every recording of a prisoner call held by the chief executive is destroyed, or completely erased, —
“(a) no later than 2 years after the call was made unless the chief executive has within that time considered that the information contained in the recording is likely to be—
“(i) required for the purposes of an investigation into an offence or possible offence, or
“(ii) required for the purposes of an investigation into the possibility that an offence may be committed in the future; or
“(iii) required for evidence in a prosecution or possible prosecution for an offence, or in disciplinary proceedings, or in proceedings against a prisoner for a disciplinary offence; or
“(iv) required to be disclosed under the Privacy Act 1993; and
“(b) within a time prescribed in regulations (being a time no later than 2 years after the call was made) if any circumstances prescribed in regulations apply.”

New clause 40A
After clause 40 (after line 27 on page 14), insert:

40A New section 189D and heading inserted
Insert the following heading and section after section 189C:
“Information associated with seized electronic communication devices

189D Chief executive may require electronic communications company to provide information associated with seized electronic communication device
“(1) This section applies if—
“(a) an electronic communication device is seized under section 150; and
“(b) the chief executive believes, on reasonable grounds, that it is necessary for the detection or investigation of any offence under this Act to examine—
“(i) the contents of the device (including any information stored on the device); or
“(ii) any information that has been—
“(A) sent from or received by the device; or
“(B) sent to or received by any person through the use of the device.
“(2) If this section applies, the chief executive may by notice in writing require an electronic communications company to—

(a) provide information that will enable the contents of the device to be examined;

(b) provide the information referred to in subsection (1)(b)(ii) or provide access to that information.

“(3) In this section, electronic communications company means any person who provides any service in New Zealand that enables or facilitates electronic communication devices to communicate with each other.”

Explanatory note

This Supplementary Order Paper amends the Corrections Amendment Bill. A summary of the main changes proposed in this Supplementary Order Paper is as follows:

- that the requirement that drinking water provided to prisoners comply with certain drinking water standards be replaced with a requirement that drinking water must be made available to every prisoner whenever he or she needs it;

- that prisoners who are subject to a segregation direction because of risk of self-harm be required to undergo a strip search when the prisoner is first placed in a segregation area and each time the prisoner is returned to the segregation area following a visit to other (non-segregated) areas of the prison;

- that recordings of a prisoner call held by the chief executive be destroyed no later than 2 years after the call was made, unless certain circumstances apply;

- if an electronic communication device is seized under section 150 of the Corrections Act 2004 and the chief executive of the Department of Corrections believes on reasonable grounds that access to information stored on the device is necessary for the detection or investigation of an offence under that Act, that the chief executive have the ability to require electronic communications companies to—

  - provide information that will enable the contents of the device to be examined; and
  - provide information conveyed from or to the device or provide access to information stored in the device.
Briefing on Rehabilitation and Reintegration Services

Recommendation

The Law and Order Committee received a briefing from the Department of Corrections on its rehabilitation and reintegration services, and recommends that the House take note of its report.

Introduction

Rehabilitation and Reintegration Services was established by the Department of Corrections on 1 July 2010. Its purpose is reducing reoffending and improving offenders’ prospects, with a dedicated focus on rehabilitation and reintegration into the community. It has about 1,000 staff, including psychologists, instructors, programme facilitators, and case managers.

The focus of the programme is on the individual offender, and it seeks to achieve effective rehabilitation by first understanding what offenders need to change in their lives, and then targeting interventions accordingly.

Rehabilitation

Trends

The outcomes recorded in the department’s 12-month study are pleasing. Reconviction rates dropped substantially for prisoners who had been involved in a medium-intensity programme (14.8 percent), a drug treatment unit (12.4 percent), Māori therapeutic programmes (15 percent), and short motivation programmes (21 percent), for example.

We asked whether these percentage-point reductions in reoffending were consistent across the whole age range. The department said that overall statistics showed a decrease in rates of offending as people mature, with a significant drop in reoffending from age 30. Teenagers and people in their twenties have the highest rate of reoffending, and most of the department’s rehabilitation programmes are aimed at this age group. A two year follow-up study showed a similar reduction in re-imprisonment. The department told us that the decrease in reoffending recorded after two years was comparable with the results of the one-year study, but not as dramatic. However, it was noted that the figures were not comparing the same group, so the results should be “taken with a grain of salt”.

We asked about the variance between figures for short motivation programmes, which were very effective in prison but not in community programmes. The department speculated that it might reflect the greater control over interventions in prison, with a captive population.
**Short-term prisoners**

We asked whether there were specific rehabilitation programmes for short-term prisoners, such as repeat drunk-drivers. The department said that efforts had been made to provide better access to rehabilitation for short-serving prisoners, which requires early engagement to determine and address their needs. It plans to deliver shorter alcohol addiction courses, with the assistance of other agencies. The department believes drug and alcohol courts might be a partial solution. These courts will be used when offenders are facing up to three years imprisonment for crimes where alcohol and drug abuse is a contributing factor; they will be assessed by a specialist under the direction of a District Court judge. The specialist will determine the most appropriate treatment programme, and judicial supervision of the treatment will follow.

**Reintegration**

**Short-stay facilities**

The department has 10 self-care units to help prisoners with the transition from prison into living in the community. We asked if more such facilities were planned, and heard that the department is considering creating a series of reintegration hubs. These services may be jointly provided with the Salvation Army, but planning is still in the early stages.

**Success of Māori and Pasifika programmes**

The department told us that these programmes are targeted for specific groups of prisoners. Tikanga Māori programmes are designed to motivate offenders by re-kindling their interest in their culture. Specialist Māori Focus and Pacific Focus units are culturally specific and designed for prisoners in low- to medium-security detention; Whare Oranga Ake Reintegration Units are for prisoners with high reintegration needs. There are two such whare at Spring Hill and another two in Hawke’s Bay. We asked how successful the Whare Oranga Ake have been, as they have been very well funded. The department is very pleased about the progress of these providers and expects that all of the units will be full by the end of the current financial year. Each prisoner in a whare has an individual plan and is case managed. Only casual results for their success have been gathered. In Hawke’s Bay, five men have been released from the Whare Oranga Ake and four have stayed in jobs. None have offended since. The department stressed though that it was still early days and more time would be needed to gather more indicative results.

We asked why there were not specific figures on recidivism rates for Pacific prisoners who have gone through the system. The department explained that the numbers were too low to give a true indication of its success.

**Site visits**

On 15 June 2012, we made site visits to the Lower Hutt Community Probation Centre and to Rimutaka Prison. Rimutaka has a number of specialist units that provide long and intensive rehabilitation programmes aimed at specific causes of offending. We were particularly interested in the education being offered to prisoners at Rimutaka Prison, consisting principally of foundation skills, NCEA, industry training qualifications, and self-directed tertiary study. We witnessed two units undertaking industry training qualifications and were impressed with the direction and motivation this training, provided by Weltec, gave the prisoners.
A site visit was made to the Spring Hill Corrections Facility on 29 June 2012. The prison, opened in 2007, is purpose-built for rehabilitation and reintegration and holds about 1,050 male prisoners. The design of the prison differs significantly from the older prisons in New Zealand, with open internal spaces, surrounded by a secure perimeter. We were shown the large yard where prisoners acquired various skills by refurbishing houses. Tours of the Drug and Special Treatment Unit and the Technical Trade Training workshops, and a demonstration of mobility dogs and their prisoner handlers showed us some of the range of programmes and interventions at Spring Hill. We were also able to speak to the prisoners about their experiences, their motivation for participating in the programmes, and their plans. Our tour of the Pacific Island Focus Unit (Fale and Vaka Fa’aola) was impressive both in terms of the commitment to and passion for the programme demonstrated by the prisoners and the staff, and the stories of individual success that bode well for the programme’s long-term results.

We congratulate the Department of Corrections on the work it is doing in prisons and in the community towards rehabilitation and reintegration. We are aware that the department has a target of reducing reoffending by 25 percent by 2017, and will monitor with great interest its continued progress towards this goal.
Appendix

Committee procedure
The committee conducted a briefing on Rehabilitation and Reintegration Services between 28 March 2012 and 1 August 2012. We heard evidence from the Department of Corrections, and visited the Lower Hutt Community Probation Centre and Rimutaka prison on 15 June 2012, and Spring Hill Corrections Facility on 29 June 2012.

Committee members
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Interim report on the
Administration of Community
Sentences and Orders Bill

339—1

Report of the Law and Order Committee

Contents
Recommendation 2
Introduction 2
Proposed amendments 2
Appendix A 4
Appendix B 5
Interim report on the Administration of Community Sentences and Orders Bill

Recommendation
The Law and Order Committee recommends that the House take note of its report.

Introduction
The Law and Order Committee is considering the Administration of Community Sentences and Orders Bill, which seeks to remove barriers to the management of offenders in the community. The Minister of Corrections has written to the committee asking that it consider, alongside the bill as introduced, further amendments.

Proposed amendments
The purpose of this interim report therefore is to make the proposed amendments available to specific submitters. The proposed amendments would make the following changes to the bill:

- Allowing community magistrates to alter or cancel a community-based sentence previously imposed by a community magistrate.
- Allowing the chief executive of the Department of Corrections to approve changes of address for home or community detention curfew.
- Allowing a probation officer, rather than the court, to direct that up to 20 per cent of an 80-hour community work sentence be spent in training in basic work and living skills, to reduce barriers to training for prisoners.
- Clarifying that a court may not cancel or replace the first sentence if that sentence was imposed by a higher court, but may instead remit the matter to the court that imposed the first sentence.
- Requiring a probation officer to review the suitability of the home detention residence or curfew address where the court defers the commencement of a second sentence of home or community detention for more than two months.
- For the purpose of determining when post-detention conditions commence, providing that any concurrent or cumulative home detention sentences must be treated as a notional single sentence.
- Where an appeal against a home detention sentence is unsuccessful, requiring that the registrar of the appeal must notify the controlling officer of the relevant probation area, and the offender if not in court, of the date on which the sentence resumes.
We seek submissions from previous submitters, to be taken into account in our consideration of the bill. The proposed amendments can be found in Appendix B of this report.
Appendix A

Committee procedure
The bill was referred to us on 8 May 2012. The closing date for submissions was 22 June 2012. We received and considered six submissions from interested groups and individuals. We received advice from the Department of Corrections.

Committee members
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Appendix B

Proposed amendments

The amendments proposed by the Minister of Corrections are:

Clause 2

In clause 2, after “section 34(1)” (line 5 on page 3), insert “and Parts 1 and 1A”.

After clause 2(2) (after line 2 on page 4), insert:

(3) Parts 1 and 1A come into force immediately after section 15 of the Bail Amendment Act 2011 comes into force.

Clause 5

Delete clause 5 (line 11 on page 4 to line 37 on page 6).

Clause 6

Delete clause 6 (line 1 on page 7 to line 6 on page 8).

Clause 7

Delete clause 7 (lines 7 to 13 on page 8).

New Part 1A

After clause 7 (after line 13 on page 8), insert:

Part 1A

Amendments to Bail Amendment Act 2011

7A Principal Act amended

This Part amends the item relating to Parts 3 and 4 of the Bail Act 2000 in the Schedule of the Bail Amendment Act 2011.

7B New section 53 of Bail Act 2000 amended

(1) New section 53 is amended by repealing subsection (1) and substituting the following subsection:

“(1) This section applies if a person—

“(a) is in custody under a conviction or is subject to a sentence
of home detention; and

“(b) is appealing the conviction or sentence, or both, to a

District Court presided over by a District Court Judge.”

(2) New section 53(2) is amended by inserting “, or is subject to
a sentence of home detention,” after “custody”.

(3) New section 53(4) is amended by omitting “34” and substituting
“35”.

(4) New section 53 is amended by repealing subsection (6) and
substituting the following subsection:

“(6) For the purposes of this section,—

“(a) an appellant is not deemed to be in custody only under
the conviction to which the appeal relates if a direction
has been given under section 83 of the Sentencing Act 2002 that another sentence or term of imprisonment is
to follow the sentence imposed on that conviction, and
the appellant has not appealed against the conviction in
respect of which that other sentence or term was imposed;
and

“(b) an appellant is not deemed to be subject to a sentence
of home detention only under the conviction to which
the appeal relates if a direction has been given under
section 80B of the Sentencing Act 2002 that another
sentence of home detention is to follow the sentence
imposed on that conviction, and the appellant has not
appealed against the conviction in respect of which that
other sentence was imposed.”

508
7C  New section 54 of Bail Act 2000 amended
(1) New section 54 is amended by repealing subsection (1) and substituting the following subsection:
“(1) This section applies if a person—
“(a) is in custody under a conviction or is subject to a sentence of home detention; and
“(b) is appealing the conviction or sentence, or both, to the High Court.”
(2) New section 54(2) is amended by inserting “, or is subject to a sentence of home detention,” after “custody”.
(3) New section 54 is amended by repealing subsection (6) and substituting the following subsection:
“(6) Section 53(6) applies for the purposes of this section.”

7D  New section 55 of Bail Act 2000 amended
(1) New section 55 is amended by repealing subsection (1) and substituting the following subsection:
“(1) This section applies if a person—
“(a) is in custody under a conviction or is subject to a sentence of home detention; and
“(b) is appealing the conviction or sentence, or both, to the Court of Appeal or the Supreme Court.”
(2) New section 55(2) is amended by inserting “, or is subject to a sentence of home detention,” after “custody”.
(3) New section 55 is amended by repealing subsection (4) and substituting the following subsection:
“(4) Section 53(6) applies for the purposes of this section.”
7E New section 58 of Bail Act 2000 amended

New section 58 is repealed and the following section substituted:

“58 Time on bail pending appeal not to be taken as time served

“(1) Section 95 of the Parole Act 2002 applies if an appellant is released on bail pending an appeal.

“(2) Section 80ZB(b) of the Sentencing Act 2002 applies if an appellant who is subject to a sentence of home detention is released on bail pending an appeal.”

7F New section 59 of Bail Act 2000 amended

(1) The heading to new section 59 is amended by inserting “from sentence of imprisonment” after “bail”.

(2) New section 59(1) is amended by omitting “defendant” and substituting “appellant”.

(3) New section 59(2) is amended by omitting “appellant” and substituting “defendant”.

7G New section 59A of Bail Act 2000 inserted

The following section is inserted after new section 59:

“59A Surrender of appellant released on bail from sentence of home detention

“(1) An appellant who has been released from a sentence of home detention on bail pending the hearing of an appeal may surrender himself or herself and apply to a District Court Judge for the discharge of bail, and the District Court Judge may order that the appellant resume serving the sentence of home detention.

“(2) If an appellant applies for the discharge of bail under subsection (1), the court may—
“(a) adjourn the matter to enable a probation officer to obtain the information required under subsection (3); and

“(b) either—

“(i) remand the appellant in custody; or

“(ii) grant the appellant bail for the period of the adjournment.

“(3) Before ordering that an appellant resume serving a sentence of home detention under subsection (1), the District Court Judge must consider information from a probation officer on—

“(a) whether the home detention residence is still available and suitable; and

“(b) whether every relevant occupant (as defined in section 26A(4)(a) of the Sentencing Act 2002) of the home detention residence consents, in accordance with section 26A(3) of the Sentencing Act 2002, to the appellant resuming the sentence at the home detention residence.

“(4) If a District Court Judge orders that the appellant resume serving the sentence of home detention,—

“(a) the appellant must go to and remain at the home detention residence unless absent in accordance with section 80C(3)(a) or (b) of the Sentencing Act 2002; and

“(b) the sentence of home detention resumes when the appellant has arrived at the home detention residence under paragraph (a).”

Clause 9

In clause 9, after new section 20A(3) (after line 8 on page 9), insert:

“(3A) A court—

“(a) must not cancel a first sentence under subsection
(2)(c) or (d) if that sentence has been imposed by a higher court; and

“(b) if it considers the first sentence should be cancelled, must refer the matter to the court that imposed the first sentence.

In clause 9, after new section 20A(5) (after line 16 on page 9), insert:

“(6) If, under subsection (2)(b), the court defers the commencement of the second sentence for more than 2 months, the probation officer must—

“(a) review the suitability of the home detention residence or curfew address; and

“(b) ensure every relevant occupant consents, in accordance with section 26A(3), to the offender resuming the sentence at the home detention residence or curfew address; and

“(c) if necessary, apply to the court for a variation or cancellation of the sentence under section 69I or 80F or obtain from the chief executive of Corrections a variation of the curfew address or home detention residence under section 69JA or 80FA.

“(7) In this section, relevant occupant has the meaning given to it by section 26A(4)(a).

New clauses 18A and 18B

After clause 18 (after line 30 on page 11), insert:

18 A New section 66A substituted

Sections 66A and 66B are repealed and the following section is substituted:
“66A Probation officer may direct hours of work to be converted to training

“(1) This section applies to sentences of community work of at least 80 hours.

“(2) A probation offer may direct that a specified number of hours of work not exceeding 20% of the total number of hours of work ordered to be undertaken by the court may be spent in training in basic work and living skills.

“(3) In determining whether to give a direction under this section, the probation officer must take account of—

“(a) the benefits of skill development to the offender for reducing the likelihood of reoffending; and

“(b) the need to hold the offender accountable to the community by making compensation to it.

“(4) A probation officer must not give a direction under this section unless—

“(a) it is reasonably practicable for the offender to undertake training in basic work and living skills (having regard to the availability of that training in the place where the offender lives); and

“(b) the offender consents to undertake that training.

“(5) Any hours spent by the offender training in basic work and living skills under a direction given under this section must, for all legal purposes, be treated as hours of authorised community work undertaken by the offender under his or her sentence.

“(6) Subsection (5) is subject to section 66C.”

18B Consequences of failing without excuse to complete
training

Section 66C is amended by omitting “66B” and substituting “66A”.

New clauses 22A and 22B

After clause 22 (after line 16 on page 13), insert:

22A New section 69JA inserted

The following section is inserted after section 69J:

“69JA Chief executive of Corrections may vary offenders’ curfew address

“(1) The chief executive may vary an offender’s curfew address if—

“(a) the curfew address is no longer available or suitable because of a change in circumstances; and

“(b) an alternative address is suitable; and

“(c) every relevant occupant (as defined in section 26A(4)(b)) at the alternative address has given their informed consent to the offender remaining at that address during the curfew period; and

“(d) the alternative address is in an area in which a community detention scheme is administered by the Department of Corrections; and

“(e) the offender has given written consent to the change in address.

“(2) A probation officer may, subject to subsection (3), approve an alternative curfew address at which the offender must remain pending a decision by the chief executive under subsection (1).
“(3) If the chief executive does not vary a curfew address within 5 days after an alternative curfew address is approved,—

“(a) the probation officer must apply to the court for an order under section 80F(4) at the earliest opportunity; and

“(b) the offender must remain at the alternative curfew address pending the decision of the court.”

22B Section 69K repealed

Section 69K is repealed.

Clause 23

In clause 23 (after line 17 on page 13), insert as subclause (1):

(1) Section 72(1) is amended by repealing paragraph (c) and substituting the following paragraphs:

“(c) to a District Court presided over by a Judge or Community Magistrate if the sentence was imposed by a Community Magistrate; or

“(d) to a District Court presided over by any Judge, in any other case.”

New clauses 27A to 27C

After clause 27 (after line 31 on page 14), insert:

27 A New section 80FA inserted

The following section is inserted after section 80F:

“80F A Chief executive of Corrections may vary offenders’ home detention residence

“(1) The chief executive of the Department of Corrections may vary an offender’s home detention residence if—

“(a) the home detention residence is no longer available or suitable because of a change in circumstances; and
“(b) an alternative address is suitable; and
“(c) every relevant occupant (as defined in section 26A(4)(a)) at the alternative address has given their informed consent to the offender remaining at that address while serving his or her home detention sentence; and
“(d) the alternative address is in an area in which a home detention scheme is administered by the Department of Corrections; and
“(e) the offender has given written consent to the change in address.

“(2) A probation officer may, subject to subsection (3), approve an alternative home detention residence at which the offender must remain pending a decision by the chief executive under subsection (1).

“(3) If the chief executive does not vary a home detention residence within 5 days after the alternative home detention residence is approved,—
“(a) the probation officer must apply to the court for an order under section 80F(4) at the earliest opportunity; and
“(b) the offender must remain at the alternative home detention residence pending the decision of the court.”

27B Section 80H repealed
Section 80H is repealed.

27C New section 80MA inserted
The following section is inserted after section 80M:

“80MA Registrar must notify controlling officer and offender
of resumption of sentence

If the outcome of an offender’s appeal against a sentence of home detention is unsuccessful and the offender has been granted bail under section 53, 54, or 55 of the Bail Act 2000, the Registrar of the appeal court must—

“(a) notify the controlling officer of the probation area in which the sentence is to be served of the date on which the sentence is to resume; and

“(b) notify the offender of that date if he or she is not present in court at the time the appeal is disposed of.”

Clause 28

In clause 28 (after line 34 on page 14), insert as subclause (2):

(2) Section 80N is amended by adding the following subsection:

“(6) If the court imposes a home detention sentence cumulatively on an existing sentence or a concurrent sentence of home detention that is longer than the first sentence, any post-detention conditions imposed with the first home detention sentence commence only after the second sentence has been completed.”

Clause 32

In clause 32, new section 80ZG(6)(a)(iii), after “80F” (line 32 on page 16), insert “or obtain from the chief executive of Corrections a variation of the home detention residence under section 80FA.”

In clause 32, new section 80ZGD(1)(b), replace “section 45” (line 26 on page 18) with “section 53, 54, or 55”.

Clause 33

In the heading to clause 33, replace “80ZGD” (line 5 on page 19) with “80ZGC”.
In clause 33, replace “80ZGD” (line 7 on page 19) with “80ZGC”.

Clause 46

Delete clause 46 (lines 8 to 12 on page 23).

Clause 48

Delete clause 48 (lines 16 to 20 on page 23).
Corrections Amendment Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation
The Law and Order Committee has examined the Corrections Amendment Bill, and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Corrections Act 2004 and make a minor amendment to the Courts Security Act 1999, in order to remove barriers to the effective and efficient operation of the corrections system. The bill seeks to enhance prison security by reducing the amount of contraband in prisons, by streamlining procedures for drug tests and strip searches, and by enabling the Department of Corrections to adapt to technological advances or policy changes. It would place responsibility for providing health care to prisoners on prison health centre managers, rather than contractors. The bill seeks also to empower the chief executive of the department to delegate and sub-delegate powers and functions to contractors of prison services to aid the operation of privately-managed prisons. It seeks also to provide for
prisoners to be self-employed in work under conditions approved by the chief executive.

On 26 June 2012, the Minister of Corrections wrote to inform us of proposed amendments to the bill agreed to by Cabinet on 25 June 2012. The draft supplementary order paper included provisions allowing the department to require a phone company to provide it with the personal unlock codes or keys to SIM cards that have been seized in prison; within legislative parameters, allowing prison managers to authorise non-custodial staff to read prisoners’ mail (for the purpose of ascertaining whether it should be withheld); requiring that drinking water for prisoners be of a standard reasonably equivalent to that supplied to the public; requiring that any prisoner being segregated because of a risk of self-harm be strip-searched on admission to an At Risk Unit; and allowing the department to keep recordings of prisoners’ phone calls for up to two years before erasing them, except in some defined circumstances.

We considered these proposed amendments alongside the bill. We made an interim report to the House outlining these proposals, and invited further submissions from those who had previously submitted on aspects of the bill affected by the proposed changes. This commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments.

Delegation

Clauses 14, 16, 17, 18, and 42 were included to facilitate the management of privately-managed prisons by providing the chief executive with the power to delegate powers or functions to private-sector prison managers and/or their employees. We recommend amending new section 199AA in clause 42 to authorise the chief executive’s delegate to sub-delegate functions or powers with the chief executive’s prior approval. We also recommend deleting clauses 14, 16, 17, and 18, which deal with the empowerment of authorised employees of private-sector prison managers to reconsider security classifications and private-sector prison managers to approve temporary releases and removal of prisoners. We considered these clauses unnecessary because under clause 42, the chief executive could delegate powers to an employee who was not a staff member of a prison, including privately-managed prison staff.
The four clauses we recommend removing would allow the chief executive to delegate some of his or her powers to a privately-managed prison manager or staff member. We were aware of concern that empowering employees in this way might lessen the chief executive’s accountability for the delivery of prison services. Deleting these four clauses emphasises the chief executive’s role of delegation, which we consider preserves his or her accountability for decision-making. We also recommend inserting new section 199AB in clause 42 to provide for the chief executive to delegate powers or functions to a subcontractor of a privately-managed prison.

**Medical officer allocation**

Under the Act, one or more medical officers must be allocated to each prison to provide medical care and treatment to prisoners. The bill seeks to amend this provision by requiring that a sufficient number of medical officers be allocated to every prison. However, we were concerned this could be interpreted to mean that the number of allocated medical officers could be decided to be zero. We therefore recommend amending subsection 20(1) in clause 8 to place responsibility on the chief executive or contract prison manager to ensure that a sufficient number of medical officers are allocated to each prison.

**Minimum entitlements**

As introduced, the bill sought to amend section 69(4) in clause 22 of the bill to deny a prisoner the minimum entitlement of one hour of exercise per day if he or she had been temporarily released or removed from prison, and it was impractical for staff to manage the provision of this exercise. We were concerned that this could lead to a prisoner being denied this entitlement for an extended period, if for example a trial lasted for several days. We recommend amending clause 22 so that a prisoner could not be denied the minimum entitlement to exercise for more than two consecutive days.

**Diet**

We recommend inserting new subclause 23(1AA) to amend section 72(1) to reflect the United Nations Standard Minimum Rules for the Treatment of Prisoners. This would require drinking water to be
made available to every prisoner whenever he or she needs it. The Act requires drinking standards to comply with those of the Ministry of Health or standards in force under any enactment. The existing legislative requirements for water quality for all buildings in New Zealand apply in prisons, and we consider this sufficient.

**Mandatory and discretionary strip searches**

We recommend an amendment repealing subclauses 27(1) and 27(2) to retain the requirement for a prison officer to gain managerial approval to conduct a strip search on reasonable grounds, unless the delay involved could endanger the health or safety of any person or prejudice the maintenance of prison security. Under the bill as introduced, the amendments might have resulted in operational efficiencies; however, as strip searches are highly intrusive procedures, we consider it crucial to include comprehensive safeguards for prisoners’ rights and safety. We therefore recommend that the Act’s existing provisions be retained.

We recommend inserting new subclause 27(4A) to insert new subsections 98(7A) and 98(7B), to require that every prisoner who is segregated because of risk of self-harm undergo a strip search. These subsections would provide powers currently absent from the Act. We are aware of concern that prisoners can acquire “at risk” status for technical reasons; this would then require a strip search, which is an unpleasant procedure. We considered also the possibility that strip searches might not be necessary in some situations, and might even exacerbate the risk to such a prisoner. The purpose of strip searches in this context is to determine whether further precautions should be taken to prevent serious risk to prison security or to staff and prisoner safety. We note that under new subsection 98(7A), strip searches for prisoners at risk of self-harm would be subject to a higher threshold under section 60(1)(b) of the Act. This section would allow a prisoner to be segregated, with a prison manager’s approval, for the purpose of assessing or ensuring his or her mental health, including the risk of self-harm. Furthermore, we understand that prisoners intent on self-harm can sometimes acquire very quickly the means of inflicting it, despite close supervision. We consider that the legislation allows strip searches to be conducted only when necessary.
Reading prisoners’ mail

We recommend inserting new clause 31A to amend subsections 107(1) and 107(2) to allow an authorised person, such as a non-custodial staff member, to read prisoners’ mail, for the sake of operational efficiency. Under the Act, prisoners’ mail can be read only by an authorised officer. We acknowledge that reading prisoners’ mail is not a routine administrative task, and consider it appropriate to require prison managers to authorise staff members with the appropriate skills and attributes to complete this task.

Destruction of recordings

Recordings of calls made from inside a prison are stored within the precincts of that prison and erased within six months of the call being made. Recordings can be kept for longer if they are likely to be required for a legal purpose. However, under the bill as introduced, it is unclear whether decisions to retain recordings beyond expiration must be reviewed. Therefore we recommend inserting new subsection 120(1A) in new clause 33B to require recordings of prisoner calls to be destroyed or completely erased if, two years after the call, they are no longer required for any legal purpose.

Information associated with seized electronic devices

Under the amendments proposed on the draft supplementary order paper, the chief executive could require an electronic communications company to extract information from an electronic device for the purpose of the investigation of any offence under the Act. However, the department might request information that such a company did not have the capability to extract. We recommend inserting new section 189D in new clause 40A to require an electronic communications company to provide the chief executive only with information it holds in the ordinary course of its business.

Minority views

New Zealand Labour Party

Some measures in this bill will contribute to the efficient operation of New Zealand’s prison service. Changes made to address Labour’s
concerns about other measures such as strip searches without the prior approval of the prison manager have also improved the bill. However, Labour continues to have concerns about standardising the most intrusive strip-search procedures in routine strip searches, and is totally opposed to the further entrenchment of privatisation of prison services.

*Introduction of single strip-search procedure*

Currently there are two strip search procedures, one for routine cases such as when inmates have been on work parties outside the prison, and another more intrusive procedure where there is reasonable cause to believe there are items of contraband concealed on the inmate. In the second kind, a more intrusive procedure is involved using lights and mirrors to magnify the genital and anal areas of the inmate. The bill proposes to make the second procedure the standard one for all strip searches. This is opposed by the Corrections Association of New Zealand, which says it puts their officers at greater risk of assault.

It is also opposed by other submitters including the Office of the Ombudsman, the New Zealand Law Society, and the Salvation Army. They draw attention to the risks of abuse of such procedures, which the Ombudsman pointed out has happened in the past. The Law Society makes the point that the current legislative regime regarding strip searches is an appropriate balance between ensuring the safety and security of staff and prisoners and the requirement to not unnecessarily demean and humiliate prisoners.

There has been a dramatic improvement over the last 15 years in reduction in drug use within prisons, which suggests that existing search measures are working well. We do not believe that the evidence supports more intrusive strip searching in the case of routine strip searches.

*Devolution of authority to private-sector prison operations*

The bill extends the powers that can be delegated by the chief executive officer of the Department of Corrections to prison managers and staff in privately-managed prisons. Labour strongly opposes privatised prisons. We believe that prison management, involving as it does the removal of freedom from those
who are incarcerated, is a core role of the state and not something that should be run as a profit-oriented commercial business. International experience does not support that privatisation of prisons provides a more effective or less expensive prison system. We believe the motivation for privatisation is purely ideological.

Serco, the multinational company contracted to manage Mt Eden and the future Wiri prison, has been subject to controversy over its management of prisons in the United Kingdom and detention facilities in Australia. Its record in its first year of operations of Mt Eden Prison has been poor, with failure to meet 17 out of 37 performance standards, and requiring sanctions to be imposed on it for wrongful detention, wrongful release, and escape of inmates.

Labour opposes this bill, which extends the powers delegated to privatised prisons.

**Green Party**

The Green Party has opposed this bill from first reading, based on our objections to provisions within it that in our view diminish some basic human rights of inmates; potentially make our prisons less safe and less likely to achieve the goal of rehabilitation and improved public safety; and further embed private-sector managers and motives in the prison service.

The bill as reported back from the committee is a better bill, some positive changes have been recommended to it, but overall it still falls far short of a bill we could support to second or subsequent readings.

We note that the Human Rights Commission has expressed its concern that the cumulative effect of some of the changes in the bill has the potential to weaken the principal Act’s human rights protections in significant ways, and that these changes appear to be in breach of binding international obligations. We agree with this view, especially in respect of new provisions regarding strip search regimes, entitlement to daily exercise, and oversight of the use of mechanical restraints.

The bill would further facilitate the private management of prisons, allowing a series of delegations from the chief executive of Corrections to private contractors. The Greens are strongly of the view that only the state can legitimately deprive people of their liberty, and so operation of corrections facilities should be solely the domain of the
state. International evidence is that private involvement in prisons heads to perverse and negative outcomes for inmates and prison staff alike.

We do not support a number of provisions in the bill regarding health services in prisons. We support the general principle expressed by the recent Ombudsman’s office report, that provision of such services should be overseen by a health agency, not by an organisation whose primary function is custodial.

For these and other reasons, we do not agree with the majority recommendation of the committee that the bill as amended should be passed.

**New Zealand First Party**

The New Zealand First Party supports the broad aims of the bill. We do have some areas of concern which we concede may not fall entirely within the scope of the bill.

New Zealand First notes that many of the submissions to the committee concerned the issue of strip-searching. Both the fact and the nature of strip searching was of concern to many of these submitters. We feel that while the proposals in the bill will clarify certain procedural matters related to strip searching, and provide for safer and more efficient management of the process by Corrections Department staff, there may be better ways of approaching the issue.

New Zealand First contends that greater use of technology such as body scanners would negate much if not all of the opposition to strip searching on the part of many submitters and indeed prisoners themselves, as well as improving the effectiveness of systems intended to detect contraband.

New Zealand First remains opposed as a matter of policy to the use of private firms and contractors for the purpose of operating prisons and/or prison services. We contend that the detention of citizens and others for the purposes of corrections should remain the sole preserve of the state.
Appendix

Committee process
The Corrections Amendment Bill was referred to the committee on 28 February 2012. The closing date for submissions was 12 April 2012. We received and considered 18 submissions from interested groups and individuals. We made an interim report to the House on 28 June 2012 and invited further submissions from a number of submitters. The closing date for further submissions was 27 July 2012. We received and considered five further submissions. We received advice from the Department of Corrections and the Parliamentary Counsel Office.

Committee membership
Jacqui Dean (Chairperson)
David Clendon
Kris Faafai
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Administration of Community Sentences and Orders Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Administration of Community Sentences and Orders Bill, and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Bail Act 2000, the Bail Amendment Act 2011, the Sentencing Act 2002, and the Parole Act 2002, in order to remove barriers to managing offenders in the community safely and effectively. The bill seeks to refine practices that have resulted from the introduction of extended supervision orders and sentencing and parole reforms. It would make changes to home detention and community-based sentences by adding appropriate requirements in administering these sentences, and would align electronic monitoring conditions with the monitoring equipment currently used. The bill also seeks to specify who would have responsibility for preparing reports on suitability for residential restrictions, and to eliminate gaps in extended supervision order provisions.
On 14 August 2012, the Minister of Corrections wrote to inform us of proposed amendments to the bill agreed to by Cabinet. The draft supplementary order paper proposed three substantive and four technical amendments to the bill. The substantive proposals include provisions allowing community magistrates to alter or cancel a community-based sentence previously imposed by a community magistrate; allowing the chief executive of the Department of Corrections to approve changes of address for home or community detention; and allowing a probation officer, rather than the court, to direct that up to 20 per cent of a community work sentence of at least 80 hours be spent in training in basic work and living skills, to reduce barriers to training for offenders. The technical proposals include provisions clarifying that a court may not cancel or replace the first sentence if that sentence was imposed by a higher court, but may instead remit the matter to the court that imposed the first sentence; requiring a probation officer to review the suitability of the home detention residence or curfew address when the court defers the commencement of a second sentence of home or community detention for more than two months; for the purpose of determining when post-detention conditions commence, providing that any concurrent or cumulative home detention sentences be treated as a notional single sentence; and where an appeal against a home detention sentence is unsuccessful, requiring the registrar of the appeal to notify the controlling officer of the relevant probation area, and the offender if they are not in court, of the date on which the sentence resumes.

We considered these proposed amendments alongside the bill. We made an interim report to the House outlining these proposals, and invited further submissions from those who had previously submitted on aspects of the bill affected by the proposed changes.

This commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments.

**Bail Act and Bail Amendment Act**

We recommend deleting clauses 5, 6, and 7 of the bill and replacing them with new clauses 7A–7G to amend sections of the Bail Amendment Act 2011, rather than the Bail Act 2000. As introduced, the bill sought to amend sections 45–47, 70, and schedule 1 of the Bail Act. The Bail Amendment Act, which comes into force in October 2013
or earlier if by Order in Council, replaces parts 3 and 4 of the Bail Act, into which the provisions in clauses 5–7 of this bill would be inserted. If the Bail Amendment Act were to come into force after this bill, the provisions inserted by clauses 5–7 would cease to have legislative effect. New clauses 7A–7G would have similar effect to that of clauses 5–7.

An appellant could surrender himself or herself when released on bail from home detention and apply for the discharge of bail. In this situation, the court might order the resumption of home detention, which, as amended, would require the probation officer to review the suitability of the home detention residence. This might cause unnecessary delays in cases where bail was discharged shortly after being granted. We recommend inserting new clause 7G to require the court to consider a probation officer’s review only if the appellant has been on bail for longer than two months.

**Sentencing Act**

**The integrity of community-based and home detention sentences**

Under the Act, time continues to run on community-based or home detention sentences when an application to vary or cancel the sentence has been made because of failure to comply with conditions. Ideally, a period of compliance with sentence conditions would be considered time served, and non-compliance would not. However, it is unclear how to class periods in which an offender has complied with some conditions and not others. We recommend amending clauses 14, 16, 22, and 31 to allow a court to exercise discretion when considering periods of compliance since application in determining the amount of time served on the sentence.

**Converting a proportion of community work sentences into training**

We recommend replacing sections 66A and 66B with new section 66A in new clause 18A, to provide that a probation officer may direct that up to 20 per cent of a community work sentence of at least 80 hours be spent in training in basic work and living skills. Under the Act, only the court may make such an authorisation. This proposal is intended to make such conversions more efficient.
Change of home detention or curfew address
If a residence where an offender is serving a home or community detention sentence becomes unsuitable, his or her probation officer may temporarily approve an alternative address, provided an application to approve the change is made to the court within five working days of the decision to relocate the offender. This process can be an unnecessary use of a probation officer’s and the court’s time and resources when only a short period of the sentence remains. The uncertainty while awaiting the court’s decision may hamper the offender’s reintegration into the community. We therefore recommend repealing sections 69K and 80H of the Sentencing Act 2002 and replacing them with new sections 69JA and 80FA in new clauses 22A and 27A respectively, to empower the chief executive to vary a home detention residence or curfew address if he or she is satisfied that all the following conditions are fulfilled: the address specified by the court is no longer suitable; an alternative address is suitable; the relevant occupants of the alternative address have given their informed consent; the residence is in an area in which a home detention or community detention scheme is operated by the department; and the offender has provided his or her written consent to the change of address. If the offender did not provide written consent, the probation officer would need to apply to the court to vary or cancel the sentence.
We considered whether it might not be appropriate to reassign powers away from the judiciary to a member of the department in clauses 18A, 22A, and 27A. But we are satisfied that these provisions were drafted specifically enough to reduce any risk of misuse. These clauses are intended to improve the efficiency of the processes.

Registrar notification requirement
We recommend inserting new section 80MA in new clause 27C to require the appeal court registrar to notify the controlling officer of the probation area and the offender, if not in court, of the date on which the home detention sentence resumes after an unsuccessful appeal of that sentence. This would align the bill with legislation relating to community-based sentences.
Imposition of post-detention conditions
If a court imposes a home detention sentence cumulatively with an existing sentence, or a concurrent sentence that is longer than the first sentence, it can be unclear when the post-detention conditions imposed with the first home detention sentence should begin. We recommend inserting new subsection 80N(6) in clause 28 to provide for any concurrent or cumulative home detention sentences to be treated as a notional single sentence when determining the date on which the post-detention conditions begin.

Effect of appeal on resumption of home detention sentence
As introduced, the bill would require an offender on bail to report to a probation officer within 72 hours of being notified of the appeal’s unsuccessful outcome, at which time the home detention sentence would resume. However, this might not leave enough time for the probation officer to find a suitable home detention residence if the offender’s previous residence had become unsuitable while the offender was on bail. We recommend replacing subsections 80ZGD(2) and 80ZGD(3) with new subsections 80ZGD(1A) and 80ZGD(1B) in clause 32 to require the court to stipulate the date on which the offender would have to report to a probation officer to resume serving the sentence. This date would be no earlier than 10 working days after the court’s decision.

Parole Act
Under the Parole Act 2002, an offender is subject only to the residential restrictions regarding the residence at which he or she was paroled. If an offender’s residence becomes unsuitable, his or her probation officer can apply to the board to have the restriction apply to another address. However, in the period after application to the board but before receiving board approval, a probation officer’s only legal option for most offenders is to have them recalled to prison, incurring additional costs and possibly hindering their reintegration into the community. We recommend inserting new clause 40A to empower the chief executive to approve an alternative residence for offenders subject to residential restrictions, provided an application to the board to vary the condition is made within five working days of the decision to relocate the prisoner.
Appendix

Committee process
The Administration of Community Sentences and Orders Bill was referred to the committee on 8 May 2012. The closing date for submissions was 22 June 2012. We received and considered five submissions from interested groups and individuals. We made an interim report to the House on 24 August 2012 and invited further submissions from a number of submitters. The closing date for further submissions was 7 September 2012. We received and considered one further submission. We received advice from the Department of Corrections and the Parliamentary Counsel Office.

Committee membership
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Bail Amendment Bill

Government Bill

As reported from the Law and Order Committee

Commentary

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

Introduction
This bill seeks to amend the Bail Act 2000, the Children, Young Persons, and Their Families Act 1989, the Sentencing Act 2002, the Bail Amendment Act 2011, the District Courts Act 1947, the District Courts Amendment Act 2011, and the Summary Proceedings Act 1957, in order to improve public safety and enhance the integrity of New Zealand’s bail system. The bill seeks to introduce a reverse burden of proof for offenders charged with serious violent offences and class A drug dealing offences, and provides for district court judges to deal with bail matters of defendants charged with drug dealing offences. It also seeks to remove the strong presumption in favour of bail for defendants aged 17 to 19 years who have previously been sentenced to imprisonment, and seeks to enable the Police to uplift and return young defendants in breach of their bail curfews to the
custody of their parents or caregivers. Police would also be able to arrest a young defendant who was believed on reasonable grounds to have significantly or repeatedly breached a condition of bail. The bill seeks to remove the ability of the Police to impose a requirement for monetary bonds and sureties on defendants; and it would make a person convicted of the failure to answer police bail liable to three months’ imprisonment as an alternative to the maximum fine of $1,000. It also seeks to create an electronically monitored bail regime by writing current practices into legislation.

In the course of our consideration, we also heard evidence on Petition 2011/24 of Tracey Marceau on behalf of Christie’s Law Group and 58,000 others because some issues it raised were relevant to this bill, while others fell outside its scope. We will examine issues outside the scope of this bill when we consider the petition.

The commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments.

**Commencement**

We recommend amending subclause 2(1) so that the provisions excluded from subclause 2(2) would come into force 30 days after the bill receives the Royal assent. This amendment would allow for the implementation of necessary operational changes as a result of this bill.

**Amendments to the Bail Act 2000**

**Just cause for continuing detention**

We recommend inserting new subsection 8(4B) in clause 6 to allow a court considering a bail application to take into account the defendant’s co-operation with authorities in their investigations or prosecutions, if this is relevant to the court’s assessment of the risk that the defendant will fail to appear in court, interfere with witnesses or evidence, or offend while on bail. As introduced, the bill would prevent the court from taking such considerations into account. While it is not appropriate to grant bail in return for information, co-operation with authorities could indicate that the defendant presents a relatively lower risk.
Granting of bail to defendants under 20 years of age

Under the bill as introduced, clause 9 would amend section 15 to remove the strong presumption in favour of bail for defendants aged 17 to 19, if they had previously been sentenced to imprisonment. We recommend amending section 15 in clause 9 so that this would apply only to 17-year-olds, 18- and 19-year-olds becoming subject to the standard adult test for bail. We considered a number of factors when examining this issue.

Young defendants who have served a previous prison sentence offend on bail at a significantly higher rate than those with no history of imprisonment. For example, from 2004–2009, over half of young defendants who had served a previous prison sentence were convicted of offending on bail, compared with less than a quarter of young defendants who had not previously been sentenced to imprisonment. We believe that, if the defendant is 17 years of age, is accused of committing a serious crime, and has previously been sentenced to imprisonment for a separate crime, the reverse burden of proof should apply, subject to the judge’s discretion.

We are aware of the principle that adults, young people, and children should be tried with regard to the crime they are accused of, rather than their age, because age affects the judicial treatment of a particular crime. We recognise that imprisonment can affect long-term rehabilitation, and therefore that detention of children and young people should be a last resort. We believe it appropriate that, subject to the judge’s discretion, a 17-year-old defendant be granted bail unless he or she has previously been sentenced to imprisonment.

We were concerned that this clause might be inconsistent with New Zealand’s international obligations. New Zealand has ratified the United Nations Convention on the Rights of the Child, upon which policy and legislation concerning children and young people, 0–17-year-olds inclusively, ought to be developed. Furthermore, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice reinforce the principle that detention of children and young people should be a last resort, and as short as possible. The rules indicate that, whenever possible, detention pending trial should be replaced by alternative measures, such as close supervision. To align this legislation with New Zealand’s international obligations, we believe that those aged 17 should be considered differently from adults facing similar charges, because of their age.
We considered all of these issues, and decided that we needed to find a balance between upholding a defendant’s criminal process rights, enhancing public safety, and meeting New Zealand’s international obligations. We believe that this amendment finds the right balance.

**Regulation making powers**

The Regulations Review Committee expressed concern that subsection 30B(3) in clause 17 would allow the making of a regulation that had the effect of amending a provision of the principal Act, otherwise known as a Henry VIII clause; as a matter of principle only Parliament should be able to amend provisions of an Act, and this should be done in primary legislation, not in regulations. We recommend deleting subsection 30B(3) to remove the ability for this subsection to amend the principal Act outside of legislation.

**Amendments to the Children, Young Persons, and Their Families Act 1989**

**Arrest a child without warrant**

We recommend inserting new section 214A in clause 26 to empower a constable to arrest without warrant a child or young person who has been released on bail and has repeatedly breached his or her bail conditions. Under the bill as introduced, police could arrest a young person in these circumstances, but it was not clear that the provision also applied to children. Under the Act, a child is a person aged less than 14 years, while a young person is aged more than 14 years but less than 17 years. We were told that some children and young people disregard their bail conditions because they are aware of the restrictions on their arrest, and consider that this amendment could help to combat such behaviour.

There are existing safeguards, and more being developed, to guide police conduct regarding arrests of children and young people. Subsection 214(4) of the Act, for example, requires police officers who have made such arrests to justify them to their superiors. The Police are currently developing operational guidelines on the application of the power to arrest for repeated breaches. Such guidelines will help prevent children from unnecessarily being arrested without warrant. We understand that they are likely to set out explicitly what a police
officer needs to consider before undertaking such an arrest, for example, whether to first issue a warning.

**Significant breach of bail**

We recommend replacing subparagraph 214(2A)(c)(i) with new subparagraph 214(2A)(b)(i) in subclause 26(3) to remove the provision referring to “significant” breaches. Under subclause 26(3) as introduced, police would be able to arrest a young person without warrant if they were satisfied on reasonable grounds that the defendant had significantly or repeatedly breached a condition of bail. In this case, the term “significant” is open to interpretation, and likely to complicate police officers’ decision-making when they are considering making an arrest. Existing arrest powers in section 214(1) are likely to be sufficient when a defendant’s breach appears significant. Consequently, we also recommend amending paragraph 235(1A)(b) in subclause 26(4) to align it with subclause 26(3).

**The detention of children and young people**

We recommend deleting paragraph 239(1)(d) in subclause 26(6) to avoid potentially increasing the number of children and young people being detained in custody. The subclause as introduced is intended to empower the Youth Court to order the detention of a child or young person who has significantly or repeatedly breached a condition of bail and is likely to continue to do so. This provision could lead to children or young people being detained unnecessarily, which would contravene New Zealand’s international obligations. We believe that the court’s ability to reconsider bail decisions at any time renders this provision unnecessary.

**Uplifting children and young people in breach of bail curfews**

Under the bill as introduced, the Police would have the power to uplift defendants younger than 17 years old found in breach of their bail curfews, and return them to the custody of their parents or caregivers. If the defendant failed to comply with police’s attempts to uplift and return him or her to compliance, the intended outcome would be unclear. In this situation, subclause 26(7) would not provide police with any safeguards or powers associated with an arrest power of a child or young person. Potentially, this subclause could complicate the re-
lationship between the existing care and protection provisions in the Act and the youth justice system. Therefore, we recommend deleting subsection 240(3) in subclause 26(7).

**Impact on prison capacity**

The intent of the bill is to make it harder for bail to be granted to defendants who are charged with or have previously committed serious offences. We acknowledge that doing so would inevitably increase the number of defendants remanded in custody. We are aware of concern that this bill could increase costs, put pressure on resources, and hinder rehabilitation. We note that the increase in the number of prison beds required each year would probably be modest. For example, applying the reverse burden of proof to defendants charged with class A drug offences would probably require 8.5 additional prison beds each year. While the number of prisoners held on remand would increase, the amount of offending on bail might be reduced. Defendants with the highest risk of offending on bail would be remanded in custody, thus increasing public safety. Ultimately, judges would continue to have discretion to consider how defendants are to be bailed.

**Minority views**

**New Zealand Labour Party**

Despite a major tightening of the Bail Act by Labour in 2000 and further changes to the Act in 2011 which had a minor impact, the level of criminal offending while on bail remains unacceptably high. Estimates indicate that one in five people reoffend while on bail. Much of this is minor offending but between 2006 and 2010, 23 people were convicted of murder while on bail, 21 were convicted of homicide, 7,146 of acts intended to cause injury, 1,132 of abducting, kidnapping, or threatening behaviour, and 763 of sexual assaults. The impact of this bill will be to deny bail to a relatively small number of people on the margins who under the current law would have been released on bail.

The Ministry of Justice estimates are that as a result of this law change, 50 additional prison beds will be necessary, with approxi-
mately 350 extra people held in custody for some period each year, out of the tens of thousands of bail applications heard annually. Labour supports a reverse onus of proof operating in cases where the presumption of innocence needs to be constrained by evidence of high risk to public safety. Bail is already conditional on a judge being satisfied the defendant will not reoffend, abscond, or interfere with witnesses.

The reverse onus will cause judges to look more carefully at higher-risk cases, but the discretion quite properly remains with the judge to look at each case on its individual merits. The Attorney-General advises that these measures are consistent with the Bill of Rights.

The bill also removes the stronger presumption in favour of bail currently applied to 18- and 19-year-olds because of their age. Such persons under law are in every other respect considered as adults, and offending risks on bail are higher at these ages than for other age groups. Young people aged 17 continue to receive a stronger presumption for bail, provided they have not previously been imprisoned.

Labour accepts the recommendation of Youth Court Judges that police powers of arrest without warrant for children and young persons is necessary where the alleged offenders repeatedly breach bail in a serious and significant way. However, we believe that the statute should require that the breaches be significant as well as repeated, as judges have stated that the new power “needs to clearly exclude the trivial while providing the Police with the ability to be effective when faced with serious and significant breaches of bail”.

Labour’s principal concern, however, is that this bill does not address some of the key systemic reasons for a high level of offending on bail. A critical issue that the Government must address is delays in the court system that result in people being out on bail for a long period of time waiting for their cases to be heard. There has been a significant increase in delays in Auckland and Manukau, for example, before cases come to court, which increase the likelihood of offending while on bail.

We also believe that because of the production-line manner in which bail applications are heard, more assistance should be available to judges to help ensure their decisions in finding a proper balance between presumption of innocence and public safety are well founded.
The provision of risk assessment tools for judges is necessary. Proper analysis of cases where bail decisions result in further serious offending so as to determine whether and how this might have been avoided is also necessary. This however should be done within the judicial system rather than from outside to avoid undermining the independence of the judiciary.

These are issues which need to be examined further when the Committee considers the petition on behalf of Christie’s Law Group.

**Green Party**

The stated purpose of this bill is “to improve public safety and ensure the overall integrity of New Zealand’s bail system. The changes will make it harder for those accused of serious offences to get bail”. The arguments put forward proposing that the latter “changes” will produce positive outcomes have not been persuasive, and the Green Party will continue to oppose the bill. It is recognised that problems do exist, but this bill does not offer long-term solutions to those problems.

The bill would compromise a number of New Zealand’s international commitments to fairness and the maintenance of human rights; it contravenes sections of the New Zealand Bill of Rights Act 1990, and is unlikely to produce the desired improvements in public safety.

Many of the provisions contained in the bill appear to be a purely political response to expressions of public concern about crime rather than a considered attempt to improve justice outcomes. Unfortunately much of that concern is based on misinformation aided by a vocal minority calling for excessively punitive measures, and some instances of sensationalist media reporting.

The bill widens the range of offences that call for a “reverse burden of proof”, despite the challenge this poses to a basic principle of law, that a person is innocent until proven guilty.

This bill would significantly reduce judicial discretion when hearing bail applications, despite the exercise of discretion also being a basic principle of judicial practice.

The perception that judges are not sufficiently accountable, and so ought to be subject to additional constraints, does not stand up to analysis. Advice received by the committee from the Justice Depart-
Commentary

Bail Amendment Bill

The bill would compromise the presumption in favour of bail for those aged 17–19 years, where the accused person had already served a term of imprisonment. As well as being an explicit admission that imprisonment is unlikely to reduce the likelihood of young people offending, it also contravenes relevant international obligations. In any case, section 142 of the Crimes Act 1961 allows sufficient scope to allow for the detention of a person in this age group, and no extension of the power to detain is necessary or desirable.
Appendix

Committee process
The Bail Amendment Bill was referred to the committee on 10 May 2012. The closing date for submissions was 29 June 2012. We received and considered 285 submissions from interested groups and individuals. We heard 44 submissions, which included holding hearings in Wellington and Auckland.

We received advice from the Ministry of Justice and the Parliamentary Counsel Office. The Regulations Review Committee reported to the committee on the powers contained in section 30B in clause 17.

Committee membership
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Manukau City Council
(Regulation of Prostitution in Specified Places) Bill

(197—1)

Interim report of the Local Government and Environment Committee

Contents
Recommendation 2
Introduction 2
Appendix 3
Manukau City Council (Regulation of Prostitution in Specified Places) Bill

Recommendation

The Local Government and Environment Committee is considering the Manukau City Council (Regulation of Prostitution in Specified Places) Bill, and recommends that the House take note of its interim report.

Introduction

The Manukau City Council (Regulation of Prostitution in Specified Places) Bill is a local bill sponsored by H V Ross Robertson. Its purpose is to authorise the Manukau City Council to make bylaws prohibiting the business of prostitution or commercial sexual services in specified public places in Manukau City.

The bill was referred to the Local Government and Environment Committee of the 49th Parliament on 8 September 2010. While this committee was considering the bill, the Manukau City Council was disestablished as the multiple councils covering the Auckland region were replaced by a single authority. The committee received a submission from its successor, the Auckland Council, advising the committee that it intended to replace the Manukau City Council as the bill’s promoter.

The Auckland Council has since released a supplementary order paper with proposed amendments to make the council the promoter of the bill and change the definition of “district”. The council has notified the public of these proposed amendments. On 5 September 2011 the council sent the supplementary order paper to the committee for consideration.

At our meeting on 21 December 2011, we agreed to consider these amendments to the original bill. Because the amendments proposed by the council on the supplementary order paper could apply to a much wider area than that previously governed by the Manukau City Council and affect many more people than the original bill, we decided to call for further submissions on the bill, and on the supplementary order paper.
Appendix

Committee procedure
The Manukau City Council (Regulation of Prostitution in Specified Places) Bill was referred to the Local Government and Environment Committee of the 49th Parliament on 8 September 2010. The bill was reinstated as business before the 50th Parliament on 21 December 2011. We received advice from the Department of Internal Affairs.

Committee members
Nicky Wagner (Chairperson)
Maggie Barry
Hon Chester Borrows
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Dr Paul Hutchison
Hon Annette King
Moana Mackay
Eugenie Sage
Andrew Williams
Dr Megan Woods
The Local Government and Environment Committee has examined the report from the Controller and Auditor-General on *Local government: Improving the usefulness of annual reports*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Nicky Wagner
Chairperson
The Local Government and Environment Committee has examined the report from the Controller and Auditor-General on *Managing freshwater quality: Challenges for regional councils*, has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Nicky Wagner
Chairperson
The Local Government and Environment Committee has examined the report from the Parliamentary Commissioner for the Environment on *Water quality in New Zealand: Understanding the science*. We have no matters to bring to the attention of the House.

Nicky Wagner
Chairperson
This version is a replacement of the previously published version, which omitted part of the commentary.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill and recommends that the amendments be passed. The committee was unable to agree that the bill be passed. The New Zealand Labour Party, the Green Party, and the New Zealand First Party believe that, although an exclusive economic zone and continental shelf bill is necessary, they do not support the bill in its current form.

The voting during deliberation reflects an endeavour by the committee to progress, as much as possible, legislative changes that are agreed by all members of the committee. There have been instances in the committee where there have been revised or new clauses, or clauses proposed where the vote has been tied. In these circumstances, the legislation has reverted to its original form, except for clause 11.
Introduction
The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill seeks to establish an environmental management regime for New Zealand’s exclusive economic zone (EEZ) and continental shelf. The management regime would cover activities including seabed mining, energy generation, carbon capture and storage, and marine farming. It would also cover some aspects of petroleum exploration and extraction.

The bill also seeks to give effect to New Zealand’s obligations under the United Nations Convention on the Law of the Sea (UNCLOS) to manage and protect the natural resources of the EEZ.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Commencement
We recommend amending clause 2(2) so that any provision not brought into force earlier would come into force on 1 July 2014. It is intended that the Act would come into force only once the first set of regulations was promulgated. Extending the “sunset” clause from 1 July 2013 to 1 July 2014 would allow more time for regulations to be formulated, and alleviate the risk of the Act coming into force before regulations could be developed.

Interpretation
We recommend a number of amendments to clause 4, including amending the definition of “threatened species” to include any species determined by the Minister of Conservation, and notified in the Gazette, for the purposes of the New Zealand Threat Classification System administered by the Department of Conservation.

International obligations
We recommend amending clause 11 to refer more generally to New Zealand’s international obligations regarding the marine environment, rather than solely to UNCLOS. The bill seeks to give

---

1 Exclusive economic zone: New Zealand’s sea, seabed, and subsoil from 12 to 200 nautical miles; continental shelf: the seabed and subsoil of New Zealand’s submerged landmass from the territorial limits.
effect to international obligations other than UNCLOS, such as the Convention on Biological Diversity, and this amendment would clarify this intention.

Government members sought to amend clause 11 to remove wording that would make it constitute an interpretation clause and give UNCLOS independent operating effect, which they believed could cause it to become subject to international obligations not considered by Parliament.

In order to progress clause 11 we have endeavoured to come to an agreement on the wording. However, the final wording of clause 11 does not reflect the Government members’ preferred final wording of this clause.

We are aware of concern that the bill would not in fact give effect to UNCLOS, particularly the requirement to “protect and preserve the marine environment”. Some of us note that UNCLOS also gives sovereign states the rights to explore and exploit the natural resources of the exclusive economic zone and the continental shelf; and that the placement of competing rights and obligations in the Convention assumes that states will seek an appropriate and reasonable balance between these interests. No single provision of the Convention should be read in isolation, and some of us are satisfied that the bill would fulfil New Zealand’s international obligations.

**Achieving the purpose of the bill**

We recommend deleting clauses 12 and 13 and inserting new clauses 33A and 60A. We also recommend consequential amendments to clauses 10, 33, and 59.

The purpose of clause 12 is to indicate the matters that decision-makers would be required to take into account to achieve the purpose of the bill, while clause 13 would require decision-makers to take a cautious approach when the available information was uncertain or inadequate, and to consider whether an adaptive management approach would allow an activity to be undertaken.

Moving the requirements in clauses 12 and 13 to the substantive decision-making clauses of the bill would strengthen the connection between decision-making and the relevant considerations, including the need for caution in the event of uncertainty. We note that the need for caution would only apply to the making of regulations and the
consideration of consent applications or reviews; it would not apply to the monitoring of consents or enforcement.
We further recommend amending clause 33 to require the responsible Minister to take into account the public interest when being heard in relation to marine consent applications when developing regulations.

**Treaty of Waitangi**
We recommend amending clause 14 to give effect to the principles of the Treaty of Waitangi through the provisions specified in paragraphs (a) to (d). We note that our proposed amendments are similar to the approach taken under the Climate Change Response Act 2002. Further, some of us note that Moriori would have the same rights as Māori under the bill.

**New Part 1A**
We recommend deleting clauses 15 to 20 and inserting new Part 1A, consisting of new clauses 15, 17, 18, 18A, 19, and 20.
We also recommend inserting new clauses 16 and 149A to sit with the transitional provisions that would apply when the Act comes into force. New clause 149A provides for existing petroleum activities that would require a marine consent when the Act comes into force. The provisions in the new clauses are substantially the same as those in the bill as introduced, but we feel that the proposed reordering is a more sensible arrangement of the provisions.

**Regulation-making powers**
The Regulations Review Committee reported to the committee on the powers contained in clauses 27, 29(4), 32, 33 (subpart 1 of Part 2), 142, and 144. We recommend amendments to clauses 27, 142, and 144. We do not recommend any amendments relating to the issues raised by the Regulations Review Committee in subpart 1 of Part 2. These clauses are discussed below. Our proposed amendments to clause 33 are discussed above.

**Regulations prescribing standards, methods, or requirements**
We recommend amending clause 27 so that the responsible Minister must not recommend the making of regulations unless satisfied that
the requirements proposed in clauses 32 and 33, and new clause 33A, have been met, and to accommodate regulations that might have transitional provisions.

Clause 27 would allow the Governor-General, by Order in Council, to make regulations that prescribe technical standards, methods, or requirements for activities restricted by clause 15. The Regulations Review Committee was concerned that clause 27, when read in the light of clauses 28 to 29 and 32 to 33, could include matters more significant than purely technical ones. The regulation-making powers in the bill are modelled on section 43 of the Resource Management Act 1991 (RMA), and we are satisfied that the bill sets out clear limits on the use of regulations.

**Ministerial responsibilities**

The Regulations Review Committee was concerned about the amount of control that would rest in the hands of the responsible Minister alone under clauses 29(4), 32, and 33, with no indication as to how the Minister must reach the required opinion in clause 29(4), no safeguards around the Minister’s power to determine matters in clause 32, and no indication how the Minister must have regard to the matters specified in clause 33.

Some of us note that the Minister’s power is no more or less than that afforded to any Minister of the Crown when developing regulations and is subject to the same checks and balances, including approval by the Cabinet and scrutiny by the Regulations Review Committee.

**Process for developing or amending regulations**

We recommend amending clause 32 to include regional councils in the list of those to be directly notified before the responsible Minister makes a recommendation to the Governor-General about regulations. This would be consistent with the notification process for marine consent applications, and would ensure that regional councils, which are responsible for developing and implementing regional coastal plans, had an opportunity to submit on proposed regulations.

**Incorporation by reference**

We recommend amending clauses 142 and 144 to address concerns raised by the Regulations Review Committee that the responsible
Minister could control changes to material incorporated by reference into regulations. Changes to the material would then have to be made by amending regulations.

**Impact assessments**
We recommend amending clause 40(4) to allow for any measures required by, or under, the Health and Safety in Employment Act 1992, so as to cover any future regulations that might replace the current Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 1999.

**Public hearings**
We recommend amending clause 53 to allow the questioning of a party or witness by leave of the Environmental Protection Authority (EPA). While clause 53 seeks to make the process accessible to the public, and more inquisitorial than adversarial, we recognise that testing evidence is important. We believe that our proposed amendment would create the flexibility necessary for robust testing of evidence while establishing an accessible public process.

**Granting and refusing consents**
We recommend amending clauses 61 and 62, and inserting new clause 62A, to reduce it to a decision to grant or refuse an application. Clauses 10, 59, and 60, and new clause 60A would establish the decision-making criteria; and the policy intent behind clause 61 was not to create an overriding economy-versus environment test or a cost benefit analysis of the economic and environmental implications of an application.

**Adaptive management approach**
We recommend inserting new clause 62A to provide additional clarity regarding the use of adaptive management conditions, and to clarify the extent to which the EPA’s power to set marine consent conditions would be limited.
The bill as introduced could limit the EPA’s ability to set effective consent conditions, and we believe that including a description of the
way adaptive management conditions could be imposed—in much the same way that clause 63 deals with bonds—would remedy this.

**Enforcement orders**
We recommend amending clause 114 to allow any person to apply, at any time, to the Environment Court for an enforcement order. In the bill as introduced, the right to apply for an enforcement order was limited to the EPA or an enforcement officer in order to avoid vexatious applications to the Environment Court. We consider that the costs involved would be a sufficient deterrent to vexatious applications, and therefore recommend that any person should be able to apply for an enforcement order.

**Abatement notices**
We recommend inserting new clauses 122A to 122F to provide for the use of abatement notices. Such notices could be a useful tool for the EPA when dealing with urgent matters or situations where the risk to the environment was on a small scale. We note that abatement notices, which would be similar to those issued under the RMA, would have immediate legal effect and could be used in addition to enforcement orders.

**Offences**
We recommend amending clause 124 so that it would be an offence to not comply with the instructions of the EPA under new clauses 18A or 151B, or to breach an abatement notice. Failure to comply with an abatement notice would trigger a first warning for consent holders in relation to minor administrative breaches of conditions, while a further breach could result in prosecution of an offence.

**Existing activities that become discretionary**
We recommend amending clause 150 to extend the transitional period for existing activities requiring a marine consent under the Act to 1 May 2013 or six months after the Act came into force, whichever was the later. The extension we propose would provide regulatory certainty for companies planning offshore exploration for the 2012/13
summer. For this reason, we also recommend that planned activities not yet begun be covered by the transitional period.

We further recommend that anyone undertaking discretionary activities under a petroleum permit during the transitional period be required to prepare an impact assessment and submit it to the EPA under new clauses 149A or 151A. This would give statutory weight to the current interim voluntary regime.

New Zealand Labour Party minority view

New Zealand’s EEZ and Extended Continental Shelf (ECS) cover an area more than 20 times the size of New Zealand. As a signatory to UNCLOS New Zealand has sovereign rights to explore and exploit resources in the EEZ and ECS, subject to an obligation to protect and preserve the marine environment. Given the increasing interest in oil and gas exploration in New Zealand’s EEZ, it is crucial that effective regulation be implemented that can give the public confidence that any risks associated with this activity would be effectively managed and mitigated. Unfortunately, the bill does not achieve this.

Labour does not support the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill in its current form. While we agree that it is important to get legislation in place to regulate and manage the impact of any activities being undertaken in our EEZ and ECS, we do not believe this legislation provides adequate protection for the environment. We are also concerned that the bill falls short of meeting our international obligations under UNCLOS.

The purpose of the bill attempts to achieve a “balance” between environmental protection and economic development. Labour shares the concerns of submitters who stated that this approach is inconsistent with UNCLOS, which provides a right to exploit resources conditional on a duty to protect and preserve the marine environment. We agree with the submission of the Parliamentary Commissioner for the Environment (PCE) that states in regards to UNCLOS, “We can pursue economic development, but we must protect the environment. The former—economic development—is optional. The latter—environmental protection—is not.” Given that so much of the bill is being left to regulation, making it difficult to predict exactly how effective or ineffective it would be in practice, it becomes even more critical that we get the purpose clause right.
Labour would also like to see more consistency between this regime and the RMA, which regulates activity onshore and in our territorial waters (out to 12 nautical miles). Given the line drawn between the two is jurisdictional only, it makes no sense to have two such differing regimes operating side-by-side. Local and regional authorities already have experience managing activity, including oil and gas exploration, in our territorial waters using the RMA. Labour believes that better alignment of the two regimes would provide more certainty for industry and local government, as well as reassurance for the general public regarding the protection of the marine environment.

The concept of “sustainable economic development” is well understood under the RMA, and should be carried through into this regime. We are also concerned that new terms such as “favour caution” have been included in the bill without defining what this means or whether it is meant to be more or less stringent than the widely recognised “precautionary approach”. We are also concerned that the definition of “adaptive management” in this bill differs from that defined by RMA case law. The addition of these new tests would inevitably lead to costly legal action as industry and environmental advocates seek to have the intention of the legislation clarified through the Courts. This could have been avoided by using terminology that has been well defined through two decades of RMA case law.

Labour believes that the processes in the bill for issuing marine consents could be more transparent, and we are concerned that there are significantly more restrictions and barriers for submitters than there are for applicants. We are also disappointed that the bill blocks appeals to the Environment Court, instead only allowing appeals to the High Court and only on points of law. Labour believes that what happens in the EEZ does impact on communities, and that therefore the legislation must provide the same level of community engagement and transparency as the RMA.

Labour is disappointed that iwi were not consulted in the drafting of this legislation. We share the concern of submitters that consultation with, and involvement of, iwi throughout the processes outlined in the bill are only optional and at the discretion of the EPA, especially given the lack of consultation so far. Labour members also support the submission of the Hokotehi Moriori Trust that the bill be amended
to include reference to “Māori and Moriori” and “tikanga Māori and tikane Moriori” throughout the bill.

Labour is concerned that provisions covering penalties and cost recovery in the event of a breach of the Act or an accident are inadequate. While the bill provides for full cost recovery in the event of a disaster, it does not require insurance or bonds that would realistically come anywhere near covering the costs of a major clean up. Similarly, penalties for breaching the Act would not act as a major disincentive.

The Government’s stated desire to dramatically increase the amount of oil and gas exploration in New Zealand’s EEZ makes this piece of legislation critically important. As exploration moves into deeper water with harsher environmental conditions and greater risk, the public want assurances that there is a regulatory regime in place robust enough to allow any activity to be carried out safely whilst ensuring the protection of our marine environment. This piece of legislation does not provide that assurance and as such Labour cannot support it.

Green Party minority view

Introduction

New Zealand has the fifth largest EEZ in the world. It is internationally significant in terms of biodiversity and important to New Zealanders’ wellbeing and economic prosperity. The need for an environmental management regime for the oceans is long overdue.

The Green Party supports introducing a legislative and regulatory framework to manage activities in the EEZ and continental shelf. Accordingly, it supported the bill at first reading in order to hear submissions.

The Green Party believes, however, that the bill as currently drafted is deeply flawed. The bill’s weighting in favour of economic development will facilitate extractive activities and will not “protect and preserve” our marine environment.

High-impact and high-risk activities such as deep-sea drilling are more likely to be approved, bringing with them the spectre of a catastrophic oil spill with severe impacts on the marine environment and on other users of the marine space.
The Green Party seeks greater consistency between the bill and the RMA, our other major piece of environmental legislation. The use, development, and protection of air, water, land, and the coast out to the limit of the territorial sea at 12 nautical miles are all managed under the RMA. There is considerable experience in administering the RMA and case law around the concept of sustainable management and other terms. Having two different regimes operating either side of the 12 nautical mile limit makes little sense.

Comprehensive submissions from a range of stakeholders and iwi, including the PCE, the New Zealand Law Society, and environmental organisations, highlighted substantive defects and sought major changes.

We believe the recommendations of the committee make only minor changes to the bill and do not provide adequately for environmental protection. Substantive changes relating to transitional measures sought by the users such as the oil industry weaken environmental oversight, monitoring, and protection.

This minority view covers the main reasons the Green Party opposes the bill as reported back and the key changes sought. It does not cover minor or technical amendments.

**International obligations**

The Green Party shares the concern of the PCE and many submitters that the bill is not consistent with our obligations under UNCLOS. The bill does not make use and development rights subject to UNCLOS’s requirement to “protect and preserve” the marine environment, for example, irrespective of the economic gains.

It also takes insufficient account of New Zealand’s responsibilities under other international conventions such as the Convention on Biodiversity.

**Purpose**

Clause 10 sets out the purpose of the bill. The bill is fundamentally misguided because of its assumption that environmental protection can be balanced against economic development in relation to activities in the EEZ and in or on the continental shelf. Its purpose does not embody the well-established international principle of environmental sustainability.
For the Green Party, a healthy economy relies on a healthy environment. The bill fails to recognise that economic activities must maintain healthy biophysical processes, ecosystems, and ecosystem processes. The purpose and the bill’s weighting in favour of economic development is likely to promote decisions which favour short-term economic gains at the expense of the environment. As the Environmental Defence Society and others noted, this will ultimately result in longer-term economic costs and damage to New Zealand’s international reputation and economic wellbeing. It also runs counter to UNCLOS and many New Zealanders’ desire for a clean and healthy environment.

Achieving the purpose of the bill
The bill fails to recognise that there are environmental limits that must not be breached. The bill does not include a clear set of environmental principles as environmental bottom lines. It will facilitate risky and damaging extractive activities such as deep-sea oil drilling and seabed mining.

There is no commitment as such to sustaining the life-supporting capacity of ecosystems in either clause 10 or new clauses 33A and 60A. Decision-makers are only required to “take into account” matters such as “the protection of biological diversity and the integrity of marine species, ecosystems, and processes”. They are not required to “recognise and provide” for any environmental matters as matters of national importance (as they are as part of sustainable management under the RMA). Nor are they required to give matters of ecosystem functioning and health greater weight than the “economic benefit” to New Zealand of activities such as deep-sea oil drilling or seabed mining.

The Minister in developing regulations and the EPA in considering applications for marine consents would have too much discretion as to how he or she would “balance” environmental protection against economic development. There is no hierarchy in the matters the Minister must consider. This risks decisions being expedient and pragmatic.

There is clear case law that “take into account” means to consider a factor in the course of decision-making and weigh it up with other
Commentary

factors with the ability to give it considerable, moderate, little, or no weight at all as the circumstances dictate.
A clear set and hierarchy of environmental principles should be included in the bill, with decision-makers required to “recognise and provide for” the most important of these principles.

Effects on climate change
Climate change is the most serious environmental issue and is impacting on the oceans, yet the bill specifically prevents the EPA from considering the effects of discharging greenhouse gases. These should be able to be considered as part of the effects assessment, decision-making on applications, and development of regulations.

Precautionary approach
The precautionary approach is a well understood and basic principle of environmental protection in international law. Where there is risk and uncertain information, the onus is on those wanting to undertake the activity to show that it will not cause significant harm.
Instead of requiring a precautionary approach to decision-making where there is uncertainty, the bill requires decision-makers to “favour caution and environmental protection”. Favouring “caution” is a novel concept which is not defined in the bill and no case law has developed to interpret it, leading to legal uncertainty for all parties and unnecessary litigation.
It was suggested that the bill was consistent with the precautionary approach without explicitly stating it. Clear drafting is desirable. Like a number of submitters, the Green Party recommends that new clauses 33A and 60A require the application of the precautionary approach instead of “caution”.

Adaptive management
As the PCE, Te Rūnanga o Ngāi Tahu, and others noted adaptive management is best suited to activities that can be modified to reduce adverse effects if monitoring identifies this.
The bill and the committee’s amendments to the adaptive management provisions do not recognise that there are circumstances where adaptive management is inappropriate, such as where there is a risk of
causing significant or irreversible environmental harm. In such cases the need to decline consent to an application should be clear. The bill does not signal this. Instead, it requires that if the EPA is likely to decline consent, it must first consider whether adaptive management would allow the activity to occur. This turns the precautionary approach on its head.

**Treaty of Waitangi**

The Green Party is concerned about the limited way in which the Crown’s obligations under the Treaty of Waitangi are implemented. Clause 14 provides for ways in which Māori may participate in decision-making but imposes no broader obligation on the Crown. The bill should impose a general obligation on the Crown to administer and interpret the Act so as to give effect to the Treaty/Te Tiriti principles as legislation such as the Conservation Act 1987 does. And as iwi such as Ngāi Tahu sought, it should parallel the RMA to require the relationship of iwi and their culture and traditions with the marine environment, including taonga species, to be recognised and provided for in achieving the purpose of the Act.

**Different regimes and decision-making criteria inside and outside 12 nautical miles**

The bill does not promote coherent integrated management of the oceans or of land, the inshore coast, and the oceans. Inside 12 nautical miles the RMA applies, while beyond 12 nautical miles the bill would apply. The different purposes and decision-making criteria for the two regimes (sustainable management under the RMA and trading off adverse environmental effects against economic development under the bill) would mean fragmented and inconsistent management of the sea and any cross-boundary applications. The changes to the purpose clause to provide for environmental sustainability, which the Green Party recommends, would promote more coherent management, as would use of well-understood RMA terms.

**Appeal rights to Environment Court needed**

The Green Party believes limiting appeals to points of law to the High Court and not allowing Environment Court appeals would restrict judicial oversight and scrutiny of marine consent activities. The En-
environment Court is a specialist court with expertise in a range of resource management issues. Much of its work involves public interest questions. Thus, its powers of inquiry, and less formal hearing environment than some other Courts, make it accessible to the public.

Activities such as oil drilling and seabed mining have potentially irreversible adverse effects on the marine environment. We recommend allowing the public, iwi, and other users of the marine environment to appeal EPA decisions de novo to the Environment Court to help ensure that evidence is fully tested and decisions are robust.

The bill includes a number of novel drafting concepts. Allowing appeals to the Environment Court would help drive case law and further policy development and ensure the law develops with the benefit of the specialist expertise and guidance of the Environment Court.

Penalties
The Green Party believes the penalties which mirror penalties under the RMA are inadequate given the scale of some potential activities in the marine environment. The low penalties would not act as a disincentive against illegal activities, or poorly managed or operated activities, to avoid the need for Government expenditure. The Green Party believes the corporate maximum fine amount should be significantly increased above $600,000.

Transitional provisions
The bill as reported back by the committee contains transitional provisions for users currently undertaking activities that are too permissive. The Green Party would prefer a moratorium on any new activities in the EEZ and on or in continental shelf until regulations are gazetted and the bill becomes operative.

No parallel protection regime to create deepwater marine protected areas
The bill promotes the use and development of the EEZ without any parallel legislative regime to preserve and protect areas of ocean with high biodiversity, ecological and seascape values such as important seabird areas, sea mounts, or fish spawning areas. There is no legislative mechanism to create deepwater marine protected areas. The Marine Reserves Act 1971 is restricted to within the territorial sea.
The failure to progress the Marine Reserves Bill currently before the committee or to introduce new legislation for deepwater marine protected areas is another example of the undue emphasis on economic development.

**New Zealand First Party minority view**

New Zealand First argues the purpose of this bill is a contradiction in terms. The purpose of the bill states it seeks a “balance” between two countervailing forces when it has in fact changed the goal posts. Environmental and economic factors will compete on a level playing field as if it is a 50:50 proposition. It allows deep-sea drilling of oil, gas, and minerals provided its contribution to economic development outweighs its adverse environmental effects.

New Zealand First believes the default setting of this bill should be robust environmental protection, introducing economic development strategies conditional upon minimal environmental risk. This should be non-negotiable.

New Zealand First is not against economic development, but this bill would allow intensive exploration of off-shore oil, gas, and minerals to push the boundaries, over-riding environmental risk calculations. The risk of environmental catastrophe is huge. Insurance and penalties are not a high enough deterrent, as the Gulf of Mexico disaster demonstrated.

In times of economic recession, there is huge pressure to create jobs, pay off debt, sell off assets, increase value in financial returns, and exploit natural resources. There is also a subtle difference between writing legislation not to create barriers to investors and actually encouraging foreign investment. Again, the bill tilts the balance in favour of fiscal advantage over our environmental endowment.

The financial benefits are readily quantifiable in dollar terms now; this is instant gratification against the long-term devastation of New Zealand’s environmental and economic future. The idea that the Government can pick winners has been proven wrong time and time again.

New Zealand stands on the verge of succumbing to a resource curse scenario. The easy-fix temptation to focus on exploitation of natural resources could deplete skills, employment, and investment money from other major sectors. The real long term economic advantages
such as tourism could suffer as could New Zealand’s pristine environmental image which provides us with distinct advantages.

The bill should replace malleable concepts such as “sustainable development”, “precautionary approach”, “favour caution”, and “adaptive management” to eliminate unintentional ambiguity. Giving too much room for movement could backfire in appeals to the High Court and the inevitable court battles. The legal fraternity have pointed out inconsistencies with international law.

In view of the above concerns, New Zealand First is unable to support this bill in its present form because it potentially lowers the environmental protection threshold in the Exclusive Economic Zone and Continental Shelf. New Zealand cannot afford to jeopardise its extraordinary marine environment.
Appendix

Committee process
The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill was referred to the Local Government and Environment Committee of the 49th Parliament on 13 September 2011. It was reinstated as business before the 50th Parliament on 21 December 2011.

The closing date for submissions was 27 January 2012. We received and considered 125 submissions from interested groups and individuals. We heard 37 submissions.

We received advice from the Ministry for the Environment and the Environmental Protection Authority. The Regulations Review Committee reported to the committee on the powers contained in clauses 27, 29(4), 32, 33, 142, and 144.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Hon Chester Borrows
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Andrew Williams
Petition 2005/168 of Metiria Turei

Report of the Local Government and Environment Committee

Contents
Recommendation 2
Introduction 2
Green Party minority view 2
Appendix 3
Petition 2005/168 of Metiria Turei

**Recommendation**

The Local Government and Environment Committee has considered Petition 2005/168 of Metiria Turei, and recommends that the House take note of its report.

**Introduction**

The Local Government and Environment Committee has considered Petition 2005/168 of Metiria Turei, requesting that

the House urge the New Zealand Government to use every opportunity available to it to prevent the construction of the proposed dam on the Mokihinui River, Buller District, as the proposed dam will irrevocably destroy a pristine river gorge which is the habitat for endangered species such as the blue duck (whio), western weka, great spotted kiwi, long-tailed bats, powelliphanta snail, kereru and kakariki; speed the decline of the endangered long finned eel, kokopu, koaro and other native fish species; destroy cultural heritage such as the historic pack track and the remains of the iron-bridge destroyed in the 1929 earthquake; and result in the loss of a nationally significant wilderness river prized by recreationalists, trampers and fishers.

We note that Meridian Energy Limited has announced it will not proceed with its plan to erect a dam on the Mokihinui River, north of Wesport.

**Green Party minority view**

The Green Party notes that since the Mokihinui petition was tabled in the House the Parliamentary Commissioner for the Environment has released a report entitled *Hydroelectricity or wild rivers: Climate change versus natural heritage* (May 2012) with five recommendations aimed at improving the system of legislation, processes, and institutions within which decisions are made about hydro generation and wild and scenic rivers. It also notes that the November 2011 discussion paper of the New Zealand Conservation Authority, *Protecting New Zealand’s Rivers*, included a number of recommendations about how to protect a representative range of rivers and improve the protection of wild and scenic rivers. The Green Party commends these reports to the House.
Appendix

Committee procedure

The petition was received on 18 April 2008. We received written submissions from Metiria Turei, the Department of Conservation, the Electricity Commission, John Leathwick, Meridian Energy Limited, and the Ministry for the Environment.

Committee members

Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Moana Mackey
Nikki Kaye
Hon Annette King
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
The Local Government and Environment Committee has examined the report from the Controller and Auditor-General on *Local Government: Results of the 2010/11 audits*, and has no matters to bring to the attention of the House. We recommend that the House take note of our report.

Nicky Wagner
Chairperson
**Hutt City Council (Graffiti Removal) Bill**

Local Bill

As reported from the Local Government and Environment Committee

**Commentary**

**Recommendation**
The Local Government and Environment Committee has examined the Hutt City Council (Graffiti Removal) Bill and recommends that it be passed with the amendments shown.

**Introduction**
The Hutt City Council (Graffiti Removal) Bill seeks to empower the Hutt City Council to remove from private property graffiti that is visible from a public place within the district of the Hutt City Council. The council considers graffiti to be an important issue, and it is thought to signal a lack of social cohesion and to reduce property values. Although the Summary Offences Act 1981 provides legal grounds to deter offenders and control graffiti sources and effects, it does not allow the council to clean graffiti from private properties. This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.
Purpose
We recommend amending clause 3 to make it clear that the purpose of the bill is to allow the removal from private property of graffiti that is visible from a public place. As introduced, the clause would have a broader effect than the intended effect of the bill.

Interpretation
We recommend amending clause 5 to include a definition of graffiti. We believe that a definition is desirable for the sake of clarity, and recommend one consistent with section 11A of the Summary Offences Act 1981.

Council’s power to remove graffiti
For the sake of clarity, we recommend amending clauses 6 and 7. These amendments would require the council to state on the graffiti removal notice the source of the power relied on; and would require people authorised by the council to take a copy of the notice served under clause 6(3) and to carry an adequate form of identification when removing graffiti.

Civil liability
We recommend deleting clause 8, which seeks to protect the council from civil proceedings arising out of actions done in good faith, even without reasonable care. The rationale for providing this protection is unclear, and we do not believe that council employees should be given such protection when other local authority employees are generally not.
Appendix

Committee process
The Hutt City Council (Graffiti Removal) Bill was referred to the committee on 29 February 2012. The closing date for submissions was 12 April 2012. We received and considered seven submissions from interested groups and individuals. We heard three submissions. We received advice from the Department of Internal Affairs.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams

----------------------------------
Mount Maunganui Borough Reclamation and Empowering Act Repeal Bill

Local Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Mount Maunganui Borough Reclamation and Empowering Act Repeal Bill and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to repeal the Mount Maunganui Borough Reclamation and Empowering Act 1975. The Act gave the Bay of Plenty Harbour Board the authority to transfer part of the seabed of Tauranga Harbour to the Mount Maunganui Borough Council, and authorised the council to undertake reclamation of that part of the harbour for sewerage and other municipal purposes. The council reclaimed less than half of the available area, and the authority to undertake reclamation of the balance was revoked by enactment of the Foreshore and Seabed Endowment Revesting Act 18—2

Repeal of the Act

We recommend inserting new clause 5, a “sunset” clause that would provide for the Act to expire 28 days after it came into force. Without such a clause, one Act with no continuing effect would be replaced in the statute books with another.
Appendix

Committee process
The Mount Maunganui Borough Reclamation and Empowering Act Repeal Bill was referred to the committee on 13 June 2012. The closing date for submissions was 26 July 2012. We received and considered one submission from an interested group. We heard one submission.

We received advice from the Department of Internal Affairs.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
Riccarton Bush Amendment Bill

Local Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Riccarton Bush Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to modernise and update the governance arrangements of the Riccarton Bush Trustees, who manage Riccarton House and Bush, a heritage site in Christchurch. The bill would define the trustees’ functions more precisely, provide for the continuation of its work, and improve its finance and administration arrangements. This commentary covers the key amendments we recommend to the bill. It does not cover minor or technical amendments.

Commencement and financial plan
We recommend amending clauses 2(1) and 23(7) by extending the date on which clause 16 would come into force, and the date by which the first financial plan must be prepared, from 1 July 2013 to
1 July 2015. The bill was drafted before the Canterbury earthquakes and so does not take into account the fact that, under the Canterbury Earthquake (Local Government Act 2002) Order (No 2) 2011, the Christchurch City Council’s next long-term plan will be prepared in 2015. The amendments we propose would align the bill with the Order in Council.

We also recommend amendments to clause 23 to provide for the event that the council does not approve the board’s draft financial plan.

**Leases and licences**

We recommend amending clause 21 so that the terms of any lease or licence granted by the board must reflect the protection and conservation responsibilities with which the board has been charged, and the public’s right of access.

**Consolidation of legislation**

Governance of the board of trustees and the management of Riccarton Bush are currently determined by three different Acts—the Riccarton Bush Act 1914, the Riccarton Bush Amendment Act 1947, and the Riccarton Bush Amendment Act 1949. The bill seeks to amend all these Acts and enact a fourth piece of legislation to update the governance and management arrangements for the board.

We considered whether this approach would further complicate the reading of the legislation regarding Riccarton Bush and its governance. While we believe there is merit in consolidating the legislation, such amendments would be outside the scope of this bill. Standing Order 288(2) states that a committee may not recommend an amendment to a local bill that is outside the scope of the notices advertising the intention to introduce or promote the bill. Even though the proposed amendments would not change the intent of the bill, the scope of the bill is overlaid by the notice requirements the Standing Orders impose on the promoter of the bill.

The notice given by the Christchurch City Council was that the purpose of the Riccarton Bush Amendment Bill was to only amend the Riccarton Bush Amendment Act 1914, the Riccarton Bush Amendment Act 1947, and the Riccarton Bush Amendment Act 1949. To consolidate the legislation would require the repeal of these Acts. The promoter would need to withdraw this bill and take steps to intro-
duce a new bill to consolidate the Riccarton Bush legislation into a single Act by the repeal of the existing legislation.

We are also mindful of the promoter’s wishes. In the explanatory note to the bill, the promoter considered the option of a complete rewrite of the legislation, but instead chose to pursue legislative change in the form set out in this bill. It is understood that the main reasons for doing so were to preserve the continuity and legislative history of the original Act.

While we have decided to progress this bill in its current form, we would support a future review of the Riccarton Bush legislation to simplify the reading of it and to make clear its provisions.
Appendix

Committee process
The Riccarton Bush Amendment Bill was referred to the committee on 13 June 2012. The closing date for submissions was 26 July 2012. We received and considered two submissions from interested groups. We heard two submissions at a hearing in Christchurch. We received advice from the Department of Internal Affairs.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
Building Amendment Bill (No 4)

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Building Amendment Bill (No 4) and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Building Act 2004 by introducing stronger and more comprehensive consumer protection measures, clarifying the exemptions from building consent requirements in Schedule 1 of the Act, and increasing the maximum penalty for doing building work without a consent.

The bill proposes a number of changes designed to introduce the concept of “classifiable” and “referable” dams, allow regional authorities to investigate and refer a “referable” dam for classification, and improve the efficiency of the Dam Safety Scheme.

The bill also seeks to give territorial authorities the power to deal with “non-dangerous” buildings that are at risk because they are situated near dangerous buildings.
A significant number of submitters raised issues that the Government does not intend to address in this bill. The issues of joint and several liability in the construction industry, and whether a mandatory home warranty insurance scheme should be introduced, have both been referred to the Law Commission for review and the Government is awaiting the outcome of this work.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

**Interpretation**

We recommend amending clause 4 by inserting a definition of “crest”, and new definitions of “appurtenant structure” and “large dam” to repeal and replace the definitions currently in the Act.\(^1\)

The amendments we propose to the definition of “large dam” are intended to provide a common basis of measurement, as the existing definition is used for determining both whether the dam should be classified and whether a building consent is required.

The current definition in the Act of “appurtenant structure” could cause confusion, and we propose amending it to specify that such structures are integral to the safe functioning of a dam. A definition of “crest” would provide further consistency.

**Product manufacturers**

We recommend inserting new clause 5A to define the responsibilities of product manufacturers. New clause 5A summarises the existing legal obligations for code compliance.

This provision follows from the Building Amendment Bill (No 3), which was considered by the Local Government and Environment Committee of the 49th Parliament, and sought to define the responsibilities of designers and builders.

**Building consents and code compliance**

We recommend amending clause 14, and inserting new clause 62A, to replicate provisions in the Building Amendment Act 2012 for mak-

---

\(^1\) Appurtenant structure: a secondary structure situated on the same property as the principal structure.
Commentary Building Amendment Bill (No 4) 3

ing changes to Schedule 1 of the Act by Order in Council, and to clarify the crossover between the bill and the 2012 Act. Clause 14 seeks to amend section 41 of the principal Act, while new clause 62A seeks to amend section 42. Sections 41 and 42 were amended under the Building Amendment Act 2012, and we foresee difficulties with clause 14 as introduced, working alongside the amendments made by the 2012 Act.

We also recommend inserting new clauses 16A to 16C to standardise the wording in new section 42A(2)(b) and sections 112, 115, and 116A of the Act.

Certificates of work
We recommend inserting new clause 15A to amend section 45 of the Act. The amendments we propose would make it clear that a certificate of work would not, by itself, create any liability that would not otherwise exist.

We also recommend inserting new clause 15C to replace section 92(2A) and repeal section 92(3) of the Act. These amendments would rectify drafting errors in the Building Amendment Act 2012, and clarify liability issues for certificates of work that were overlooked when the 2012 Act was being drafted.

Meaning of affected building
We recommend amending clause 19 so that new section 121A would apply to dangerous dams. It was not the policy intent of clause 19 to omit dangerous dams from new section 121A, and our proposed amendments would remedy this oversight.

We note that the timing of these amendments is not related to the inquiries into the Canterbury earthquakes. The amendments would apply to the whole of New Zealand, and would not be specific to earthquake events.

Measurement of dams and canals
We recommend amending clause 29 to refer to the crest of a dam, and to include a measurement option specific to canals. Applying these provisions to canals would otherwise be unnecessarily complex, and might potentially increase compliance costs.
We also recommend that the height of a canal be measured from the invert of the canal.

**Classification of dams**
We recommend amending clause 30 so that a regional authority could require the owner of a “referable” dam to classify it in accordance with section 134B of the Act if the authority believed that the dam was located within a designated area. We note that the clause as introduced was not intended to require regional authorities to assess all dams that fall into the “referable” dam category. We also recommend amending clause 30 so that the term “designated area” could be defined in regulations.

**Classification of canals**
We recommend inserting new clause 34A to allow all the dams in a particular canal to be treated collectively in a single dam safety assurance programme. We further recommend amending clause 30 by inserting new section 134BA to allow canals to be given one or more classifications. We believe that the Dam Safety Scheme which is due to come into effect on 1 July 2014 should allow multiple classifications in the case of canals and reservoirs with multiple dams, and note that it was not the policy intent to require canals and reservoirs with multiple dams to be classified according to the highest applicable potential impact classification rating. The amendments we propose would remedy this.

**Notification of dams**
We recommend amending clause 29 by inserting new section 133C to require the owners of a large dam to notify the relevant regional authority of the dam’s size and location. This would help regional authorities establish and maintain accurate registers of dams in their regions, and provide the necessary information for them to determine whether a dam might pose a safety risk. We recommend amending clause 31. The purpose of this clause is to allow an engineer to notify a regional authority directly if they considered a dam dangerous. It was not intended to require someone
to act outside their expertise or to create unintended liability, and for these reasons we recommend amending clause 31.

We note that chartered professional engineers and members of the Institution of Professional Engineers New Zealand are required to comply with a code of ethics which includes an obligation to act if they become aware of dangerous conditions.

**New Part 4A**

We recommend a number of amendments to clause 44, which seeks to insert new Part 4A after Part 4 of the Act. We discuss them below. We also recommend consequential amendments to clause 56 to allow the regulation-making powers in clause 56 to give effect to the amendments we propose to new Part 4A.

**Meaning of residential building contract**

We recommend amending new section 362B to define more precisely which parties would be covered by the provisions in new Part 4A. The amendments we propose to this section include making it clear that design work is not covered, nor is the relationship between the head building contractor and any of their subcontractors. We believe that our amendments reflect the policy intent behind new Part 4A more accurately.

**Pre-contract information**

We recommend amending new section 362D and inserting new section 362DA to provide purpose statements and details of the content of checklists and disclosure information. We believe that providing more detail about the content and purpose of the checklist, and other information provided by a building contractor, would be helpful, but do not consider that the bill should limit the type of information that might be required. Not doing so would leave the legislation flexible, so it would be better placed to respond to issues and behaviours as they arise.

We also recommend amending new section 362D to accommodate the infringement offence of failing to supply disclosure information.
Minimum requirements for residential building contracts
We recommend amending new section 362F to provide examples of what might be included as the minimum terms to be prescribed in regulations, allow whole default clauses to be prescribed where necessary, and limit the infringement offence to a failure to have a written contract.

We also recommend amending new section 362F to clarify that prescribed minimum terms and conditions would apply only if there were no written contract. If the written contract did not contain a term or condition on the topic covered by a minimum term and condition, the prescribed minimum terms and conditions would apply.

The amendments we propose would provide more detail about what is expected to be included in regulations for residential building contracts, and better reflect the policy intent that minimum prescribed terms and conditions should not override existing contracts in the sector or the freedom of parties to contract.

Breaches of implied warranty
We recommend amending new section 362K to clarify that the proposed remedy for a breach of warranty in new sections 362L and 362M—that of cancelling a contract for breach of implied warranty—would not apply to contracts for sale. The ability to cancel a contract should be available only when implied warranties are breached under a residential building contract.

We do not agree with suggestions that the warranty provisions in the Building Act and the Consumer Guarantees Act 1983 should be reconciled and combined into a single uniform set of rules. The separation of warranty provisions between the Building Act and the Consumer Guarantees Act is intended to ensure that consumers have choice.

We also recommend amending new section 362L to stipulate that a client could require the building contractor to remedy a breach, get another contractor to remedy the breach if they refused to do so, or cancel the contract.

We further recommend amending new section 362O to specify that the result of cancelling a contract would be to preserve the situation at the date of cancelling, with parties having no further rights or obli-
gations in respect of each other. This is achieved by cross-referring the relevant provisions of the Contractual Remedies Act 1979.

**Remedy or exclusion of defects**
We recommend amending new section 362P and inserting new section 362PA to make it clear that the defect repair period would apply to on-sellers, that the client could use the remedy when a subcontractor, or any person the contractor was responsible for, had done the work, and that the provisions in new section 362P would not apply to work carried out before it came into force. These amendments reflect the policy intent behind new section 362P more accurately.
We recommend amending new section 362Q(1) to expand defect exclusions to include force majeure events (acts of God), and to clarify that building contractors are responsible for subcontractors, and an on-seller could not escape liability by arguing they were not the building contractor.
We believe that an on-seller should not be able to escape liability under this provision by arguing on a technicality that they were not the building contractor. While we consider that force majeure should be an exception, we note that the requirement to prove the defence is no different from existing common law.

**Fee for building without a consent**
We recommend inserting new clause 65A to amend the Building (Infringement Offences, Fees, and Forms) Regulations 2007 to increase the infringement fee for doing building work without a building consent from $750 to $1,000. This would increase the fine for the offence, and follows the proposed amendments to the Act in clause 13 of the bill.

**Other matters**
During our consideration of the bill, we discussed the issue of company liquidations. We were told that the building sector’s failure rate is higher than the rate for all businesses before 2003 and after 2008. We are concerned that information about whether liquidations are voluntary or forced is unavailable. We have been assured that such information will be available in future. We believe this is critical, as
part of the broader policy intent to hold building companies responsible for their buildings over the ten-year liability period.

**New Zealand Labour Party minority view**

Labour supports the Building Act review process, but cannot support the passage of this bill, which like the earlier No 3 bill, represents a piecemeal and uncoordinated response to an important issue. With its narrow focus on residential properties it fails to address the wider concerns in the construction industry. As many of the submitters have said this could have serious unintended consequences by shifting accountabilities without addressing the root cause of the problem. Neither the review nor the two bills address the technical skill levels of the building and construction industries.

Given the range of serious issues that have been identified by submitters and the fact that the government will be considering the report of the Canterbury Earthquakes’ Royal Commission, it would make more sense to separate off the elements of the No 4 bill that relate to dams and hold back the provisions that deal with the consumer issues in relation to residential properties.

The recent Supreme Court’s decision on the Spencer on Byron case has reinforced the view that the Building Act review and the bills introduced should be taking a wider look at those issues.²

Further, we found the rationale to replace Code Compliance Certificates with Consent Completion Certificates less than convincing. We agree with submissions that this is a step too far until such time as the Licensed Building Practitioner regime matures.³ At this stage the regime is more a system of “ticking boxes” than a means to up-skill the industry.⁴ The new CCC is significantly different from the old CCC, which could have detrimental effects on aggrieved household bill.

---

² *Body Corporate No. 207624 v North Shore City Council* [2012] NZSC 83 (Spencer on Byron) held that the council owes a duty of care to the owners of all buildings, irrespective of whether the buildings are residential or non-residential, in relation to its statutory functions under the Building Act 1991.

³ Submission to the Local Government and Environment Committee from the Home Owners and Buyers Association, p. 5.

owners seeking redress for loss.⁵ It is unclear whether this is an intended or unintended consequence of the No 4 bill.

Submissions from some consenting authorities made it clear that the proposed changes would not improve their potential liability positions. Rather, they argued, the measures in this bill fail to provide meaningful protection for consumers and do little to remove the risk that building consent authorities would be left to pick up more than their fair share of the cost of defective building work. Such confusion only adds to the legal fees and anomalies in terms of building legislation.

This brings us to the issue which the Government has failed to make progress on. In the absence of a more genuine reallocation of accountability, for example, through mandatory home warranties, the introduction of proportionate liability, and mandatory insurance, all parties (consumers, building professionals, and building consent authorities) will continue to be financially exposed, even for defects not of their making.

In their submissions, two of the country’s biggest city councils urged the Government to include measures such as warranties in this bill to avoid a repeat of the leaky building saga.⁶ This raises the question of the role of insurance.

Both matters of a warranty or surety scheme, and joint and several liability or proportionate liability have been referred to the Law Commission for review.⁷ This is why the Government has not been able to produce a comprehensive reform package and means that there will be further uncertainty, and create false hopes for parties in the building and construction sector.

---

⁵ Submission to the Local Government and Environment Committee from structural engineer John Scarry, p. 15.
⁶ Submissions to the Local Government and Environment Committee from the Christchurch City Council and Wellington City Council.
Appendix

Committee process
The Building Amendment Bill (No 4) was referred to the committee on 1 May 2012. The closing date for submissions was 11 June 2012. We received and considered 47 submissions from interested groups and individuals. We heard 23 submissions.

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

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
Waitaki District Council Reserves and Other Land Empowering Bill

(20—1)

Report of the Local Government and Environment Committee

Contents

Recommendation 2
Introduction 2
Lookout Point land 2
Reserves and Other Lands Disposal Bill 3
Appendix 4
Waitaki District Council Reserves and Other Land Empowering Bill

Recommendation

The Local Government and Environment Committee has examined the Waitaki District Council Reserves and Other Land Empowering Bill and recommends by majority that it be passed.

Introduction

The Waitaki District Council Reserves and Other Land Empowering Bill seeks to revoke the reservation of the Palmerston Showgrounds (in Palmerston, Otago) and Lot 1, DP 345820 (in Oamaru) and vest ownership, absolutely, in the council and the registered proprietors respectively.

The council wishes to regularise the current lessees’ occupation of the Palmerston Showgrounds by revoking its reserve status and vesting ownership in the council so that it may consider selling the property to the current lessees. The council also wishes to regularise the current proprietors’ occupation of Lot 1 DP 345820 by revoking its reserve status and vesting ownership of the property in the current registered proprietors.

Both Ngai Tahu and the Department of Conservation have consented to the revocation and vesting of the showgrounds in the council, and to the ratification of the sale of the freehold of Lot 1, DP 345820 by the council to the original registered proprietors. There was no opposition to this course of action.

The bill also seeks to clarify the status of Lookout Point land in Oamaru, also known as Forrester Heights. We discuss this in more detail below.

Lookout Point land

Clause 7 of the bill seeks to clarify the status of the land at Lookout Point in Oamaru, also known as Forrester Heights, as uncertainty now exists as to whether it was vested in the Oamaru Borough Council, a predecessor of the Waitaki District Council, as an endowment, or is a reserve and therefore subject to the Reserves Act 1977. The council wishes to have the status of the Lookout Point land confirmed as that contemplated in an 1885 Order in Council—that is, endowment land—so that it may sell the land in accordance with the Local Government Act 2002. Selling the land would not be possible if it were a reserve and subject to the Reserves Act.

We carefully considered the claims that the land was set apart as a reserve in or about 1862 and, based on extensive research and legal advice, we are satisfied that Lookout Point was never set apart as a public reserve under the Public Reserves Act Amendment Act 1862.

Reference to the land as a reserve in the Oamaru Sheep Reserve Diversion Bill 1878 has no status as this legislation was never enacted.

In an 1885 Gazette notice the land at Lookout Point was “reserved for the purpose” of an endowment in aid of the funds of the Oamaru Borough Council. This was done under sections 37 and 38 of the Land Act 1877 Amendment Act 1884. Section 38 allows the
Governor to “reserve” Crown lands. The marginal note in the 1884 Act for section 38 states that the section is about “conditions on which Governor may reserve Crown lands within boroughs or town districts as endowments therefor”.

It is our opinion that “reserve” means to set apart Crown lands as endowments, and that it does not enable a public reserve to be endowed.

In a 1937 Gazette notice the land was set apart as “reserves for an endowment” in aid of the funds of the Oamaru Borough Council. This was done under section 9 of the Public Reserves, Domains, and National Parks Act 1928, which was eventually replaced by the Reserves Act 1977. If the land at Lookout Point were considered a reserve based on the wording of the 1937 notice, it would be subject to the Reserves Act and the council would not be able to sell it.

Section 9 of the 1928 Act allows the Governor-General to vest reserves. Based on our opinion that the land is not a reserve, and was set apart in 1885 as endowment land, we are satisfied that the 1937 notice was ultra vires, or beyond the powers of the Reserves Act, and that the status of the land at Lookout Point is that of endowment land.

We note that the Primary Production Committee of the 49th Parliament reported to the House on the Reserves and Other Lands Disposal Bill, which includes provisions (clauses 18 to 20) relating to the land at Lookout Point. The committee noted that Land Information New Zealand and the Department of Conservation had reviewed their records and were satisfied that treating Lookout Point land as a reserve was “a genuine mistake, resulting from the various meanings and legal uses of the word ‘reserve’”.

**Reserves and Other Lands Disposal Bill**

We note that clause 7 of this bill is the same as clause 20 of the Reserves and Other Lands Disposal Bill, which is currently awaiting its second reading in the House. There is nothing in Standing Orders that disallows two different bills from having identical clauses. It is, however, legally unnecessary for two Acts to have two identical sections. In such circumstances, the identical clause can be removed from whichever bill is enacted second by an amendment at the committee of the whole House stage.

---

1 Primary Production Committee, *Reserves and Other Lands Disposal Bill*, p. 4.
Appendix

Committee procedure

The Waitaki District Council Reserves and Other Land Empowering Bill was referred to the committee on 13 June 2012. The closing date for submissions was 26 July 2012. We received and considered 27 submissions from interested groups and individuals. We heard seven submissions.

We received advice from the Department of Internal Affairs.

Committee members

Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
Local Government Act 2002
Amendment Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Local Government Act 2002 Amendment Bill and recommends that the amendments set out below be passed.

The committee was unable to agree that the bill be passed. The recommendations we endorse are those on which all members of the committee agree. Where we have been evenly divided in our opinion no amendments are proposed, but we discuss our consideration of the major issues (such as the purpose of local government and polls on reorganisation proposals), and a number of other matters, in the course of our commentary.

Introduction
This bill seeks to amend the Local Government Act 2002, to improve the operation of local government by focusing councils on operating more efficiently. The bill provides for the establishment of financial prudence requirements and performance benchmarks. It would allow
councils to determine policies on remuneration and staff numbers, and seeks to extend some aspects of the Auckland mayoral model to cover all mayors.

The bill also seeks to establish a more flexible range of mechanisms for Crown assistance and intervention in the affairs of individual councils, with the aim of providing assistance to councils before situations become critical.

The bill is intended to streamline local authority reorganisation procedures, give the Local Government Commission more flexibility to develop reorganisation proposals put forward by individuals, organisations, or communities, and make it easier and faster for proposals to proceed.

The purpose of local government

Section 3(d) of the Act provides for local authorities to play a broad role in “promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach”. Clause 4 of the bill seeks to replace this with “meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions”.

There is concern that the proposal to replace the “four well-beings” (social, economic, environmental, and cultural) would remove key responsibilities from local government and threaten the maintenance of local government activities that foster community cohesion and welfare. There is also concern that the proposed changes could increase the potential for judicial review of local government decisions.

Section 11A of the Act lists core services which local authorities “must have particular regard to” including public transport services, libraries, museums, recreational facilities, and the avoidance or mitigation of natural hazards. Because the bill does not seek to amend section 11A, there is a view that amending section 3(d) would not constrain local authorities from continuing their current activities.

We have considered the arguments for and against amending section 3(d) of the Act and are evenly divided in our opinion.
Transitional arrangements for reorganisation proposals
Clause 11 seeks to allow certain statutory requirements, including scheduled elections, to be extended or postponed after public notice of a final reorganisation is given, but before the fate of the proposal is known.
There is concern about the democratic implications of delaying elections, as well as more technical questions such as whether a postponed election should be re-synchronised with other local authority elections.
We considered a number of proposed amendments regarding transitional arrangements with a view to strengthening these provisions, but were ultimately unable to reach agreement.

The power of the Minister to act
Clause 21 seeks to replace Part 10 of the current Act. New Part 10 would establish a more flexible range of mechanisms for Crown assistance and intervention. Currently the relevant Minister can intervene only by replacing a local authority with commissioners or calling an election. Such an extreme action should not be undertaken lightly, which is why providing lesser levels of assistance early is favoured.
There is concern, however, that the particular approach taken in this bill would undermine the autonomy of local authorities by placing more power with the Minister, as he or she would have more opportunity to intervene.
While none of us are opposed to some provision for intervention, not all of us agree that the approach taken in this bill is the correct one. We are divided in our opinion and cannot, in good conscience, recommend any amendments to clause 21.

Poll of electors
Schedule 3, clause 49(1) of the current Act states that if a draft reorganisation scheme has been approved by the Local Government Commission, a poll of electors “must be held” in each district or region that is directly affected by the scheme. Reflecting the bill’s overall intent to take a more flexible approach, Schedule 1, clause 21 states that a poll “may be demanded” by a petition of 10 percent or more of eligible electors.
Removing the mandatory requirement for a poll reflects the bill’s intent of streamlining procedures and giving the Local Government Commission more flexibility to develop reorganisation proposals put forward by individuals, organisations, or communities.

The ability to vote is fundamental to the democratic process, and there is concern by some that removing the requirement to hold a poll would restrict the ability of citizens to participate and have their voices heard.

We note that in the provision in Schedule 1, clause 21(4), the 40-working-day period for generating a petition is a minimum, which could be extended by the Commission.

We considered a number of proposed amendments to Schedule 1, including those by the Green Party, but are evenly divided in our opinion on them.

**Interpretation**

We recommend amending clause 5 to make it clear that the existing definition of “Commission” in section 5 of the Act would not apply in new Part 10. In Part 10 the term “Commission” would refer to a commission appointed under new section 258D by the Minister to act in place of the elected members of a local authority.

**Orders in Council giving effect to reorganisation schemes**

We recommend amending clause 12 to make it clear that an Order in Council giving effect to reorganisation schemes might make technical, clerical, or typographical corrections to the wording of a reorganisation scheme.

**Role and powers of mayors**

We recommend amending clause 16 to make it clear that a council could disestablish or reconstitute a committee established by a mayor, remove from office a deputy mayor or chairperson appointed by a mayor, or appoint another committee. We believe this would establish important safeguards against a mayor exercising the powers proposed in clause 16 unilaterally and without council support.
We do not support the powers proposed in clause 16 being extended to regional council chairs, as they are elected internally by the governing body, and do not have the community mandate, accountability, or expectations of mayors, who are elected “at large”.

**Regulations**

We recommend amending clause 22 to require local authorities to disclose, in a manner prescribed by regulations, their planned or actual performance against benchmarks or parameters in their long-term plans, annual plans, and annual reports. The amendments we propose would also require the Auditor-General to report on the adequacy and accuracy of this disclosure.

We also recommend amending clause 22 to make it clear that measurement against benchmarks or parameters could be applied to a council only, or also include council subsidiaries.

The amendments we propose would increase transparency and strengthen local authorities’ accountability to communities. We consider that public disclosure of performance would encourage local authorities to adhere to the benchmarks, and would minimise the need for additional reporting and inquiry into the affairs of individual local authorities.

**Other matters**

A number of other matters arose during our consideration of this bill. While they are outside the scope of the bill, we believe they raise important issues and should be brought to the attention of the House.

**Rates**

The issue of local authority rates, and the fact that they seem to keep rising, was raised during our consideration of the bill. We have a great deal of sympathy for those on low or fixed incomes who fear being rated out of their properties.

There is advocacy for new mechanisms for local councils to raise revenue to replace or complement rates, including regional fuel taxes, regional GST, and a local share of central taxation revenue.
Local government reporting
The Department of Internal Affairs and Statistics New Zealand both collect local government data.
Statistics New Zealand undertakes two regular local authority financial surveys—the Local Authority Financial Statistics and the Local Authority Statistics. The Local Authority Financial Statistics are the results of an annual survey of accounting-based income, expenditure, and financial-position information for each local authority; while the Local Authority Statistics is a quarterly estimate of the accounting-based income and expenditure for current operations of local authorities, at a national level.
We note that where councils use subsidiaries such as council-controlled organisations to deliver services, only transactions between the parent council and the council-controlled organisations are reported. This tends to understate the scale of local authority financial activity.
The Department of Internal Affairs gathers data at council level from published long-term plans, in order to provide information on projected trends in local authority finances. Councils have considerable flexibility, within generally accepted accounting practice, as to how data is presented, and the data covers only income and expenditure and balance sheet items.
The Local Government (Financial Reporting) Regulations 2011 require local authorities, from the 2012 long-term plan, to adopt consistent approaches to defining rates, disclosing investment in subsidiaries, and disclosing depreciation for financial reporting purposes; they prescribe a standard form for funding impact statements. We consider this to be a useful first step, but would like to see requirements for more detailed information, and for all information to be reported in as consistent and uniform a manner as is practicable.

Ethics
The issue of councillors and council staff acting ethically and professionally, and the lack of repercussions when they do not, was raised during our consideration of the bill.
The Local Government Act has limited provisions relating to individual local authority members. Most legislative provisions confer powers and responsibilities on the local authority itself, which are
then exercised collectively by the governing body. Enacting a statutory duty of care would require significant policy and legal analysis to ensure it did not unintentionally cut across the existing body of relevant common law. We note that members may be held liable for the tort of misfeasance in public office, and are subject to the Crimes Act 1961 for offences relating to misleading justice, such as false statements or declarations and fabricating evidence.

The role of the chief executive of a local authority is set out in section 42 of the Local Government Act, and includes implementing the decisions of the local authority, and providing advice to members of the local authority and its community boards. While there is no explicit provision relating to the provision of resources or the impartiality of advice, the chief executive is employed directly by the local authority and is statutorily responsible for implementing its decisions.

We consider that the rights of councillors to require information from officers are implicit in the obligation of the chief executive in section 42 of the Act to provide advice. Nothing prevents a council from setting out its expectations on these issues. Similarly, it is within the powers of councillors to question or require certification of information or advice derived from consultants or other sources.

**Powers of the Auditor-General and Ombudsmen**

During our consideration of the bill the question of expanding the powers of the Auditor-General or the Ombudsmen to give them a more proactive role in assessing local government activity was raised.

Section 15 of the Public Audit Act 2001 places a statutory duty on the Auditor-General to audit the financial statements, accounts, and other information that a public entity is required to have audited. However, any effectiveness and efficiency examination is to be limited to consistency with the entity’s policy. Section 18 of the Public Audit Act permits the Auditor-General to inquire into any matter concerning a public entity’s use of its resources. Such an inquiry is similarly limited to the extent to which the public entity is using its resources consistently with its policy.

The Auditor-General has an important role of providing independent assurance that public sector organisations are operating satisfactorily, and accounting for their performance. Some of us do not think it
appropriate to change the powers of the Auditor-General to include commenting on local authority policy decisions as well as providing independent audit functions. The Ombudsmen may investigate any administrative decision, recommendation, act, or omission made by any committee, subcommittee, official, or member of a local authority. They may not, however, investigate the decisions of an entire authority. The Ombudsmen also have no power to direct a local authority to implement any recommendations the Ombudsmen may make. Like those of the Auditor-General, some of us do not think it appropriate to expand the powers of the Ombudsmen. We are also aware of workload and resourcing constraints on the Ombudsmen.

**New Zealand National Party view**

Government members view the Better Local Government Reforms as an important component of its broader plan of rebalancing the New Zealand economy. The last decade saw excessive growth in the public sector in both local and central government at the expense of the private and exporting sectors.

There has been no credible challenge to the core statistics that underline this reform. Inflation data as recorded by the Consumers Price Index show rates between 2003 and 2010 increase nationally by an average 6.85 percent. This compares to 3 percent for the Consumers Price Index over the same years and a 3.9 percent for the preceding decade from 1993 to 2002 prior to the major local government changes in 2002 that expanded the purpose. Local government expenditure as measured as a proportion of GDP was relatively static at 3.2 percent between 1993 and 2002 has subsequently grown to over 4 percent confirming, the same trend.

Government members believe these reforms are essential to improving the fiscal responsibility and efficiency of local government. These are the first four parts of an eight-part reform package. The arguments for deferral until the future work and reviews from the Department of Internal Affairs, Productivity Commission, Efficiency Taskforce, and Auditor-General ignore the need for the process of change to get under way. Households and businesses need the benefits of these reforms as soon as possible.
New Zealand Labour Party view

Labour stands for effective and efficient local government with long term social and economic planning to be integrated with land use and other resource planning. We believe in local democracy, local empowerment, and local choice.

Labour opposes the Local Government Act 2002 Amendment Bill on six major grounds:

- There is no evidence to show the Local Government Act 2002 (LGA02) which brought in the requirement for local government to consider the economic, social, cultural, and environmental well-being (the “four well-beings”) of their communities has led to an expansion of the purpose and function of local government.

- The bill is based on misinformation and a very small number of examples, particularly in relation to rate increases and debt levels of councils between 2002 and 2011.

- The bill has been rushed, written before sufficient evidence has been gathered to support the changes. Adequate consultation had not occurred leading to confusion as to whether the changes proposed, would work.

- The “Better Local Government” reform proposals are being implemented in a back-to-front way, with a number of reviews aimed at gathering evidence, information, and providing advice are due to be reported after the passage of this bill.

- The reorganization proposals for local government are antidemocratic with the removal of an automatic poll of voters in an affected area.

- The bill leads to far greater interference in local government by the Minister of Local Government than is warranted by evidence.

The LGA02 was a fundamental change in approach to the empowerment of local government. The former prescriptive approach to specifying what councils could do and how they could do it (in the Local Government Act 1974) was replaced by broad powers enabling councils to reflect community preferences and interests. The powers are bound by detailed process requirements designed to promote transparency and accountability, and to enable effective informed public input into decision-making processes (with a limited number of ex-
plicit prohibitions and constraints) (page 9 Regulatory Impact Statement (RIS)).
This bill seeks to “refocus” the purpose statement of the Act on the “view” that LGA02 provides no direction as to what councils should be expected to do, and is too broad (page 7 RIS).
The RIS prepared by the Department of Internal Affairs, dated 16 March 2012 released at the time of “Better Local Government”, states on page 11, “There is no clear quantitative evidence to suggest that the LGA02 has resulted in a proliferation of new activities, or that local government is undertaking a wider group of functions”.
In response to a questionnaire sent to all councils requesting what new activities they had undertaken since 2002 only one council identified a new function.
At the AGM of Local Government New Zealand (LGNZ) in July 2012 members voted unanimously to retain the four well-beings in the Local Government Act 2002.
The majority of submissions opposed the removal of the “four well-beings”.
Justification for “Better Local Government” reform is based on data which has not been backed by evidence. Figures provided at the time of the policy release were removed from the Department of Internal Affairs (DIA) website within days of their publication. The Minister of Local Government in a letter to Labour dated 16th July 2012 wrote “you note that the department has removed the tables from its website. As noted on the website, this was because there were issues with the data both in terms of its accuracy and in terms of the picture that was being given for some council’s”.
LGNZ reported in a briefing to the incoming Minister of Local Government (April 2012) that “debt by the sector overall is still quite modest (servicing costs average approximately 5.5 percent of council income)” (p. 6). It also published a series of “facts” to refute claims that local government spending was out of control, including:
(a) Local government expenditure has remained a relatively consistent proportion of between 3 and 4 percent over the last six years.
(b) Pressure on infrastructure, such as water and roads plus encouragement by Government for councils to bring forward infrastructure projects during the global financial crisis, has caused councils to increase their investment.
(c) Local Government expenditure as a proportion of total Government expenditure has also remained relatively consistent over the last six years—the average proportion was 8.21 percent, virtually the same proportion as 2006 (8.20 percent).

A recent report released in October 2012 by NZIER entitled *Is Local Government Fiscally Responsible?* states that data from the last 10 to 20 years suggests the local government sector as a whole has NOT been fiscally irresponsible. Rates and spending have risen but the increases are not startling relative to GDP or property values. At an aggregate level, investment and borrowing also cannot be said to be irresponsibly high. Debt is low relative to assets; capital spending is steady relative to the asset base; debt servicing costs are at a responsible level. (http://nzier.org.nz/publications/is-local-government-fiscally-responsible)

Both DIA and LGNZ as well as many other submitters were concerned at the rushed nature of the legislation. The RIS stated that the timeframe within which the proposals have been developed has restricted the ability to assess multiple options, and the assumptions in “Better Local Government” have not or only partially been tested. LGNZ said in their briefing to the incoming Minister that “the first tranche of these changes are to be rushed through Parliament in a process that denies citizens their normal right to comment on draft legislation”. This has led to the select committee asking the department to go back to LGNZ to consult on issues.

The “Better Local Government” proposals are made up of eight points. Four relate to the legislation currently under consideration while four others relate to work to be undertaken by the efficiency task force: the Productivity Commission’s Review of Regulatory Performance; the review of local government’s role in infrastructure; and the review of development contributions. Submissions recommended reversing the proposed programme to complete this work before passing legislation. In keeping with the advice of the Chief Science Advisor to the Prime Minister, policy should be based on sound evidence and research. This bill is not based on evidence as the RIS points out (page 11).

The reorganisation proposals undermine the fundamental basis of democracy. LGA02 clearly sets out the purpose of local government is to enable democratic decision-making and action by and on behalf of communities, based on three core concepts including “effective
Local choices and participation in making them”. The removal of a right to hold a ballot of ratepayers on an amalgamation proposal in their local area goes against that core concept. LGNZ pointed out in their advice to the incoming Minister that communities should be free to make decisions on local matters that directly affect them. Labour is opposed to the weakening of local decision-making by local people. Many submissions were also strongly opposed.

The powers the Minister takes under the intervention framework intrude too far into the independent operation of democratically elected local councils. Suggestions to involve LGNZ and the Audit Office in providing early advice and intervention to a struggling council were rejected by the Government in favour of ministerial intervention. Labour believes this bill is ill considered, not based on sound evidence, but rather reflects the Government’s perception and misconceptions about local government.

**Green Party view**

Some 518 individuals, organisations, and local authorities took the time to write thoughtful and constructive submissions and many appeared before the committee during hearings in Auckland, Hamilton, Wellington, and Christchurch. The “vast majority” of submissions opposed the bill. Given this, the Green Party is disappointed that more weight was not given to issues raised by submitters and that Government members declined to amend the bill to reflect public and submitter concerns.

The Green Party opposes the bill particularly:

- the changes to the purpose of local government and the deletion of the “four well beings” (social, economic, environmental, and cultural)
- the increased mayoral powers
- the loss of democracy represented by the increased powers of ministerial intervention and the processes for how and when this will be used
- the content of the fiscal benchmarks
- the undemocratic procedures and criteria for council reorganisation.
Purpose of local government and “four well-beings”

The Green Party agrees with the assessment by Local Government NZ and SOLGM that: “The scale of the change signalled in this bill...[has] the potential to create the most significant change to the sector since the amalgamations and accountability review of 1989. We would have expected that such proposals would have been grounded in top quality policy analysis, and a robust assessment of all of the available evidence.

“One only need look at the first page of the RIS to conclude, that for the most part, this has not been the case”.

The lack of sound data and information or any robust analysis to support the changes in the bill risks it being ineffective, having unintended consequences, and putting additional costs on councils and ratepayers, such as to amend long-term plans.

Like the “vast majority” of submitters, the Green Party opposes the changes to the purpose of local government in the principal Act and the deletion of the promotion of the four community well-beings and their replacement by the narrower, more restrictive purpose in clause 7. The new purpose does not accurately describe the role of local government in New Zealand and councils’ relationship with their communities.

Many councils and community organisations highlighted councils’ central role in “place making”—creating attractive and healthy places to live and work in which attract investment capital, entrepreneurs, and skilled workers.

Submitters presented evidence on the many significant and diverse activities and services which councils provide or help support. These include early childhood education, premises for medical and health professionals, community care for the disadvantaged, funding for riparian management, crime prevention, and the arts. These matters can be as important to communities’ long-term economic viability, growth, and development as infrastructure provision.

As the Human Rights Commission observed, “Local government decisions, including how services are provided, are often the most direct expression of the democratic process (or lack of it)”. The Green

1 Submission of the Society of Local Government Managers (SOLGM) at p. 6.
2 Submission of Human Rights Commission at p. 2.
Party believes that the change to the purpose will undermine councils’ autonomy and their ability to deliver on their communities priorities.

As the Tasman District Council noted, “The benefit of the current purpose of local government stated in the LGA 2002 is that it focuses councils and communities on ensuring council activities and services provide community well-being. It enables councils to identify what is important to their specific communities and to meet the needs and preferences of those communities.… “What councils do is ultimately determined in consultation with their communities. Any council not reflecting the needs, wishes, and preferences of their communities will not last long”. 3

Council submissions and evidence suggested that rates increases are more likely to be the result of infrastructure provision, addressing historically deferred maintenance, and new regulatory responsibilities rather than the current statutory purpose of promoting community well-being. The Green Party agrees. The Society of Local Government Managers (SOLGM) noted that, “there is little evidence to suggest that the sector is not focussed on so-called “core” services. Three different reports concluded that the sector has not significantly expanded the scope of its activities since 2002. Analysis of the 2006 and 2009 long-term plans (LTPs) shows that between 70 and 75 percent of the capital programme is on roads, the three waters, and flood protection”. 4

Submitters including the Auckland District Law Society noted that the new purpose will cause legal confusion and uncertainty and risks legal challenges to council decisions. Accordingly it has a potentially “chilling” effect on council decisions if councils take a narrow view of their roles and do not invest in facilities or services other than infrastructure which are important to their communities. This potentially creates funding gaps, and risk services not being provided.

3 Submission of Tasman District Council at p. 4.
4 Submission of the Society of Local Government Managers (SOLGM) (July 2012) at p. 7.
Role and power of mayors

A number of submitters opposed the increased powers for mayors because of the risk this posed to a constructive and collaborative working relationship between the mayor and councillors. The Green Party endorses these concerns.

Ministerial intervention powers

As the Human Rights Commission noted, “Effective democracy demands respect between the different spheres of government and recognises the defined roles that they play in serving their citizens”. Submitters noted that the proper accountability for a council is directly to its community through consultation and electoral processes. By significantly increasing the power of the Minister to interfere with local authorities, the bill changes the balance of power and accountability from the community to the Minister and central Government. This is a significant constitutional change which has not been widely debated which undermines local democracy and democratic processes. It creates a significant risk of wide discretionary powers being transferred to non-elected appointees contrary to the other purpose of local government in the principal Act which is to enable democratic local decision-making and action by, and on behalf of communities. This is opposed.

Submitters’ concerns about these powers included the broad definition of a “problem” which “justifies” ministerial intervention by way of Crown Observer, Crown Manager, Crown Review Team, or appointed commissioners; and the absence of any checks on the ministerial power, such as a requirement for prior advice from an independent agency (such as Local Government NZ) to confirm the existence of a “significant problem”.

The Green Party shares those concerns. It opposes the low thresholds for intervention, the lack of clarity in the definitions of “problem” and “significant”, and the potential for inappropriate use of the ministerial intervention powers. It opposes the link between the fiscal benchmark requirements and the triggering of the intervention powers as giving the Minister an inappropriate amount of discretion as to when to intervene.

The Green Party is disappointed that few of submitters’ many constructive and detailed suggestions to clarify and better define the intervention powers, and to require costs any appointees to be shared with central Government were implemented.

The Green Party supports submitters who suggested that other options (which would not require legislative change) would better assist councils avoid or address potential governance or financial prudence issues. These include improved governance and financial training for councillors; more guidance materials and greater assistance from experts appointed by the Local Government NZ and SOGLM; and mentoring opportunities.

Fiscal responsibility requirements
The Green Party supports the contention that local authorities must conduct their affairs in a fiscally responsible manner and keep both rates and debt at sustainable levels. It notes that the fiscal prudence of the majority of local authorities has not been questioned and that none of the councils perceived to be in difficulty has defaulted on their debt servicing obligations.

It agrees with Auckland Council and other submitters that the bill’s system of financial benchmarks will degrade rather than enhance councils’ ability to manage their affairs in a financially prudent way. This is because link between the financial benchmarks and the ministerial intervention powers is likely to hasten the evolution of the benchmarks into de facto caps on rates and council debt which councils would feel forced to comply with, reducing their ability to act prudently.

The Green Party supports a strengthening of the balanced budget requirements in section 100 of the principal Act as an alternative to the bill’s benchmarks.

Reorganisation
As the Secretary General of the United Nations has noted: “Democracy implies far more than the mere act of periodically casting a vote…it covers the entire process of participation by citizens in the political life of their country”.6

The Green Party opposes the “streamlining” of council reorganisation where this undermines the democratic right of local communities to reflect their diversity and decide their own council governance structures. As one submitter, Sarah Walters said, “This is not streamlining, it is steam rolling”.

The Green Party’s particular concerns include:

- The Local Government Commission rather than communities make the decision on reorganisation
- The lack of an automatic poll on a final reorganisation scheme and the burden on communities of having to organise a petition to achieve a poll
- The short time and large number of signatures required (10 percent of electors) for a community petition to achieve a poll
- The requirement where a poll is undertaken for this to be over the whole affected area, rather than each council area affected by reorganisation proposals
- The exclusion of “effective local community representation” and consideration of “representing communities of interest” as key criteria for assessing reorganisation proposals.

**New Zealand First Party view**

New Zealand First opposes the Local Government Act 2002 Amendment Bill.

While NZ First agrees there is some merit in a review of the Local Government Act 2002, caution must be exercised in tampering with core democratic principles and undermining the important second tier of New Zealand’s democratic system—local government. This represents the overwhelming sentiment of 775 written submissions and 186 oral submissions on the bill.

An amendment to the Act changes the purpose of local government “... to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses”.

This simplistic approach totally underestimates the extent to which local authorities form the basic fabric of our communities.
NZ First agrees the role of local government must be aimed at achieving the best return for ratepayer and taxpayer money, especially in the provision of world-class infrastructure. We also acknowledge that there must be some limits on non-core activities but the bill advocates the complete removal of the four well-beings (social, economic, environmental, and cultural well-being) from the purpose of the Local Government Act. This will essentially destroy the meaning of “community”, the heart and soul, and the essence of what makes a city and district a place where people want to live.

Economic well-being encourages councils to attract business and enterprise to their region such as developing conference- and tourism-related facilities. One such economic promotion is the zero fees initiative at Southland Institute of Technology, supported by local government in the region which attracts a sizeable student population that may otherwise have bypassed Invercargill.

Environmental well-being ensures councils can promote clean green policies which enhance and protect the environment; council recycling programmes and sustainable urban design are good examples of the important role that local authorities play in environmental governance.

Social well-being means councils can allocate resources to facilitate social cohesion. A prime example is the huge pressure on councils to deal with the impact of immigration which has seen massive demographic transformation especially in our major cities. Central Government’s immigration policy places a high burden on councils to service social and cultural requirements as our cities become more ethnically diverse.

And finally, cultural well-being encompasses sports and festival events, expanding horizons in the arts, music, design, heritage, and activities that define a community’s character.

Those elected to local bodies represent the grassroots interest of communities, watchdogs to ensure the financial bottom line does not over-ride the greater community interest. If council was meant to be run entirely on a commercial basis, why have elected officials at all?

If the four well-beings are removed from the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009, but remain in the likes of the Building Act 2004, Resource Management
Act 1991, Auckland Regional Amenities Funding Act 2008, and all the Maori Settlement Acts, this is a discriminatory double standard by the Government.

NZ First agrees with the setting of prudential legislative guidelines on rates and debt but there is a misconception that local government debt escalated because councils pandered to popular local interest side issues. This is a relatively small portion of council spending whereas the fact is local government had to respond to an enormous vacuum created by central Government in dealing with decades of infrastructure neglect.

The National Government is on record advocating increased central and local government cooperation and partnership to address infrastructure deficit to help increase New Zealand’s economic productivity and competitiveness. Now that local government has responded to this request, it is chastised and criticised by central Government for rising to the challenge.

A review is needed of the burden and associated costs that central Government imposes on councils when local government is required to meet legislative requirements such as the regulation of prostitution and brothels, dog control, and liquor licensing.

NZ First is opposed to selling off local government assets to help fund council activities. We see strategic assets such as pensioner and community housing as being cost neutral, especially when taking into account the huge real estate capital gains provided from retention of such assets.

With reference to the Funding Local Government: The Report of the 2007 Independent Inquiry into Local Government Rating (the Shand report) on debt repayment, NZ First advocates exploring avenues of revenue, other than rates, such as enabling councils to set fees for all regulatory responsibilities on an “actual and reasonable” cost-recovery basis.

The widening of mayoral executive powers is a two-edged sword. The bill changes the definition of the mayor being first among equals to a presidential model. This may widen the scope for a competent mayor but there are no checks and balances in the event a dictatorial mayor goes rogue.

The local government framework was meant to be consultative and cooperative. This bill has the potential to set up combative forms
of governance which could divide mayors and councillors; it is an unhealthy model.

This bill will make it easier for the Minister to intervene and for central Government to take action against a local authority. Submissions point out it will be too easy for a central Government power grab without first exhausting all other avenues before intervention.

The changes will give central Government the power to move into local authorities and replace them with hand-picked Crown Managers and commissioners. Also, NZ First does not agree that the Minister of Local Government is able to suspend local body elections. We are against central Government’s increased powers to interfere in council operational issues before first steps options are taken to authoritative sources such as Local Government NZ, the Auditor-General, and the Ombudsman.

As chair of the Local Government Review Panel, Rt Hon Sir Geoffrey Palmer refers to the democratic deficit in local government. And further, the huge disconnect between ratepayers and councils is shown by the lack of participation and interest in local politics, and often there is considerably less than 50 percent voter turnout. NZ First believes that many of the changes proposed in this bill will only serve to undermine public confidence and interest in local government democracy.

This bill poses a direct threat to the important second tier of democracy in our country and could mean that local councils end up being run exclusively by those that support the Government of the day—not controlled by those elected by the voting public. It is fundamental that communities have the democratic right to determine the local governance of their city and district. Any proposed amalgamations of local authorities should be as a result of local community acceptance and approval, not imposed on them by central Government intervention as occurred in Auckland.
Appendix

Committee process
The Local Government Act 2002 Amendment Bill was referred to the committee on 12 June 2012. The closing date for submissions was 26 July 2012. We received and considered 518 submissions from interested groups and individuals as well as a number of supplementary submissions. We heard 178 submissions, which included holding hearings in Auckland, Christchurch, and Hamilton.

We received advice from the Department of Internal Affairs. The Regulations Review Committee reported to the committee on the powers contained in clause 11.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
South Taranaki District Council (Cold Creek Rural Water Supply) Bill

Local Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the South Taranaki District Council (Cold Creek Rural Water Supply) Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The South Taranaki District Council (Cold Creek Rural Water Supply) Bill seeks to establish a process by which the council may obtain the authority to transfer the Cold Creek Rural Water Supply Scheme to Cold Creek Community Water Supply Limited. The scheme primarily provides water for farming purposes, and services around 162 connections in an area covering 7,620 hectares in the Pihama/Te Kiri area in South Taranaki. Cold Creek Community Water Supply has managed the scheme since 2001 through an informal arrangement with the Council. This arrangement is deemed to be unsatisfactory.
as regards the present management and operation of the scheme, and
the way the capital costs were originally funded.
This commentary covers the key amendments we recommend to the
bill. It does not cover minor or technical amendments.

Interpretation
We recommend amending clause 4 by dividing the definition of
“scheme assets” into capital assets (previously paragraphs (a) to (i))
and rights and privileges (previously paragraphs (j) to (l)). We pro-
pose this separation for consistency with the Resource Management
We also recommend amending clause 4 to exclude the cross linkage
pipeline (beyond the connection point or tee junction) that may be
used to supplement the Opunake water supply in certain emergency
situations. This pipeline would remain in Council ownership should
the scheme be divested. The amendment we propose would make
this intent clear.

Transfer process
We recommend amending clause 5 to provide an opportunity for au-
thorities representing iwi whose rohe wholly or partly encompass
the scheme distribution area to be consulted, and for the Council to
make their views publicly available. These amendments are consis-
tent with section 14(1)(d) of the Local Government Act 2002, which
says that “a local authority should provide opportunities for Māori to
contribute to its decision-making processes”.

Eligibility to vote in referendum
We recommend amending clause 7 to make it clear that eligibility to
vote would be restricted to properties within the scheme distribution
zone. We considered whether the residents of Opunake should be
included in the referendum in recognition of the emergency supply
agreement, but ultimately decided not to recommend such an amend-
ment.
We also considered whether the referendum should include all elect-
ors in the South Taranaki region. However, the public subsidy for
construction of the scheme came from taxes not rates, and it would
be impractical to have a referendum over the whole country. The majority of us believe that it is fair for the referendum to cover only those covered by the scheme.

We have been assured that the Council and the Company have agreed to continue the current arrangement for the scheme to supplement the Opunake water supply in an emergency.

We also recommend a consequential amendment to clause 9(b).

**Requirements for plans and assessments**

We recommend several amendments to clause 8, to require the Company to assess its capability and commitment if property within the scheme’s distribution zone were to be transferred or leased to another person, and to clarify that the assessment includes the supply of water to Opunake in emergencies.

We also recommend amendments to require the Company to prepare a protocol for appropriate liaison with relevant iwi whose rohe lie in the distribution area.

**Matters relating to transferring the scheme**

We recommend deleting clauses 12(1) and 13. Clause 12(1) seeks to exempt the Council from certain duties imposed by section 125 of the Local Government Act 2002 (assessments of water and sanitary services); while clause 13 would exempt the Council from certain duties relating to drinking water under the Health Act 1956. These provisions are outside the scope of the bill as expressed in the explanatory note and clause 3, and we therefore recommend deleting them.

We are aware that the Council felt the Company should be contracted to assist the Council in meeting its statutory obligations, and should indemnify the Council against liabilities. We are assured that the Council and the Company have agreed to provide the Council with any information it needs to complete an assessment under section 125 of the Local Government Act, and have also agreed to a binding and irrevocable indemnity regarding the obligations of the Council under the Health Act relating to drinking water.

We also recommend inserting new clause 13A to require the South Taranaki District Council to notify the Taranaki Regional Council, as
soon as practicable, that the scheme has been transferred. This would allow the regional council to liaise with the Company on resource management matters.

**Green Party minority view**
The Green Party does not support the Council’s divestment of the Cold Creek Water Supply given significant public funding for the scheme infrastructure, including a 1984 Crown grant of $1.28 million for half of the scheme’s construction costs and ratepayers’ contribution to its operating costs. It remains concerned about the potential for the scheme’s privatisation to affect the value of and potential rental return from leases in perpetuity over Māori reserve land in the scheme area and the land owners’ access to water from the scheme. The Green Party shares the concerns of Taranaki Iwi and Ngati Ruanui about the precedent which the bill may set for water management. The Green Party considers that the referendum should include all residents of South Taranaki District because of past public funding of the scheme and because of officials’ advice that the Council’s proposed divestment was not sufficiently described in the Council’s draft Long Term Plan for 2012–22 to provide a basis for public consultation.
Appendix

Committee process
The South Taranaki District Council (Cold Creek Rural Water Supply) Bill was referred to the committee on 21 March 2012. The closing date for submissions was 3 May 2012. We received and considered 41 submissions from interested groups and individuals. We heard four submissions.
We received advice from the Department of Internal Affairs.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
Hon Chester Borrows participated in the consideration of this bill.
Environment Canterbury
(Temporary Commissioners and Improved Water Management) Amendment Bill

63—1

Report of the Local Government and Environment Committee

Contents
Recommendation 2
Introduction 2
New Zealand Labour Party, Green Party, and New Zealand First Party minority view 3
Appendix 4
Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill

Recommendation

The Local Government and Environment Committee has examined the Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill and was unable to agree that the bill be passed.

Introduction

The bill seeks to amend the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010. The Act replaced the elected council members of the Canterbury Regional Council, also known as Environment Canterbury or ECan, with Government-appointed commissioners. The commissioners were tasked with acting as Environment Canterbury’s governing body. They were given special functions and powers to address issues regarding the efficient, effective, sustainable management of Canterbury’s fresh water and other regional resources. The Act suspended the 2010 election but allowed elections to occur in 2013.

The bill would extend the governance arrangements in the Act by retaining Government-appointed commissioners and by specifying that the next election would be in 2016 and not 2013. It would also require a ministerial review of Environment Canterbury’s governance structure, membership, powers, and functions.

The bill would also repeal provisions in the Act relating to the Hurunui River Water Conservation Order application. This application was withdrawn on 16 December 2010, making the provisions unnecessary.

Canterbury earthquakes

The Act came into force before the Canterbury earthquakes. The earthquakes and the destruction they wrought, the consequent need for a consistent approach to planning for infrastructure, and ensuring stable regional governance and effective leadership are given as reasons for extending the Act. Many people, however, believe that the earthquakes should not be used by central Government to justify further intervention, and note that the Canterbury Earthquake Recovery Authority Act 2011 was enacted to enable a focused, timely, expedited recovery.

Some members of the committee acknowledge that temporarily suspending democratic rights during an emergency may sometimes be necessary. Not all of us consider, however, that the circumstances in Canterbury justify continued suspension of local body democracy. Government members of the committee note that New Zealanders living in Auckland, Gisborne, Nelson, Tasman, and Marlborough do not have separately elected regional councils, and would argue they do not have an inferior form of democracy.
The right of appeal

Under the Act decisions made by the commissioners on resource management planning and policy framework may not be appealed to the Environment Court. This is intended to empower the commissioners to expedite decisions on the natural resources plan and the regional policy statement.

The bill seeks to continue these provisions, as the commissioners’ work is incomplete and Government members believe maintaining their ability to expedite decisions is considered desirable. The need for stable regional governance while Canterbury rebuilds and recovers from the earthquakes is also a consideration.

Many submitters were concerned that the bill would continue to deny Cantabrians the right to appeal regional plans and water conservation orders to the Environment Court. There was also concern that the different criteria used for water conservation orders in Canterbury reduce the protection available to Canterbury rivers and lakes. Government members view it as important that the decisions on Canterbury’s water conservation orders and regional water plans are made in a coordinated way, and consider that the urgent importance of getting operative plans on Canterbury’s waters outweighs the additional appeal rights.

The committee has no other matters to bring to the attention of the House.

New Zealand Labour Party, Green Party, and New Zealand First Party minority view

Opposition members of the committee are opposed to the bill’s extension of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act governance arrangements and special water management decision making powers for a further three years.

Opposition members regard this as a denial of Cantabrians’ democratic rights and reject the justification that circumstances relating to earthquake recovery and governance challenges continue to exist in Canterbury on a scale that sets it apart from other regions.

We note that 90 of 95 submissions received opposed this legislation. Principally the bill was opposed on the basis that it is seen as undermining democratic rights. In particular we agreed with the Chief Human Rights Commissioner’s submission that argued that the undemocratic way in which the original legislation was introduced, and its continuance, are simply wrong from a human rights perspective. He pointed to the Cabinet paper accompanying the original Act, which stated that the deferral of the 2010 election should only be a temporary measure because it constrained the right to public participation.

The first cabinet paper signed by the Minister of Local Government, David Carter, and the Minister for the Environment, Amy Adams, stated that any option except a return to a fully elected council would limit the democratic rights of residents of Canterbury compared to the rest of the country. Furthermore, we note the departmental report may limit the rights of the people of Canterbury under Article 25 of the International Covenant on Civil and Political Rights (ICCPR). We agree with the Human Rights Commission’s submission that in effect the current proposal means the Government would be in breach of its international obligations and its commitment in the ICCPR to protect, promote, and fulfil the rights of people in New Zealand.
ENVIRONMENT CANTERBURY AMENDMENT BILL

Appendix

Committee procedure

The Environment Canterbury (Temporary Commissioners and Improved Water Management) Amendment Bill was referred to the committee on 18 September 2012. The closing date for submissions was 23 October 2012. We received 95 submissions from interested groups and individuals. We heard 24 submissions, which included holding a hearing in Christchurch.

We received advice from the Department of Internal Affairs. The Ministry for the Environment provided additional advice.

Committee members

Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams

New Zealand Labour Party members were replaced by Dr Megan Woods at different times.
Marine Reserves (Consultation with Stakeholders) Amendment Bill

(38—1)

Report of the Local Government and Environment Committee

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Progress</td>
<td>2</td>
</tr>
<tr>
<td>Appendix</td>
<td>3</td>
</tr>
</tbody>
</table>
Marine Reserves (Consultation with Stakeholders) Amendment Bill

Recommendation
The Local Government and Environment Committee has examined the Marine Reserves (Consultation with Stakeholders) Amendment Bill and recommends that it not be passed.

Introduction
The Marine Reserves (Consultation with Stakeholders) Amendment Bill is a member’s bill in the name of Eric Roy. It was referred to the Local Government and Environment Committee of the 48th Parliament on 17 May 2006, and was reinstated by the 49th and 50th Parliaments.

The bill seeks to amend section 5 of the Marine Reserves Act 1971 to provide for consultation with user groups in an area that is the subject of an application for the development of a marine reserve.

Submissions were not called for on the bill as its progress was considered to be dependent on the progress of the Marine Reserves Bill.

Progress
On 28 February 2012 the Minister of Conservation wrote to inform us that the Government intends to withdraw the Marine Reserves Bill and introduce a new Marine Reserves Bill. Eric Roy supports this intention, as the new bill is intended to cover the issues of early consultation and community support which are addressed in his member’s bill.

Because we have considered progress of this bill to be dependent on the progress of the Marine Reserves Bill, we resolved to release this report at the same time as a report on the Marine Reserves Bill.
Appendix

Committee procedure
The Marine Reserves (Consultation with Stakeholders) Amendment Bill was referred to the Local Government and Environment Committee of the 48th Parliament. It was reinstated by the 49th and 50th Parliaments.

Committee members
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
# Marine Reserves Bill

(224—1)

Report of the Local Government and Environment Committee

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Progress</td>
<td>2</td>
</tr>
<tr>
<td>Marine Reserves (Consultation with Stakeholders) Amendment Bill</td>
<td>2</td>
</tr>
<tr>
<td>Appendix</td>
<td>4</td>
</tr>
</tbody>
</table>
Marine Reserves Bill

Recommendation
The Local Government and Environment Committee has examined the Marine Reserves Bill and recommends that it not be passed.

Introduction
The Marine Reserves Bill is a Government bill in the name of the Minister of Conservation, Hon Kate Wilkinson. The bill seeks to implement the New Zealand Biodiversity Strategy, which was developed partly to fulfil commitments made under the International Convention on Biological Diversity. The bill seeks to protect marine communities and ecosystems, including representative examples of all the more widespread and common types as well as sites that are outstanding, rare, distinctive, or otherwise important. The bill also seeks to extend the exclusive economic zone (EEZ) to include all of New Zealand’s marine communities and ecosystems.

The bill was referred to the Local Government and Environment Committee of the 47th Parliament on 15 October 2002, and was reinstated by the 48th, 49th, and 50th Parliaments. In March 2005 the committee resolved to suspend work on the bill. The Government indicated that it wished to review the initial work done under the Marine Protected Areas Policy, to see whether marine reserves legislation might more effectively support an integrated approach to protecting marine biodiversity. It was also noted that work was being done on the management of environmental effects of activities in the EEZ, and that an integrated regime for the area outside the Territorial Sea was desirable.

Progress
On 28 February 2012 the Minister of Conservation wrote to inform us that the Government intended to withdraw the bill. The Minister wrote that the Government had reassessed the usefulness of the bill, and noted that since its introduction the Marine and Coastal area (Takutai Moana) Act 2011 has been enacted and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill introduced.

In view of these and other changes, the Government intends to introduce a new Marine Reserves Bill which would be better aligned with Government policy and EEZ legislation.

We are pleased that the Government intends to progress legislation to protect marine communities and ecosystems, and encourage it to introduce such legislation as soon as possible. The Minister has advised us that she expects to have a bill ready for introduction in the second half of 2013.

Marine Reserves (Consultation with Stakeholders) Amendment Bill
The Marine Reserves (Consultation with Stakeholders) Amendment Bill is a member’s bill in the name of Eric Roy. It was referred to the Local Government and Environment Committee of the 48th Parliament on 17 May 2006, and was reinstated by the 49th and
50th Parliaments. The bill seeks to amend section 5 of the Marine Reserves Act 1971 to provide for consultation with user groups in an area that is the subject of an application for the development of a marine reserve.

The committee has considered the bill’s progress to be dependent on the progress of the Marine Reserves Bill. In the light of this, we resolved to release a report on the Marine Reserves (Consultation with Stakeholders) Amendment Bill concurrently with this report.
Appendix

Committee procedure

The Marine Reserves Bill was referred to the Local Government and Environment Committee of the 47th Parliament. It was reinstated by the 48th, 49th, and 50th Parliaments. The closing date for submissions was 28 February 2003. 170 submissions were received from interested groups and individuals; 98 submissions were heard.

Advice was received from the Department of Conservation, the Ministry of Fisheries, and the Ministry of Māori Affairs (Te Puni Kokiri).

Committee members

Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
Game Animal Council Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Game Animal Council Bill and recommends by majority that it be passed.

Introduction
The Game Animal Council Bill seeks to establish the Game Animal Council. The Council would be a body corporate with perpetual succession, and is intended to improve the management of chamois, deer, tahr, and wild pig, including opportunities to hunt such animals.\(^1\)

The bill includes provisions for the Minister of Conservation to designate any herd of game animals in a defined location on conservation land to be a herd of special interest. It is intended that such herds would be managed specifically for recreational hunting without adversely affecting other users or biodiversity values.

\(^1\) Chamois: a goat-like antelope; tahr: wild goat.
The bill would require the payment of a levy to the Council to export a game trophy from New Zealand. The funds received would form part of the Council’s revenue.

**Hunting on the conservation estate**

The Conservation Act 1987 states that one of the functions of the Department of Conservation is “to manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under this Act”. Many view the existence of game animals on conservation land as incompatible with this function, especially since New Zealand’s unique ecosystem does not cope well with introduced species.

Hunting and conservation are not mutually exclusive. We recognise that many hunters take a keen interest in maintaining and protecting the environment. We think that it is possible for game animal hunting to be managed safely on the conservation estate, but would strongly encourage such activity being undertaken judiciously and with due consideration for the protection of our indigenous flora and fauna.

We note that under the bill, the Council would be able to manage only specified species in specified locations. The Department of Conservation would continue to have responsibility for controlling other species, such as hares, goats, rats, and stoats.

**Game Animal Council Establishment Committee**

The Game Animal Council Establishment Committee was appointed in 2008 to recommend how a national-level body should be set up to manage and represent all interest groups. In 2010 it presented the Minister of Conservation with a report which made a number of recommendations. We are aware that some would like to see the bill amended to adopt in full the establishment committee’s recommendations. The changes sought would significantly change the overall intent and effect of the bill and would affect a wider range of interests, including private landowners. They are, however, outside the scope of this bill.

**Commentary**

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.
**Interpretation**

For the sake of clarity we recommend a number of amendments to clause 4, including

- inserting a definition of “regional council”
- deleting the definition of “conservation land” and replacing it with a definition of “public conservation land”
- amending the definitions of “game trophy” and “overriding considerations”.

Defining “overriding considerations” is intended to ensure that a consistent set of considerations is applied in a number of potential decisions under the Act. Adding animal welfare to “overriding considerations” would not be appropriate as the Animal Welfare Act 1999 specifies how animal welfare requirements apply.

We recommend amending the definition of “game trophy” to exclude products that are traded on a significant scale as commercial products, such as velvet, hard antler, hides, and meat. We consider that all game animals and parts of game animals that are exported as trophies should be subject to Council regulations and levies irrespective of whether they were obtained on private or conservation land.

We do not recommend amending the definition of “game animal” to include other animals such as upland game birds, and wild sheep. Wild sheep and upland game birds are outside the scope of the bill.

We do not consider that enforcement officers should be renamed rangers. “Ranger” is a general term used to describe Department of Conservation and local territorial authority field staff—including those who are not warranted as enforcement officers. Renaming enforcement officers rangers could therefore lead to confusion. We note that ranger is not a statutory term under the Conservation Act 1987, and Council staff would be free to use the term in their work.

**Functions of the Council**

We recommend amending clause 7(1)(f) to make it clear that the Council may conduct research on the hunting of game animals and on game animals generally.

We also recommend inserting new clause 7(1)(j), to make it clear that the Council could assess the costs of managing herds of special interest, and could recommend to the Minister the appropriate ways to
recover those costs. The amendment we propose would not delegate decision-making powers to the Council, and we note that Schedule 2 provides an appropriate level of accountability as it seeks to make consequential amendments to the Public Finance Act 1989, including a requirement for the Council to submit an annual report to Parliament.

**Council membership**

We recommend amending clause 8(3) by including kaitiakitanga and relevant scientific knowledge among the kinds of knowledge and experience Council members should have. We believe this amendment would allow the Council to operate more effectively.

**Council chairperson**

We recommend amending clause 12 to require the Minister to appoint a chairperson who he or she considers possesses the appropriate management and conflict resolution skills to chair the Council. The Council is intended to help manage the wide range of interests in the hunting sector, and this amendment would help facilitate it doing so.

**Meetings of the Council**

We recommend amending clause 13 to require the Council to advise the responsible Minister of any amendments to its procedures, and to make its procedures available for inspection free of charge. The amendments we propose would ensure consistency between the bill and the Local Government Official Information and Meetings Act 1987.

We also recommend amending clause 13 to change the required majority for the purposes of Council decision-making from two-thirds to a simple majority.

**Herds of special interest**

**Designating herds of special interest**

We recommend amending clause 16 to require a Gazette notice designating game animals a herd of special interest to include any species of game animal that would be part of a herd, the area of land the ani-
mals must be located in, and the reasons for the particular “special interest” designation.

We recommend that clause 16 also require the Minister to consider the purpose of the Wild Animal Control Act 1977, the status of relevant conservation land, and any overriding considerations.

We further recommend that clause 16 require the Minister to have regard to the advice of the New Zealand Conservation Authority, relevant conservation boards and regional councils, and the Ministry for Primary Industries.

Ownership of herds of special interest
We recommend amending clause 17 to make it clear that the Crown would not have obligations or liabilities in respect of damage done by any game animal.

Herd management plans
We recommend amending clause 19 to make game animal management plans mandatory not discretionary, and to require that plans be reviewed at intervals of “not more than five years”.

We also recommend amending clause 19 to clarify who the Minister must consult with before making or amending a herd management plan, including
- the Minister for Primary Industries
- the Game Animal Council
- the Director-General of the Department of Conservation
- the New Zealand Conservation Authority.

Delegation of Minister’s powers
We recommend amending clause 20 to make it clear that the Minister could only delegate to the Council the powers under clause 18—excluding the ability to capture, convey, or liberate animals. As introduced, clause 20 would have allowed the Minister’s power to appoint the Council, designate a herd of special interest, and make a management plan to be delegated to the Council. This was not intended, and the amendments we propose would remedy this.
We also recommend that clause 20 allow the Minister to delegate his or her authority only if satisfied that the delegation would improve the management of the herd.

**Failing to produce authorisation**

We recommend deleting clause 31(2). Clause 31(2) deems any person who is carrying a weapon in an area where there is a herd of special interest to be there because they intend to kill a game animal. While this would not necessarily be the case—they could be merely passing through—the bill as introduced would put the onus on individuals to prove that they did not wish to kill a game animal that was part of a herd of special interest.

We believe there are adequate enforcement provisions in clause 28 to manage any unauthorised hunting or killing of herds of special interest.

**Council funding**

We recommend replacing clause 32 and inserting new clause 32B. New clause 32 would allow the Governor-General, by Order in Council and on the recommendation of the Minister, to impose hunting fees in relation to herds of special interest as well as game trophy export levies, while new clause 32B would require the Minister to determine the funds to be raised by levies each year.

Under the bill as introduced, Council funding, excluding appropriations, was to be limited to game trophy export levies. We were concerned that this would provide the Council with insufficient funding to operate effectively. At the same time we did not think it appropriate to propose levies that could be imposed on people who do not hunt game animals. The amendments we propose are intended to balance our concerns and provide for a targeted levy.

Government members of the committee supported the possibility of alternate funding mechanisms such as an ammunition levy.

We also recommend amending clause 33 to allow the Governor-General, by Order in Council, to impose fees for cost recovery purposes.
**Relationship with other Acts**

We recommend inserting new clause 34A to make it clear that ministerial powers relating to the authorisation of hunting could not limit the ability of the Minister or Director-General of Conservation to carry out the killing of wild animals or pests for control or management purposes.

**Enforcement officers**

We recommend amending Schedule 1 by inserting new clause 6A to grant enforcement officers the power to search when they have good reason to believe that an offence has been committed. While clause 7 would grant enforcement officers the power to stop, and clause 8 the power of seizure, the bill as introduced does not include the power to search. This could, potentially, have led to enforcement officers stopping a vehicle but being able to seize only that which was clearly visible, with any contraband in the boot, for example, being out of the reach of enforcement officers. The amendment we propose would remedy this.

**New Zealand Labour Party minority view**

Labour supported the referral of this bill to committee but raised serious concerns about it. Some of these concerns have been addressed during the committee process but several fundamental issues remain unresolved. Labour regrets that the Minister responsible, Hon Peter Dunne, did not agree to the committee’s request for a longer extension of time, as we believe that these issues may have been resolved with further work.

The first issue was the actual structure of the Game Animal Council as a separate entity, rather than a structure such as a ministerial advisory committee under the Wild Animal Control Act. This separate structure was against the specific advice of both the Treasury and the Department of Conservation (DOC) and sets up direct and competing interest in the management of wild animals, rather than progressing, the more collaborative approach that should be pursued. They further advised that separate legislation to create a Game Animal Council would have the highest costs in regulatory time and resources.

Labour respects the long traditions of hunting of game animals in New Zealand and agrees that it does help to control animal num-
bers and protect biodiversity, but the establishment of the Council as reported back from the committee will create confusion and could undermine both these controls and protections. Many recreational hunter submitters expressed strong frustration at the lack of recognition by DOC in regard to their role as hunters in conservation. This frustration and lack of relationships in some parts of the country has been the driver of the establishment of the Game Animal Council. However these submitters, despite their frustration with DOC, and their equally strong support for a Game Animal Council, did not support the structure outlined in the bill.

The second issue is in regard to the final determination of a proposal for conservation purposes, for example the dropping of 1080 for possums, rats, or stoats. The Parliamentary Commissioner for the Environment raised this concern in her submission and it is unresolved. She pointed out that the Game Animal Council could halt 1080 operations if it thought game animals were going to be at risk. This is a direct threat to essential pest control and therefore to both health and biodiversity.

The third issue is in regard to the funding of the Council. This has been a very difficult area and one on which the committee has worked hard.

The next issue is the continued lack of recognition of Māori and the role of iwi in local conservation management. We heard through submissions of the strong relationship between some iwi and the local Department of Conservation, and innovative partnership approaches which have developed. The bill does not build on those relationships, but undermines them.

The bill creates tension between the Game Animal Council and the Department of Conservation. That is in no-one’s best interest. The passing of the Wild Animal Control Act in 1977 recognised the role that commercial and recreational hunters had to play alongside the Department of Conservation if we were to control species that harm our fauna and flora. This bill actually makes the activities of recreational hunters more difficult and more expensive, to the advantage of safari hunters.

The bill provided an opportunity to build on existing relationships or create those that do not exist but could strengthen conservation if they did, but the opportunity has been missed. Instead, we have a bill which creates tension between hunters and the Department of
Conservation, and makes the activities of recreational hunters more difficult. Labour will not be supporting the further progress of this bill.

**Green Party minority view**

The Green Party supports recreational hunting on conservation land and recognises the enjoyment and satisfaction which many hunters gain from the sport. Recreational hunting of deer and thar, for example, can help reduce animal numbers but research shows that on its own it does not reduce numbers enough to protect indigenous biodiversity.

The Green Party opposes the Game Animal Council Bill for the following reasons: Firstly, the bill introduces multiple-use management on the public conservation estate. This is at odds with the thrust of conservation legislation and the Department of Conservation’s statutory purpose to preserve and protect natural and historic resources and our unique indigenous plants, wildlife, and landscapes for their intrinsic value, and to safeguard the options of future generations.

The Game Animal Council’s statutory functions and decision-making powers potentially undermine the department’s ability to control introduced animals such as deer and pigs on conservation land. This is because the bill establishes a dual management regime for areas where “herds of special interest” are designated. The Game Animal Council’s desire to maximise hunting opportunities will conflict with the need to control and cull introduced browsers such as thar to protect alpine plants and ecosystems. Such conflict potentially delays or constrains the department’s work in undertaking 1080, culling, and other pest control operations.

Secondly, the bill creates an unnecessary quango. Recreational hunting areas already exist under the Wild Animal Control Act and a ministerial advisory committee could have been established under that Act.

Additional appointments to existing organisations such as the New Zealand Conservation Authority and conservation boards would better reflect the range of public and stakeholder interests in the management and control of introduced species on conservation
land. This would promote more collaborative discussion than a stand-alone Game Animal Council.

Thirdly, historically wild animal recovery operators (WARO) taking thar and deer for commercial use (such as venison recovery) have contributed significantly to reducing deer and thar numbers. The bill introduces additional bureaucracy which may obstruct or delay the issue and implementation of WARO permits and commercial recovery.

Fourthly, there is no prohibition on “herds of special interest” being established in our most valuable protected areas, such as national parks, national reserves, scientific reserves, and ecological areas, with the damage to indigenous biodiversity this would cause.

By allowing the Minister to approve the capture and liberation of animals from a herd of special interest, the bill would enable an expansion of the feral range of animals such as deer and chamois. The natural history of Aotearoa/New Zealand is a study of the impacts of the introduction and spread of introduced predators and mammalian browsers. The effective protection of our unique and internationally significant indigenous biodiversity requires a contraction not an expansion in the range and abundance of deer, chamois, thar, and other introduced animals. The illegal release of pigs in areas where they were not previously found can help spread bovine Tb.
Appendix

Committee process
The Game Animal Council Bill was referred to the committee on 1 March 2012. The closing date for submissions was 20 April 2012. We received and considered 664 submissions from interested groups and individuals as well as four form submissions comprising 252 individuals. We heard 39 submissions, which included holding a hearing in Christchurch.
We received advice from the Department of Conservation.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Gareth Hughes
Raymond Huo
Nikki Kaye
Hon Annette King
Moana Mackey
Eugenie Sage
Hon Dr Nick Smith
Andrew Williams
For this item of business Hon Shane Jones replaced Hon Annette King, and Hon Ruth Dyson replaced Raymond Huo.
The Māori Affairs Committee has considered Petition 2011/7 of Barney Tūpara (Claimant to the Waitangi Tribunal and Barrister, representing 18 claims to the Waitangi Tribunal), requesting that the House of Representatives note that 1,053 people have signed a petition calling on the House to vote against the Ngāti Porou Claims Settlement Bill and that the House act in accordance with this wish, and has no matters to bring to the attention of the House.

Hon Parekura Horomia
Deputy Chairperson
Kua whakaaroarohia e te Komiti Whiriwhiri Take Māori te Petihana 2011/7 a Barney Tūpara, (Kaikerēme ki Te Rōpū Whakamana i te Tiriti o Waitangi, Rōia hoki mō ngā kerēme e 18 ki Te Rōpū Whakamana i te Tiriti o Waitangi), e tono ana kia aro mai te Whare o ngā Māngai ki tēnei, arā, e 1,053 ngā tāngata kua haina i tētahi petihana me te karanga ki te Whare, kia whakahēngia te Pire Whakataunga i ngā Kerēme a Ngāti Porou, ā, kia whakatutuingia tēnei hiahia e te Whare; kāore he take a te komiti mō tēnei kia aronga e te Whare.

Hōnore Parekura Horomia
Heamana Tuarua
Ngai Tāmanuhiri Claims Settlement Bill

As reported from the Māori Affairs Committee

Recommendation
The Māori Affairs Committee has examined the Ngai Tāmanuhiri Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Ngai Tāmanuhiri Claims Settlement Bill would give effect to the deed of settlement entered into by the Crown and Ngai Tāmanuhiri on 5 March 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill includes only those components of redress in the settlement package for which legislative authority is required. The deed of settlement sets out in full the redress provided to Ngai Tāmanuhiri in settlement of its historical claims.

Ngai Tāmanuhiri’s area of interest, which it shares with Te Aitanga a Mahaki and Rongowhakaata, is in the south of the Tūranganui a Kiwa/Gisborne region. Ngai Tāmanuhiri’s area also overlaps with Ngāti Ruapani, Rongomaiwahine, and Ngāti Kahungunu ki Wairoa.
We understand that there are no outstanding issues relating to overlapping claims.

Our commentary covers amendments proposed to clause 7 to rectify text omitted from the Crown’s acknowledgments. We propose an amendment to clause 13(5) to make it clear that the Waitangi Tribunal continues to have jurisdiction regarding Wharerata Crown Forest Licensed land. We also recommend amendments to clauses 24, 25, and 26 in order to make it clear with whom responsibility resides for issuing protocols to the trustees in respect of conservation.

In order to clarify the intent of the taxation provision regarding the assets and liabilities of the post-settlement entity we recommend a substantive amendment to clause 116. This amendment has been agreed to by all parties to the settlement. The remainder of our commentary discusses the settlement issues we considered.

**Pakowhai Scenic Reserve**

Clauses 86 and 87 of the bill would provide the iwi with the right of first refusal for 100 years for the Pakowhai Scenic Reserve; descendants of the Teutenbergs have expressed opposition to this part of the settlement. Pakowhai Scenic Reserve formed part of Ngai Tāmanuhiri’s tribal estate, but, like nearly all of the iwi’s land holdings, was ceded to the Crown in the late 1860s. Pakowhai was subsequently converted to individual title and sold. We understand that land included in the reserve was gifted to the Crown by G R Black and W A Teutenberg.

We note that before Pakowhai is made available to Ngai Tāmanuhiri under the right of first refusal mechanism, the Crown must meet a number of statutory requirements, including the revocation of its reserve status. We are assured that in this process the Minister of Conservation is required to consider whether the land should be offered to the former owners. We are satisfied that the bill would not undermine the responsibilities of the Crown under the Reserves Act 1977 to fulfil any pre-existing obligations to the former owners.

**Te Whānau a Kai**

Te Whānau a Kai is one of the five constituent groups in Te Aitanga a Mahaki and Affiliates, the mandated body of one of the three Tūranga iwi recognised by the Crown to negotiate a Treaty settlement. We
note that the mandate lies with the collective body and not with each constituent group. We heard from Te Aitanga a Mahaki and Affiliates, which expressed its support for the bill.

Te Whānau a Kai Trust, however, expressed concern about the allocation of quantum between the three Tūranga iwi, particularly regarding the Tahora and Awapuni blocks. We consider that the Crown has undertaken an appropriate assessment of the historical interests of the three groups and believe that Te Whanau a Kai will benefit from the settlement of Te Aitanga a Mahaki and Affiliates’ claims.

The Crown’s acknowledgements
Clause 7 of the bill provides the Crown’s acknowledgments to Ngai Tāmanuhiri. We recommend two amendments to reflect the deed of settlement more closely. First, we recommend an amendment to clause 7 referring to the forcible confiscation of Te Hau ki Tūranga by the Crown. Secondly, we recommend an amendment to clause 7(16) setting out the Crown’s acknowledgement of the devastating consequences for the wellbeing of Ngai Tāmanuhiri that flowed from the Crown’s actions and omissions.

Transitional taxation provisions
Clause 116 of the bill provides for taxation of the transferred assets and liabilities of the post-settlement governance entity, the Tāmanuhiri Tutu Poroporo Trust. We recommend an amendment to this clause, and consequential amendments to clauses 114 and 117, to clarify the intent of the taxation provision. We also recommend an amendment to clause 115 regarding the charitable status of assets.

Local Leadership Body area
We are pleased that the Gisborne District Council supports the bill and note the Council’s concern with the description of the Local Leadership Body area. We therefore recommend amending clause 41 so that the bill refers to the correct deed plan.

Wharerata Crown Forest Licensed land
Clause 13 of the bill removes the jurisdiction of courts, tribunals, and other judicial bodies in respect of the historical claims of Ngai
Tāmanuhiri. Noting that the Waitangi Tribunal would retain jurisdiction over Wharerata Crown Forest licensed land, we recommend an amendment to clause 13(5) to make it clear that subclause (4) does not limit clause 70(3).

**Protocols in respect of conservation**

Clauses 24, 25, and 26 provide for the relevant Ministers to issue protocols to the trustees in respect of conservation, Crown minerals, and fisheries. We recommend amending these clauses to make it clear who is responsible for including a summary of the terms of the protocols in specified documents.
Appendix

Committee process
The Ngai Tāmanuhiri Claims Settlement Bill was referred to the committee on 16 February 2012. The closing date for submissions was 29 March 2012. We received and considered eight submissions from interested groups and individuals. We heard two submissions at a hearing in Gisborne.

We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hon Parekura Horomia
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Louisa Wall
Louise Upston
Jonathan Young
Te Pire Whakataunga i ngā Kerēme a Ngai Tāmanuhiri

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua ata tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakataunga i ngā Kerēme a Ngai Tāmanuhiri me tana tūtohu kia whakaaetia, tae atu ki ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Ka whakamana te Pire Whakataunga i ngā Kerēme a Ngai Tāmanuhiri i te whakaaetanga whakataunga i uru atu rā te Karauna me Ngai Tāmanuhiri i te 5 o Poutū-te-rangi 2011, mō te whakataunga oti atu o ngā kerēme o neherā e pā ana ki ngā whatinga o te Tiriti o Waitangi. Kei roto hoki i te pire aua āhuatanga anake whakatika hapa i te mōkihi whakataunga ka hiahiatia rā he whakamanatanga ā-ture. Ka whakatakotoria e te whakaaetanga whakataunga te katoa o te whakatika hapa i hoatu ki a Ngai Tāmanuhiri i te whakataunga o āna kerēme hītori katoa.
Ko te wāhi whai pānga o Ngāi Tāmanuhiri me Te Aitanga a Mahaki me Rongowhakaata, kei te taitonga o te rohe o Tūranganui a Kiwa.
Inaki ai hoki te wāhi o Ngāi Tāmanuhiri ki ērā o Ngāti Ruapani, Ron-gomaiwhine me Ngāti Kahungunu ki Wairoa. Ki tō mātou mōhio, kāore he take kē atu e pā ana ki ngā kerēme inaki i te noho tārewa. Ka kapi i a mātou kōrero ngā whakatikatika kua whakatakotohia mō rara 7 hei whakatika i ngā kupu tuhi i aweretia i ngā whakaetanga a te Karauna. Kua whakatakoto mātou i tētahi whakatikatika ki rara 13(5) kia mārama ait e kītea atu, kei te tū tonu te mana ture o Te Rōpū Whakamana i te Tiriti o Waitangi mō te whenua Wharerata a Crown Forest Licensed. Ka tūtohu whakatikatika hoki mātou ki rara 24, 25, me 26, kia mārama ai te kītea atu, mā wai ngā kawa e pā ana ki te atawhai whenua e hoatu ki ngā kaitiaki.

Kia pai ai te whakamārama i te whakamaunga atu o te wāhanga tāke-tanga mō ngā hua me ngā taunahatanga o te hinonga whakataunga-whai muri, ka tūtohu mātou whakatikatika rahi rawa atu mātou ki rara 116. Kua whakaaetia tēnei whakatikatika e ngā taha katoa ki te whakataunga. Matapaki ai te toenga o ā mātou kōrero i ngā take whakataunga i whakaaroarotia e mātou.

Whenua Rāhui Whakakitekite o Pākōwhai
Hoatu wāhi ai a rara 86 me 87 o te pire i te tika ki te whakahē tuatahi e pā ana ki ngā tau e 100 ki te iwi mō te Whenua Rāhui Whakakitekite o Pākōwhai; kua putai te mautohenga o ngā uri whakaheke o ngā Teutenberg ki tēnei wāhanga o te whakataunga. He wāhanga te Whenua Rāhui Whakakitekite o Pākōwhai o ngā pānga whenua o te iwi o Ngāi Tāmanuhiri ēngari, tata katoa ngā rawa whenua o te iwi i tautukuna ki te Karauna i ngā tau tōmuri 1860. Nō muri iho, ka huria ki te taitara takitahi, ka hokona. Ki tō mātou mōhio, i kohaina te whenua i roto i te whenua rāhui ki te Karauna e G R Black rāua ko W A Teutenberg.

Ko tērā ka aronga e mātou, i mua i te whakawāteaanga o Pākōwhai ki a Ngai Tāmanuhiri i raro i te huarahi whakahē tuatahi, me tutuki i te Karauna ētahi whakaritenga ā-ture, tae atu ki te whakakorenga o tōna tūranga whenua rāhui. I puta he kōrero whakatūturū ki a mātou, nā tēnei hātepe, me matua whakaaroaro te Minita mō ngā Take Papa Atawhai mehemea, me tuku te whenua ki ngā rangatira o mua o te whenua nei. Kei te ngata mātou, kāore te pire e whakaruhi i ngā haepapa o te Karauna i raro i te Ture Whenua Rāhui 1977 kia tutuki ai ētahi herenga ō-mua ki ngā rangatira i mua o te whenua.
Te Whānau a Kai

Ko Te Whānau a Kai o ngā kohinga e rima o Te Aitanga a Māhaki me ngā Whakawhanaunga, tētahi o ngā rangatūpū whai mana o ngā iwī e toru o Tūranga-nui-a-Kiwa ka aronga e te Karauna ki te whiriwhiri whakataunga Tīriti. Kua kite mātou, ka noho kē te mana kōkiri ki te ohu rangatūpū kāpā ki ia kohinga wāhanga. I rongo mātou i te tautoko o Te Aitanga a Mahaki me ngā Whakawhanaunga mō te pire. Heoi anō rā, i whakaputā āwangawanga te Poutiaki o Te Whānau a Kai mō te whakaratonga rahi i waenganui i ngā iwī e toru o Tūranga, otirā, e pā ana ki te poronga Tāhora me te poronga Awapuni. Ki a mātou, kāore ēnei poronga e uru atu ki te hōkaitanga o te pire nei. Ki a mātou, kua oti kē i te Karauna he aromatawai tika mō ngā pānga hītori o ngā kohinga e toru me tō mātou whakapono, ka whai painga Te Whānau a Kai i te mutunga, nā te whakataunga o ngā kerēme a Te Aitanga a Māhaki me ngā Whakawhanaunga.

Ngā Whakaaetanga a te Karauna

Hoatu wāhi ai a rara 7 mō ngā whakaaetanga a te Karauna ki a Ngāi Tāmanuhiri. E rua ngā whakatikatika ka tūtouhua mātou kia tata kē atu a, ki te whakaaetanga whakataunga. Tuatahi, ka tūtouhua whakatikatika mātou ki a rara 7 mō te kaha raupatu a te Karauna i Te Hau ki Tūranga. Tuarua, ka tūtouhu whakatikatika mātou ki a rara 7(16) e whakatakoto ana i te whakaaetanga a te Karauna ki ngā tukunga iho ātetea mō te oranga o Ngai Tāmanuhiri, nā ngā mahi me ngā aweretanga a te Karauna.

Ngā wāhanga e pā ana ki te tāketanga whakawhitinga

Hoatu wāhi ai a rara 116 o te pire mō te tāketanga hua, taunaha hoki a te hīnonga tiaki kaupapa whakataunga-whai muri ka whakawhitia, ā, me ērā hoki a te Poutiaki Poroporo Tutu a Tāmanuhiri. Ka tūtouhu whakatikatika mātou ki tēnei rara, me ngā whakatikatika whai muri ki a rara 114, me rara 117, ki te whakamārama i te whakamaunga atu o te wāhanga tāketanga. Ka tūtouhu whakatikatika hoki mātou ki a rara 115 mō te tūranga aroha e pā ana ki ngā hua.
Takiwā e pā ana ki te Rangatōpū Ārahitanga Hau Kāinga
E āhuareka ana mātou, kei te tautoko te Kaunihera ā-Rohe o Tūranga-nui-a-Kiwa i te pire me tā mātou aro atu ki te āwangawanga o te Kaunihera ki te whakaahuatanga o te takiwā e pā ana ki te Rangatōpū Ārahitanga Hau Kāinga. Nā runga i tērā, ka tūtohu mātou kia whakatikaina a rara 41, kia hāngai ai ngā kōrero o te pire ki te mahere whakaaetanga tīka.

Whenua Wharerata a Crown Forest Licensed
Tango ai a rara 13 o te pire i te mana whakahaere o ngā kōti, Taraip-iunara me ētahi atu rangatōpū kōti e pā ana ki ngā kerēme hītori a Ngai Tāmanuhiri. I te mea e kete ana mātou, ka pupuri tonu Te Rōpū Whakamana i te Tiriti o Waitangi i te mana whakahaere ki te Whenua Wharerata a Crown Forest Licensed, ka tūtohu whakatikatika mātou ki a rara 13(5), kia mārama ai te kite atu, kīhai a rara-iti (4) i te whakawhāiti i a rara 70(3).

Ngā kawa e pā ana ki te atawhai whenua
Hoatu wāhi a rara 24, 25 me 26 hoki ki ngā Minita tika mō te tuku kawa ki ngā kaitiaki e pā ana ki te atawhai whenua, ki ngā kohuke me ngā tini a Tangaroa a te Karauna hoki. Ka tūtohu mātou kia whakatikatikaina ēnei rara kia mārama ai te kite atu, kei a wai te haepapa whakauru whakarāpopotonga mō ngā ritenga kawa i ngā tuhinga kua āta whakahuatia ake.
Tāpiritanga

Hātepe o te komiti
I whiwhi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hōnore Parekura Horomia
Katrina Shanks
Rino Tirikätene
Mētīria Tūrei
Nicky Wagner
Louisa Wall
Louise Upston
Jonathan Young
Rongowhakaata Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Rongowhakaata Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Rongowhakaata Claims Settlement Bill would give effect to the deed of settlement entered into by the Crown and Rongowhakaata (which includes Ngā Uri o Te Kooti Rikirangi) on 30 September 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill also records the apologies offered by the Crown to Rongowhakaata and Ngā Uri o Te Kooti Rikirangi. Ngā Uri o Te Kooti Rikirangi, a whānau group who are affiliated to Rongowhakaata, would receive specific redress for the stigmatisation of their ancestor Te Kooti Rikirangi. We support this redress as a step towards rehabilitating his reputation, and acknowledging the discrimination experienced by his descendants.
The bill includes only those elements of redress in the settlement package for which legislative authority is required. The deed of settlement sets out in full the redress provided to Rongowhakaata in settlement of all its historical claims.

Rongowhakaata’s area of interest, which it shares with Ngai Tāmanuhiri and Te Aitanga a Mahaki, is in the Tūranganui a Kiwa/Gisborne region. Rongowhakaata’s area also overlaps with Ngāti Porou in the north. We understand that there are no outstanding issues relating to overlapping claims.

Our commentary covers the amendments we propose to clauses 27(1), 28(1), and 29(1) in order to make it clear with whom responsibility resides for issuing protocols to the trustees in respect of conservation. We also recommend an amendment to clause 49(3) to make it clear when the vesting of Matawhero site B would take effect. The remainder of our commentary discusses the settlement issues we considered.

**Te Whānau a Kai**

Te Whānau a Kai is one of the five groups that constitute Te Aitanga a Mahaki and Affiliates, the mandated body of one of the three Tūranga iwi recognised by the Crown to negotiate a Treaty settlement. We note that the mandate lies with the collective body and not with each constituent group. We heard from Te Aitanga a Mahaki and Affiliates, which expressed its support for the bill.

Te Whānau a Kai Trust, however, expressed concern about the allocation of quantum between the three Tūranga iwi, particularly regarding the Awapuni (AML) block. We note that the Crown consulted Te Aitanga a Mahaki and Affiliates and obtained their agreement to the transfer of a portion of the site to Rongowhakaata as part of its settlement.

We consider that the Crown has undertaken an appropriate assessment of the historical interests of the three groups, and believe that Te Whānau a Kai will ultimately benefit from the settlement of Te Aitanga a Mahaki and Affiliates’ claims.

**Watson Park**

We heard that the Rongowhakaata Settlement Trust proposed that Rongowhakaata work alongside Te Aitanga a Mahaki and Affiliates
Commentary

Rongowhakaata Claims Settlement Bill

and the Gisborne District Council to jointly administer Watson Park, which borders the AML block. We understand that Watson Park is wholly owned and administered by the council and was not available as redress for settlement of any Treaty claims.

Te Hau ki Tūranga
The cultural redress provided for in the bill includes the vesting of the whare Te Hau ki Tūranga in the trustees of the Rongowhakaata Settlement Trust. The whare is currently housed at the Museum of New Zealand Te Papa Tongarewa. A trust is to be established to manage Te Hau ki Tūranga and its eventual return to the Tūranga area. We heard that Rongowhakaata do not wish the return of Te Hau ki Tūranga to create a financial burden for future generations. We are pleased that Te Papa Tongarewa and the Ministry for Culture and Heritage have committed themselves to working with Rongowhakaata to ensure a sustainable future for the whare, particularly as regards its relocation.

Protocols in respect of conservation
Clauses 27, 28, and 29 provide for the relevant Ministers to issue protocols to the trustees in respect of conservation, Crown minerals, and fisheries. We recommend amending these clauses to make it clear who is responsible for including a summary of the terms of the protocols in specified documents.

Vesting of Matawhero site B
The bill would vest Matawhero site B in the trustees of Ngā Uri o Te Kooti Rikirangi. We recommend an amendment to clause 49(3) to make it clear that the vesting would not take place until an easement was granted by the trustees.
Appendix

Committee process
The Rongowhakaata Claims Settlement Bill was referred to the committee on 8 March 2012. The closing date for submissions was 18 April 2012. We received and considered seven submissions from interested groups and individuals. We heard three submissions at a hearing in Gisborne.

We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Hon Parekura Horomia
Brendan Horan
Katrina Shanks
Rino Tirikatene
Metiria Turei
Louise Upston
Nicky Wagner
Louisa Wall
Jonathan Young

_________________________________________
Te Pire Whakataunga i ngā Kerēme a Rongowhakaata

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakataunga i ngā kerēme a Rongowhakaata me tana tūtohu kia whakaaetia, tae atu ki ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Ka whakamana te Pire Whakataunga i ngā Kerēme a Rongowhakaata i te whakaaetanga whakataunga i uru ātu rā te Karauna me Rongowhakaata (me Ngā Uri o Te Kooti Rikirangi) i te 30 o Mahuru 2011, mō te whakataunga oti ātu o ngā kerēme o neherā e pā ana ki ngā whatinga o te Tiriti o Waitangi. Kei roto hoki i te pire te whakapāha i hoatu e te Karauna ki a Rongowhakaata me Ngā Uri o Te Kooti Rikirangi. Ka whiwhi i Ngā Uri o Te Kooti Rikirangi, tērā kohinga whānau o Rongowhakaata, he whakatika hapa ake mō te takahitanga o te mana o tō rātou tipuna a Te Kooti Rikirangi. Ka tautoko mātou i tēnei whakatika hapa hei hīkoitanga whakamua ki te whakaora ake i tōna ingoa pairongo, me te whakaae atu, i whakahāweangia ōna uri whakaeke.
Kei roto i te pire aua āhuatanga anake whakatika hapa i te mōk-ihī whakataunga ka hiahiatia rā he whakamanatanga ā-ture. Ka whakataotoria e te whakahetanga whakataunga te katoa o te whakatika hapa i hoatu ki a Rongowhakaata i te whakataunga o āna kerēme hītori katoa.

Ko te wāhi whai pāngā o Rongowhakaata me Ngāi Tāmanuhiri, me Te Aitanga a Māhaki, ko tērā i te rohe o Tūranganui a Kiwa. Inaki ai hoki te wāhi o Rongowhakaata i tērā o Ngāti Porou ki te raki. Ki tō mātou mōhio, kāore he take e pā ana ki ngā kerēme inaki i te noho tārewa.

Ka kapi i ā mātou kōrero ngā whakatikatika ka whakaaro hia i te Whakawhānaungatanga mō ngā rara 27(1), 28(1), 29(1), kia mārama ai mā wai ngā kawa ki ngā kaitiaki e whakaputa mō te atawhiti i te whenua. Ka tūtōhū hoki mātou i tētahi whakatikatika ki rara 49(3), kia mārama ai, āhea te tukunga o Matawhero papa B mana ai. Ka matapaki te toenga o ā mātou kōrero i ngā take whakataunga kua whakaaroarohia e mātou.

**Te Whānau a Kai**

Ko Te Whānau a Kai o ngā kohinga e rima o Te Aitanga a Māhaki me ngā Whakawhānaungatanga, tētahi rangatūpū whai mana o ngā iwi e toru o Tūranga-nui-a-Kiwa ka aronga e te Karauna ki te whirihirihia whakataunga Tiriti. Kua kite mātou, ka noho kē te mana kōkiri ki te ohu rangatūpū kāpā ki ia kōhinga wāhanga. I rongo mātou i te tautoko o Te Aitanga a Māhaki me ngā Whakawhānaungatanga mō te pire. Heoi anō rā, i whakaputa māharahara te Poutiaki o te Whānau a Kai mō te whakaratonga rahi i waenganui i ngā iwi e toru o Tūranga, otiārā, e pā ana ki te poronga Awapuni (AML). Kua kite mātou i rapu whakamaherehere te Karauna i Te Aitanga a Māhaki me ngā Whakawhānaungatanga, ā, ka whiwhi whakahetanga hoki mō rātou ki te whakawhititi i tētahi wāhanga o te tūnga ki a Rongowhakaata mō tōna whakataunga.

Ki a mātou, kua oti kē i te Karauna he aromatawai tika mō ngā pānga hītori o ngā kohinga e toru me tō mātou whakapono, ka whai paininga Te Whānau a Kai i te mutunga, nā te whakataunga o ngā kerēme a Te Aitanga a Māhaki me ngā Whakawhānaungatanga.
Te Papa Rēhia o Watson
I rongo mātou, i marohi te Poutiaki Whakataunga o Rongowhakaata kia mahi a Rongowhakaata i te taha o Te Aitanga a Māhaki me ngā Whakawhanaunga, o te Kaunihera ā-Takiwā o Tūranga-nui-a-Kiwa ki te whakahaere ngātahi i te Papa Rēhia o Watson, kei te taha rā o poronga AML e tū ana. Ki tō mātou mōhio, ko te kaunihera te rangatira katoa me te kaiwhakahaere o te Papa Rēhia o Watson, ā, kāore i te wātea hei whakatika hapa mō te whakataunga kerēme tiriti, ahakoa nō hea mai.

Te Hau ki Tūranga
Whakaurua ai he wāhi whakatika hapa tikanga tuku iho ki roto i te pire mō te tukunga o te whare, Te Hau ki Tūranga, ki ngā kaitiaki o te Poutiaki Whakataunga o Rongowhakaata. Kei Te Papa Tongarewa te whare e noho ana i te wā nei. Ka whakatūria he poutiaki hei whakahae i te whakahokinga o Te Hau ki Tūranga ā tōna wā ki te rohe o Tūranga. I rongo mātou, kāore a Rongowhakaata i te hiahia kia whakahokia mai a Te Hau ki Tūranga kia noho ai hei taumahatanga a-pūtea ki runga i ngā whakatipuranga o ngā rā e heke mai nei. E āhuareka ana mātou kua herea e Te Papa Tongarewa me te Manatū Taonga ā rāua kaha ki te mahi i te taha o Rongowhakaata ki te āta titiro, ka pūmau te whare a tōna wā mō tōna whakanekenga anō.

Ngā kawa e pā ana ki te atawhai whenua
Hoatu wāhi ai hoki a rara 27, 28, 29 ki ngā Minita tika mō te tuku kawa ki ngā kaitiaki e pā ana ki te atawhau whenua, ki ngā kohuhe me ngā tini a Tangaroa a te Karauna hoki. Ka tūtohu mātou kia whakatikaina ēnei rara kia mārama ai te kītea atu, kei a wai te haepapa mō te whakauru whakarāpopotonga mō ngā ritenga kawa i ngā tuhinga kua āta whakahuatia ake.

Tukunga o tūnga B Matawhero
Ka tukua e te pire te tūnga B Matawhero ki ngā kaitiaki o Ngā Uri o Te Kooti Rikirangi. Ka tūtohu whakatikatika mātou ki a rara 49 (3) kia mārama ai te kīte mai, kāore te tukunga e tukua kia whakahei rā anōria e ngā kaitiaki tētahi tikanga ture whakangāwaritanga.
Te Pire Whakataunga i ngā Kerēme
a Rongowhakaata
Ngā Kōrero

Tāpiritanga

Hātepe o te komiti

I whihi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi.

Ko ngā mema o te komiti

Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Hōnore Parekura Horomia
Brendan Horan
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Louise Upston
Nicky Wagner
Louisa Wall
Jonathan Young
Maraeroa A and B Blocks Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

**Commentary**

**Recommendation**
The Māori Affairs Committee has examined the Maraeroa A and B Blocks Claims Settlement Bill and the Maraeroa A and B Blocks Incorporation Bill, and recommends that they be passed with the amendments shown.

**Background**
The Maraeroa A and B Blocks Incorporation Bill is a private bill, to implement parts of the deed of settlement relating to the post-settlement governance arrangements for the management of the Maraeroa A and B Blocks, which would be given effect by the Maraeroa A and B Blocks Claims Settlement Bill.

For brevity, our report to the House comments on the two bills together.
Introduction
The Maraeora A and B Blocks Claims Settlement Bill would give effect to the deed of settlement entered into by the Crown and the descendants of the original owners of Maraeora A and B Blocks on 12 March 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill also records the apology of the Crown to the descendants of the original owners of Maraeora A and B Blocks. The Maraeora A and B Blocks Claims Settlement Bill includes only those elements of redress in the settlement package for which legislative authority is required. The deed of settlement sets out in full the redress provided to the descendants of the original owners of the Maraeora A and B Blocks.

The Maraeora A and B Blocks are located south-west of Te Kuiti. The descendants of the original owners of Maraeora A and B Blocks are affiliated to a number of iwi, including Ngāti Rereahu, Ngāti Tūwharetoa, Maniapoto, and Raukawa.

The Maraeora A and B Blocks Incorporation Bill is a private bill, which would establish the Maraeora A and B Blocks Incorporation and apply specific provisions of Part 13 of Te Ture Whenua Maori Act 1993 to the incorporation.

Definition of the settling group
Clause 11 of the Maraeora A and B Blocks Claims Settlement Bill defines the settling group. We consider that the current definition in the bill is not sufficiently clear to identify the settling group with legal certainty. We therefore recommend amending the clause to include citations of the dates and minute book references for the relevant judgments and orders made by the Native Land Court.

Calculation of Crown forest licence rental proceeds
Clause 72(3) of the Maraeora A and B Blocks Claims Settlement Bill provides for the calculation of rental proceeds from the Crown Forestry Rental Trust. The trustees of the Maraeora A and B Settlement Trust are confirmed beneficiaries in relation to licensed land within the Pureora North Crown forest. The calculation of rental proceeds is already provided for in the Crown Forestry Rental Trust deed, so we recommend deleting clause 72(3) as superfluous.
Comprehensive settlement of Maniapoto claims
The Maniapoto Māori Trust Board expressed support for the settlement bill on the basis of its understanding that it will not affect the quantum of the Maniapoto comprehensive claims. We are assured that this bill relates only to the settlement of claims relating to the Maraeroa A and B Blocks and will not affect the quantum of any future settlement of Maniapoto’s historical claims for breaches of the Treaty of Waitangi.

Maraeroa A and B Blocks Incorporation Bill
Pursuant to the Standing Orders we have considered the preamble of the Maraeroa A and B Blocks Incorporation Bill, and consider the statements in it have been proved to our satisfaction subject to the correction noted below. We acknowledge that the proposals set out in the bill could not be achieved other than by legislation.

Amendment to preamble
Recital (2) of the preamble of the Maraeroa A and B Blocks Incorporation Bill as introduced incorrectly refers to “attachment 4 to the documents schedule”. We recommend an amendment to the preamble to refer to “part 4 of the attachments to the deed of settlement”.

Constitution and operation of the Incorporation
We have considered the constitution and operation of the Maraeroa A and B Incorporation, which would be established by this private bill. Specific provisions of Part 13 of Te Ture Whenua Māori Act 1993, concerning the constitution, powers, and operations of Māori incorporations, would apply to the incorporation. We note, however, that the existing legislative mechanism is inappropriate as some of the provisions of Part 13 are inconsistent with the post-settlement governance structure contemplated by the deed of settlement.

We note that the trustees sought a governance structure on a similar model to that of the management committee for the Maraeroa C Block. The Māori incorporation established by the bill would have one share held by the trustees on behalf of the settling group. The constitution of the incorporation is provided through the deed of settlement.
Appendix

Committee process
The Maraeroa A and B Blocks Claims Settlement Bill and the Maraeroa A and B Blocks Incorporation Bill were referred to the committee on 8 March 2012. The closing date for submissions was 18 April 2012. We received and considered one submission from an interested group.
We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hon Parekura Horomia
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Louisa Wall
Louise Upston
Jonathan Young
Te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa, me te Pire Whakarangatōpū i a Poronga A me B o Maraeroa, me tana tūtohu kia whakaaetia, tae atu ki ngā whakatikatika kua oti te whakaatu.

Ngā kōrero nō hea mai
He pire tūmataiti te Pire Whakarangatōpū i a Poronga A me B o Maraeroa, hei whakatinana i ngā wāhanga o te whakaaetanga whakataunga e pā ana ki ngā whakaritenga tiaki kaupapa, mō te whakahaerenga o Poronga A me B o Maraeroa, tērā hoki ka whakamanahia e Te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa.
Hei whakarāpopototanga, ka kōrero tahi tā mātou pūrongo ki te Whare mō ngā pire e rua.
Kupu Whakataki

Ka whakamana te Pire Whakataunga i ngā Kerēme mō Poronga A me B, i te whakaaetanga whakataunga, i uru atu rā te Karauna me ngā uri i heke mai i ngā rangatira tūturu o Poronga A me B o Maraeroa, i te 12 o Pou-tū-te-rangi 2011, mō te whakataunga ote atu o ngā kerēme o neherā e pā ana ki ngā whatinga o Te Tiriti o Waitangi. Kei roto hoki i te pire, te whakapāha a te Karauna ki ngā uri i heke mai i ngā rangatira tūturu o Poronga A me B o Maraeroa. Kei roto anō hoki i te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa, aua āhuatanga whakatika hapa anake i te mōkihi whakataunga, ka hiahiaia rā he whakamanatanga ā-ture. Kua whakatakotoria ki roto i te whakaaetanga whakataunga, te katoa o te whakatika hapa i hoatu ki ngā uri i heke mai i ngā rangatira tūturu o Poronga A me B.

Kei te takiwā puānga o Te Kūiti, te Poronga A me B o Maraeroa. Nō tētahi iwi huahua ngā uri i heke mai i ngā rangatira tūturu o Poronga A me B o Maraeroa, tae atu ki a Ngāti Rereahu, a Ngāti Tūwharetoa, a Maniapoto, a Raukawa hoki.

He pire tūmataiti Te Pire Whakarangatōpū i a Poronga A me B o Maraeroa, ā, māna Te Pire Whakarangatōpū i a Poronga A me B o Maraeroa e whakapūmā, ā, māna hoki e whakahāngai ngā whakaritenga pū o Wahanga 13, o Te Ture Whenua Māori o te tau 1993, ki te rangatōpū.

Whakamāramatanga kohinga whakatatū

Whakamārama ai a rara 11 o Te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa, i te kohinga whakatatū. Ki a mātou nei, kāore te whakamāramatanga i roto i te pire i te wā nei, i tino mārama rawa mō te tohu kohinga whakatatū, kia tūturu ā-ture ai. Nā reira mātou ka tūtuhou, kia whakatikaina te rara, kia whakaurusa atu ai he kupu hautoa e pā ana ki ngā rā, me ngā tohutoro kei te pukapuka mauhanga kōrero, e pā ana ki ngā whakawātanga, whakataunga hāngai hoki nā Te Kōti Whenua Māori i whakatakoto.

Tātaítanga moni hua rētī a Ngahere Karauna raihana

Hoatu wāhi ai a rara 72(3), o Te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa, mō te tātaítanga moni hua rētī i tukua mai e Ngā Kaitiaki Rētī Ngahere Karauna. Ko ngā kaitiaki o Te Poutiaaki Whakataunga o Poronga A me B o Maraeroa, he uri whai
Whakataunga whānui o ngā kerēme a Maniapoto

I taketake mai te whakapuaki tautoko o Te Poari Poutiaki Māori a Maniapoto i te pire whakataunga i tōna mōhio, kāore te kōrahi o ngā kerēme whānui o Maniapoto e ahutia. Ko te kupu whakatūturu i a mātou ko tēnei nā, arā, e pā anake ana te pire nei mō te whakataunga i ngā kerēme mō te Poronga A me B o Maraeroa, ā, kāore hoki te kōrahi o tētahi whakataunga i mua i te araroa e pā ana ki ngā kerēme hītori a Maniapoto, mō ngā whatinga o Te Tiriti o Waitangi.

Pire Whakarangatōpū i a Poronga A me B o Maraeroa

E ai ki ngā Whakataunga Tū Roa, kua whakaaroarohia e mātou te whakatakina o Te Pire Whakarangatōpū i a Poronga A me B o Maraeroa, me te whakatau, kua ngata o mātou hiahia, he pono ngā kōrero e ai rā ki ngā whakatikanga kua kite mātou i raro iho nei. Ka whakaae mātou, kāore ngā kaupapa i whakatakotoria i roto i te pire e taea te whakatutuki ēngari, mā te hanganga ture anake.

Whakatikatika i te whakatakina

I te tātaki (2) o te whakatakina mō Te Pire Whakarāngatōpū i a Poronga A me B o Maraeroa, i whakaurua hēngia mai he kōrero mō “tāpiritanga 4 ki te pukapuka āpiti e pā ana ki ngā tuhangia”. Ka tūtohu whakatikatika mātou kia whakatikaina tērā, kia kōrero kē ai mō te “wāhanga 4 o ngā tāpiritanga e pā ana ki te whakaaetanga whakataunga”.

Kaupapa Here me ngā mahi o te Rangatōpū

Kua whakaaroarohia e mātou te kaupapa here me ngā mahi o te Rangatōpū A me B o Maraeroa, ka whakatūria rā e te pire tūmataiti nei. Ko ngā ritenga pū o Wāhanga 13, o Te Ture Whenua Māori o te tau 1993, mō te kaupapa here, mō ngā mana me ngā mahi mā ngā rangatōpū Māori, ka hāngai katoa ēnei ki te whakarangatōpū. Heoi, kua pānga ki te whenua whai raihana i roto iho i te ngahere Karauna a Pureroa ki Te Rakī. Kua oti kē te hoatu tātaitanga moni hua rētū i te whakaetanga a Ngā Kaitiaki Rētū Ngahere Karauna, nā reira mātou ka tūtouhia kia whakakorea atu a rara 72(3) i te mea, kua kore kē he mahi māna.
kite mātou, kāore te huarahi hanga ture o te wā nei i tika nā te mea, e maiyororo ana ētahi ritenga o Wāhanga 13 ki te hanga o te kaupapa tiaki whakataunga-whai muri, kei te whakaarongia e te whakaaetanga whakataunga.

Kua kite mātou, e rapu ana ngā kaitiaki i tētahi hanga kaupapa tiaki rite anō te tauira, ki tērā mā te whakahaerenga komiti mō Poronga C o Maraeroa. Nā, ka whiwhi i te rangatōpū Māori ka whakatūria e te pire, te kotahi o ngā hea kei ngā kaitiaki e pupuri ana mō te kohinga whakatūtū. Ka riro mā te whakaaetanga whakataunga e hoatu te kaupapa here mā te rangatōpū.
Ngā Kōrero

Te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa

Tāpiritanga

Hātepe o te komiti
Nō te 8 o Paenga-whāwhā 2012 i tonoa ai ki te komiti, Te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa, me te Pire Whakarangatōpū i a Poronga A me B o Maraeroa. Ko te 18 o Paenga-whāwha 2012 te rā kati mō ngā tāpaetanga. Kotahi te tāpaetanga a tētahi kohinga whai pānga, i whiwhi, i whakaaroarohia e mātou. I whiwhi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hōnore Parekura Horomia
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Louisa Wall
Louise Upston
Jonathan Young

________________________________________
Maraeroa A and B Blocks Incorporation Bill

Private Bill

As reported from the Māori Affairs Committee

Refer to the joint commentary on the Maraeroa A and B Blocks Claims Settlement Bill and the Maraeroa A and B Blocks Incorporation Bill.
Te Pire Whakarangatōpū i a Poronga A me B o Maraeroa

Pire Tūmataiti

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto

Haere ki ngā kōrero tahi mō te Pire Whakataunga i ngā Kerēme mō Poronga A me B o Maraeroa, me te Pire Whakarangatōpū i Poronga A me B o Maraeroa.
Ngāti Mākino Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Ngāti Mākino Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Ngāti Mākino Claims Settlement Bill would give effect to the deed of settlement entered into by the Crown and Ngāti Mākino on 2 April 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill also records the Crown’s acknowledgement of the grievances of Ngāti Mākino and the Crown’s failure to uphold the Treaty of Waitangi.
Our commentary covers the settlement issues we considered and the amendments we recommend to the bill.
Ngāti Mākino

The bill includes only those elements of redress in the settlement package for which legislative authority is required. The deed of settlement sets out in full the redress provided to Ngāti Mākino in settlement of all its historical claims.

Ngāti Mākino is a small iwi comprising individuals descended from ancestors who exercised customary interests in the Ngāti Mākino area of interest after 6 February 1840 by virtue of being descended from Hei, Waitaha, and Mākino II.

Ngāti Mākino traditionally occupied the area between the Bay of Plenty coastline and lakes Rotoiti, Rotoehu, and Rotomā. Ngāti Mākino’s area of interest overlaps with Ngāti Rangitihiri, Ngāti Awa, Ngāti Pikiao, Ngāti Tūwharetoa (Bay of Plenty) to the east, Ngāti Rangiwhewehi, Ngāti Rangiteaorere, Tapuika, Ngāti Whakaue, and Waitaha to the west, and Ngāti Rongo Mai to the south. We understand that overlapping claims have been largely resolved in respect of the negotiations.

Ngāti Rangitihiri Raupatu Trust Incorporated

We heard opposition to the settlement from the Ngāti Rangitihiri Raupatu Trust, specifically concerning overlaps in Ngāti Mākino’s area of interest. The Ngāti Rangitihiri Raupatu Trust told us it had been unaware of the settlement’s inclusion of land to the east of the Waitahanui Stream at Ōtamarākau. We were advised that the Ngāti Rangitihiri Raupatu Trust does not have a mandate to speak on behalf of Ngāti Rangitihiri and does not administer Treaty settlement assets. Te Mana o Ngāti Rangitihiri is the post-settlement governance entity which holds Treaty Settlement assets on behalf of all Ngāti Rangitihiri.

We heard that the Ngāti Rangitihiri Raupatu Trust is concerned about the inclusion in the settlement of west Rotoehu Crown Forest licensed land. We understand that the Crown’s allocation of land within the Rotoehu Crown Forest between the various groups with overlapping interests, for the settlement of historical claims, was guided by the findings of the Waitangi Tribunal. Forestry redress for Ngāti Rangitihiri is provided through the Central North Island Forests Land Collective Settlement Act 2008. The Minister for Treaty of Waitangi Negotiations wrote to Ngāti Rangitihiri outlining the settlement redress that was to be offered to Ngāti Mākino and, after
discussions, Te Mana o Ngāti Rangitihi expressed its support for the settlement on behalf of Ngāti Rangitihi. We therefore do not accept the trust’s assertion that Ngāti Rangitihi would be unfairly affected by Ngāti Mākino’s receipt of Crown forestry land as commercial redress. We further consider that an appropriate consultation and engagement process with Ngāti Rangitihi was undertaken by the Crown with Te Mana o Ngāti Rangitihi.

Legal descriptions and encumbrances of properties
We recommend amendments to Schedule 2 and Schedule 3 to reflect the updated legal description following a survey of the Lake Rotomo Scenic Reserve and the Moutoroi Pā site. We also recommend amendments to the encumbrances for the Rākau ō Kauwae Hapa site.

Whenua rāhui
We recommend an amendment to clause 5(3) of the bill to refer to whenua rāhui, to reflect the deed of settlement. The deed of settlement provides that the Lake Rotoma Scenic Reserve would be subject to a whenua rāhui. This means that the New Zealand Conservation Authority or a conservation board would be required to have particular regard to the statement of Ngāti Mākino’s values and protection principles in relation to the site.

Application of other enactments
We recommend a correction to a cross-reference by an amendment to clause 83(4) of the bill to delete the words “section 76” and replace with “section 79”.

Appendix

Committee process
The Ngāti Mākino Claims Settlement Bill was referred to the committee on 16 February 2012. The closing date for submissions was 22 March 2012. We received and considered three submissions from interested groups and individuals. We heard three submissions via teleconference in Wellington.
We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hon Parekura Horomia
Katrina Shanks
Rino Tirikatene
Metiria Turei
Louise Upston
Nicky Wagner
Louisa Wall
Jonathan Young
Te Pire Whakataunga i ngā Kerēme a Ngāti Mākino

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakataunga i ngā kerēme a Ngāti Mākino me tana ūrō kia whakaaetia, tae atu ki ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Ka whakamana te Pire Whakataunga i ngā Kerēme a Ngāti Mākino, i te whakaaetanga whakataunga i ūrō atu rā te Karauna me Ngāti Mākino i te 2 o Paenga-whāwhā 2011, mō tētahi whakataunga oti atu o ngā kerēme o neherā e pā ana ki ngā whatinga o te Tiriti o Waitangi. Kei roto anō hoki i te pire, te whakaaetanga o te Karauna ki ngā whakamau a Ngāti Mākino, me te takanga o te Karauna ki te tautoko i te Tiriti o Waitangi.
Ka kapi i ā mātou kōrero ngā take whakataunga nā mātou i whakaaroaro, ā, ngā whakatikatika hoki nā mātou i ūrō ki te pire.
Ngāti Mākino
Kei roto i te pire, aua āhuatanga whakatika hapa anake i te mōk-ihī whakataunga ka hiahiatia rā he whakamanatanga ā-ture. Ka whakatakotiora e te whakataunga te katoa o te whakatika hapa i hoatu ki a Ngāti Mākino i te whakataunga o āna kerēme hītori katoa. He iwi pakupaku noa a Ngāti Mākino o te hunga takitahi i heke mai i ngā tūpuna whakamahi i ō rātou pānga tukunga iho i te pānga wāhi o Ngāti Mākino, whai muri i 6 o Hui-tanguru i te tau 1840, nā te mea hoki, he uri i heke mai i a Hei, Waitaha me Mākino te Tuarua. Nō mai anō a Ngāti Mākino i noho ai i te takiwā i waenganui i te tuku-tai o Te Moana-ā-ī-Toi-te-Huatahi me ngā rōtu o Rotoiti, o Rotoehu, ā, o Rotoroa hoki. Inaki ai ngā pānga wāhi o Ngāti Mākino ki ērā o Ngāti Rangitihi, Ngāti Awa, Ngāti Pikiao, Ngāti Tūwharetoa (ki Te Moana-ā-ī-Toi-te-Huatahi) i te rāwhiti, ki ērā o Ngāti Rangiwhewehi, Ngāti Rangitaorere, Tapuika, Ngāti Whakaue, Waitaha i te uru, ki tērā hoki o Ngāti Rongomai i te tonga. Ki tō mātou mōhio, kua tautū te nuīnau o ngā kerēme inaki e pā ana ki ngā whirihirihinga.

Te Rangatūpū Poutiaki Raupatu o Ngāti Rangitihi
I rongo whakahēnga mātou mai i Te Poutiaki Raupatu o Ngāti Rangitihi ki te whakataunga, otirā, ērā e inaki ai i ngā pānga wāhi o Ngāti Mākino. Ko tā Te Poutiaki Raupatu o Ngāti Rangitihi ki a mātou, kihai rawa atu a ia i mōhio ki te whakaurunga ki rōtu i te whakataunga o te whenua i te taha rāwhiti o te Awa o Waitahanui i Ōtamarākau. Ko tērā kua kite mātou, kihai i Te Poutiaki Raupatu o Ngāti Rangitihi he mana kōkiri ki te kōrero mō Ngāti Rangitihi, ā, kāore hoki e whakahaere rawa whakataunga Tiriti ana. Pupuri ai Te Mana o Ngāti Rangitihi, tērā hinonga tiaki kaupapa whakataunga-whai muri, i ngā rawa Whakataunga Tiriti mō te katoa o Ngāti Rangitihi. I rongo mātou, i te māhahāhara Te Poutiaki Raupatu o Ngāti Rangitihi ki te whakaurunga o te whenua whai raihana a Ngahere Kaurauna i Rotoehu ki te uru, ki rōtu i te whakataunga. Ki tō mātou mōhio, nā ngā whakataunga a Te Rōpū Whakamana i Te Tiriti o Waitangi i ārangi te tohaina a te Karauna i te whenua i rōtu iho i te Ngahere Karauna o Rotoehu ki waenganui i ngā momento Kohinga, he pānga inaki ō rātou e pā ana ki te whakataunga o ngā kerēme hītori. Mā rōto kē i Te Ture Whakataunga a te Ohu Whenua o ngā Ngahere i Te Puku o te Ika a Māui o te tau 2008, te whakatika hapa ngahere mā Ngāti Rangitihi. I
Ngā kōrero

Te Pirē Whakataunga i ngā Kerēme
a Ngāti Mākino

Tuhi atu te Minita mō ngā Whiriwhiringa e pā ana ki te Tiriti o Waitangi ki a Ngāti Rangitīhi me te whakamārama i te whakatika hapa whakataunga e tukua ana ki a Ngāti Mākino, ā, whai muri i ngā mata-pakinga, ka whakapua e Te Mana o Ngāti Rangitīhi tōna tautoko mō Ngāti Rangitīhi e pā ana ki te whakataunga. Nā reira, kīhai mātou e whakaae ki te kōrero tanga a te poutiaki kītanga, ka huhunāia kīnotia a Ngāti Rangitīhi mā te whiwhinga a Ngāti Mākino i te whenua a Ngahere Karauna hei mea whakatika hapa arumoni. Tua atu hoki, i tīka ki a mātou te hātepe rapu whakamaherehere, tūtakitaki hoki i whakahaere a te Karauna mā Ngāti Rangitīhi.

Ngā whakaahuatanga ā-ture me ngā taumahatanga e pā ana ki ngā pito whenua

Ka ārōrangiwhakatikatikanga mātou ki Pukapuka Āpiti 2 me Pukapuka Āpiti 3 kia kitea mai ai, ko tērā te whakaahuatanga ā-ture kua whakahouinga whai ake i tētahi rūrihanga o te Whenua Rāhui Whakakitekite o te Roto o Rotoehu, o te tūnga Moutoroi Pā hoki. Ka ārōrangiwhakatikatikanga anō hoki mātou ki ngā taumahatanga mō te tūnga Rākau o Kauwae Hapa.

Whenua rāhui

Ka ārōrangiwhakatikatikanga mātou ki tētahi whakatikatikanga ki rara 5(3) o te pire, kia whakahuatia ai te whenua rāhui, kia kītea mai ai hoki, ko te whakaaetanga whakataunga tērā. Hoatu wāhi ai te whakaaetanga whakataunga mō te here i te Whenua Rāhui Whakakitekite o te Roto o Rotoehu ki tētahi whenua rāhui. Ko te tikanga ia o tēnei e mea ana, me arongia e Te Mana Papa Atawhai o Aotearoa, e tētahi poari papaihia rānei te tauākī o ngā uara me ngā mātāpono tika i Ngāti Mākino mō te tūnga.

Whakamahinga i ētahi atu whakaturetanga

Ka ārōrangiwhakatikatikanga mātou ki tētahi thohutoronga mā tētahi whakatikatikanga ki rara 83(4) o te pire kia ūkuia atu ngā kupu “tekiona 76” me te whakakapi mā ngā kupu “tekiona 79”.
Tāpiritanga

Hātepe o te komiti


I whiwhi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi.

Ngā mema o te komiti, ko

Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hōnore Parekura Horomia
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Louise Upston
Nicky Wagner
Louisa Wall
Jonathan Young
Ngāti Whātua Ōrākei Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation

The Māori Affairs Committee has examined the Ngāti Whātua Ōrākei Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction

The Ngāti Whātua Ōrākei Claims Settlement Bill would give effect to the deed of settlement entered into by Ngāti Whātua Ōrākei and the Crown on 5 November 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill also records the acknowledgements and the apology offered by the Crown to Ngāti Whātua Ōrākei.

The bill includes only those parts of the redress in the settlement package that require legislative authority. The deed of settlement sets out in full the redress provided to Ngāti Whātua Ōrākei in settlement of all its historical Treaty of Waitangi claims.
Ngāti Whātua Ōrākei is the collective group comprising individuals descended from the ancestor Tuperiri and members of the hapū of Te Tāōū, Ngā Oho, and Te Uringutu who exercised customary rights in the area of interest of Ngāti Whātua Ōrākei after 6 February 1840. Ngāti Whātua Ōrākei’s area of interest runs across Auckland’s North Shore, and through the Manukau and Waitematā harbours, and includes all the land in between. This area overlaps with the areas of interest of Ngāti Whātua o Kaipara, Te Kawerau ā Maki, Marutūāhu, and the Waiohua tribes.

Our commentary covers the amendments we propose to clause 10 and Schedule 2 of the bill. The remainder of our commentary discusses the settlement issues we considered.

Te Tāōū

Te Tāōū is one of the three constituent hapū of Ngāti Whātua Ōrākei. A representative of Te Tāōū expressed concern that, as he did not consider Te Tāōū to be part of Ngāti Whātua, the hapū would not benefit from the settlement. Clause 11 of the bill makes it clear, however, that members of Te Tāōū are included in the settlement. We also note that the Waitangi Tribunal found that Te Tāōū would benefit from the Tāmaki Makaurau settlements including Ngāti Whātua o Kaipara and any future settlement that may be negotiated with Te Runanga o Ngāti Whātua. We do not support the assertion that Te Tāōū would be excluded from benefiting from this settlement.

Defence reserve at Narrow Neck

Clause 53 provides for Ngāti Whātua Ōrākei to purchase 3.2 hectares of land on the Narrow Neck headland on the North Shore as commercial redress. We heard strong opposition to the inclusion of this land in the settlement from a number of submitters on the grounds that the land has reserve status and it is of considerable value to the wider Devonport community. We acknowledge that the land at Narrow Neck is of historical and cultural significance to many in Tāmaki Makaurau, and New Zealand more generally. The headland has been utilised for various defence purposes since its purchase by the army in 1886, including as a detention camp for conscientious objectors primarily from Waikato-Tainui and Maniapoto during World War One.
The 3.2 hectares of land currently has reserve status for defence purposes and is occupied by the Navy’s Officer Training School. If Ngāti Whātua Ōrākei purchases the land, we understand that it would lease back the land to the New Zealand Defence Force for a minimum of 15 years, with a right of renewal for up to 150 years.

**Commercial redress**

We are aware of concern about the land being offered as commercial rather than “cultural” redress. We understand that Ngāti Whātua Ōrākei had no desire to acquire the site as a recreational reserve, and its commercial value is fundamental to the settlement redress as negotiated. If the trustees purchase the site, the iwi may develop it after the New Zealand Defence Force vacates it. It could also be developed by the New Zealand Defence Force if it retains ownership. Ngāti Whātua Ōrākei would be subject to the same regulatory constraints on commercial development as any other developer.

**Revocation of reserve status**

Clause 54 provides that, should the Crown transfer the land at Narrow Neck to Ngāti Whātua Ōrākei, its status under the Reserve Act 1977 as a reserve for defence purposes would be revoked. We received many submissions expressing concern about the revocation of the land’s reserve status. It was argued that the land is protected by the Hauraki Gulf Marine Park Act 2000 and should therefore revert to public ownership once vacated by the defence force.

Clause 14 of the Hauraki Gulf Marine Park Act expressly provides that the ability of any person or group to make a claim arising out of the application of the Treaty of Waitangi relating to the area within the Hauraki Gulf, and the ability of the Crown to offer redress, are not limited. We are assured that the Crown has considered thoroughly the removal of the land from the Hauraki Gulf Marine Park, and considers it to be consistent with the objectives of the Hauraki Gulf Marine Park Act. The sale of the land would not limit coastal access.

**Playing field access**

We are aware of concern about public access to the New Zealand Defence Force playing fields via a walkway on the southern boundary of the land in question. We understand that the current access
arrangement between the Defence Force and the Auckland Council can, in fact, be terminated with three months’ notice. The post-settlement governance entity, the Ngāti Whātua Ōrākei Trust, has guaranteed that it will make this public access permanent as part of the lease with the New Zealand Defence Force. We consider that this approach would benefit the community generally.

**Definition of commercial property**

We recommend that the definition of commercial property in clause 10 be amended to clarify that it catches only those properties listed in part 3 of the property schedule of the deed of settlement that are in fact transferable in accordance with the deed. This amendment takes account of the fact that certain of those properties require preconditions to be met before a transfer may take place.

**Definition of Ngāti Whātua Ōrākei Trust**

We recommend an amendment to the definition of the Ngāti Whātua Ōrākei Trust in clause 10, to make it clear that this term means the trust with that name established by a deed of trust dated 3 November 2011.

**Legal description of property**

We recommend an amendment under Schedule 2 to the land description of the Narrow Neck property to remove an inapplicable computer interest register description.

**Consultation with the public**

We have considered the adequacy of the Crown’s consultation with the local community and the Auckland Council. The Hauraki Gulf Forum, constituted under the Hauraki Gulf Marine Park Act, was informed of the Crown’s intention to include the purchase and lease-back provision for the site at Narrow Neck in the settlement package in April 2011. The Auckland Council is a member of the Hauraki Gulf Forum. We understand that the forum did not provide any comment in response.

We note that settlement negotiations are generally conducted in confidence, which limits the public consultation the Crown can practically
undertake. Nevertheless, the inclusion of naval defence properties as commercial redress was publicly signalled when the Agreement in Principle was agreed in 2006 and again when the Deed of Settlement was initialled in 2011.

Wakakura block
The Mary Barrett Glade in the southern area of the Wakakura block is currently accessible by means of a public walkway. The accessible parts of the glade and the walkway would be within the marginal strip to be created when the site is transferred to Ngāti Whātua Ōrākei. The strip is to be administered by the Department of Conservation. The Wakakura block also includes the remains of historical brickworks, and this site is also included in the marginal strip. We encourage all parties to preserve the archaeological heritage on the Wakakura block.

Support for the bill
We were pleased that a number of submitters expressed support for the settlement as provided for in the bill. We were, however, disheartened by those submitters who opposed the bill largely on grounds that stem from mistrust and misunderstanding. We encourage members of the Devonport community who have reservations about the settlement to work towards a positive relationship with Ngāti Whātua Ōrākei. We consider that effective communication between affected parties, particularly as they could be neighbours in the future, would improve understanding of differences and avoid mistrust.
Appendix

Committee process
The Ngāti Whātua Ōrākei Claims Settlement Bill was referred to the committee on 8 March 2012. The closing date for submissions was 18 April 2012. We received and considered 99 submissions from interested groups and individuals. We heard 23 submissions, which included holding a hearing in Auckland.

We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (chairperson)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hon Parekura Horomia
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Louisa Wall
Louise Upston
Jonathan Young
Te Pire Whakataunga i ngā Kerēme a Ngāti Whātua Ōrākei

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakataunga i ngā kerēme a Ngāti Whātua Ōrākei me tana tūtohu kia whakaaetia i te taha o ngā whakatikatika kua oti te whakaaatu.

Kupu Whakataki
Ka whakamana Te Pire Whakataunga i ngā Kerēme a Ngāti Whātua Ōrākei i te whakaaetanga whakataunga i uru atu rā te Karauna me Ngāti Whātua Ōrākei ki roto i te 5 o Whiringa-ā-rangi 2011, mō te whakataunga oti atu o ngā kerēme o neherā mō ngā whatinga o Te Tiriti o Waitangi. E mau ana hoki i roto i te pire ngā whakaaetanga me te whakapāha i hoatu e te Karauna ki a Ngāti Whātua Ōrākei.
Kei roto i te pire aua wāhanga whakatika hapa anake i te mōk-ihi whakataunga ka hiahiatia rā he whakamanatanga ā-ture. Whakatakoto ai te whakaaetanga whakataunga i te katoa o te whakatika hapa i hoatu ki a Ngāti Whātua Ōrākei, hei whakataunga i ʻona kerēme Tiriti o Waitangi hītori katoa.
Ko Ngāti Whātua Ōrākei te kohinga ohu o aua hunga takitahi i heke mai i te tupuna a Tuperiri, ā, i ērā hoki o ngā hapū o Te Tāōū, o Ngā Oho, o Te Uringutu, a rātou mā i whakamahi nei i ō rātou tika tukunga iho i te pāŋa wāhi pānga o Ngāti Whātua Ōrākei, mai anō i te 6 o Hui-tanguru i te tau 1840. Whakawhitī haere ai te pāŋa wāhi o Ngāti Whātua Ōrākei ki Te Pae Rakihwenua o Tāmaki-makau-rau, puta atu ai ki ngā wahapū o Waimarama me Kawerau-ā-Maki, o Te Kawerau-ā-Maki, o Marutūahu, ā, o Wāihua hoki.

Kapi ai i ā mātou kōrero ngā whakatikatika kei te whakaaroarohia e mātou mō rara 10, ā, mō Pukapuka Āpitī 2 hoki o te pāre. Matapaki ai te toenga o ā mātou kōrero i ngā take e pā ana ki te whakataunga i whakaaroarohia e mātou.

**Te Tāōū**

Ko Te Tāōū tētahi o ngā wāhanga hapū e toru o Ngāti Whātua Ōrākei. Nā, ka whakapuaki tētahi māngai o Te Tāōū i tōna maharahara ka mea ki a ia nei, kāore he whai painga o te hapū i roto i te whakataunga nā te mea, kāore he paku Te Tāōū i roto i a Ngāti Whātua. Heoi anō, mārama ana te whakaatu a rara 11 o te pāre, he ngā tāngata o Te Tāōū kei roto i te whakataunga. Kua kīte hoki mātou, e ai ki Te Rōpū Whakamana i te Tirirangi he painga anō hoki o Te Tāōū kei ngā whakataunga a Tāmaki-makau-rau, tae atu ki a Ngāti Whātua o Kaipara, ā, he whakataunga kei mua i te aroaro, ka whiriwhiria pe a i te taha o Te Rūnanga o Ngāti Whātua. Kīhia mātou e tautoko i te kōrerootanga e pā ana ki te waiho atu i a Te Tāōū ki waho o te whakataunga nei, kīhia hoki e whiwhi painga.

**Whenua rāhui waonga i Narrow Neck**

Hoatu wāhi ai a rara 53 mā Ngāti Whātua Ōrākei, kia hokoa ai he whenua e 3.2 heketea i te mātārae o Narrow Neck, i Te Raki Pae-whenua, heī whakatika hapa arumoni. He tino kaha te whakahēnga i rongo mātou mai i ētahi kaiwhakatako tāpapainga mō te whakarunga o te whenua nei ki roto i te whakataunga nā te mea, he tūranga whenua rāhui tō te whenua, ā, arā noa atu tōna ura ki te haptorī whānui o Devonport. Ka whakaae mātou, he wāhi nui te hītori me te tikanga tuku iho o te whenua i Narrow Neck ki te tini maha i Tāmaki-makau-rau,
tētahi tētahi te whakatakoto ara kerēme rānei i ake mō ki kohinga kīhai tētahi tino o te kaha ka e whakawhāitingia tangata, whakapuaki, Ko e Tākai Tīkapa e Papa Pātaka Rēhia Tā Moana, o te atu wehe ana waonga. o nā i hoki anō ki te rangatiratanga māra, ka runga tērā, 2000, o te o ure Tīkapa Moana Tā Kai te Pātaka tau maru o Rēhia Papa e kei te te o raro whenua tohengia, te tiakina tērā whenua o māharahara tūranga te rāhui ana te mō i i waonga. a mātou tāpaetanga ngā huhua e whakapuaki i whiwhi hei rāhui Rāhui o mō te Whenua ngā te whenua Ture take 1977 whakakorea Neck ki raro Ngāti tūranga i Whātua i Ōrākei, ka te te te ki rara whenua e 54, whakawhitia Karauna i o enga rāhui te utaina Ngāti Whātua te a Ōrākei. i runga kirite ā-ture anō arumoni, hoki mō whanaketanga ārahi te mō ka atu tētahi anō rangatira taua wāhi. kaiwhakawhanake, te noho ki Ka eia a hoki te ia hei tonu whakawhanake ana e T Kaatuwhakawhāitingia ana kei te whakakorenga o te tūranga whenua rāhui o te whenua. Ko tērā i tohengia, kei te tiakina te whenua i rarou i te maru o te Ture Papa Rēhia o Te Pātaka Kai o Tīkapa Moana o te tau 2000, ā, nā runga i tērā, me hoki anō te rangatiratanga ki te marea ka wehe atu ana te ope waonga. Ko tā rara 14 o Te Ture Papa Rēhia o Te Pātaka Kai o Tīkapa Moana, ka tino whakapuaki, kihai e whakawhāitingia te kaha o tētahi tangata, tētahi kohinga rānei ki te whakatakoto kerēme i ara ake mō tētahi
wāhi i roto ake i Te Pātaka Kai o Tikapa Moana nā te whakamahinga o Te Tiriti o Waitangi, ā, e whakawhāitingia rānei te kaha o te Karauna ki te tuku whakatīka hapā. Nā te kōrero nei mātou i whakatūturu, arā, kua āta whakaaroarohia e te Karauna te tangohanga mai o te whenua i Te Papa Rēhia o Te Pātaka Kai o Tikapa Moana, ā, ko tāna hoki ka whakatau, e ārite ana tērā ki ngā whāinga o Te Ture Papa Rēhia o Te Pātaka Kai o Tikapa Moana. Kihai te urunga ki te taha moana e whakawhāitingia e te hokonga o te whenua.

**Urunga papa tākaro**

Kei te mārama mātou ki te māharahara mō te urunga marea ki ngā papa tākaro o Te Ope Kaatua o Aotearoa mā tētahi ara hīkoi i te taha tonga o te whenua e kōrerotia ake nei. Ki tō mātou mōhio, ka tino taea te whakaritenga urunga i waenganui i Te Ope Kaatua me te Kau Nihera o Tāmaki-makau-rua o te wā nei, te whakakorea i roto i ngā marama e toru o te pānuitanga. Kua oati te hinonga whakaahere tiaki kaupapa mō te whakataunga-whai muri, ko Te Poutiaki o Ngāti Whātua Ōrākei tērā, ka whakatūturungia te urunga marea nei e ia mō ake tonu atu hei wāhanga o te rīhi mā Te Ope Kaatua o Aotearoa. Ko te āhua nei ki a mātou, he painga kei roto i tēnei aronga mā te marea.

**Whakamāramatanga o te pito whenua arumoni**

Ka tūtohu mātou kia whakatikaina te whakamāramatanga o te pito whenua arumoni i rara 10 kia mārama ai te kite atu, ko aua pito whenua anake ērā e whakarārangitia ake rā i wāhanga 3 o te kupu āpiti o te whakaaetanga whakataunga, ka whakawhitia e ai ki te whakaaetanga. Ka tā tēnei whakatikatika ka tino whakaaroarotia, me āta tutuki e ētahi o aua pito whenua rā ētahi ake ritenga tōmua i mua o te whakawhitinga.

**Whakamāramatanga o Te Poutiaki o Ngāti Whātua Ōrākei**

Ka tūtohu mātou kia whakatikaina te whakamāramatanga o Te Poutiaki o Ngāti Whātua Ōrākei i rara 10 kia mārama ai te kite atu, ko te tikanga o tēnei kītanga e mea ana, ko te poutiaki me taua ingoa i whakatūria e tētahi whakaaetanga poutiaki i te rā 3 o Whiringa-ā-rangi i te tau 2011.
Whakaahuatanga ā-ture o te pito whenua
Ka tūtohu whakatikatika mātou i raro Kupu Āpiti 2 ki te whakaahuatanga o tētahi pito whenua i Narrow Neck, ina rā, kia mukua atu tētahi whakaahuatanga rēhita pānga ā-rorohiko kore-hāngaitanga.

Rūnangatanga whakaaro i te taha o te marea
Kua whakaaroarohia e mātou te pai rawa o te rūnangatanga whakaaro a te Karauna i te taha o te hapori hau kāinga, me te Kaunihera o Tāmaki-makau-rau. I whakamōhiotia atu ki Te Wānanga o Te Pātaka Kai o Tikapa Moana, tērā rangatōpū i whakaturengia i raro i Te Ture Papa Rēhia o Te Pātaka Kai o Tikapa Moana, te hiahia o te Karauna ki te whakauru i te ritenga hoko mai, rāhitia anōtia hoki mō te tūnga i Narrow Neck ki roto i te mōkahi whakataunga i te marama o Paenga-whāwhā 2011. He mema o Te Wānanga o Te Pātaka Kai o Tikapa moana te Kaunihera o Tāmaki-makau-rau. Ki tō mātou mōhio, kāore taua wānanga i whakautu mai.

Ki a mātou nei, nā te muna o te āhua o ngā whirihirilinga whakataunga, ka itiiti te wā mō te marea me te Karauna ki te rūnangatanga whakaaro, ā, nā runga i tērā kua kore te marea e tino whai wāhi. Ahakoa tērā, i puta te tohu ki te marea mō te whakaurunga o ngā pito whenua waonga a te taua moana hei whakatika hapa arumoni i te manakohanga o te Whakaaetanga Mātāpono i te tau 2006, ā, i te wā anō hoki i whakaretangia te Whakaaetanga Whakataunga i te tau 2011.

Poronga Wakakura
I te wā nei, mā tētahi ara hīkoi te marea e uru atu ai ki te Ahaaha o Mary Barrett i te taha tonga o te poronga o Wakakura. Ka noho ngā wāhanganga urunga o te Ahaaha me te ara hīkoi ki roto iho i te tapa haurokuroku, ā tōna wā te tūnga ka whakawhitia ki a Ngāti Whātau Ōrākei. Ka riro mā Te Tari Papa Atawhai e whakahaere te tapa. Kei roto hoki te toenga o ngā ahumahi perekī hītori i te poronga o Wakakura, ā, kei roto hoki te tūnga nei i te tapa haurokuroku. Ka akiaki mātou i ngā taha katoa ki te tiaki i ngā huakanga tukunga iho kei runga i te poronga o Wakakura.
Tautoko mō te pire
Āhuareka ana mātou ki te huhua kē nei o te hunga whakatakoto tāpaetanga i whakapuaki tautoko mō te whakataunga i hōmaitia rā i roto i te pire. Hēoi anō, i heke anō hoki ō mātou wairua nā te whakahēngā o aua hunga whakatakoto tāpaetanga i te pire, i te nuinga o te wā, nā te hotohoto, nā te pōhēhē. Ka akiaki mātou i ērā o te haperi o Devon-port, he nguengue o rātou mō te whakataunga, kia kaha te whakapiri atu ki a Ngāti Whātua Ōrākei, kia puāwai ai he hononga whai kiko. Ki a mātou nei, mā te pai ake o te whakawhitiwhiti whakaaro, o te whakawhitiwiti kōrero hoki i waenganui i ngā taha e pā ana i te mea, he wā kei mua i te aroaro e noho kiritata ai rātou, tētahi ki tētahi. Mā tērā hoki e pai ake ai ngā rerekētanga i waenganui i a rātou, e kore ai hoki te hotohoto.
Tāpiritanga

Hātepe o te komiti

I whiwhi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hōnore Parekura Horomia
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Louisa Wall
Louise Upston
Jonathan Young
Ngāti Manuhiri Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Ngāti Manuhiri Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Ngāti Manuhiri Claims Settlement Bill would give effect to the deed of settlement entered into by Ngāti Manuhiri and the Crown on 21 May 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill also records the acknowledgements and the apology offered by the Crown to Ngāti Manuhiri. The bill includes only those parts of the redress in the settlement package that require legislative authority. The deed of settlement sets out in full the redress provided to Ngāti Manuhiri in settlement of all its historical Treaty of Waitangi claims. Ngāti Manuhiri comprises those individuals who descend from Manuhiri, the eldest son of Maki, who exercised customary rights in
the area of interest of Ngāti Manuhiri after 6 February 1840. Ngāti Manuhiri is affiliated through Maki with the Kawerau confederation, and shares close whakapapa connections with Ngāti Wai. Ngāti Manuhiri’s area of interest runs along the east coast north of Auckland, from Bream Tail to Whangaparāoa, and includes Te Hauturu-o-Toi/Little Barrier Island. We understand that Ngāti Manuhiri, Ngāti Wai and Ngāti Rehua all have whakapapa links to Te Hauturu-o-Toi. While we appreciate that Ngāti Manuhiri has worked with the Crown to resolve any issues related to overlapping claims, we remain concerned that the bill as introduced does not adequately reflect these shared interests with Ngāti Wai and Ngāti Rehua. We therefore recommend an amendment to ensure the bill reflects the possibility of other iwi becoming involved in the co-governance re-dress for Te Hauturu-o-Toi/Little Barrier Island under future Treaty settlements. The balance of our commentary covers the other amendments we recommend to the bill and the settlement issues we considered.

Te Hauturu-o-Toi

We heard opposition to the settlement, specifically concerning Te Hauturu-o-Toi. Clause 83 of the bill provides for Te Hauturu-o-Toi/Little Barrier Island gift area, less the 1.2 hectares discussed below, to be vested in the post-settlement governance entity, and for that vested property to be gifted back to the people of New Zealand after seven days. The remaining 1.2 hectares’ fee simple estate would remain vested in the trustees of Ngāti Manuhiri. Clauses 84 to 96 of the bill provide for co-governance, with the governance entity to be involved with the conservation management plan for Te Hauturu-o-Toi/Little Barrier Island (less the 1.2 hectares).

We have considered the adequacy of the bill in acknowledging the mana whenua of other groups to Te Hauturu-o-Toi. We are aware of concern that the bill could enable Ngāti Manuhiri to limit access to Te Hauturu-o-Toi, and to prevent Ngāti Wai and other iwi with interests from influencing the management of the island. We have been given an assurance that this is not the intent or the likely effect of the bill.
Co-governance arrangements
We are of the view that clause 83(3) of the bill, which acknowledges “the area? s other former owners of Ngāti Rehua and Ngāti Wai descent” is not sufficient. The drafting of the co-governance provisions is prescriptive, following the Conservation Act 1987. However, as introduced the bill does not contemplate adequately the possibility of other iwi groups becoming involved in future co-governance arrangements. We note that Ngāti Manuhiri intends to work with Ngāti Wai and Ngāti Rehua in the development of a conservation plan.

Clarification of redress
We understand that the bill would not convey redress exclusively to Ngāti Manuhiri. As a result of our consideration, we recommend a new clause 96A to make it clear that the bill would not prevent future Treaty settlements from providing for co-governance arrangements of Te Hauturū-o-Toi involving other iwi. This proposed amendment has been agreed to by the parties to the settlement. We also understand that the Crown and Ngāti Manuhiri have agreed a deed to amend the deed of settlement to include a qualification to the same effect.

Ngātiwai Trust Board
Ngāti Wai does not yet have a body with a Crown-recognised mandate for the purposes of Treaty settlement negotiations; the Ngātiwai Trust Board is recognised, however, as the body that represents the interests of the Ngāti Wai community. Ngāti Manuhiri have a representative on the Ngātiwai Trust Board, as they have done for the past 70 years. We understand that the Ngātiwai Trust Board has formally expressed its support for the bill, but we are aware of specific concerns pertaining to the Trust Board’s mandate to consult and express the support of Ngāti Wai as a whole for the settlement of Ngāti Manuhiri’s historical claims. We consider that concern has largely stemmed from anxiety that the bill might confer exclusive mana whenua over Te Hauturu-o-Toi and also extinguish the historical claims of Ngāti Wai. The intent of clause 13 of the bill is that only the historical claims of Ngāti Manuhiri would be settled.
Conflicts of interest
We are aware of concern about a potential conflict of interest as the chair of the Ngātiwai Trust Board is also on the board of the Manuhiri Ōmaha Kaitiakitanga Ora (MOKO) Trust, which was the body mandated to negotiate the Treaty settlement provided for in this bill. The two bodies also employ the same legal counsel. We are assured that there is no conflict of interest, and that the dual roles have been made plain to the community. The close links between Ngāti Wai and Ngāti Manuhiri are well known and there are a number of people who are affiliated to both.

Special General Meeting
We heard that the Ngātiwai Trust Board held a special general meeting on 31 March 2012. At this meeting a motion was passed opposing the inclusion of Te Hauturu-o-Toi in Ngāti Manuhiri’s deed of settlement. The board considered the motion on 13 April and it was lost on a vote. The Ngātiwai Trust Board’s deed confers a wide discretion on the trustees and does not require trustees to act upon resolutions passed at a special general meeting. We do not consider that the Ngātiwai Trust Board has acted inappropriately.

Consultation and ratification processes
Consultation with Ngāti Wai
We heard that some members of Ngāti Wai felt that the Crown had not consulted them adequately regarding the settlement with Ngāti Manuhiri. The Crown engaged with Ngāti Wai in a number of ways throughout the negotiation and settlement with Ngāti Manuhiri, and we understand that there were a number of discussions about the settlement between Ngāti Manuhiri representatives, the Ngātiwai Trust Board, and various Ngāti Wai members. We note also that the inclusion of Te Hauturu-o-Toi as cultural redress was signalled publicly when the Agreement in Principle was agreed in 2009 and again when the Deed of Settlement was initialled in 2011.

Post-settlement governance entity
We heard from a small number of Ngāti Manuhiri members who were concerned about the structure of the post-settlement governance en-
tity. The standard consultation and ratification processes were undertaken for the acceptance of the deed of settlement and the establishment of the post-settlement governance entity. We note that the Waitangi Tribunal found no fault with the structure of the post-settlement governance entity and has declined two applications for urgent hearings on the adequacy of the Manuhiri Ōmaha Kaitiakitanga Ora Trust’s mandating processes. We are confident that the process for the finalisation of Ngāti Manuhiri’s settlement has been robust and transparent; in this we are guided by the findings of the Tribunal and the consistency of the processes employed by the MOKO Trust with Crown policy.

Te Uri o Maki
We heard objection to the settlement on the grounds that it does not provide fairly for Te Uri o Maki, and particularly the descendants of Maki’s eldest son, Maraeariki. Members of Te Uri o Maki told us that their Waitangi Tribunal claim, Wai 2181, would be settled by the bill without their consent. We note that the bill would settle only the aspects of Wai 2181 that relate to the descendants of Manuhiri. The bill would not prevent Te Uri o Maki claimants who are descended from Ngāwhetu from participating in the Ngāti Whātua o Kaipara settlement.

Meaning of historical claims
We recommend an amendment to clause 13 of the bill to make it clear that with respect to Wai 1811, the bill would settle only the historical claims of Ngāti Manuhiri, and would not extinguish the more generic element of the claim.

Legal description of statutory areas
We recommend an amendment to Schedule 1 to include the individual names of the three lakes that constitute the Ngāroto Lakes: Slipper Lake, Spectacle Lake and Tomarata Lake.

Legal description of cultural redress properties
We also recommend an amendment to Schedule 3 to correct the area of the Leigh Recreation Reserve site following a survey of the area.
Definition of Ngāti Manuhiri Settlement Trust

We recommend an amendment to the definition of the Ngāti Manuhiri Settlement Trust in clause 11, to make it clear that this term means the trust with that name established by a deed of trust dated 5 December 2011.
Appendix

Committee process
The Ngāti Manuhiri Claims Settlement Bill was referred to the committee on 8 March 2012. The closing date for submissions was 18 April 2012. We received and considered 100 submissions from interested groups and individuals. We heard 13 submissions at a hearing in Leigh.

We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (chairperson)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hon Parekura Horomia
Katrina Shanks
Rino Tirikatene
Metiria Turei
Louise Upston
Nicky Wagner
Louisa Wall
Jonathan Young
Te Pire Whakataunga i ngā Kerēme a Ngāti Manuhiri

Pire Kāwanatanga

Tērā nā te Komiti Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori Te Pire Whakataunga i ngā Kerēme a Ngāti Manuhiri me tana tūtohu kia whakaaetia i te taha o ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Ka whakamana Te Pire Whakataunga i ngā Kerēme a Ngāti Manuhiri i te whakaaetanga whakataunga i uru atu rā te Karauna me Ngāti Manuhiri ki roto i te 21 o Haratua 2011, mō te whakataunga oti atu o ngā kerēme o neherā mō ngā whatinga o Te Tiriti o Waitangi. E mau ana hoki i roto i te pire ngā whākinga me te whakapāha i hoatu e te Karauna ki a Ngāti Manuhiri.
Kei roto i te pire aua wāhanga whakatika hapa anake i te mōk-ihī whakataunga kia hiahiatia rā he whakamanatanga ā-ture. Whakatakoto ai te whakaaetanga whakataunga i te katoa o te whakatika hapa i hoatu ki a Ngāti Manuhiri, hei whakataunga i ōna kerēme Tiriti o Waitangi hītori katoa.
Te Pāne Whakataunga i ngā Kerēme
a Ngāti Manuhiri

Ngā Kōrero

Ko Ngāti Manuhiri aua hunga takitahi i heke mai i a Manuhiri, te tama mātāmua a Maki, otiārā, a rātou mā i whakamahi i ō rātou tika tuhunga iho i te pānga wāhi o Ngāti Manuhiri, mai anō i te 6 o Hui-tanguru i te tau 1840. Noho uri ai a Ngāti Manuhiri mā roto i a Maki, mā roto hoki i te whakaminenga o Kawerau, ā, he tata hoki ōna hononga whakapapa ki a Ngāti Wai.

Haere ai te pānga wāhi o Ngāti Manuhiri i te taha tai rāwhiti o Tā-maki-makau-rau ki te raki, atu i Bream Tail ki Whangaparāoa, ā, kei roto hoki Te Hauturu-o-Toi. Ki tō mātou mōhio, he hononga whakapapa katoa tō Ngāti Manuhiri, Ngāti Wai, Ngāti Rehua hoki ki Te Hauturu-o-Toi. Ahakoa tō mātou whakamihī, kua mahi a Ngāti Manuhiri i te taha o te Karauna ki te whakatatū take e pā ana ki ngā kerēme inaki, ka noho māharahara tonu mātou, kihai ngā pānga tuari nei i te taha o Ngāti Wai me Ngāti Rehua i āta whakaturia paingia i tua pire i whakaurua rā. Nā reira, ka tūtohu whakatikatika mātou kia āta kītea ai, ka whakaturia e te pire te tūpono whai wāhi mai o ētahi atu iwi i te māhia whakatikika hapā e pā ana ki te whakahaere tiaki kaupapa-tahi mō Te Hauturu-o-Toi, i raro whakataunga Tiriti kei mua i te aroaro. Ka kapi ai te toenga o ā mātou kōrero e ētahi atu whakatikatika ka tūtohunga e mātou ki te pire, ā, me ngā take whakataunga ka whakaaaroarohia e mātou.

Te Hauturu-o-Toi

I rongo whakahēnga kōrero mauohenga mātou ki te whakataunga, otiārā, tērā e pā pū ana ki Te Hauturu-o-Toi. Hoatu wāhi ai a rara 83 o te pire mō te takiwa takoha o Te Hauturu-o-Toi, iti iho i ngā heketea e 1.2 kua matapakia i raro iho nei, kia tukua ki te hinonga whakahaere tiaki kaupapa mō te whakataunga-whai muri, ā, mō tāua pito whenua tukunga ka takongahia, kia whakahokia anōtia ki ngā tāngata o Aotearoa, ka hīpa ana ngā rā e whitu. Nā, mō te pānga angiāngi o ngā heketea e 1.2 ka toe maia, ka noho tukunga tonu ki ngā kaitiaki o Ngāti Manuhiri. Hoatu wāhi aia ngā rara atu i te 84 ki te 96 o te pire mō te whakahaere tiaki kaupapa-tahi, ā, me te whai wāhi hoki o te hinonga whakahaere tiaki kaupapa-tahi, i te mahere whakahaerenga atawhai whenua mō Te Hauturu-o-Toi (me te kore o ngā heketea e 1.2).

Kua whakaaaroarohia e mātou te rawakatanga o te pire ki te whaka-manako i te mana whenua o ētahi atu kohinga ki Te Hauturu-o-Toi.
Kei te mārama mātou ki te māharahara, mā te pire nei e kaha ai a Ngāti Manuhiri ki te whakawāti i te urunga atu ki Te Hauturu-o-Toi, ā, me te kati atu ai i a Ngāti Wai me ētahi atu iwi whai pānga ki te whakaawe i te whakahaerenga o te motu. Kua hōmai te kōrero whakatūturū ki a mātou, eharā tēnei i te koronga o te pire, i te tūpono tukinga rānei o te pire.

Ngā whakaritenga mō te whakahaere tīaki kaupapa-tahi
Ki a mātou nei, kāore i rawaka rawa a rara 83(3) o te pire, tērā i whakaae ai, “ngā rangatira o mua i heke mai i a Ngāti Rehua me Ngāti Wai o te wāhi”. Whai atu ana i Te Tūranga Whenua o te tau 1987, he whakahau rawa te āhua o te whakahukihukitanga mō ngā ritenga whakahaere tīaki kaupapa-tahi. Heoi anō rā, pērā ki tērā i whakaurua, kāore i rahia rawa te aro a te pire i te tūpono whai wāhitanga o ētahi atu kohinga iwi ā tōna wā, i roto whakaritenga mō te whakahaere tīaki kaupapa-tahi. Kua kete atu mātou i te hiahia o Ngāti Manuhiri ki te mahi i te taha o Ngāti Wai me Ngāti Rehua ki te whakahiato mahere atawhai whenua.

Whakamāramatanga mō te whakatika hapa
Kei te mōhio mātou, kihai te pire e hoatu whakatika hapa oti atu ki a Ngāti Manuhiri. Nā runga i ū mātou whakaroarohanga, ka tūtohu rara hou 96A mātou kia mārama ai te kite mai, kihai te pire e aukati whakataunga Tiriti kei mua i te aroaro, ā, me te hōmai whakaritenga hoki e pā ana ki te whakahaere tīaki kaupapa-tahi i te taha o ētahi atu iwi mō Te Hauturu-o-Toi. Kua whakaaetia te whakatikatika e whakaroatia ake nei e ngā taha ki te whakataunga. Ki tō mātou mōhio hoki, kua whakaae te Kāroha me Ngāti Manuhiri ki te whakatika i te whakaaetanga whakataunga, kia whakaurua atu he tohu pērā.

Te Poari Poutiaki o Ngātiwai
Kāore he rangatūpū a Ngāti Wai e whai mana kōkiri ana kei te mōhiotia e te Kāroha i te wā nei mō ngā take whirihiriringa whakataunga Tiriti; heoi, ko tērā e mōhiotia ana e te Kāroha, ko Te Poari Poutiaki o Ngātiwai te rangatūpū māngai o ngā pānga mō te haporī o Ngāti Wai, mai anō i ngā tau e 70 ki muri. Ki tō mātou mōhio, he ōkawa te whakapuaki a Te Poari Poutiaki o Ngātiwai i tōna tautoko mō te
pire engari, e mārama ana mātou ki ngā māharahara pū e pā ana ki te mana kōkiri o Te Poari Poutiaki mō te whakawhitiwhiti whakaaaro, mō te whakapuaki tautoko hoki mō te katoa o Ngāti Wai e pā ana ki te whakataunga o ngā kerēme hītori a Ngāti Manuhiri. Ki a mātou nei, ko te nuinga o te mānukanuka i ahu mai i te mahara, ka whakamaua pea e te pire te mana whenua ki runga anake i a Te Hauturu-o-Toi, ā, ka whakatineia hoki ngā kerēme hītori a Ngāti Wai. Ko te koronga a rara 13 o te pire, ko ngā kerēme hītori anake a Ngāti Manuhiri ka whakatūtūngia.

**Ngā papā o te pānga**

I te mārama mātou mō te māhara hāra e pā ana ki tētahi papā ka tūpono puta ake pea nā te mea, ko te heamana o Te Poari Poutiaki o Ngāti-wai kei runga anō hoki i te poari o Te Poutiaki o Manuhiri Ōmaha Kaitiakitanga Ora (arā, a MOKO). Ko tērā hoki te rangatōpū kei te mōhioitia e te Karauna, kei a ia te mana kōkiri kua hoatu e te pire nei ki te whiriwhiri whakataunga Tiriti. He rite anō hoki te rōia a ngā rangatōpū e rua nei. Ko te kupu whakatūturū i a mātou, kihai he papā o te pānga, ā, kua āta whakamarahia paiangia ngā tūranga tōrua nei ki te haperi. Kei te mōhioitia paiangia ngā hononga tata i waenganui i a Ngāti Wai me Ngāti Manuhiri, ā, me te huhua anō hoki o rātou nō ngā iwi e rua nei.

**Hui Whānui Motuhake**

I rongo mātou, i whakatūria e Te Poari Poutiaki o Ngātiwai, tētahi hui whānui motuhake i te 31 o Poutū-te-rangi 2012. I taua hui, ka whakaaetia he mōtini whakahē hei whakauru i Te Hauturu-o-Toi ki roto i te whakaaetanga whakataunga a Ngāti Manuhiri. I whakaaoroaohia te mōtini e te poari i te 13 o Paenga-whāwhā, ka pōtingia, ā, ka hinga mā tētahi pōtī. E ai ki te whakaaetanga a Te Poari Poutiaki o Ngātiwai, he whānui te hiahia tanga ka tukua e taua whakaaetanga ki runga i ngā kaitiaki, ā, kihai hoki e whakahau kia whaitia ake, he whakataunga i whakaaetia i tētahi hui whānui motuhake. Ki a mātou nei, kāore te mahi a Te Poari Poutiaki o Ngātiwai i hē.
Hātepe rūnangatanga whakaaro, hātepe whakatūturutanga

Rūnangatanga whakaaro i te taha o Ngāti Wai
I rongo mātou, e ai ki ētahi o Ngāti Wai, kīhia i rahi rawa te rūnangatanga whakaaro a te Karauna i tō rātou taha e pā ana ki te whakataunga me Ngāti Manuhiri. Puta noa i te whiriwhiringa me te whakataunga i te taha o Ngāti Manuhiri, he huhua noa atu ngā huarahi i mahitahi ai i te taha o te Karauna me Ngāti Wai, ā, ki tō mātou mōhio, arā noa atu te huhua o ngā matapakinga mō te whakataunga i waenganui i ngā māngai a Ngāti Manuhiri, i te taha o Te Poari Poutiaki o Ngātiwai, ā, i waenganui hoki i ēnā, me ērā o Ngāti Wai. Kua kite hoki mātou, i tohungia ki te iwi whānui te whakaurunga o Te Hauturu-o-Toi, hei mea whakatika hapa tikanga tuku iho i te wā i whakaetia ai te Whakaaetanga Mātāpono i te tau 2009, ā, anō hoki i te whakaretahanga o te Whakaaetanga Whakataunga i te tau 2011.

Hinonga whakahaere tiaki kaupapa mō te whakataunga-whai muri
I rongo kōrero mātou mai i ētahi tāngata torotoro nei o Ngāti Manuhiri mō tō rātou māharahara e pā ana ki te hanga o te hinonga whakahaere tiaki kaupapa mō te whakataunga-whai muri. Ka whakahaerea he hātepe whakawhitinga whakaaro, whakatūturutanga hoki ki tētahi taumata noa mō te manakohanga i te whakaaetanga whakataunga, me te whakahaūtanga o te hinonga whakahaere tiaki kaupapa mō te whakataunga-whai muri. Kua kite mātou, kīhia he hapa i kītea e Te Rōpū Whakamana i Te Tiriti o Waitangi e pā ana ki te hanga o te hinonga whakahaere tiaki kaupapa mō te whakataunga-whai muri, ā, e rua ngā tono i makaia e ia ki waho mō ngā whakawātanga kaikā, e pā ana ki te pai rawa o ngā hātepe whakamanatanga a Te Poutiaki o Manuhiri Ōmaha Kaitiakitanga Ora. Ngākau titikaha ana hoki mātou, he pakari, he mārama hoki te hātepe mō te whakaoinga o te whakataunga a Ngāti Manuhiri; waihoki, nā ngā whakataunga o te Taraipiunara mātou i ārahi i tēnei āhuatanga, ā, nā te rite hoki o ngā hātepe i whakamahia e Te Poutiaki o MOKO, me te kaupapa here hoki a te Karauna.
Te Uri o Maki
I rongo whakahēnga mātou ki te whakataunga nā runga i te take, kāore te wāhi i hoatu mā Te Uri o Maki i tōkeke, otirā, mā ngā uri whakaheke o te tama mātāmua a Maki, a Maraeariki. I kī mai ātahi o Te Uri o Maki ki a mātou, kīhī tā rātou kerēme ki Te Rōpū Whakamanā i te Tiriti o Waitangi, arā, a Wai 2181, e whakatatūngia e te pire ki te kore rātou e whakaae. Ko tērā kua kīte mātou, ko ngā āhuatanga anake o wai 2181 e pā ana ki ngā uri whakaheke o Manuhiri, ko ērā anake ka whakatatūngia e te pire. Kāore nga kaikerēme o Te Uri o Maki i heke iho i a Ngāwhetū, e katia atu e te pire kia whai wāhi ai i roto i te whakataunga a Ngāti Whātua o Kaipara.

Te tikanga o ngā kerēme hītori
Ka ātūtohu whakatikutika mātou ki rara 13 o te pire kia mārama ai te kitea atu, ka whakatatūngia e te pire ngā kerēme hītori anake a Ngāti Manuhiri e pā ana ki a Wai 1811, ā, kīhī te āhuatanga kano kē atu o te kerēme e whakatineia.

Whakaahutanga ā-ture o ngā takiwā ā-ture
Ka ātūtohu whakatikutika mātou ki Pukapuka Āpiti 1 kia uru atu ai ngā ingoa takitahi o ngā roto e toru e kīia nei, ko ngā Roto o Ngāroto; arā, a Roto Slipper, a Roto Spectacle, a Roto Tomarata hoki.

Whakaahutanga ā-ture o ngā pito whenua hē whakatika hapa tikanga tuku iho kei runga
Ka ātūtohu whakatikutika hoki mātou ki Pukapuka Āpiti 3 hei whakatika i te takiwā o te tūnga Whenua Rāhui Hākinakina o Leigh whai muri i tētahi rūrihanga o te takiwā.

Whakamāramatanga o Te Poutiaki Whakataunga a Ngāti Manuhiri
Ka ātūtohu whakatikutika mātou ki te whakamāramatanga o Te Poutiaki Whakataunga a Ngāti Manuhiri i rara 11, kia mārama ai te kitea mai, ka pā te tikanga o tēnei kīanga ki te poutiaki i a ia taua ingoa i te whakaūtanga e tētahi whakaaetanga poutiaki i te 5 o Hakihea 2011.
Ngā Kōrero

Te Pire Whakataunga i ngā Kerēme
a Ngāti Manuhiri

15

Tāpiritinga

Hātepe o te komiti
Nō te 8 o Poutū-te-rangi 2012 te Pire Whakataunga i ngā Kerēme a Ngāti Mākino i tūnoa ki te komiti. Ko te 18 o Paenga-whāwhā 2012 te rā kati mō ngā tāpaetanga. E 100 rau ngā tāpaetanga a ngā kohinga whai pānga me te hunga takitahi i whiwhi, i whakaaroarohia e mātou. E 13 ngā tāpaetanga i rongo mātou i tētahi whakawātanga i Leigh. I whiwhi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (heamana)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hōnore Parekura Horomia
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Louise Upston
Nicky Wagner
Louisa Wall
Jonathan Young

729
Ngāti Whātua o Kaipara Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Ngāti Whātua o Kaipara Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Ngāti Whātua o Kaipara Claims Settlement Bill would give effect to the deed of settlement entered into by Ngāti Whātua o Kaipara and the Crown on 9 September 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill also records the acknowledgements and apology offered by the Crown to Ngāti Whātua o Kaipara.

The bill includes only those parts of the redress in the settlement package that require legislative authority. The deed of settlement sets out in full the redress provided to Ngāti Whātua o Kaipara in settlement of all its historical Treaty of Waitangi claims.
Ngāti Whātua o Kaipara is the collective group comprising individuals descended from Haumoewaarangi and a recognised ancestor of at least one of Ngāti Whātua Tūturu, Te Tāōū, Ngāti Rango, Ngāti Hine, or Te Uri o Hau, and who exercised customary interests predominantly in relation to the area of interest of Ngāti Whātua o Kaipara at any time after 6 February 1840. The collective of Ngāti Whātua o Kaipara includes these individuals and the whānau, hapū, and groups to which these individuals belong.

Ngāti Whātua o Kaipara’s area of interest encompasses the entirety of the southern Kaipara region, from South Head to Muriwai on the west coast, and from near Wellsford to the upper Waitematā Harbour to the east. Five marae in the south Kaipara are affiliated with Ngāti Whātua o Kaipara: Te Haranui, Puatahi, Araparera, Kākānui, and Rēweti.

Our commentary covers the settlement issues we considered and amendments proposed to the bill.

**Distinction between commercial and cultural redress**

The Auckland Council expressed concern that two blocks of land in Helensville, currently public space, will be vested in Ngāti Whātua o Kaipara as part of their commercial redress.

This land has been incorrectly described in clause 6(5) as commercial redress. We recommend amending clause 6(5) by deleting the words “further commercial redress”. This is to make it clear the properties are not classified as commercial redress, and their financial value is not being deducted from the financial redress amount.

The council believes that reclassifying the land as cultural redress would ensure continued public access to the land and the facilities on it. However the land is being returned under the Gifted Lands Policy of Land Information New Zealand, as it was originally gifted by Ngāti Whātua to the Crown, and it will be provided to the iwi without any reserve or conservation encumbrances, and not vested as cultural redress. The buildings and improvements on the land are being sold to the iwi by the Auckland Council.

It was the iwi’s choice for the land to be transferred to the commercial post-settlement governance entity. Ngāti Whātua o Kaipara will be able to build on the land, remove existing structures, and use the land for commercial purposes if it wishes. However, the land is still
subject to an open space designation in Auckland Council planning documents, and a public process is usually required to change this.

**Historic memorial sites**
The Auckland Council queried the fate of historic memorials on land that is to be vested in Ngāti Whātua o Kaipara. We believe that the iwi and council can work together following the settlement to come to an arrangement that will satisfy both parties.

**Kopironui**
Representatives of Te Kawerau ā Maki are concerned that the Kopironui block within Woodhill Crown Forest Licensed Land is to be included in Ngāti Whātua o Kaipara’s settlement. This block contains an ancestral urupā and kāinga of Te Kawerau ā Maki. The three parcels of land, including the land where the urupā and kāinga are located, will be removed from the Crown Forest Licensed Land before it is vested in Ngāti Whātua o Kaipara. These parts of the Kopironui block are subject to Te Kawerau ā Maki’s continuing historical Treaty of Waitangi negotiations, and we are satisfied that Ngāti Whātua o Kaipara’s settlement will not impinge on them.

**Additional amendments**
We recommend amending clause 97(1) to correct cross-references to the Deed of Settlement.
We also recommend amending clause 129(6) to make it clear that the trustees of the Development Trust must be registered as the proprietors of the fee simple estate in the Helensville land.
Appendix

Committee process
The Ngāti Whātua o Kaipara Claims Settlement Bill was referred to the committee on 19 September 2012. The closing date for submissions was 19 October 2012. We received and considered ten submissions from interested groups and individuals. We heard five submissions, which included holding hearings in Kaukapakapa. We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (chairperson)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hon Parekura Horomia
Katrina Shanks
Rino Tirikatene
Metiria Turei
Louise Upston
Nicky Wagner
Louisa Wall
Jonathan Young
Te Pire Whakataunga i ngā Kerēme a Ngāti Whātua o Kaipara

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakataunga i ngā Kerēme a Ngāti Whātua o Kaipara, ā, ka tūtohu kia whakamanatia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Ka whakamana te Pire Whakataunga i ngā Kerēme a Ngāti Whātua o Kaipara i te whakaaetanga whakataunga i uru atu rā a Ngāti Whātua o Kaipara me te Karauna ki roto i te 9 o Mahuru, i te tau 2011 mō te whakataunga oti atu o ngā kerēme hītori e pā ana ki ngā whatinga o Te Tiriti o Waitangi. Kei roto anō hoki i te pire ngā whākinga me te whakapāha i hoatu e te Karauna ki a Ngāti Whātua o Kaipara.

Ko au a whāhanga anake o te whakatika hapa i roto i te mōkihi whakataunga ka hiahiaia he whakamanatanga i raro i te ture, ka whakaurua ki roto i te pire. Ka whakatakoto te whakaaetanga whakataunga i te katoa o te whakatika hapa i hoatungia ki a Ngāti
Whātua o Kaipara hei whakatatū i āna kerēme hītori katoa mō Te Tiriti o Waitangi.

Ko Ngāti Whātua o Kaipara te ohu kohinga o ngā uri takitahi i heke mai i a Haumoewaarangi me tētahi tupuna e mōhiotia ana nō tētahi o ēnei, arā, o Ngāti Whātua Tūturu, Te Tāoū, Ngāti Rango, Ngāti Hine, Te Uri o Hau rānei, otirā, rātou i whakamahi i ō ratou pānga tukunga iho i te nuinga o te wā e pā ana ki te wāhi whai pānga a Ngāti Whātua o Kaipara, i ngā rā whai muri i te 6 o Hui-tanguru i te tau 1840 ahakoa noa. Ka uru atu ki te ohu kohinga a Ngāti Whātua o Kaipara ēnei uri takitahi me ō rātou whānau, hapū, kohinga hoki.

Ka whakararawhi te wāhi whai pānga a Ngāti Whātua o Kaipara i te katoa o te rohe taitonga o Kaipara atu i South Head ki Muriwai i te taitauāuru, ā, tata mai i Wellsford ki te taha whakarunga o te Whanga o Waiomatā ki te rāwhiti. E rima ngā marae i te taitonga o Kaipara, ā, he Ngāti Whātua o Kaipara katoa: arā, ko Te Haranui tērā, ko Puatahi tērā, ko Araparerā tērā, ko Kākānui tērā, ko Rēweti hoki tērā.

Ka kapi i ā mātou kōrero ngā take whakataungia i whakaaroarohia e mātou, tae atu ki ngā whakatikatika ki te pire nā mātou i whakatakoto.

**Te rerekētanga o te whakatika hapa tikanga tuku iho me te whakatika hapa arumoni**

Ka whakapuaki māharahara te Kaunihera o Tāmaki-makau-rau mō ngā poroko whenua e rua i Helensville. I te wā nei he wāhi ērā mō te marea, ā, ka tukua ki a Ngāti Whātua o Kaipara ā tōna wā hei wāhanga o tā rātou whakatika hapa arumoni.

I whakamāramatia hēngia te whenua nei i rara 6(5) hei whakatika hapa arumoni. Ka tūtohu whakatikainia matou mō rara 6(5) mā te whakakore atu i ngā kupu, “ētahi atu whakatika hapa arumoni”. Mā ēnei e mārama ai, ēhara aua pito whenua i te tētahi hei whakatika hapa arumoni, ā, kāore hoki te wārū i aua pito whenua e tangohia mai i te pupūtanga whakatika hapa pūtea.

Ka whakapono te kaunihera, mā te whakawhehe anō i te whenua hei whakatika hapa tikanga tuku iho, e haere tonu ai te whai putanga a te marea ki te whenua me ngā whakaurunga o runga. Heoi, e whakahokia ana te whenua i raro i te maru o te Kaupapahehe Whenua Koha a Toitū Whenua Aotearoa i te mea, i kohangia e Ngāti Whātua ki te Karauna i te tīmatanga, ā, nā runga i tērā, ka hoatu noatia ki te iwi
Whakapānga
Whakaaetanga
ana
pā
te
ki
Whakataunga.
whakawhiti
e
tūtohu
a
Ka
mātou
tika
kia
97(1)
rara
whakatikaina
ngā
atu
i
Ngā
kō
Whakatikatika
i
te
auraratia
Ngāti
whiriwhiringa.
whakataunga
e
a
aua
i
kei
T
W
kīhai
te
aitangi.
tua
T
e
o
te
Ā,
ngata
tērā,
mātou,
atu
mō
hītori
e
ngā
Kawerau
nei
T
haere
e
nei
tonu
Maki
whiriwhiringa
a
ā
Kōpironui
te
herea
ngā
wāhanga
o
poroko
te
o
Whātua
Kaipara.
Kei
Raihana
te
Karauna,
Ngāherehere
Ngāti
mua
a
tukua
noa
i
ki
a
te
atu
te
Whenua
whenua
urupā
rā
kāinga
te
ti
roto
me
ki
atu
Whai
ei
toru,
ā
Maki.
mai
era
e
ngā
Kei
tae
whenua
tangohia
e
nei
kāinga,
hoki
roto
he
Kaw-
nā
urupā
tūpuna
poroko
he
Kei
T
te
Karauna
te
W
o
Whātua
a
o
Kaipara.
whakataunga
Ngāti
oodhill
i
Whenua
Kōpironui
poroko
Raihana
te
te
Ngāherehere
i
Whai
roto
māngai
o
ngā
Kei
e
T
whakaurua
Maki,
ka
te
Kawerau
onui
Kōpir
ana
rua.
pai
ki
e
taha
whakaritenga
e
ngā
whakatutuki
i
ki
whai
ki
te
muri
to
whakataunga
ana
Whātua
a
o
kauni-
mātou
kaha
Kaipara.
ti
Ngā
iwi
te
me
nei,
ka
te
whenua
o
whakamaharatanga
hītori
ngā
i
a
ka
tukua
runga
pātai
te
ahatia
i
ka
Ka
o
te
Tāmaki-makau-rau
mutunga,
Kaunihera
paenga
whakamaharatanga
Ngā
hītori
i
whakarerekē
tuwhera.

Ngā paenga whakamaharatanga hītori
Ka
pātai
te
Kaunihera
o
Tāmaki-makau-rau
i
te
mutunga,
ka
ahatia
ngā
whakamaharatanga
hītori
i
runga
i
te
whenua
ka
tukua
rā
ki
a
Ngāti
Whātua
o
Kaipara.
Ki
a
mātou
nei,
ka
kaha
te
iwi
me
te
kauni-
hera
ki
te
mahitahi
whai
muri
ana
i
te
whakataunga
ki
te
whakatutuki
whakaritenga
e
pai
ana
ki
ngā
taha
e
rua.

Kōpironui
Kei
te
māharahara
ngā
māngai
o
Te
Kawerau
ā
Maki,
ka
whakaurua
te
poroko
Kōpironui
i
roto
i
te
Whenua
Whai
Rainhana
Ngāherehere
Karauna
o
Woodhill
ki
te
whakataunga
a
Ngāti
Whātua
o
Kaipara.
Kei
roto
i
te
poroko
nei
he
kāinga,
he
urupā
tūpuna
hoki
nā
Te
Kaw-
erau
ā
Maki.
Kei
te
tangoitia
mā
ngā
porohanga
whenua
e
toru,
tae
atu
ki
te
whenua
kei
roto
rā
te
urupā
me
te
kāinga
i
te
Whenua
Whai
Rainhana
Ngāherehere
a
te
Karauna,
mu
noa
atu
i
te
tukua
ki
a
Ngāti
Whātua
o
Kaipara.
Kei
te
herea
ngā
wāhanga
o
te
poroko
Kōpironui
nei
e
ngā
whiriwhiringa
hītori
e
haere
tonu
nei
a
Te
Kawerau
ā
Maki
mō
Te
Tiriti
o
Waitangi.
Ā,
tua
atu
i
tērā,
kei
te
ngata
mātou,
kīhai
te
whakataunga
a
Ngāti
Whātua
i
te
aurarata
i
a
ua
whiriwhiringa.

Ngā Whakatikatika i kō atu
Ka
tūtohu
mātou
kia
whakatikaina
a
rara
97(1)
ki
tika
ai
ngā
whakapānga
whakawhiti
e
pā
ana
ki
te
Whakaetanga
Whakataunga.
Ka tūtohu anō hoki mātou kia whakatikaina a rara 129(6), kia mārama ai te kite atu me tino rēhitatia ngā kaitiaki o Te Pou Tiaki Whakahia-totanga hei rangatira o te pānga angiangi i te whenua o Helensville.
Tāpiritanga

Hātepe komiti

I tonoa te Pire Whakataunga i ngā Kerēme a Ngāti Whātua o Kaipara ki te komiti i te 19 o Mahuru, i te tau 2012. Ko te 19 o Whiringa-ā-nuku i te tau 2012, te rā i kati ai mō ngā tāpaetanga. E tekau ngā tāpaetanga i whihi, i whakaaroarohia e mātou nā ngā kohinga me te hunga takitahi whai pānga. E rima ngā tāpaetanga i rongohia e mātou, tae atu ki te whakatū whakawātanga i Kaukapakapa. I whihi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi.

Ko ngā mema of te komiti, ko

Hōnore Tau Hēnare (heamana)
Te Ururoa Flavell
Hone Harawira
Brendan Horan
Hōnore Parekura Horomia
Katrina Shanks
Rino Tirikatene
Metīria Tūrei
Louise Upston
Nicky Wagner
Louisa Wall
Jonathan Young
Inquiry into the appointment of a Parliamentary Commissioner for the Environment

Report of the Officers of Parliament Committee
Inquiry into the appointment of a Parliamentary Commissioner for the Environment

Recommendation

The Officers of Parliament Committee recommends to the House of Representatives that the House recommend to the Governor-General that, pursuant to section 4 of the Environment Act 1986, Dr Janice Claire Wright be appointed as Parliamentary Commissioner for the Environment.

Dr Janice Claire Wright has been Parliamentary Commissioner for the Environment since 5 March 2007. Her five-year term expired on 5 March 2012. We consider that she should be re-appointed for another term.

The procedures for the appointment of an Officer of Parliament provided a guide for managing this appointment process.¹

Consultation

The committee sought and obtained the support of all parties represented in the House for Dr Wright’s re-appointment.

Committee members

Dr The Rt Hon Lockwood Smith (Chairperson)
Hon Peter Dunne
Darien Fenton
Te Ururoa Flavell
Gareth Hughes
H V Ross Robertson (Deputy Chairperson)
Barbara Stewart
Michael Woodhouse

¹ Officers of Parliament Committee, Report on the Procedures for the Appointment of an Officer of Parliament, 2002, I.15A
Inquiry into the appointment of an auditor for the Office of the Controller and Auditor-General

Report of the Officers of Parliament Committee

Contents

Recommendation 2
Overview 2
Committee procedure 2
Due diligence 3
Recommended appointment 3
Appendix 4
Inquiry into the appointment of an auditor for the Office of the Controller and Auditor-General

Recommendation

Pursuant to section 38(1) of the Public Audit Act 2001, the Officers of Parliament Committee recommends that the House appoint CST Nexia as the independent auditor to audit the financial statements of the Office of the Controller and Auditor-General for the financial years ending on 30 June 2013, 30 June 2014, and 30 June 2015, commencing with effect on 21 December 2012.

Overview

Standing Order 386(1)(b) requires the Officers of Parliament Committee to consider and recommend to the House an auditor to audit the financial statements of each office of Parliament. Pursuant to section 38(1) of the Public Audit Act 2001, the House appointed Curran Sole and Tuck of Auckland (now CST Nexia) on 18 October 2001 as the auditor to audit the Office of the Controller and Auditor-General for three financial years ending on 30 June 2004. The House has reappointed CST Nexia as the auditor since that time.

With the term of the auditor now ended, we conducted a competitive tender process to appoint the auditor of the Office of the Controller and Auditor-General.

Committee procedure

We appointed a specialist adviser to assist us with the tender and appointment process. We advertised widely within New Zealand for expressions of interest from interested parties. The advertisement outlined the competencies we considered an audit firm would need to undertake the audit of the Office of the Controller and Auditor-General.

Expressions of interest were received from two parties. We evaluated them against pre-determined criteria and reduced this list to one short-listed candidate. One firm, the incumbent, was invited to submit a proposal. The candidate was evaluated against the following pre-determined criteria:

- capability to undertake the audit
- experience in public sector auditing
- experience in auditing entities of a similar size and complexity
- understanding of key issues affecting the audit and the audit implications of those issues
- resourcing the audit—total hours and mix of hours
- professionalism shown during the due diligence process.

We interviewed the single remaining firm, and then selected it to recommend for appointment. The tender and interview process was competitive. We are concerned about the reducing pool of viable candidates and will consider this matter before the appointment becomes due again.
Due diligence

The short listed candidate was permitted time with the Office of the Controller and Auditor-General to conduct “due diligence”. This enabled it to obtain information relevant to its proposal, and also the entity to observe the professional behaviour of the candidate. The Office of the Controller and Auditor-General provided to us a summary of the due diligence process and an assessment of the professional behaviour of the candidate. These assessments were considered in our evaluation of the candidates.

Recommended appointment

We recommend that CST Nexia be appointed as the auditor of the Office of the Controller and Auditor-General for the financial years ending on 30 June 2013, 30 June 2014, and 30 June 2015.

The normal maximum length of continuous association with an audit client is seven years under the New Zealand Institute of Chartered Accountants’ Code of Ethics. CST Nexia has been the auditor of the office for 12 years. The seven-year time-limit is recommended to prevent auditors becoming over-familiar with the client, and more likely to overlook problems as a result. CST Nexia has taken steps to guard against over-familiarity, including rotating staff, not allowing the same partner to oversee the audit every year, and appointing an overseas audit partner to peer review the audit process. We accept that these steps will reduce the risk of over-familiarity with the office on the part of the auditor.
Appendix

Committee procedure
The committee met between 19 July 2012 and 29 November 2012 to consider the inquiry.

Committee members
Dr The Rt Hon Lockwood Smith (Chairperson)
Hon Peter Dunne
H V Ross Robertson (Deputy Chairperson)
Michael Woodhouse
Darien Fenton
Gareth Hughes
Barbara Stewart
Te Ururoa Flavell
Inquiry into the appointment of an Ombudsman

Report of the Officers of Parliament Committee

Contents

Recommendation 2
Overview 2
Committee procedure 2
Appendix 3
Inquiry into the appointment of an Ombudsman

Recommendation

Pursuant to sections 3 and 5 of the Ombudsman Act 1975, the Officers of Parliament Committee recommends that the House recommend to the Governor-General that Ron Paterson be appointed as an Ombudsman for a five-year term, commencing with effect on 4 June 2013.

Overview

David McGee has been an Ombudsman since 19 November 2007. Mr McGee decided not to seek to renew his five-year term, and a process was commenced in July to recruit a new Ombudsman.

Committee procedure

The procedures for the appointment of an Officer of Parliament provide a guide for managing the process for an appointment to the position of Ombudsman.1 We initially appointed a subcommittee of four members to manage most aspects of the appointment process, and employed the services of a recruitment adviser to assist. The Minister of Justice was consulted about the process and the recommended appointment.

The position was advertised widely within New Zealand, and we were satisfied with the response. We were pleased with the high calibre of the applicants.

Consultation

The committee unanimously supported Mr Paterson’s appointment.

---

1 Officers of Parliament Committee, Report on the procedures for the Appointment of an Officer of Parliament, 2002
Appendix

Committee procedure
The committee met between 19 July 2012 and 5 December 2012 to consider the inquiry.

Committee members
Dr The Rt Hon Lockwood Smith (Chairperson)
Hon Peter Dunne
H V Ross Robertson (Deputy Chairperson)
Michael Woodhouse
Darien Fenton
Gareth Hughes
Barbara Stewart
Te Ururoa Flavell

Subcommittee members
Dr The Rt Hon Lockwood Smith (Chairperson)
Hon Peter Dunne
Darien Fenton
Gareth Hughes
The Primary Production Committee has considered Petition 2008/45 of David Mark Wills, requesting that the House of Representatives note that 543 people signed a petition asking that the Primary Production Committee of Parliament investigates why commercial and customary fishermen may use set-nets, while recreational fishermen are prohibited from doing so.

This topic has been the subject of a judicial review in recent years. The High Court conducted the review into decisions concerning Hector’s and Māui’s dolphins by the Hon Jim Anderton when he was the Minister of Fisheries. In February 2010, the court decided that the Minister of Fisheries and Aquaculture needed to reconsider the prohibition of set-net fishing on the West Coast of the North Island, and the decision not to exempt set-net fishing for butterfish on the East Coast of the South Island, because the previous Minister had received inaccurate advice on these matters.

In February 2011, the Minister decided to retain the prohibition on the West Coast of the North Island, and to allow commercial set-net fishing for butterfish on the north-eastern coast of the South Island. The area in question is 200 metres from the shore from Needles Point to Cape Campbell; Rarangi to Oyster Bay; Deep Bay to Coopers Point on Arapawa Island; Little Waikawa Bay to Cape Jackson; and all of Motua Island, the Twin Islands, Motungarara Island, the Brothers Islands, and White Rocks on the north-eastern coast of the South Island. In October 2011, the Minister decided to allow amateur fishers to use set-nets in the same area, on the condition that they stay with their nets at all times while they are set.

We consider that the difference between commercial and recreational fishers is less important than ensuring the safety of Hector’s and Māui’s dolphins and the sustainability of the fisheries in these areas, whoever is fishing there. We are satisfied that the Ministers involved considered these two factors when making their decisions.

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

Shane Ardern
Chairperson
Dairy Industry Restructuring Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation
The Primary Production Committee has examined the Dairy Industry Restructuring Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Dairy Industry Restructuring Act 2001. The bill aims to promote the efficient operation of dairy markets in New Zealand. It introduces a new regime for Fonterra’s pricing of milk, setting out guidelines for deciding the base milk price, requiring the maintenance of a milk price panel to review price setting operations, requiring disclosure of the milk price manual, and requiring an annual review of the manual and milk price by the Commerce Commission. The bill enables Fonterra to restructure its capital through the Trading Among Farmers (TAF) scheme, a proposed share-trading system. It also guides Fonterra’s conduct regarding co-operative shares, including its valuation of shares, should shareholders vote not
to implement TAF, or if it is implemented and subsequently wound up.
This commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments.

**Milk price**
The bill as introduced could have the effect of prioritising Fonterra’s efficiency over the contestability of the farm gate milk market. This is contrary to the intent of the principal Act where contestability is a means to achieving efficient dairy markets. To reflect the principal Act’s intention, the farm gate milk price should be set at a level that provides an incentive to Fonterra to operate efficiently while also providing for contestability in the farm gate milk market. Therefore we recommend deleting subsection 4(fa) in clause 4 and amending section 150A in clause 13 to reflect the principal Act’s intention.
We also recommend amending the definition of independent in section 5, clause 5. As introduced, the bill classes persons with relevant interests in Fonterra fund securities as independent of Fonterra. Such persons could then be considered for appointment to the Milk Price Panel. This amendment would remove the eligibility of such persons for inclusion on the panel.
We recommend amending section 150C in clause 13 to ensure contestability in the market for raw milk. This amendment would require that any assumptions taken into account in calculating the farm gate milk price be practically feasible for an efficient processor to replicate.
We also recommend amending section 150P in clause 13 to clarify that the Commerce Commission would not be required to calculate the costs of an independent processor when it prepares its milk price report.

**Share valuation**
We recommend amending new section 77A in clause 7. This new section is intended to guide Fonterra on setting its share price in the absence of TAF. It requires that the co-operative share price be set at fair value; however, the inclusion of “market” in the title could be taken to imply that a restricted market value would apply. There is also a potential to interpret subsections 77A(1) and 77A(2) as in-
consistent. We recommend the removal of “market” from the new section’s title and the removal of new subsection 77A(1), to clarify that an unrestricted fair value co-operative share price should be set in the absence of TAF.

We believe that creating a back-up option to TAF that involved regulating the share price might be unfair for shareholders to consider before they voted on whether to implement TAF.

We also recommend amending the definition of assets in new subsection 77A(2), which provides a formula for calculating fair value of a co-operative share. We propose correcting this definition, to make it clear that the free cash flows are to be valued rather than the assets themselves.

**Trading Among Farmers**

Should Fonterra’s fund securities cease to be listed on a registered market, the bill would require the reinstatement of share issue and redemption obligations on Fonterra. This action might create a delay between the winding up and de-listing of the Fonterra fund. During this delay, it is unlikely that farmers would be able to enter and exit Fonterra freely. Therefore we recommend amending sections 109F, 109G, and 109H, and inserting subsection 109G(1A) in clause 8 to ensure that if the fund were to be wound up, a transitional period of no more than six months would apply to the reinstatement of the share issue and redemption obligations. We believe that this would ensure farmers’ freedom of entry and exit at all times.

We recommend amending section 109K in clause 8 to prevent Fonterra purposely limiting the liquidity and fungibility of the TAF share and fund markets. We acknowledge that Fonterra has incentives to develop and maintain well-functioning markets; but periodically it could benefit from limiting market liquidity, which in turn would limit farmers’ freedom to enter and exit Fonterra. These amendments would safeguard farmers’ freedom of entry and exit and maintain the contestability of the farm gate milk market.

We also recommend inserting new sections 161AA and 161AB in clause 14 to clarify the process that would apply if Fonterra acquired units from the Fonterra Fund. This new section provides for this process to be completed in accordance with the Companies Act 1993.
This is a similar process to that which Fonterra currently uses to acquire its own shares.

Fonterra was established under statute as a co-operative with ownership by New Zealand dairy farmers. We received submissions about the possible unknown impact of external investment on Fonterra.

**Regulation making powers**

The Regulations Review Committee expressed concern that sections 109B and 109G would allow regulations to be made that had the effect of suspending certain provisions of the principal Act. It considered that as a matter of principle only Parliament should be able to suspend provisions of an Act, and that this should be done in primary legislation and not in regulations.

We consider that the suspension of certain provisions of the Act should be effected not by an Order in Council, as provided by section 109A, but by a provision directly to that effect. Accordingly, we recommend changes to sections 109A and 109B and in other sections where the Order in Council is referred to. Provision must be made for the repeal of the suspension provision, and we recommend new section 109FA be inserted for this purpose.

**Minority views**

**New Zealand Labour Party and Green Party minority view**

The Labour and Green members of the Primary Production Committee have concerns that have not been addressed through the Committee’s consideration of the bill. The short timelines for submissions and limited ability of the committee to obtain advice on TAF has resulted in a bill that contains risks for the dairy industry and Fonterra.

Independent advice provided to the committee identified risks that have not been properly considered. Advice from officials with limited knowledge of co-operative company principles and objectives left many concerns raised by submitters unanswered.

The Base Milk Price Setting system that the bill legislates for would provide oversight by the Commerce Commission, but both the commission and independent processors identified potential flaws in the policy. The limited time to analyse the changes proposed to the complex system could lead to unintended consequences. The open entry
open exit objectives in a transparent and contestable dairy market may be compromised with harm to farmers, independent processors, and Fonterra.

The enabling provisions of the bill that allow the trading of shares between farmers are subject to requirements laid out in the bill. Insufficient scrutiny of the potential effect of the Shareholder Share Market size and the fungibility with the open trading on the Shareholder Fund Market have prevented analysis of potential gaming and market influence on the operations of the co-operative company.

There is a tension between the differing interests of milk-supplying shareholders and investors who may be more interested in a short-term return rather than the long-term interests of a vertically integrated industry. The legislation contains no legislative limit on the proportion of Fonterra share securities that can be traded in the open market by non-suppliers, which could lead to pressure to demutualise the company. We believe such a protection for the co-operative is needed in law.

In the event of failure or wind-up of share trading, the bill legislates for a “fair value” share in Fonterra. Officials stated the objective is to achieve a full-value discovery. We question this objective, given the co-operative status of Fonterra and the clear desire of farmers to have it remain a co-operative. Many submitters requested the removal of section 77A and, while improvements have been made, we feel the imposition of such a valuation system on a co-operative is untested.

This legislation implements fundamental change to Fonterra, a co-operative that is the largest company in the most significant export sector in New Zealand. Any reduction in control or ownership has risks for farmers and the country. We are concerned that an immediate and unavoidable consequence of the establishment of the TAF scheme will be the loss of an unknown and uncapped proportion of the dividend stream generated by Fonterra’s profits, currently retained by New Zealand farmer shareholders, to overseas investors. We believe the select committee has had insufficient time, resources, and analysis to ensure the passage of the bill will deliver the security of ownership and control in Fonterra long-term that farmers are expecting from Parliament.

New Zealand First concurs with the views of the Labour and Green members.
Green Party minority view

The Green Party also felt that the focus of the bill on the efficient operation of dairy markets in New Zealand, missed an opportunity, and fails to allow broader environmental gains, such as the promotion of biological or organic farming models, to be influenced by the bill. Fonterra has already dropped 50 per cent of its organic producers from its organic programme, due primarily to “inefficient” milk pickup runs and processing plant operations. Larger volume independent processors show no sign of picking up what can be seen as more environmentally sustainable production. “Efficient” is primarily a term used for volume-based production and marketing, and does not address long-term economic efficiency, that being sustainable production.

TAF as proposed in the bill has had an evolution from origins that intended open stock exchange listing. The current desire of Fonterra for TAF maintains elements of that, and as such does not fit the co-operative model that has allowed the success of Fonterra. Many submitters pointed out that the purported advantages of TAF for buffering redemption risk can be achieved by other means, such as the retention policy that has already been shown to be successful in accruing significant capital. Fonterra have issued contradictory statements as to the need of the share trading as envisaged in TAF, which is further confused by its complex communications to its member farmers. The Green Party doubt the veracity of some of the Fonterra executive’s statements, and cannot support TAF.

TAF allows investors that are not providers of milk to Fonterra to trade shares that benefit from Fonterra farmer shareholder dividend streams. The Green Party sees this outside “investment” as a weakening of the farmer base of the co-operative, and may better be described as Trading Against Farmers.

Share valuation in the absence of TAF, and the farm gate milk pricing mechanism of the bill, are focused on contestability rather than competition, according to officials. However, no matter the semantics of contestability or competition, the mechanics of the bill seek to open up competition in the dairy industry to the point that there would be significant risk to the dominant single desk co-operative and New Zealand farming families’ economic and intergenerational success. Such success is more likely to drive improvements in envir
onmental and social sustainability than the open market model that this bill appears to predicate.
Appendix

Committee process
The Dairy Industry Restructuring Amendment Bill was referred to the committee on 3 April 2012. The closing date for submissions was 24 April 2012. We received and considered 99 submissions from interested groups and individuals. We heard 43 submissions.

We received advice from the Ministry for Primary Industries, the Ministry of Economic Development, and our independent specialist adviser Dr James Morrison. The Regulations Review Committee reported to the committee on the powers contained in sections 109B and 109G.

Committee membership
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O’Connor
Eric Roy

Richard Prosser participated in the committee’s consideration of this item of business.
Briefing on agricultural development in the Waitaki Basin and MacKenzie Country

Report of the Primary Production Committee

Contents
Recommendation 2
Introduction 2
Stradbrook Robotic Dairy Farm 2
van Leeuwen Dairy Group 2
Waitaki Irrigators Collective Limited 3
Acknowledgements 3
Appendix 4
Briefing on agricultural development in the Waitaki Basin and Mackenzie Country

**Recommendation**

The Primary Production Committee recommends that the House take note of its report.

**Introduction**

On 24 August 2012, the Primary Production Committee made site visits to Stradbrook Robotic Dairy Farm and van Leeuwen Dairy Group, and met with the Waitaki Irrigators Collective.

**Stradbrook Robotic Dairy Farm**

Stradbrook Robotic Dairy Farm is a 75-hectare-effective dairy farm situated in Mayfield, mid-Canterbury. It was the first dairy farm in New Zealand to apply automated milking to a conventional grazing farm.

The milking barn is in the middle of the farm. The longest distance that cows have to walk to be milked is some 600 metres. An electronic collar on the cows triggers robotic gates to open and shut, in response to their individual needs.

The cows are milked using four robotic milking machines. The animals are free to choose their own milking time, the majority wanting to be milked from 7 am onwards. The committee was presented with data which showed that currently less than five per cents of the herd was milked between 4 am and 7 am. Their electronic collars also allow the collection of comprehensive daily data, for each cow and for the whole herd.

Between 1 June 2010 and 31 May 2011 the number of cows milked was 270, and the average number of times they were milked per day was between 1.8 and 2.4. Total milk solids production was 167,786 kg. The rate per hectare was 2,237 kg and the total milk solids per cow was 630kg. The goal is to achieve 750 kg of milk solids per cow by 2015/16.

In 2010/11 the national average quantity of milk solids produced per effective hectare was 923 kg and the average per cow was 334 kg. In the same period the average per effective hectare for the Ashburton District was 1,313 kg and the average milk solids per cow was 381 kg.¹

**van Leeuwen Dairy Group**

The van Leeuwen Dairy group milks some 12,000 cows in the North Otago and South Canterbury regions.

The committee visited one of their free-stall barns with robotic milking machines, near Morven. The barn houses up to 500 cows. The cows can walk freely between their food supply, a padded platform where they can rest, and the robotic milking machines. The cows were in good condition and we were impressed by the quietness in the barn, where the cows were housed in comfortable, spacious conditions. The cows are milked using eight robotic milking machines.

The total milk solids produced per cow is currently 650 kg per year. The goal is to achieve 750–800 kg per cow.

In 2010/11 the national average production of milk solids per cow was 334 kg, whereas for the Waimate District the average was 352.2

Apart from a little sulphur, the farm uses no imported soluble fertilizer, and returns all effluent to the farm by spreading it evenly onto the farm paddocks. Further nutrients are supplied to the system through imported supplement feeding.

**Waitaki Irrigators Collective Limited**

The committee met with the board of directors and management staff of the Waitaki Irrigators Collective at Morven. The collective is a company made up of shareholders in five irrigation schemes and a society of individual irrigators. Water is taken from the Waitaki River or its tributaries and used to irrigate land downstream of the Waitaki dam.

The company represents an irrigable command area of over 75,000 hectares across North Otago and South Canterbury. This represents approximately 11.5 per cent of irrigated land in New Zealand. Only a third of irrigated land is used for intensive dairy farming.

We heard about the collective’s difficulty dealing with two regional councils (Otago and Environment Canterbury) with differing sets of criteria. We were told that while Environment Canterbury consults at a community level, Otago was imposing nutrient limits without ensuring they were appropriate for each catchment. Their preference was for all regional councils to use catchment management systems. The drawn-out consenting process was also an issue.

The committee on this occasion did not scope the issues regarding intergenerational funding and substantial headworks construction for irrigational delivery and environmental sustainability. The advantages of irrigation for agriculture were clearly evident in carefully managed schemes.

The relative merits of gravity and spray irrigation systems were also discussed.

**Acknowledgements**

The committee would like to thank very much Sally Williams and Ryan Carr, from Stradbrook Robotic Dairy Farm, Aad van Leeuwen from van Leeuwen Dairy Group and the board and management of the Waitaki Irrigators Collective for giving up their time to meet with us.

---

Appendix

Committee procedure
This briefing was initiated on 7 July 2011 by the Primary Production Committee of the 49th Parliament. After the commencement of the 50th Parliament, we readopted this briefing on 21 December 2011.

The committee visited Stradbrook Robotic Dairy Farm and van Leeuwen Dairy Group, and met with the Waitaki Irrigators Collective on 24 August 2012.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
Petition 2011/2 of G R Hughey

Report of the Primary Production Committee

Contents
Recommendation 2
Introduction 2
Submission of the petitioner 2
Submission from the Ministry for Primary Industries 2
Comment 3
Appendix 5
Petition 2011/2 of G R Hughey

Recommendation
The Primary Production Committee has considered petition 2011/2 of G R Hughey, and recommends that the House take note of its report.

Introduction
We have received and considered the petition of G R Hughey which requests that the House of Representatives

note that 3,523 people have signed a petition calling for the establishment of a foreshore and inshore fishery for amateur recreational users at no cost to those users.

The petition was prompted by concern at the falling numbers of fish available in waters that were previously renowned for their plentiful supply and variety. The petitioner believes this to be a result of the breakdown of an informal arrangement whereby fishing operators using trawlers, nets, and long lines remained outside a three-mile limit.

Submission of the petitioner
Mr Hughey represents the Tasman Bay Amateur Shore and Inshore Fin Fishing Group, a Nelson group which wants to ensure the protection of sustainable customary fishing rights for future generations and the protection of the unique coastal environment. The petitioner submits that because of commercial fishing pressure, fish stocks available to recreational and amateur fishers along the foreshore and inshore areas of the bays have declined significantly, to the extent that very few fish are now caught by onshore fishers and the underwater ecology of the area is in danger. In order to reverse this decline, the petitioner proposes options for establishing near-shore and coastal fishing areas in Tasman and Golden Bay: excluding commercial fishing from waters between Farewell Spit and Nelson, the creation of conservation or migration zones for finfish, and the placement of artificial fish habitats in some areas. Commercial fin fishing, net fishing and long-line fishing should be prohibited at certain places within these zones for at least five years to allow fish stocks to recover and fish nursery areas to regenerate.

We heard from the petitioner that until 1996, a voluntary, unwritten three-mile limit kept trawlers well offshore, and that a return to this limit would protect the customary and traditional rights of shore fishers, and also the coastal environment. He maintained that current bans on the use of commercial bulk fishing methods are being breached and that dialogue with the ministry had so far produced no satisfactory conclusion. As a result, the group he represents feels neglected, and argues that the restoration of their customary rights in the areas outlined in the petition would be both just and lawful.

Submission from the Ministry for Primary Industries
We heard from the Ministry for Primary Industries that the inshore fisheries in the area proposed by Mr Hughey are important to all sectors (Māori, customary, commercial and
recreational), and contribute substantially to overall benefits from fisheries in the region, so all sectors have an interest in safeguarding resources. It is not practical to close the proposed areas to commercial fishing without imposing substantial costs on the industry, but there are existing measures to prevent the use of bulk fishing methods. The fragility of fish habitats is already addressed by fisheries management decisions that take into account the effects of fishing on the environment. The ministry added that the implementation of a Marine Protected Area for recreational fishing purposes is not consistent with the policy purpose of such areas, which is biodiversity protection, and would be subject to ministerial consideration.

We also heard that the ministry operates a number of national fisheries plans but that the Fisheries Act 1996 provides limited ability to create areas exclusively for recreational fishing. The Minister may recommend making regulations to close an area to commercial fishing or prohibiting a method of commercial fishing for the purpose of providing for recreational fishing, but amongst other provisos, a dispute regarding the matter must have first been considered under Part 7 of the Act. The Minister must be satisfied that all parties to the dispute have used their best endeavours to settle the dispute but have failed to do so. The ministry notes that this procedure has not been invoked by Mr Hughey and that no assessment has been made of whether the matter meets the relevant criteria. If there is intent to implement a regulatory measure, such as excluding commercial fishing, the provisions of the Act must be complied with.

Customary management tools such as the establishment of Mātaitai Reserves are used solely for giving effect to Māori fishing rights and there is no statutory basis on which they can be used to establish recreational fishing areas. We also heard that although it is not in a position to facilitate discussions with the relevant parties in this instance, the ministry pointed out that there is scope for stakeholders to reach agreement about the management of a fishery on a voluntary basis without the use of regulatory powers. The long-standing accord between recreational and commercial fishers regarding the catch of marlin is an example of a successful voluntary agreement between fishing sectors.

Comment

We sympathise with the petitioner about the decline in fish stocks for onshore and recreational fishers, and also note his environmental concerns. We consider that, although the Fisheries Act 1996 provides a limited ability to create recreational fishing areas and a disputes procedure is available to the petitioner, these options may not be sufficient to provide a solution and may be impractical. We believe that attempting to change the situation within the current system would not be effective and might entail changes to the Act.

We believe that a solution could be arrived at without the use of regulatory powers and there is an instance where this has been accomplished successfully. In 1995 a group of concerned Fiordland users and community representatives formed what is now known as the Guardians of Fiordland’s Fisheries and Marine Environment Inc. The guardians include commercial and recreational fishers, charter boat and tourism operators, environmentalists, marine scientists, community representatives and tangata whenua (Ngai Tahu). Their purpose is to maintain or improve the quality of Fiordland’s marine environment and fisheries, for the benefit of future generations. Local agreement between
the different fishing sectors has allowed them to recommend special legislation amending fisheries regulations, and excluding commercial fishing from large areas, as well as non-legislative measures. Their recommendations have been realised with the enactment of the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.

We feel that this model offers the way forward for the petitioner and that this approach would provide a workable and effective alternative to seeking changes under the current system.
Appendix

Committee procedure
The committee met between March and September 2012 to consider the petition. We received written submissions and heard evidence from the petitioner and from the Ministry for Primary Industries.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
Briefing from the Animal Health Board on biosecurity matters

Report of the Primary Production Committee

Contents
Recommendation 2
Introduction 2
Presentation on the use of 1080 2
Demonstration of aerial bait application and ground traps 3
Comment 4
Appendix 5
Briefing from the Animal Health Board on biosecurity matters

Recommendation
The Primary Production Committee recommends that the House take note of its report.

Introduction
On 20 September 2012, the Primary Production Committee made a site visit to the National Centre for Biosecurity and Infectious Disease at Wallaceville, Upper Hutt to watch a demonstration of aerial and ground pest control techniques used by the Animal Health Board (AHB) and its contractors for bovine Tuberculosis (TB) control. Using these techniques, the AHB aims to control and contain the wildlife species, mainly possums and ferrets, responsible for carrying TB and spreading the disease to cattle and deer. Wildlife (vector) control work is carried out mainly using ground-based methods, such as trapping, and is supported by aerial control. The event included a presentation by the chief executive and staff followed by a practical demonstration of bait application from a helicopter. A display of ground-based control techniques included the latest technology used in the detection and control of wild animals and demonstrated how data collected in the field is used to determine future control projects.

Presentation on the use of 1080
The committee heard a presentation on the use and effectiveness of the toxin 1080 (sodium fluoroacetate) for use in various types of baits for vector control operations in the fight against bovine TB. New Zealand exports of dairy and meat products are worth $12 billion annually, but rising international animal health standards and growing concern about food safety are now major factors governing access to premium overseas markets. Mycobacterium bovis, the causative organism of bovine TB, can cause TB in humans, via close contact with infected cattle and consumption of unpasteurized milk. As a nation with bovine TB, New Zealand is banned from exporting live cattle and deer to TB-free countries such as Australia and North America. Bovine TB is a major threat to the New Zealand economy and continued efforts at eradication are important.

1080 is a naturally occurring toxin manufactured for use in various types of bait for pest control operations, and is highly toxic to mammals in particular. As New Zealand has no native mammal population apart from bats but does have a large number of introduced, highly destructive mammalian pests including possums, rabbits, rats, stoats, ferrets, and feral cats, collateral damage from the use of this poison is limited. Of these pests, possums are the main carrier of bovine TB in New Zealand and are the primary source of chronic infection in cattle and deer herds, responsible for 80 percent of new infections. Although the use of 1080 is aimed primarily at these carriers, the destruction of other mammalian pests has had very beneficial effects for New Zealand’s native species of birds, insects, and plants.
Through a nationally coordinated programme comprising ground and aerial control methods and TB-testing of cattle and deer, the AHB has reduced the number of TB-infected herds by 90 percent over the past decade and is on track to reach the internationally recognised target for official TB freedom of 0.2 percent infected cattle and deer herds by 2013. The board has developed a TB disease management programme based on continued eradication, the protection of TB-free areas, and the suppression of infected herds. A significant part of this management programme involves the use of 1080 in vector operations, as well as the use of trapping methods in target areas. 1080 is highly water soluble and breaks down in the environment into harmless substances without accumulating in the food chain. Any animal ingesting a sub-lethal dose will metabolise and eliminate the substance within 10 days.

The committee heard that on two previous occasions, successful bovine TB eradication programmes using vector-control methods had reduced the infected cattle and deer herds to internationally acceptable levels but failure to allocate further funds to maintain the reduced levels had allowed infected herd numbers to rise again. There is a direct correlation between the allocation of funds to an eradication programme and infected herd numbers, and continued funding following eradication programmes is essential. Currently $46 million is spent on vector control of which 20 percent is spent on aerial control and 80 percent on ground-based control.

**Demonstration of aerial bait application and ground traps**

The committee observed a demonstration of a carefully controlled aerial drop of bait. This type of operation is used in areas that are remote and difficult to access on the ground. A helicopter using specially adapted dispersal equipment dropped a straight line of food bait over a set distance on the ground. This initial drop of bait is used to accustom mammals, especially possums, to feed in the area. The helicopter then returned and dropped 1080-poisoned bait in the same area. Normally, there would be a gap of three weeks between the two drops, and for the purpose of the demonstration bait in the second drop was non-toxic. The demonstration allowed the committee to observe the accuracy of the drops which is an essential feature of these operations.

Aerial application of 1080 using helicopters is a carefully planned process, targeting and avoiding specific areas and boundaries. We were informed that the development of accurate, targeted bait drops has enabled a reduction in the amount of poisoned bait laid from 30 kg per hectare in the 1970s to between 1.5 kg and 3 kg today, and Landcare is carrying out research for the Department of Conservation and the AHB to reduce this figure to 0.25 kg per hectare. Using GPS systems and strict flight plans, accurate positioning of the bait is possible, reducing contamination of adjacent property and possible contact with humans and pets. For the year ending 30 June 2012, 302,401 hectares were targeted using aerial control methods, comprising 7 percent of all vector operations.

We also observed a display of ground trapping methods for a variety of mammals which included an innovative, automatically reloadable possum-killing device which obviates the need for repeated daily visits to the trap site by staff. Eighty contracting companies are engaged in the programme, employing around 450 operators on the ground covering approximately two thirds of the areas where it has been identified that possum control is necessary. For the year ending 30 June 2012, these areas comprised 3,848,900 hectares and 93 percent of all vector operations.
Comment

We were impressed with both the excellent, in-depth briefing provided by the AHB and the aerial and ground displays of vector control and we have noted the point in the briefing concerning continuation of programme funding. We have also been made aware of the potential for additional community benefits offered by this programme especially in the field of employment.

We asked whether any research had been or was being carried out on the long-term effects of 1080 on wildlife. We were informed that an independent research programme undertaken by Victoria, Canterbury, and Otago Universities and funded by the AHB had been initiated to study the impact of aerial dropped 1080 on birds and insects over a 5-10 year period.
Appendix

Committee procedure
We received a briefing from the Animal Health Board on 20 September 2012 and considered it on 8 November 2012.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
Briefing from the forest industry

Report of the Primary Production Committee

Contents

Recommendation 2
Introduction 2
Forest Owners Association concerns 2
Appendix 4
Briefing from the forest industry

**Recommendation**
The Primary Production Committee recommends that the House take note of its report.

**Introduction**
On 27 September 2012, the Primary Production Committee received a briefing from representatives of the New Zealand Forest Owners Association (FOA) on the effects of the current Emissions Trading Scheme (ETS) policy on the carbon trading market.

The association argued that although the ETS was not designed to help forestry but to minimise climate change, the forestry industry and the ETS are inextricably linked, and that forestry has significant potential to help New Zealand meet its international obligations regarding climate change and its national environmental standards. They cautioned, however, that several issues had to be resolved for forestry to remain an attractive investment.

**Forest Owners Association concerns**
The main concern expressed by the FOA was the general downward movement in the price of New Zealand carbon trading units (NZUs), which was a big factor reducing the attractiveness of forestry as an investment. Carbon trading, which should generate part of the financial return for investors in forestry, was currently not a worthwhile proposition, and there are indications that unit prices are likely to go even lower. A large reduction in investment in forestry is demonstrated by figures for new forestry plantings. In 2011–2012, between 12,000 and 15,000 hectares of land were newly planted, and the association aims for 20,000 hectares of new plantings each year by 2020. However, there have been no enquiries about new plantings for the period 2012–2013.

Because there is no limit on the number of low-priced international carbon units that can be purchased by New Zealand emitters, there is little if any demand for NZUs. A subsidy of 2 units for the price of 1 further distorts the New Zealand market and lessens even further any return on investment in forestry.

The FOA wants a robust carbon trading scheme with integrity for New Zealand, and one that offers attractive returns for investors. Many international schemes lack integrity and cheap carbon units are flooding the New Zealand market to the detriment of the forestry industry. The FOA believes that NZUs should be separated from international units so as to ensure that New Zealand emitters buy at least a percentage of NZUs rather than cheap overseas units only. They suggest following competitor countries such as Australia and South Korea in imposing a purchase cap of 50 percent on overseas units and removing the subsidy. Emitters would therefore need to purchase 50 percent of their requirements in NZUs, which would drive up the value of these units and increase confidence and interest amongst potential investors in forestry. The association does not believe that this would adversely affect industry, consumers, or the Crown; it stressed that this figure of 50 percent...
was not just a winnable compromise, but a competition-based, reasonable amount, which would allow a separation of NZUs and overseas units with consequent benefits for New Zealand.

We also heard that any alternative government scheme to stimulate forestry investment would be a second-best option when there is already an internationally accepted scheme that could be made to work for New Zealand. Government intervention to institute a cap on the purchase of overseas units and the elimination of the present subsidy would raise the price of NZUs and directly improve forestry investors’ confidence, with benefits for employment in rural and provincial towns. Alternative suggestions such as a carbon tax in New Zealand might offer a future for the industry, but the international community has now gone down the route of carbon trading and New Zealand is unlikely to diverge from it.

The association concluded by arguing that the current system was workable given the right incentives for emitters to purchase NZUs, and that a return of investor confidence could bring significant benefits for the New Zealand forest industry.
Appendix

Committee procedure
We heard evidence from the New Zealand Forest Owners Association on 27 September 2012 and considered it on 8 November 2012.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
The Primary Production Committee received a briefing on 27 September 2012 from the Ministry for Primary Industries on the impact of high technology trawlers, and has no matters to bring to the attention of the House.

Shane Ardern
Chairperson
The Primary Production Committee has considered Petition 2008/146 of Sorrel Davies requesting “that the House of Representatives note that 88 people have signed a petition calling for shark finning to be made illegal in New Zealand, and that the House pass legislation in this respect”. The committee intends to monitor compliance with our existing laws. We have no other matters to bring to the attention of the House.

Shane Ardern
Chairperson
Briefing on the 2012 Ballance Environmental Farm Awards

Report of the Primary Production Committee

Contents
Recommendation 2
Introduction 2
National winners 2
Conclusion 3
Appendix 4
Briefing on the 2012 Ballance Environmental Farm Awards

Recommendation

The Primary Production Committee recommends that the House take note of its report.

Introduction

The Primary Production Committee received a briefing on the 2012 Balance Farm Environment Awards from Blair and Jane Smith. These annual awards seek to promote sustainable and profitable farming, and provide a way to exchange innovative ideas in the farming community. The Smiths were chosen as Supreme Award Winners for the Otago region, and also chosen from the nine regional winners as the winners of the Gordon Stephenson National Winner trophy. The Ballance Farm Environment Awards, which include the Gordon Stephenson Trophy, continue to build momentum and showcase outstanding examples of farmers who care for the environment.

National winners

Blair and Jane Smith run Newhaven Farms Ltd, a North Otago sheep, beef, forestry and dairy support operation that spans three family-owned properties totalling 1,530 hectares. They have demonstrated excellent care of the environment, in parallel with wise use of fertiliser based on an excellent understanding of soil, animal, and pasture requirements. The couple seeks to take a systemic approach to nutrient management: annual budget, annual soil tests, and herbage testing for trace elements. The judges were particularly impressed with the Blairs’ constant search for new and better approaches and ideas.

Other notable features of their farming system include their impressive “nil adult sheep drenching” policy; their closely monitored experimentation with pasture mixes to develop sensitive hill areas sustainably; and their purposeful steps to minimise sediment loss through management of winter crops, paddock selection, and cultivation techniques. Over 60,000 trees have been established on Newhaven and the other farms, often in harsh climatic conditions. Native falcons and wood pigeons are living undisturbed on the hill country and freshwater crayfish have been introduced to contained waterways. In 2011 the Smiths also planted 16 hectares of Douglas fir for carbon sequestration, and as part of a strategy to learn about carbon credits and the Emissions Trading Scheme.

Their sheep stud operation receives the same careful attention, and years of monitoring have resulted in a “nil drench” flock. DNA testing is undertaken to monitor cold tolerance in newborn lambs and to identify susceptibility to footrot in sires, and they have collaborated with AgResearch to investigate the flock’s “bare breech” trait, which means they grow no wool on the area below the tail. They are also working on a joint stud venture in Australia. The couple believes that they have demonstrated their ability to maintain the whole property in good heart and farm it sustainably, while maintaining a wide range of off-farm commitments to the local community and to their industry.
Conclusion

We fully support the goals of the awards, and endorse the work of the New Zealand Farm Environment Award Trust. We commend the Smiths for their achievements both on and off their farm and in winning the award, and we thank them for their presentation.
Appendix

Committee procedure

We heard evidence from Blair and Jane Smith and the New Zealand Farm Environment Trust on 18 October 2012 and considered it on 29 November 2012.

Committee members

Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O’Connor
Eric Roy
Complaint regarding the Legal Services Regulations 2011 (SR 2011/144)

Report of the Regulations Review Committee

Contents

Recommendations 2
Introduction 2
The complaint 2
The committee’s consideration 4
Appendix A 8
Appendix B 9
Complaint regarding the Legal Services Regulations 2011 (SR 2011/144)

Recommendations

The Regulations Review Committee recommends that the House take note of this report.

We recommend that the Government review the lack of provision in the Legal Services Act 2011 for merits review by a provider of a decision to decline out-of-time payment following a grant of legal aid as envisaged by Standing Order 315(2)(d).

Introduction

In November 2011, we received a complaint from Cooper Legal about the Legal Services Regulations 2011. The complaint related to the time-frame set by regulation for making claims for payment for legal aid services.

Parliament’s Standing Orders allow a person or organisation aggrieved at the operation of a regulation to make a complaint to the Regulations Review Committee. The committee may consider the complaint, and draw the regulation to the special attention of the House on one or more of the grounds specified in Standing Orders.

At our meeting of 5 April 2012, we heard evidence from the complainant and from the Ministry of Justice. The ministry subsequently provided further written evidence in response to matters raised at the meeting.

The complaint

Grounds of complaint

The complainant bases its complaint on four grounds set out in the Standing Orders of the House of Representatives 2011. The first two grounds were

- SO 315(2)(a): Regulation 19 of the Legal Services Regulations is not in accordance with the general objects and intentions of the Legal Services Act.

- SO 315(2)(b): Regulation 19 of the Legal Services Regulations trespassed unduly on personal rights and liberties.

- SO 315(2)(c): Regulation 19 of the Legal Services Regulations appears to make some unusual or unexpected use of the powers conferred by the Legal Services Act; or

- SO 315(2)(f): Regulation 19 of the Legal Services Regulations is a matter more appropriate for parliamentary enactment.
Relevant legislation

The Legal Services Act 2011 came into force on 1 July 2011. Its purpose is to promote access to justice by establishing a system that provides legal assistance to people of insufficient means, and to deliver the necessary services in the most effective and efficient manner.1

Section 98 of the Legal Services Act states that the time-frame for claiming payments for legal aid services is that set by regulations unless the Secretary specifies some other time-frame. Section 114(w) of the Act states that regulations may be made prescribing a time-frame.

Section 99 of the Legal Services Act sets out the process for claims for payment for legal aid services. It requires the Secretary for Justice to refer a claim for payment from a provider to the Legal Services Commissioner. Under section 99(4), the Commissioner may decline some or all of a claim on a number of specified grounds, including that of the claim not being made in accordance with the time-frame referred to in section 98.

The Legal Services Regulations also came into force on 1 July 2011. Regulation 19 sets the time-frame in which to make a claim for payment for legal aid services at three months after the day on which the services were provided.

Complainant’s evidence

The complainant is a law firm in Wellington with over 600 legally aided clients involved in civil litigation regarding longstanding historic abuse.

The complainant gave evidence that the new time-frame prescribed by regulation 19 had imposed a heavy administrative burden. The complainant said it was now required to submit a separate claim for payment for each one of its legally aided clients every time any work was done on his or her case. The complainant said the requirement applied irrespective of whether the work done was substantial or very minor: this was placing a large burden on the complainant’s resources.

The complainant said that a further effect of the requirement to make a claim within three months was that there was now a large backlog of such claims before the ministry. The backlog resulted in long delays in processing claims, which the complainant said was making it difficult to manage its business effectively and for clients to follow the progress of their claims.

We were told that the apparent lack of discretion or flexibility regarding the three-month time-frame was also of concern for the complainant. We were told of instances where delays in delivering posted claims, or delays in making a grant of legal aid, created a risk of the ministry declining a claim for payment as exceeding the statutory time-frame.

We asked the complainant whether it would agree that the ministry had a right to impose a time-frame for submitting claims for payment for legal aid services, provided it was reasonable and appropriate to the ministry’s ability to process such claims. The complainant agreed, but said flexibility or discretion regarding the time-frame would still be

1 Section 3, Legal Services Act 2011.
COMPLAINT REGARDING THE LEGAL SERVICES REGULATIONS 2011

needed to ensure fairness. The complainant also suggested that the ministry should also be subject to some obligations regarding its processing of claims. At present all the obligations fall on providers and none on the ministry in relation to its processing of claims for payment.

**Ministry of Justice response**

The ministry said that there had not been any time limit for filing claims for payment under the previous legislation. The ministry said this resulted in claims for payment being made years after the services were provided, making it difficult for the ministry to process them. The ministry also said that the lack of a time limit for making claims for payment also made it difficult to administer legal aid funding.

We asked about the delays in processing claims, and were advised that the ministry consider this to be a transitional issue. The introduction of the time-frame had caused a large backlog of claims to accumulate, and the ministry admitted it had received more claims than it had expected. The ministry said some claims were many years old and time-consuming to deal with. However, the ministry said changes to fees for criminal aid claims had sped up their processing, freeing up resources which were now being used to address the backlog.

We asked the ministry if claims were taking longer to process since the new time-frame was introduced. The ministry said that the time taken to process civil claims had increased, but it attributed this to the complexity of civil matters and the extra time needed to process very old claims for payment.

The ministry pointed out that there is a discretion regarding the time-frame under regulation 19. The Legal Services Commissioner has the discretion to accept and approve a late claim for payment. The commissioner can also reduce a payment, or reject a claim for payment altogether. The grounds on which the commissioner would exercise this discretion were those set out in section 99(4) of the Legal Services Act. The ministry acknowledged that, in practice, the commissioner’s discretion was delegated to ministry staff to exercise on the basis of internal guidelines.

We heard that the ministry is reviewing the time-frame set in regulation 19. It is considering changing it from three months to six months, with provision for the ministry to make a formal request for a claim for payment to be lodged within three months in particular circumstances. We note that this amendment was made recently, and the applicable time-frame for claims for payment will be six months, effective from 2 July.

**The committee’s consideration**

SO 315(2)(a): Regulation 19 of the Legal Services Regulations is not accordance with the general objects and intentions of the statute under which it is made

The complainant claims that the time-frame imposed by regulation 19 of the Legal Services Regulations is not consistent with the delivery of legal aid services in the most effective and efficient manner. The complainant argues that the administrative burden on providers imposed by the new requirement, the backlog of claims awaiting processing, and the delays in processing claims by the ministry were evidence that the time-frame was not consistent with delivering legal aid services effectively or efficiently.
The ministry claims that a time limit for making claims for legal aid payments was necessary because the lack of a time-frame under previous legislation had caused problems in administering legal aid. The ministry says that the backlog of claims and any delays in processing claims were merely transitional issues.

We consider that this ground of complaint has been made out. A reasonable time-frame is not inconsistent with the purpose of the Legal Services Act—to deliver legal aid services in the most effective and efficient manner. However, the current three month time-frame is not reasonable.

**SO 315(2)(b): Regulation 19 of the Legal Services Regulations trespasses unduly on personal rights and liberties**

The complainant claims that the requirement to invoice for each legally aided client every three months is an unnecessary and unjustifiable constraint upon the rights and liberties of the lawyers who work for the complainant. The complainant claimed the volume of work the requirement created for the complainant’s lawyers, and the administrative costs and burden of complying with it, were an unreasonable interference with its right to run its business.

We do not consider that this ground of complaint has been made out.

**SO 315(2)(c): Regulation 19 of the Legal Services Regulations appears to make some unusual or unexpected use of the powers conferred by the statute under which it was made**

The complainant claims that the introduction of a strict three-month time limit for making claims for payment with no discretion for its extension is an unusual or unexpected use of the powers conferred by the Legal Services Act. The complainant claimed the strict enforcement of the time-frame by the ministry and the lack of any apparent discretion to deal with situations where enforcement of the time-frame would lead to unfairness were an unusual or unexpected use of the power to impose a time-frame for making claims under the act.

The ministry claims that the Legal Services Commissioner has discretion in dealing with claims for payment and can accept, approve, reduce or reject claims for late payment case by case. In practice, the ministry said the discretion was exercised by ministry staff in accordance with internal guidelines.

We acknowledge that the commissioner has discretion under section 99 of the Legal Services Act regarding late claims for payment. The evidence put forward by the ministry also supports the claim that its internal guidance provides for this discretion to be exercised to allow payment of a late claim in circumstances where it would be unfair to enforce strict compliance with the time-frame.

We accept that the discretion available to the Legal Services Commissioner is an answer to the complainant’s claim on this Standing Order ground. We also note the discretion must be exercised by ministry staff in appropriate circumstances to prevent the operation of the time-frame in regulation 19 from being an unusual or unexpected use of the power conferred under the Act.
SO 315(2)(f): Regulation 19 of the Legal Services Regulations contains matter more appropriate for parliamentary enactment

The complainant claims, as an alternative to Standing Order ground 315(2)(c), that the introduction of a time-frame for making claims for payment for legal services is a matter more appropriate for parliamentary enactment. The complainant says that as no time-frame existed under the Legal Services Act 2000, the introduction of one in the current act is a significant change and a matter of broad policy and principle which is more appropriate for inclusion in the principal act.

We do not consider that this ground of complaint has been made out.

Other Standing Orders grounds

Although this was not raised with us by the complainant, we consider that regulation 19 raises concerns on another Standing Order ground. SO 315(2)(d) states that one of the grounds on which a regulation can be brought to the special attention of the House is that it unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal.

We asked the ministry whether there was any basis on which a provider could review or appeal a decision by the ministry on a claim for payment. The ministry advised us that there are internal review processes, which involve the provider raising the existence of special circumstances with the ministry, which would then consider the claim for payment in accordance with its internal guidelines. These guidelines were the same as those that guided decisions on the exercise of the commissioner’s discretion under section 99 of the Legal Services Act.

In response to our question, the ministry confirmed that no formal mechanism for review was available to providers under the current act. The right of review available to providers under the Legal Services Act 2000 was not carried over into the 2011 Act. Only clients receiving legal aid could now review decisions of the ministry under the present legislation. The ministry advised that the recourse available to a dissatisfied provider is to seek a judicial review of the decision to decline payment of a claim.

We acknowledge that a legal aid provider that is aggrieved by a decision to decline out-of-time payment following a grant of legal aid has remedies that include a complaint to the Legal Services Commissioner, and a right to seek judicial review in the High Court. However, there is no right to formal and independent review of decisions of this nature. An unspecified right of providers to raise concerns about a decision on a claim for payment with the same party that made the decision, to be considered in accordance with the same internal guidelines that applied to the initial decision, does not constitute an independent right of review on the merits. SO 315(2)(d) envisages such a right of review on the merits but the substantive legislation does not appear to empower this.

Recommendation

We recommend that the Government review the lack of provision in the Legal Services Act 2011 for merits review by a provider of a decision to decline out-of-time payment following a grant of legal aid as envisaged by Standing Order 315(2)(d).
Final matters

We have found that the complaint is made out in respect of the ground set out in SO 315(2)(a). Ordinarily, it would follow that we would recommend the disallowance of the regulation on this ground. However, the regulation has been amended so that it complies with the standing order, so we do not draw the attention of the House to it.

We await the Government’s response to our recommendation.
Appendix A

Committee members
Charles Chauvel (Chairperson)
Lianne Dalziel
Ian McKelvie
Mike Sabin
Katrina Shanks
Appendix B

Corrected transcript of hearing of evidence 4
April 2012

Members
Charles Chauvel (Chairperson)
Hon Lianne Dalziel
Ian McKelvie
Mike Sabin
Katrina Shanks

Witnesses
Sonja Cooper, Principal, Cooper Legal
Sam Benton, Associate, Cooper Legal
Gerard Clark, Policy Manager, Ministry of Justice
Patrick McCabe, Principal Adviser, Ministry of Justice

FTR 15:40:41

Chauvel Welcome to this meeting of the Regulations Review Committee of the 50th Parliament. I wonder if the complainants would mind introducing themselves to the committee, and then the committee will do the same.

Cooper I’m Sonja Cooper. I’m the principal of Cooper Legal. We’re obviously a Wellington law firm that does a lot of legal aid work.

Benton I’m Sam Benton. I’m an associate working with Ms Cooper.

Chauvel [Introductions] I see that we have Mr Clark and Mr McCabe from the Ministry of Justice. Welcome. What we propose to do is invite the complainants to speak to their complaint. We’ve set aside 20 minutes for that, and then we’ll invite the ministry to respond to the points that are made. The floor is yours.

Benton Thank you very much for hearing us. I’m going to be starting this submission, and Ms Cooper will pick up shortly afterwards. As you’ll be aware, the position has changed somewhat since the complaint was first lodged. There has been a proposed amendment to the particular regulation that we’re looking at. Do I need to fill you in on exactly what regulation we’re looking at? Would that be helpful?

Chauvel The members have read the papers, so probably the essential thing to do here is to ensure that you’re satisfied we are completely up to date with
where your complaint sits, given the correspondence that’s passed between the parties, and what you actually want us to do.

Benton Thank you. The proposed amendments do seek to change the regulation requiring 3-monthly invoicing. It’s currently open for discussion, but, as such, there has been no change to the amendment. The proposals that have been made are, in our view, reasonably vague, and we’re not entirely happy with the broadness of the discretion that that grants. I think Ms Cooper will address that in a bit more detail later on. Basically, given that the regulations are still in force and will be until any amendment does get passed, we think it is important to bring our concerns to the committee’s attention in any event.

I’m not entirely sure if you will be aware, but the Minister of Justice appeared on the Court Report television programme on 22 March and made comment about the 3-monthly invoicing requirement. She stated: “Lawyers being expected to bill within 3 months of a matter is frankly ridiculous, and I’ve told Justice that, so they’re changing that.” While we are happy that that is the case, that they are looking to change it, as I’ve said, we are concerned that the proposed amendment does not go far enough to rectify our concerns, so we will cover those in a little more detail.

Our concerns are basically three-pronged. There’s the practical effect on lawyers that the 3-monthly invoicing has, particularly those with a high volume of legal aid cases. There’s the effect on Legal Aid Services itself. Both those two concerns are reasonably well covered in the complaint that we have made, although we will speak to them as well. The third concern that we have we haven’t really addressed in writing, and that’s the actual effect on the legally aided clients themselves. In terms of that, just to briefly cover that off, if we’re talking about having to invoice every 3 months, the previous position was that invoicing would generally be done once a certain step was finished. In some of our cases, which is probably all I can speak to personally, that could take a year or two before you’d actually do an invoice, just because we’re involved in very longstanding historical abuse civil litigation, which is, unfortunately, a very slow process. So now we are required to invoice within 3 months of any work being undertaken, whether or not it’s a single telephone in from a client or even a letter from Legal Aid or anything like that. We have to do an invoice. Invoicing can take sometimes around half an hour to do a single invoice. So if you’re having to do a half an hour invoice four times a year, that’s 2 hours of work that a legally aided client will have to pay for, although in terms of the fixed-fee regime, obviously that work will have to be paid for by the legally aided lawyer themselves, which is another issue. Civil legal aid, which is what we deal with, we’re not subject to a fixed-fee arrangement at present, so the costs go straight to the client, which is, in our view, not acceptable, basically.
McKelvie  I want to ask a question about this. Are you telling us that if you don’t get whatever activity’s occurred in the 3 months leading up to the billing into that bill, you don’t get it—is that what you’re saying?

Benton  That’s correct, yes. It won’t be paid.

Cooper  So we can give you an example. We had an invoice yesterday where Legal Aid incorrectly stated that they had received it 2 days late. They actually hadn’t, because we’d emailed it to them on the correct day. They said they were backing out the time for those 2 days, and they’re not going to pay for it. That’s happening as a matter of routine.

Shanks  You said that you can bill up to once every 1 or 2 years. Is that normal practice for lawyers, is it?

Cooper  For our work, our work is quite unique—it has been quite unique because it’s been running a very slow track through the courts. When one has a maximum of one case per every 8 or 9 years being heard by the courts, it’s a slow track. For us to do a stage of work, it could be 1 or 2 years, for example, to do pleadings and then to do affidavits. Our work would be unique in that regard.

Shanks  So what percentage of your work would you bill only once every 1 or 2 years?

Cooper  Most of it. Typically, yes.

Shanks  So you’re a year or two behind in your billing?

Cooper  Well, no, because we billed within a stage of work. Our work has always been to complete a stage of work. Until the last year or so, we’ve had six or seven particular steps of work, and once we have completed that step of work, we’ve billed it.

Shanks  You’ve obviously got an electronic billing system, haven’t you? An integrated system into your time sheets and everything?

Cooper  We run an Excel process.

Shanks  You run an Excel spreadsheet for your billing?

Cooper  We have to.

Benton  We’ve investigated Junior Partner several times and other electronic billing facilities, but they don’t fit with our requirements.

Cooper  Our work, because our work’s got unique legal aid invoicing regimes.

Benton  This has all been agreed and discussed with Legal Aid over a number of years, the actual way that we do this and the steps of funding. It’s reasonably unique.
Are you kind of unique to the point that there are very few other companies in New Zealand that would be operating in the same manner that you are? Is that what you mean by unique?

No, I think all lawyers would be affected by, that there would be some points where—in fact, I was just talking with another lawyer today—there would be a number of files where, honestly, there had probably been a phone call or a letter, so we’ve got two units that have to be billed. That is because it falls within the 3-monthly invoicing regime. So that would be affecting all lawyers, I think. Probably criminal lawyers, it’s going to be much faster, but all of us who do civil/family, there can be large gaps when you’re not doing much active on a file—for example, if you’re waiting for a court hearing, or if nothing active is happening on a file for a particular point because, say, for example, you’ve just finished a tranche of work. But as I say, if the client calls in or if you get a letter, or if Legal Aid sends you a letter and that falls within that 3-monthly invoicing regime, if you don’t bill it, you don’t get paid it.

Just to clarify, I suppose, our concerns fit quite clearly under the question of whether or not the legal services are being delivered in the most effective and efficient manner, which is section 3, Subpart B of the Legal Services Act 2011.

Another effect of the 3-monthly billing requirement is the effect on Legal Aid and the delays that this causes, both in terms of individual clients knowing what’s going on in a file, what funding is available, and what funding you will get in the future, and in terms of bills being paid by Legal Aid. We have actually—am I able to pass out a document? Is that all right? I’m passing out a letter that we wrote to the general manager of legal aid services, Mr Stuart White. It was copied to the Minister. There is an attachment to both those letters that I have not supplied, for privacy issues. Basically, we’re listing there the delays in terms of our firm that we are experiencing at the moment. So you’ll see, if you look at my most recent letter, the 19 March one, I describe a number of outstanding amendments to grant. Amendments to grant is the process by which we seek further funding for legally aided clients. You’ll see there are about 180 clients in default there, some with many more than one single amendment to grant.

Possibly more concerning is the second table that I refer to, which lists approximately 970 outstanding invoices, dating back over 2 years, for the sum of about $888,000 owing to Cooper Legal. I note that we can’t seek interest on that amount under the statute. That sum is possibly not entirely accurate. There are some elements of those invoices that are in contention, but we are still talking over half a million dollars in debt to this firm, and mounting, unfortunately, due to delays at Legal Aid.

How does the 3-month requirement around billing relate to the $800,000 shortfall?
In essence, because they’re not able to keep up with our work, because we’re now having to submit 600 invoices every 3 months, they just fall further and further behind. So in terms of debtors, that falls further and further behind. That’s our experience, that Legal Aid are simply unable to deal with the extra work that this has generated at its end.

So having imposed a 3-month requirement, they haven’t got the administrative capacity to satisfy it?

They can’t manage it. They haven’t got the staff or the bodies to actually deal with it. We’ve been repeatedly told, because we’ve obviously raised this on numerous occasions, that there is a fixed lid on staff, and that nobody actually took into account the extra staffing resources that would be required at Legal Aid to actually manage this increased volume. If you think from our perspective now, our small firm alone is generating actually for Legal Aid something like 1,800 invoices every 3 months because we also do what we call global bills—we do invoices that we now also have to do every 3 months—for work that gets spread between our entire client base. That’s an example. We’ve been sending in our regular 3-monthly bills since August last year. Legal Aid has not yet paid one. They’re already 7 months in default. Those two bills get spread between one client group of about 400 and the other client group of about 200. That’s already, as I say, about 1,800 payments that they’re in default on. That’s not including the individual bills; that’s just the global bills.

When did this regulation come into force, sorry?

1 July, I believe, 2011.

2011. This bill, the arrears goes back to 2009, that you’re owed?

The majority of the invoices, I think, go back to early 2010, but there are one or two that go back to late 2009, yes.

Do Legal Aid recommend any type of interface or billing system for people, companies like yourselves doing legal aid, to make it easier?

There are a number of electronic programmes. I think, as I say, the problem for us is that we’re unique in that sense. But that’s not going to resolve their issue, which is actually handling the input of work that we’re inputting to them. We’ve actually hired extra staff to manage the extra workload that this has created. We’ve actually had to hire on an extra staff member so that we can actually, you know, fulfil our statutory obligations. But what we’re saying is that at the Legal Aid end, there are no extra staff and they actually can’t handle it. And there is a cumulative effect because they’re just getting further and further behind. We are getting less and less payments. We’re now having to do hundreds of little bills. They can handle a few of them, but it’s the kind of bigger, more difficult bills that just sit, and sit, and sit. As I say, the global bills—not one yet has been paid.
The other aspect of that, which we were going to raise as well, is that we’ve got a number of files where because of this 3-monthly invoicing regime that’s in force, where Legal Aid in one case has taken 2½ years to grant aid, in another case has taken about a year and a half to grant aid, and in another case of ours has taken 6 months to grant aid, and then says to us: “We’re not going to pay you for the work that’s been done outside the 3-monthly invoicing period.” We can’t actually invoice it until we get a grant of aid. So from our perspective, there are actually disincentives from a legal aid perspective to get on and do its work, because they can then say: “We’re not going to pay you because you’re outside of the billing regime.”

Chauvel

The only possible relevance—I’m sorry, because I’m interrupting a question from another member—that can have for the Standing Order grounds that we are responsible for is whether or not the 3-month requirement was, essentially, a rational one, in respect of what you tell us about the processing capability of Legal Services/the Ministry.

Sabin

I just wonder when you say you’re in a unique position, are there other firms, to your knowledge, that are experiencing—? Because I assume that you’re not the sole reason for the backlog at Legal Aid Services.

Cooper

No. In fact, it’s interesting you ask that, because there’s been an email from the Wellington branch of the New Zealand Law Society that’s been published the last 3 weeks. I actually took a copy of it. This is our e-brief. This has been published in the last 2 or 3 weeks, saying: “Are you experiencing delays in legal aid payments?”, and the Wellington branch of the New Zealand Law Society saying: “A number of practitioners have sent us evidence of delays in legal aid payments. If you also are experiencing problems, please immediately contact the branch.”, and they’re asking us for quite a lot of information. So I’ve spoken to the branch manager of the Wellington branch. Anecdotally, she is saying that there are lots of complaints. Apparently, it’s confined to Wellington, which, of course, affects us, but Wellington’s a large area. I think Wellington Legal Aid goes as far north as Hawke’s Bay and covers down a reasonable amount of the South Island as well, I understand. Certainly, we’re not unique. If the Wellington branch of the New Zealand Law Society is asking people to send in evidence of delays in debts, we’re not unique. I understand that, yeah, it’s a real problem, not just for us. We probably are a microcosm—because of the large volume of clients we have, the large number of clients—of all legal aid problems, and so we can talk to that because we probably experience it all. Most law firms have probably got 40 or 50 files, maybe. We’ve obviously got 600 or 700. We probably experience all of the problems.

Sabin

Just trying to get my head around how the 3-month billing period has changed what would have otherwise been your normal course of business and billing. How would you have normally presented invoices in a way that wouldn’t create this backlog?
Cooper: What do you mean?

Sabin: You’re saying that because you’re having to submit every 3 months, these series of invoices for payments—is that correct?

Cooper: Yes.

Sabin: What is it that you would have otherwise done that would have prevented this? Because, obviously, you’re saying you only invoice once every 2 years or something, ordinarily.

Benton: It depended on what stage the case was at, but if we had, say, a 2-year period where nothing happened on a particular file and we got a few phone calls earlier on in that period, we wouldn’t bother invoicing them 3 months to the day; we would wait until the end of the step. It’s basically the number of invoices and frequency.

Sabin: So has it created additional invoices than otherwise you would have had to generate?

Cooper: Absolutely.

Benton: That’s correct.

Sabin: And a lot of that is to do with the protracted nature of the cases?

Cooper: Yes. That’s right—ours have been very protracted. We’re on a kind of different path now, but I think for us, our concerns are, as I say, that we’ve kind of matched our practice to handle it, but Legal Aid hasn’t. Also, a big point is that nobody has factored in the cost of that process for the clients either, because they are actually having to pick up the extra cost of having to do a 3-monthly invoice for what might be a letter or a phone call. That’s not fair. We, typically, and I think most lawyers typically, bill within a particular stage of work. All lawyers, whether you’re in the Family Court or civil, you do particular tranches of work. If you’re in a civil case, your first tranche of work will be to, usually, interview the client, take those initial instructions, and then decide where to, so you bill at that point. That, actually, will be usually quickly. The next point, of course, might be if you’re in a civil case to then draft pleadings and file those in a court. That’s the next tranche of work. In our area, that can actually be quite a lengthy process because of what we have to collect in to do that. Each area of law will have steps that Legal Aid know. Typically, lawyers have invoiced when they’ve finished a stage of work, and that makes sense.

Chauvel: Cutting to the chase on this, because I think we understand or can have a picture of the problems that the 3-month rule, if I can put it that way, has posed for you. What do you say about the Ministry’s response that it’s going to be done away with, so it’s not going to be an issue going forward, because obviously that’s going to be very relevant?
Cooper: Well, that’s not quite what they’re saying. I mean, what they’re saying is—

Chauvel: Sorry, I’m paraphrasing. On what the Ministry says about the future, what’s your position?

Cooper: I guess our position is that it must be clear that the 3-monthly invoicing regime should go. I think we’re concerned that this proposed amendment leaves all the discretion, again, with the Ministry to decide: “OK, for this particular firm it’s got to be 3-monthly invoicing.” And we could see us being stuck with it. When this first came in, we actually approached Legal Aid and said: “Can we look at something special for us because, one, we’re going to have difficulty handling it, and, two, you are not going to handle it. You already can’t handle our work.” They basically just said no, out of hand. I think our concern is that leaving too much discretion with Legal Aid to decide what regime fits for what is not acceptable. It’s not an acceptable regime for practitioners. There needs to be certainty around who gets what in terms of invoicing regime. I think our preference is that the 3-monthly goes, and obviously the Minister thinks it’s ridiculous. As I say, for lawyers who do the sort of work we do, so civil, family, mental health, or whatever, most of the work is in steps. We think that that sensibly fits, that that’s the point at which you invoice within 3 months of completing a step of work. Not just blanketly every 3 months.

Chauvel: We’ve interrupted your flow, I imagine, several times. Are there any other key points that you think we need to hear from you on before we invite the ministry’s response?

Cooper: I think one thing perhaps I need to emphasise is having a 3-monthly invoicing regime or whatever— One thing that needs to be clarified is that at any point it shouldn’t start running until there is a grant of aid. The point that I just made before about in some cases we’ve actually waited 2½ years to get a grant of aid, you can’t impose an invoicing regime that kicks in immediately the client instructs the law firm when there’s no grant of aid. In our cases, in particular, because ours have been through LAT, and then the High Court, and then back to Legal Aid, we’ve had a lot of problems with Legal Aid. You cannot impose any sort of invoicing regime that kicks in immediately a lawyer is instructed but there’s no grant of aid. It must start to run from when there is a grant of aid.

Chauvel: What about where the grant of aid can’t be processed because the authorities don’t have the information that they need from the applicant or perhaps where the solicitor doesn’t even have it from the client?

Cooper: Again, though, why should the lawyer be penalised? I don’t know if you’ve seen a legal aid form lately, but they’re incredibly complex. They require a lot of information. Most of our clients struggle with literacy, and they’ve got alcohol and drug abuse problems, literacy problems, mentally ill. To complete a legal aid form, it’s hard enough, I think, for a lawyer, let alone a client, to complete. There is a lot of background information that needs to
be provided with that, particularly those who’ve got some form of property, or if you’ve got debts, you’ve got to provide evidence of your debts. That’s actually a lot of information for somebody who is really struggling with their life to pull together. Often, too, we might wait for 3 months before Legal Aid comes back to us and says: “This form’s incomplete because you haven’t provided that information.” Why should we be penalised? Because then we’ve got to scurry around and get in a whole lot more information. The example we had, a case here of refusal of legal aid, went to LARP—the Legal Aid Review Panel—then went to the High Court. We abandoned the appeal on the basis that legal aid was going to be granted. It then took another 7 months for a grant to be made. Now, there was no reason why it took another 7 months, and with us constantly chasing up. In the meantime, the 3-monthly invoicing regime has kicked in. We’re waiting for the: “Well, we’re not going to pay you for all that work between July 2011 and when we actually gave you the grant in March or something 2012.”

Chauvel So you would say in that sort of situation the 3-month requirement cuts across the statutory obligations?

Cooper Yeah, we noted that. I mean, one of the things it’s about—

Chauvel I think we’re understanding the context. Would you agree that there’s a right to impose some form of limit, provided that it has a rational connection to the processing capacity of the granting body?

Cooper I suppose so, as long as, one, I think at the moment there’s absolutely no discretion. Well, there appears to be no discretion. We’ve, for example, sent in invoices well within time, but for whatever reason—New Zealand Post has taken a week to deliver from our office on The Terrace to their office just up the road—and if we’re 1 or 2 days late, they deduct out that time. I’d hate to think what the position is for lawyers who don’t even live in Wellington. I mean, as I say, if New Zealand Post can take a week to deliver our mail, apparently, to Legal Aid, then I don’t know what other lawyers are having to do. That actually cuts the 3-monthly invoicing regime even further, because, in fact, you’ve got to get it to Legal Aid within the time. What we’ve done mostly now is we actually get them hand-delivered, and we make them stamp it just so we’ve got proof that it’s been delivered. So there are all those kind of quirky things too. If it’s a day late because the post is late, you don’t get paid for that day. That’s creating unfairness and anomalies.

I think at the moment there is no flexibility, there is no discretion, and that’s unfair, that can create unfairness. That needs to be rectified. I think our big issue is at the moment every obligation is on a provider. There is no reverse obligation on the Ministry. In our case, we wait 4, 5, 6, 7, or 12 months for an invoice to be even acknowledged, let alone paid. Then there’s all the accumulation of amendments to grant not being processed and reconsiderations not being done. Within a 3-monthly invoicing regime, if that’s all behind, we never know where we stand in terms of funding. We
don’t know whether we should have submitted another amendment to grant, because we’ve submitted our 3-monthly invoice but Legal Aid hasn’t looked at it yet. We’ve got examples of files here. I got two decisions today on a file, one invoice in November I submitted and another one in March, and we got two decisions on that file today. You’re reading them and you’re saying: “What? What does this mean? It doesn’t even make sense.”, because one letter deals strictly with the November invoice, and the other letter then deals with the March invoice. We never know where we stand. They’ve got no obligations. We’ve got all of them. There’s no discretion, apparently. I understand the rationale of it; it just is not working.

Shanks  I think we understand your frustration. I think we’ve got that pretty clear down this end of the table. You’re in agreement that you would be happy with some type of process if you could relate to it. On the other side of that, if there was a lifting of the game in terms of Legal Services, then you’d be a pretty happy camper.

Cooper  Well, also, as I say, discretion when it’s late, for whatever reason. I think that needs to be taken into account too. Yeah, I would be a happy camper.

Shanks  OK. That’s great.

Chauvel  OK, I think we get it. What I propose to do is invite the Ministry to respond to the complaint, and then if new matters are raised in their reply, I propose to ask you to deal with those right at the end. So if you wouldn’t mind yielding the table to the Ministry, we’ll hear their response.

Clark  Thank you, Mr Chairperson. I’m Gerard Clark. I’m the manager of access to justice and family law policy in the Ministry of Justice.

McCabe  And I’m Patrick McCabe. I’m a principal policy adviser at the Ministry of Justice.

Chauvel  Mr Clark and Mr McCabe, welcome. Essentially, the floor is yours to respond as you see fit. We’ve read the material, but if you want to make any additional points or deal with the way in which the members asked questions of the complainant, then you’re welcome to do that.

Clark  Thank you, Mr Chairperson. What I’ll propose to do is talk a little bit about the background to why the regulation exists at the moment. Then I’d like to go into some detail about the changes we’re proposing to make to the regulation in the future, and the situation has slightly changed since the letter we sent you, so there’ll be some new information there. Then I can address some of the issues raised by the complainants. Then, if you’d like at that point, I can go through the four grounds of complaint, but you may not feel that’s necessary.
As noted by the complainant, prior to the Legal Services Act 2011 there wasn’t a statutory time frame for providing invoices, at all. The provision for that time frame, and that regulation setting the time frame at 3 months, was set to address a number of quite significant concerns about the operation of the legal aid scheme generally. These concerns arose because it was common for the agency to be receiving invoices for work undertaken a long time after the work was done. In at least one case this was over 10 years after the work was done. In many cases it was around the 5- or 6-year mark. And, quite concerning as well, sometimes we would be invoiced for payment at the same time as the application for a grant of legal aid was referred to us. So these late invoices made it very difficult, first of all, for us to assess whether the work that was done was necessary and required, or even whether the work actually was done. It made it very difficult for us to meet our obligations under the Public Finance Act for accrual accounting, because it was impossible to know what to accrue. It also made it very difficult to estimate the resource requirements to deal with invoices, so we never had a clue when in the year various things would come up. They’d come up at a time—so, for instance, sometimes there would be a spike near Christmas; sometimes at other times there’d be a big spike. That would lead to delays in providing those payments. And importantly also for some legal aid clients, the delays in invoicing meant that they were unable to know how much the debt that might be applicable to their legal aid case could be, so they could be left in limbo for quite some time about what they might end up having to repay, which was very uncomfortable for them.

The then Legal Services Agency did explore non-legislative options for this. They looked at having—in fact, they trialled having a contract that required invoicing within 2 months, but that was unsuccessful and wasn’t able to be enforced. So the provision was included in the bill that led to the current Act. During the select committee stage of the bill, four submitters commented on the issue of time frames for provider invoices. The New Zealand Law Society, in particular, raised the issue about whether this should be set in legislation and regulation or whether it should be done through contracts, but there were also some submissions about the length of time that would be appropriate for a time frame to be set in regulations. These ranged from 90 days by, for instance, the Criminal Bar Association to 6 months by the New Zealand Law Society and its family law section. Having seen those submissions, the select committee agreed to report the bill without any changes to those relevant provisions on provider invoicing—so that was clause 98 and part of clause 114 of the bill, which is the regulation-making power. Then, in determining the time frame to be used in regulation, we did consult with representatives of the legal profession, including, and in particular, the New Zealand Law Society.

So that’s the background to the regulation as it stands. As we wrote to you in our letter on 23 March, consideration is being given in any case to amending this regulation. What we discussed with you in that letter was having a very flexible system where different time frames could be established for different situations. Having looked at that a little bit more
and having had some feedback, that doesn’t appear to be workable and possibly would be ultra vires. What the current proposal is is to shift to a requirement for 6-month invoicing but to include a provision that if there’s a formal request from the Ministry of Justice for an invoice within 3 months, then that needs to be provided if the payment is to be made in a particular circumstance. This seems to us to balance better with the fact that most providers do comply with reasonable time frames and are able to do so. It also gives us some flexibility to deal with the small number of providers that are unable, for whatever reason, to comply with those provisions or are unwilling to.

Chauvel What about the situation where there is compliance but there isn’t timely processing on the Ministry’s behalf? Is that a real situation that we should be concerned about?

Clark We see it as a transitional issue, really, for two reasons. There is some increase in the time it’s taking to make provider payments. However, it’s transitional partly because the reason of bringing in the 3-month invoicing requirement or any set time frame is to ensure that we have a much better idea of when we are likely to be billed for various things, so we can manage our resources better. The other reason there’s a bit of a blip at the moment is because we did get an enormous backlog of some very old invoices that came through—probably more than we were expecting.

Chauvel But at the time that the legislation was passed, it was known that the Legal Services Agency functions would move into the Ministry, so presumably this was taken into account in setting the 3-month time frame?

Clark That’s absolutely right.

Chauvel —and yet the transition, as you say, causes a problem.

Clark No, not the transition of the Agency to the Ministry but the transition to a 3-month invoicing requirement. So it’s a short-term issue that we got an enormous backlog of invoices when that provision came in. That was spread over some time, because for some of the invoices that were incurred prior to 1 July last year we allowed an extra amount of time until the end of the year to provide those. But, notwithstanding that, we got many invoices going back many years from a lot of providers. A lot of those are a lot harder to deal with than invoices that are contemporaneous, where we can actually look at what’s happening, so that is taking some time to deal with. The other factor that will mean that we become faster at processing those invoices is that we’re introducing fixed fees in the criminal—fixed fees in the criminal jurisdiction have been introduced. That’s reducing the amount of work for us, as well, around invoicing. So we’re able to use the same resources to remove the backlog, and that’s starting to occur at the moment.
Shanks: Now, I would imagine that would be because you didn’t know what you didn’t have—is that right?

Clark: That’s my—we did expect some increase.

Shanks: You had no visuals at all on what was accrued, what you hadn’t received, what was sitting in everybody’s files, and so they had this one shot to get it in before that 3-month period, then it was gone. So it would’ve been a huge influx, I would imagine, of really old cases.

Clark: There was a large influx, yes.

Shanks: So I assume, though, you’ve got systems in place that now—Well, as we heard, you know, some haven’t been paid for a period of time but will now be in catch-up and nearly caught up.

Clark: Well, it’s certainly our intention to catch up. It is a difficult resourcing issue still. We’re getting through the backlog and then we’re adjusting to how much that workload adjusts with fixed fees, as well. But it appears to be going down, and we anticipate improving the situation. It is at the moment a bit worse than it was prior to the 3-month invoicing requirement coming into force, but the situation then was unsatisfactory, and we’d like to move into a better situation.

Sabin: How do you find dealing with invoices that might be for matters like a single letter or, you know, just the sheer volume of invoice processing for things that basically amount to very small costs?

Clark: My understanding is that that’s not a significant issue with most providers—that in the majority of cases a lot of the work is completed within a 3- or a 6-month period, and so we’re not getting that bulk of very minor, small issues. Having said that, when the invoice comes in, we still need to identify that, say, a phone call occurred on a certain date and assess that, so in one sense the work isn’t different either in terms of invoicing or in terms of processing that invoice. That still needs to be processed as an item, and so it’s merely a matter of when it’s bulked up.

Sabin: So have you seen an increase in the numbers of invoices you’re processing since this 3-month rule has come into play?

Clark: Yes, but I’m not certain how much of that is because there was a large backlog of old cases and how much—and whether there’s just more coming in. I’m not sure I understand the question.

Sabin: Well, I’m just wondering if this new system, with a requirement for 3-monthly invoicing, has dramatically increased literally the number of invoices you’re having to process, because clearly there’s a substantial backlog. So I guess what I’m trying to get a handle around is is this backlog just part of the normal course of business, or has there been an increase in it as a result of this 3-monthly requirement?
Clark  I would have to go and find that out. I know that a lot of it is simply as a result of a lot of old invoices coming in. I’m not certain if we’re in a position yet to assess whether day to day there are more invoices coming in, but I could check that out, potentially.

Chauvel  You’d be welcome to do that, unless your colleagues can assist you. No. All right. Well, I think the relevance of it for us is, again, around the—I’ll paraphrase the Standing Orders—the reasonableness or the nexus between the choice of the 3-month requirement and the effect on it, and then the way in which you’ve had to process things and the position that leaves you in under the Act in terms of your duties. But, anyway, —I think it would be helpful if you were able to give us that information.

McCabe  I think it’s important to note, as has been said in our first submission to the committee, that the Ministry did advise Legal Aid providers that until 31 December 2011 it would not enforce the 3-month requirement for cases where the application for legal aid was dated before 1 July 2011. So that’s an important position. Second is that the Legal Aid Commissioner has a discretion on a case by case basis, and he exercises that on a case by case basis, and he either accepts and approves a late payment or he reduces the approval or he rejects it. So he’s doing that on a case by case basis. He has that discretion. Now, the legal aid commissioner is a statutory officer responsible for the administration of legal aid.

McKelvie  On what grounds would you reject it on?

Clark  I guess it would be that it was unreasonable—that it wasn’t referred within the time frame. So we are trying to avoid the situation where people are simply just not billing for quite a long time. Also, if the work wasn’t work we consider should’ve been paid for—

McKelvie  That’s partly answered the question.

Clark  —and it might’ve been that if it was within the time frame, we could have had a discussion about that, but that’s no longer possible.

McCabe  Section 99(4) of the Legal Services Act 2011 sets out the statutory grounds for the commissioner to exercise his discretion to decline some or all of the claim “on any 1 or more of the following grounds,” and it sets out the grounds.

Chauvel  And is that a power that’s delegated in practice to claims processing officers?

Clark  Yes, it is.

McCabe  But within a hierarchy of approvals, so that—depending on the experience and the rank of the grants officer.
COMPLAINT REGARDING THE LEGAL SERVICES REGULATIONS 2011

Chauvel: It’s not as if the commissioner’s sitting there as a sort of Court of Appeal dealing with exceptional cases; it’s a power that is being dealt with every day by staff, effectively.

Clark: That’s right.

Chauvel: As you say, within a managerial structure.

McCabe: Some of those people exercising the exceptional cases have been involved in the administration of legal aid under its various statutes for more than 20 years.

Chauvel: Anyway, please continue.

Clark: That’s essentially, I think, covered off all the issues we want to, other than to just inform you that we are looking at the regulatory change coming in in June that we’re talking about for the regulations. So we’re consulting on that currently.

Chauvel: So when would the regulation be made? It would come into effect on 1 July, presumably, or—

Clark: I guess if we take into account the 28-day rule. Our intention is to do it as soon as possible, and we’d hope it would be in force by 1 July. We were consulting on the previous proposal, but we have had to now consult again on this latter one, so we’re just working out the time frames, given that consultation.

Chauvel: So I think you told us that initially you thought a flexible requirement applying different time frames for different situations might work, but there are problems with that, so what’s the nub of the current proposal that you’re consulting on to replace the present requirement?

Clark: It would essentially say that—other than for fixed fees, anyway—the invoice should be provided within 6 months of the work being carried out, rather than the current 3 months. It would additionally provide for the Ministry to make a formal request for an invoice if it felt that it needed an invoice for a particular issue, and if that wasn’t paid within 3 months, then we’d be able to decline the payment.

Chauvel: All right. Any other questions for the Ministry? Thank you very much for your response. Just a question to the complainant as to whether there are any issues arising out of that that you want to take the time to address. If there are, what I’ll do is ask you just to come up to the table again.

Cooper: Yeah, I don’t want to say much. I suppose just a couple of points. Being lawyers, we know about the importance of keeping a reply short. I suppose one thing we just noticed in terms of the backlog issue, these regs have been in force since 1 July, so they’ve already been in force for 9 months now, and from our perspective we’re not seeing any improvement. In fact,
we’re only seeing the situation getting worse, and I think the New Zealand Law Society anecdotal evidence suggests that’s the case, as well.

I think the other issue—and perhaps you can ask for more information. But while there appears to be a discretion—well, there is a discretion—within the Act and within the regs, we’ve never seen it exercised. We don’t know how it’s exercised. And from our perspective it appears to be very inflexible—i.e., as I gave the example of an invoice where they said we’d got it in late; in fact, we hadn’t because we’d emailed it. But their own systems hadn’t even picked up that they’d got it on time, and they were ready to deduct out—in fact, they’d told us that they were going to be deducting out—the time. There was no discussion about that, no attempt to exercise any discretion, and, as I say, they were wrong in any event. I had to go back and say: “Here’s the email I sent to you, sending it on the correct day.” I think, as I say, we don’t see the exercise of that discretion.

Chauvel So, just to round out that experience, was the matter corrected once you’d had that discussion?

Cooper Yeah, and an apology made. But the thing is the fact that the system was a failure anyway and I had to spend 20 minutes of my time going back through my files to find that I had actually emailed it—because I knew I had—and find the email and then forward that to the grants people to say: “Here’s my email. It was sent to you on the correct day. Why isn’t this in your system?” There’s no explanation as to why it’s not in the system. There’s an acknowledgment, yes, and an apology, but that was more of my legal time that I shouldn’t have needed to spend rectifying an error in their office. You know, this was a reasonably large invoice, but, still, imagine if it had been an invoice for two units that I’d had to do that on.

Dalziel But I think your point that you’re making is that no one ever said to you, you know: “There is a discretion here if you give us a good reason.”

Cooper No, no. Well, and, in fact, that’s a really good example—I think you missed it. We said we had some cases where, in fact, we’ve waited 2½ years for a grant of aid or 5 months for a grant of aid. Even there we’re being asked to break down our work. Now, that’s Legal Aid’s fault or issue, that we haven’t had a grant of aid—or just the system, like, as I say, one case has gone through refusal of legal aid to the High Court and then we waited patiently for Legal Aid to make a grant for 6 months while we were repeatedly saying: “Can you make a grant of aid? Can you make a grant of aid?” Now, again, we don’t know what’s going to happen. We have no doubt that we’ll just be told to break down the invoice, as we have on every other occasion, to show what works within the 3-month invoicing period and what’s not, and we’ll probably get a decision saying: “We’re only paying you for the last 3 months.” So we don’t see any exercise of that discretion, ever.
Chauvel: Do you have any views that you want us to hear about the potential changes—

Cooper: To 6 months?

Chauvel: —that the Ministry—

Cooper: We could probably handle that.

Chauvel: —told us about?

Cooper: Again, I think the challenge will be for the Ministry. That’s probably better for them, as well, actually. That’s probably more realistic. As I say, we’ve already put in place our resources to handle the 3-monthly invoicing regime. That’s, as I say, probably better for them—more realistic—and I think most practitioners should be able to manage a 6-monthly invoicing regime. Again, it worries me that they say they’re going to give themselves power to say in particular cases that they require an invoice within 3 months, and I can just see them saying to my firm, with 600-odd legally aided clients: “Provide all your invoices within the 3 months.” Because of the way that the contracts are set up, we’ve got no power. As I say, all of the obligations in this new legislation are on providers. There are virtually no obligations on Justice. So if we’re going to have obligations, there has to be room for discretion, and also too there has to be—or, otherwise, there have to be reciprocal obligations on Justice, because, as I say, we just—from our perspective the situation’s untenable. When there are months of delays in dealing with anything—amendments to grant, reconsiderations, invoices, applications for legal aid—which just accumulate and accumulate and accumulate, any regime’s got its problems unless there is a reciprocal obligation or timeliness within Justice, and that’s our concern—is that there isn’t.

Chauvel: All right. Any further questions from members? In that case, thank you for your attendance. What we’ll do now is close the public session and consider what we’re going to do with the complaint.

**Conclusion of evidence**
Subordinate Legislation (Confirmation and Validation) Bill

Report of the Regulations Review Committee

Contents

Recommendation 2
Background 2
Confirmation and validation is warranted 2
Improving the scrutiny process 3
Conclusion 6
Appendix 7
Subordinate Legislation (Confirmation and Validation) Bill

Recommendation

The Regulations Review Committee has examined the Subordinate Legislation (Confirmation and Validation) Bill and recommends that it be passed without amendment.

Background

The purpose of the bill is to confirm and validate subordinate legislation made under various Acts. Clauses 7 to 12 would confirm and validate certain subordinate legislation that will lapse unless confirmed or validated by an Act of Parliament. The subordinate legislation referred to in clauses 7 to 9 and 11 would be confirmed; that referred to in clauses 10 and 12 would be both validated and confirmed. Clause 6 would repeal the Subordinate Legislation (Confirmation and Validation) Act 2011 (2011 No 96).

Confirmation and validation is warranted

We wrote to the five government departments with responsibility for administering the orders and regulations in the bill, inviting them to make a written submission explaining why the orders and regulations should be confirmed and/or validated. We also asked the agencies why confirmation and validation provisions were originally included in the Acts under which the orders and regulations were made.

In all cases, confirmation and/or validation was considered necessary by the departments to prevent the orders and regulations from lapsing and thus ceasing to be legally enforceable. The policy reasons for these confirmations and validations included funding for an industry organisation, the application of increases in the consumers price index to social security benefits, war pensions and allowances, and the need to allocate road user charges according to new vehicle types and weight bands.

After considering the responses from the departments, we found no reason that the orders and regulations should not be confirmed and/or validated. We thank the departments for their responses to our questions and their cooperation with our processes for the bill.

1 The Ministry for Primary Industries, the Ministry of Social Development, the New Zealand Customs Service, the Ministry of Transport, and Veteran’s Affairs New Zealand.
Improving the scrutiny process

We have found no reason why this particular subordinate legislation bill should not proceed. However, if this bill had raised issues or concerns, we would have been constrained in our ability to examine them appropriately. We examine the reasons for this, below.

Why subordinate legislation bills are important

This committee has previously recognised the constitutional importance of subordinate legislation bills that validate or confirm legislation to prevent its lapse. In 1986, the committee set out four categories of regulations that it considered might call for confirming or validating legislation to prevent lapse to be passed by Parliament: 2

1. emergency regulations
2. regulations imposing a financial charge in the nature of a tax
3. regulations amending the empowering Act or another Act (Henry VIII clauses)
4. regulations that deal with issues of policy under the authority of broad empowering provisions.3

If particular regulations were to fall into one of these categories, the committee considered that, provided that the subject-matter of the regulations was appropriate for delegated legislation, it was then a matter of judgement whether the confirmation and validation procedure should be used, and recognised that the use of the procedure would not always be appropriate.4 The committee recommended that when statutory provisions that delegate powers falling within the four categories are being drafted, there should be an examination of the desirability of including a requirement that the exercise of those powers is to be confirmed by Act of Parliament.5

The four categories of regulations specified by the committee all deal with matters of constitutional importance, and are therefore the types of regulations over which Parliament is likely to wish to exercise a higher degree of oversight than with other types of regulations. For example, it is a fundamental constitutional principle that the Crown may not levy money without the approval of Parliament.6 Thus, it is appropriate that any regulations seeking to impose or vary a tax (the second category above) should be subject to some form of parliamentary oversight and control.

The enactment of provisions requiring subordinate legislation made under them to be confirmed and/or validated to prevent lapse is apparently becoming more frequent. According to the Parliamentary Counsel Office, currently 34 Acts of Parliament (and two bills) contain 50 such empowering provisions. In 1986, the committee found only eight such Acts, containing in all eight such empowering provisions.7

3 Ibid.
4 Ibid., n. 2, para 8.1.
5 Ibid., n. 2, para 8.5.
6 See section 22 of the Constitution Act 1986 and article 4 of the Bill of Rights 1688.
7 Regulation Making Powers in Legislation, para 8.3.
Allowing time for scrutiny of policy issues

As a technical scrutiny committee, our role regarding policy matters is limited. We are concerned with how policy is implemented in regulations, not with the merits of the policy itself. It is for the House and its subject select committees to address the policy aspects or merits of regulations.8

Although the present bill is referred to the Regulations Review Committee, there is still scope for the policy issues raised by the regulations in question to be examined by the House. In 1986, the committee observed that the confirmation and validation procedure can provide Parliament with the opportunity to consider these policy issues, and noted that the House can choose to refer the regulations to the appropriate select committee.9 Furthermore, under Standing Order 289, we can ask any other committee for its opinion on a bill referred to us.10 In giving us its opinion, the other committee may call for submissions, hear evidence and recommend amendments to the bill.11

However, should we have considered it appropriate to use the process envisaged by Standing Order 289 in this case, we would have run up against the difficulty that there was insufficient time to seek comment from the relevant subject select committees. Subordinate legislation bills are required to be reported back to the House within a shorter time than most other bills, because of the timing restrictions imposed by the relevant empowering provisions. This bill was introduced on 30 August 2012, and referred to us on 11 September 2012, with a report-back date of 5 November 2012. This allowed us less than two months to consider the bill; six months is usually allowed for bills referred to select committees for consideration.

We understand from the Parliamentary Counsel Office that it is not reasonably practicable to introduce these subordinate legislation bills in the first half of the calendar year—that is, before 1 July. This is because of the statutory timetables of the various empowering provisions that require subordinate legislation made under them to be confirmed and/or validated to prevent lapse. A common form of confirmation provision envisages instruments made in the first six months of a year being confirmed by Act (if at all) either in the second six months of the year or in the next year.12 Beyond the limitations imposed by the empowering statutes, the Parliamentary Counsel Office also requires time in which to research and compile the bill, and to progress it through the various approval processes required before introduction.

We recommend that the Government examine the viability of introducing bills seeking confirmation and/or validation of subordinate legislation earlier in the calendar year than has been usual in recent years, preferably on 1 August, or as close to that date as possible. Earlier introduction would increase the time available for us to consider the bill and refer any specific policy issues that we might identify to the appropriate subject select committee.

9 Regulation Making Powers in Legislation, para 8.2.
10 Standing Order 289(1) provides that the select committee to which a bill is referred may ask any other committee for its opinion on the bill or on a part, clause, schedule, or other provision of the bill.
11 Standing Order 289(2)
12 See, for example, section 54(5) of the Customs and Excise Act 1996.
Streamlined procedure for consideration

The current process for considering the bill allows for only limited select committee scrutiny. Passing the bill through all its stages into law also takes up a substantial amount of House time. Given that it is not reasonably practicable for a subordinate legislation bill to be introduced until the second half of the calendar year, we have considered alternatives to the way the bill is currently considered.

The Clerk of the House pointed us towards a streamlined procedure recommended by the Standing Orders Committee for the consideration of revision bills, a type of bill envisaged by the Legislation Bill currently before the House.13 Revision bills would re-enact laws in an up-to-date and accessible form without changing their substance. In considering a revision bill, the question before Parliament would be a narrow one, of whether the proposed bill correctly states the existing law.

The procedure recommended by the Standing Orders Committee would mean that a revision bill would

• not be subject to debate on its first reading
• be considered by a subject select committee in the usual way
• be debated at second reading, and any select committee amendments adopted
• be considered in committee of the whole House only if required
• be set down for third reading forthwith, without debate.14

We consider that the streamlined procedure for revisions bills endorsed by the Standing Orders Committee would also be appropriate for bills seeking confirmation and/or validation of subordinate legislation. In considering these bills, the question before Parliament is the relatively narrow one of whether to confirm and/or validate the exercise of delegated law-making power by the Executive in a small number of subordinate legislative instruments. Adopting a similar procedure for subordinate legislation bills would abbreviate those parts of the legislative procedure that take up House time, which would in turn allow more time to be spent on the parts of the legislative procedure involving select committee scrutiny. We consider select committee scrutiny to be a more effective means of scrutinising this type of legislation.

14 Above n 13, p. 38.
**Conclusion**

We found no reason why the relevant subordinate legislation should not be confirmed and/or validated, and therefore recommend that the bill be passed without amendment.

We recommend that the Government examine the viability of introducing bills seeking confirmation and/or validation of subordinate legislation earlier in the calendar year than has been usual in recent years, preferably on 1 August, or as close to that date as possible.

We encourage the House to consider carefully whether the streamlined procedure recommended by the Standing Order Committee for revision bills might also appropriately be extended to bills seeking confirmation and/or validation of subordinate legislation.
Appendix

Committee procedure

The Subordinate Legislation (Confirmation and Validation) Bill was referred to the committee on 11 September 2012. The committee invited written submissions from the relevant Government departments with responsibility for administering the subordinate legislation requiring confirmation and/or validation in the bill. The committee also sought advice from the Clerk of the House of Representatives, and Parliamentary Counsel.

Committee members

Charles Chauvel (Chairperson)
Hon Lianne Dalziel
Ian McKelvie
Mike Sabin
Katrina Shanks
# Investigation into the Road User Charges (Transitional Matters) Regulations 2012 (SR 2012/145)

Report of the Regulations Review Committee

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Legislative framework</td>
<td>2</td>
</tr>
<tr>
<td>Our investigation</td>
<td>3</td>
</tr>
<tr>
<td>Evidence from the Ministry of Transport</td>
<td>4</td>
</tr>
<tr>
<td>Our view</td>
<td>6</td>
</tr>
<tr>
<td>Appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made</td>
<td>6</td>
</tr>
<tr>
<td>Contains matter more appropriate for parliamentary enactment</td>
<td>9</td>
</tr>
<tr>
<td>Conclusion</td>
<td>12</td>
</tr>
<tr>
<td>Appendix</td>
<td>13</td>
</tr>
</tbody>
</table>
Investigation into the Road User Charges (Transitional Matters) Regulations 2012 (SR 2012/145)

Recommendation

The Regulations Review Committee recommends that the House disallow regulations 5(3), 5(4) and 8 of the Road User Charges (Transitional Matters) Regulations 2012 (SR 2012/145).

Introduction

We first considered the Road User Charges (Transitional Matters) Regulations 2012 (the regulations) on 19 July 2012, as part of our usual scrutiny process. The regulations were made under section 90 of the Road User Charges Act 2012 (the Act).

The regulations were made by His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, on 11 June 2012. They came into force on 1 August 2012, the same date on which the Act came into force.1 The regulations expire with the close of 31 July 2013, at which time they are deemed to be revoked.2

Legislative framework

What the regulations provide for

Regulations 5 to 9 modify provisions of the Act for varying specified periods of time. For the purposes of our investigation, the key regulations are regulations 5(3), 5(4) and 8.

Regulation 5(3) of the regulations amends the definition of “exempt vehicle” in section 5 of the Act by adding “an unregistered vehicle operating under trade plates” to the list of exempt vehicles set out in that definition. Section 7 of the Act imposes a general requirement for road user charges (RUC) to be paid in respect of the operation of a RUC vehicle. Regulation 5(3) has the effect of removing an unregistered vehicle operating under trade plates from that requirement in section 7.

Regulation 5(4) amends the definition of “permit” in section 5 of the Act. The effect of the definition in the Act as enacted was that both over-dimension and overweight vehicles were required to carry either an additional licence or Type H licence. The effect of regulation 5(4) is that only overweight vehicles are now required to carry such a licence.

Regulation 8 inserts a new section 97B into the Act. New section 97B provides that the exemption granted under the Road User Charges Act 1977 (the 1977 Act) in respect of farmers’ vehicles used on the road only in connection with agricultural operations will continue to apply in respect of light RUC vehicles (defined in section 5 of the 2012 Act) until 30 June 2013, and that the light RUC vehicles to which the exemption applies must be treated as if they were an exempt vehicle within the meaning of section 5 of the 2012 Act.

---

1 Excluding section 87.
2 Regulation 3 of the regulations; section 90(2) of the Act.
Empowering provision

The regulations were made under section 90 of the Act, which provides as follows:

90  Transitional regulations

(1) The Governor-General may, by Order in Council, make regulations—

(a) prescribing transitional and savings provisions concerning the commencement of this Act, which may be in addition to or in place of the provisions of this Act:

(b) providing that, subject to any conditions that may be specified in the regulations, during a specified transitional period,—

(i) specified provisions of this Act (including definitions) do not apply:

(ii) specified terms have the meaning given to them by the regulations:

(iii) specified provisions repealed or amended or revoked by this Act are to continue to apply:

(c) providing for any other matters necessary for facilitating or ensuring an orderly transition from the provisions of the former Act to the provisions of this Act.

(2) No regulations made under this section may be made, or continue in force, later than 1 year after the date on which this section comes into force.

Regulations made under section 90(1) may prescribe provisions that add to or replace the provisions of the empowering Act. Section 90(1) is therefore a Henry VIII power—in other words, a power, granted in primary legislation, for delegated legislation to amend, suspend or override the empowering Act or any other Act. As a matter of principle, such powers are undesirable because they give the government of the day the power to override the will of Parliament, and thus have serious implications for Parliament’s ability in practice to control and oversee the delegation of its law-making powers. Henry VIII powers should therefore be granted by Parliament, and used by the government of the day, only in exceptional circumstances and subject to appropriate controls and safeguards.

The Regulations Review Committee has previously set out criteria specifying circumstances in which the use of Henry VIII powers might be permissible. The committee stated that an empowering provision that enables primary legislation to be amended by regulations should be granted by Parliament rarely and with strict controls. We note that the section 90 empowering provision appears to satisfy only two of the seven criteria set down by the committee. We acknowledge that section 90(2) provides an important safeguard constraining the Henry VIII power contained in section 90(1). Section 90(2) effectively ensures that the law-making power delegated by section 90(1) will expire one year after the date on which the section comes into force—that is, on 1 August 2013. It also ensures that any transitional regulations made under section 90(1) of the Act can continue in force for only a short period of time—no longer than one year, and not beyond 31 July 2013.

Our investigation

During our initial scrutiny of the regulations, we were concerned about the number of matters included in these regulations, given that the empowering provision requires that

---

3 Regulations Review Committee, Inquiry into the Resource Management (Transitional) Regulations 1994 and the principles that should apply to the use of empowering provisions allowing regulations to override primary legislation during a transitional period [1995] AHRR 1.16C, pp.22–23
they be confined to dealing with transitional matters. In particular, we were concerned that regulation 5, which adds another category of vehicles to the definition of “exempt vehicle” in section 5 of the Act, might deal with a matter of policy that would more appropriately be included in primary legislation.

We therefore wrote to the department responsible for administering the regulations, the Ministry of Transport (the ministry), seeking an explanation of why all the matters contained in the regulations needed to be added to the Act at that time, and why these matters had not been identified and addressed prior to the Act coming into force.

The ministry wrote back to us on 24 August 2012. We considered this response and, on 27 September, wrote back to the ministry, seeking further information, which we received on 16 October 2012. These responses are summarised below.

**Evidence from the Ministry of Transport**

The ministry explained to us the policy reasons underlying each of the amendments to the Act made by the regulations. The ministry stated that, with two exceptions, the matters covered in the regulations either facilitated implementation of the policy in the Act, or clarified that policy.\(^4\) We have considered the two exceptions identified by the ministry, regulations 5(3) and 8, in detail; we have also considered regulation 5(4).

**Regulation 5(3)**

The ministry told us that the need to exempt unregistered vehicles operating under trade plates from the requirement to pay RUC “did not become apparent to officials until it was raised in the context of consultation on proposed exemption regulations under section 38 of [the Act]”.\(^5\) When the oversight became apparent, “it was not possible to amend the primary legislation without causing a significant delay to the implementation of the new RUC system”.\(^6\) The ministry considered that the costs to the wider transport sector of delaying the introduction of the new RUC system would have outweighed the benefits of resolving this matter.\(^7\)

The ministry acknowledged that regulation 5(3) “deals with a policy issue not addressed in the Act”, although it felt that this issue was “relatively minor”.\(^8\) The ministry appears to have initially overlooked this issue because it considered that “in principle, unregistered vehicles operating under trade plates should be subject to the same RUC licence requirements as similar registered motor vehicles”.\(^9\) However, the ministry subsequently realised that the New Zealand Transport Agency’s (NZTA) administrative systems did not enable such vehicles to be issued with RUC distance licences.\(^10\)

The ministry explained that the exemption provisions in the Act were drafted with a particular class of vehicles in mind, and that this class did not include unregistered vehicles operating under trade plates.\(^11\) The 1977 Act required certain vehicles, including non-petrol

\(^4\) Second submission from the Ministry of Transport, p. 1.
\(^5\) First submission from the Ministry of Transport, p. 2.
\(^6\) Ibid., n. 4, p. 2.
\(^7\) Ibid., n. 4, p. 3.
\(^8\) Ibid., n. 4, pp. 1 and 3.
\(^9\) Ibid., n. 4, p. 2.
\(^10\) Ibid., n. 4, p. 2.
\(^11\) Ibid., n. 4, p. 2.
powered vehicles on trade plates, to carry RUC time licences. The 2012 Act did not provide for time licences; instead, the government agreed that all vehicles previously subject to time licences would become exempt from the requirement to pay RUC. Most vehicles subject to time licences were special purpose vehicles, unsuitable for regular road use; it was these vehicles for which the exemption provisions in the Act were drafted, rather than unregistered vehicles operating under trade plates.

The ministry acknowledged that it had given insufficient attention to the application of the Act to unregistered vehicles operating under trade plates:

> It is clear that further attention should have been given to whether the policy on exemptions from RUC in the Act was capable of being applied to vehicles operating under trade plates. Unfortunately the priority that both the Ministry of Transport and [the] NZ Transport Agency had to give to resolving other issues that were critical to the implementation of the Act led to this need being overlooked.

The chief executive of the ministry stated, “I believe this is a case where an anomaly, discrepancy or mistake has become apparent and the use of regulation 5(3) of these regulations is justified, pending further policy work.” The ministry told us that it was “investigating options for the future treatment of unregistered RUC vehicles operated under trade plates, including making the temporary exemption from RUC permanent through an amendment to the Act”.

**Regulation 5(4)**

The ministry explained that regulation 5(4) corrected what it considered was an error in the Act, which had meant that the Act did not accurately reflect the ministry’s policy intention. The ministry stated that, “although it is intended that the definition of permit will be changed permanently through a Statutes Amendment Bill, the regulations were necessary to correct an error in the interim.”

The ministry explained that regulation 5(4) corrected what it considered was an error in the Act, which had meant that the Act did not accurately reflect the ministry’s policy intention. The ministry stated that, “although it is intended that the definition of permit will be changed permanently through a Statutes Amendment Bill, the regulations were necessary to correct an error in the interim.”

The ministry expanded on the policy background underlying regulation 5(4). It considered that the reason why only overweight, and not over-dimension, vehicles should be required to carry either an additional licence or Type H licence was because the costs that vehicles over 44 tonnes imposed on the road network varied primarily in proportion to their weight. Imposing a requirement on vehicles that are over-dimension but not overweight to carry additional RUC licences would therefore be likely to impose a compliance cost on operators that would be disproportionate to the revenue involved.

**Regulation 8**

The ministry told us that regulation 8 had been made to continue the existing exemption for farmers who operate light RUC vehicles for agricultural operations with limited on-road use, “pending outstanding policy decisions on how best to manage” exemptions for light RUC vehicles under the Act. As at 1 August 2012, when the Act came into force, “policy

---

12 Ibid., n. 4, p. 2.
13 Ibid., n. 4, p. 2.
14 Ibid., n.5, p. 2.
15 Ibid., n. 4, p. 3.
16 Ibid., n. 5, p. 2.
17 Ibid., n. 4, pp. 3 and 4.
18 Ibid., n. 5, p. 3.
decisions on whether and how to implement an exemption for light RUC vehicles under sections 40 and 89 of the 2012 Act had not been made”.19 The ministry intends that policy decisions on whether to implement an exemption for light RUC vehicles under the 2012 Act will be taken before the existing exemptions for light RUC vehicles expire on 30 June 2013.20

Section 40 of the Act provides that a RUC collector may grant an exemption from the requirement to pay RUC if satisfied that the light RUC vehicle in question:

(a) belongs to a class of light RUC vehicles prescribed by regulations made under section 89 of the Act, and
(b) will be operated almost exclusively off-road, and
(c) satisfies any other relevant criteria prescribed by regulations made under section 89.

The ministry had originally intended that no regulations relating to section 40 would be made under section 89, meaning that light RUC vehicles operated almost exclusively off-road would not be able to be exempted from the requirement to pay RUC. The ministry told us that, in April 2012, “Cabinet asked for further policy work to done on this issue”, but that it was unable to complete that work prior to the Act coming into force.21

The ministry explained that it had used transitional regulations, rather than an amendment Act, to continue the existing exemption because it did not intend to preserve exemptions based on these criteria beyond expiry of the regulation on 30 June 2013.22 Any new exemptions for light RUC vehicles would be based on the criteria set out in section 40, which does not allow for vehicles to be exempted on the basis of ownership.23

Our view

Standing Order 315 provides that, in examining a regulation, the committee considers whether it should be drawn to the attention of the House on one or more the grounds set out in Standing Order 315(2). We considered the regulations in respect of the following two grounds:

(c) that the regulation appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made:

(f) that the regulation contains matter more appropriate for parliamentary enactment.

Appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made

We considered whether the regulations make some unusual or unexpected use of the section 90 legislative power conferred by the Act. Although it is not for this committee to rule on vire, the regulations appear to fall within the parameters of the empowering provision under which they are made, section 90 of the Act, and therefore appear to be authorised by that provision. The question under this Standing Order ground is whether the regulations represent a proper use of that power.

19 Ibid., n. 4, p. 1.
20 Ibid., n. 4, p. 3.
21 Ibid., n. 4, p. 2.
22 Ibid., n. 4, p. 1.
23 Ibid., n. 4, p. 2; section 40 enables an exemption to be made if a vehicle “will be operated almost exclusively off-road”.

6
In considering this ground, it is important to bear in mind that the power delegated by section 90 is a power to make regulations for transitional purposes. Regulations made under section 90 may prescribe “transitional and savings provisions” concerning the commencement of the Act; may provide that specified provisions of the Act do not apply “during a specified transitional period”; and may provide for any other matters necessary for facilitating “an orderly transition” from the provisions of the 1977 Act to those of the 2012 Act.

It is generally understood that the purpose of a transitional provision is to facilitate the coming into force of new legislation by making “special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force”. Regulations made under a transitional provision cover “the mechanics of the transition from the present to the future state of affairs”. Transitional matters should be the subject of regulations only in “exceptional cases”.

**Regulation 5(3)**

Regulation 5(3) amends the definition of “exempt vehicle” in section 5 of the Act by adding unregistered vehicles operating under trade plates. The ministry’s position is that, in principle, unregistered vehicles operating under trade plates should be subject to the same RUC licence requirements as similar registered motor vehicles. The Act has been drafted to achieve that policy outcome.

Following the enactment of the legislation, the ministry realised that the NZTA’s administrative systems did not enable unregistered vehicles operating under trade plates to be issued with RUC distance licences. This raised an operational problem, which the ministry chose to address by using the power to make transitional regulations delegated in section 90. The ministry acknowledged that it had given insufficient attention to the way in which the Act would apply to unregistered vehicles operating under trade plates. The chief executive of the ministry stated, “I believe this is a case where an anomaly, discrepancy or mistake has become apparent and the use of regulation 5(3) of these regulations is justified, pending further policy work.”

We consider that the amendment to the Act effected by regulation 5(3) reverses a matter of substantive policy contained in that Act. Indeed, the ministry itself acknowledged to us that regulation 5(3) deals with a policy issue not addressed in the Act, although it considered it to be a “relatively minor” issue. The Act provides that unregistered vehicles operating under trade plates should be subject to the requirement to pay RUC; regulation 5(3) effectively reverses that policy, exempting such vehicles from this requirement.

We consider that the appropriate way for the ministry to deal with the problem raised by the limitations of the NZTA’s administrative systems would have been to seek to amend the Act by way of primary legislation. This is because the solution to the problem involved changing or reversing the substantive policy contained in primary legislation. The ministry could have sought an amendment equivalent to the exemption set out in section 37 of the Act.

---


25 Ibid., n. 24, Thornton.

26 Ibid., n. 24, Burrows and Carter, p. 604.

27 Ibid., n. 5, p. 2.
Act, which delegates a power to make regulations specifying a period during which RUC is not payable in respect of light electric RUC vehicles.

The ministry instead sought to deal with the problem by using a power to make transitional regulations. We consider that this was an inappropriate use of transitional regulations, which are intended to deal with technical matters facilitating the transition from the old legislative regime to the new, not to make substantive policy changes to primary legislation. Contrary to the statement of the ministry’s chief executive, the use of transitional powers to remedy an “anomaly, discrepancy or mistake” was not justified in this case.

It is unfortunate that the ministry appears to have moved to legislate before ensuring that the policy contained in the Act was capable of being implemented in practice. Given that the Road User Charges Bill was introduced to the House in November 2010 and not enacted until February 2012, we consider that there was sufficient time for the ministry to consult all relevant parties, including the NZTA, and to adapt the legislation in line with operational limitations, prior to its enactment.

It is unusual or unexpected that regulations made under a delegated power to make transitional regulations should be used to reverse substantive policy contained in an Act of Parliament. We therefore find that regulation 5(3) makes an unusual or unexpected use of the legislative power delegated in section 90 of the Act.

**Regulation 5(4)**

Regulation 5(4) amends the definition of “permit” in section 5 of the Act to the effect that over-dimension vehicles are no longer required to carry either an additional licence or Type H licence.

The ministry regards the change to the Act implemented by regulation 5(4) as simply correcting an error, because it was never the ministry’s policy intention that over-dimension vehicles should be required to carry either an additional licence or a Type H licence. The ministry told us that it intends to seek to change the section 5 definition of “permit” permanently through a Statutes Amendment Bill, which indicates that the ministry considers the amendment to be non-controversial.28

We consider that the points we have discussed in relation to regulation 5(3) apply equally to regulation 5(4). The amendment to the Act effected by regulation 5(4) appears to us to involve a matter of substantive policy, in that there may well be sound policy reasons why over-dimension vehicles should be required to carry either an additional licence or a Type H licence.

It is unexpected that regulations made under a delegated power to make transitional regulations should be used to reverse a matter of substantive policy in an Act of Parliament. We therefore find that regulation 5(4) makes an unusual or unexpected use of the legislative power delegated in section 90 of the Act.

**Regulation 8**

The ministry explained that regulation 8 preserves the current position of farmers who operate light RUC vehicles for agricultural operations with limited on-road use, “pending outstanding policy decisions on how best to manage such vehicles”.29 The ministry has

---


29 Ibid., n. 5, p. 3.
acknowledged that it found itself unable to complete the necessary policy work on this matter prior to the Act coming into force.

Section 2 of the Act provides for the commencement of the Act. Section 2(1) states that the Act will come into force on a date to be appointed by the Governor-General by Order in Council. Section 2(3) provides that, to the extent that the Act is not brought into force under section 2(1), the rest of the Act will come into force on 1 August 2012. The Act therefore has a defined final commencement date of 1 August 2012. The Transport and Industrial Relations Committee recommended that section 2(3) be inserted into the bill as introduced, on the advice of the Regulations Review Committee.\(^{30}\)

Regulation 8 appears to us to subvert the commencement date specified by Parliament. The exemption for light RUC vehicles allowed for under section 40 of the Act cannot come into effect until supporting regulations have been made under section 89(1) of the Act. The ministry has therefore effectively used the section 90 power to make transitional regulations as a holding measure to support its delay in bringing section 40 into operation, from the date specified by Parliament, 1 August 2012, to the final date possible under section 90(2), 31 July 2013. This delay appears to have been introduced for operational reasons, in that the ministry has yet to make outstanding policy decisions on how best to manage the exemption power provided for in section 40.

It is unexpected that regulations made under a delegated power to make transitional regulations should be used to delay bringing a provision of an Act of Parliament into practical effect for operational reasons. We therefore find that regulation 8 makes an unusual or unexpected use of the legislative power delegated in section 90 of the Act.

**Contains matter more appropriate for parliamentary enactment**

We also considered whether the regulations deal with matters of policy that should be addressed only in primary legislation. It is a well-established principle that matters of principle and policy are usually found in primary legislation, while detail and implementation are ordinarily the domain of delegated legislation.\(^{31}\) The question is whether the regulations implement matters of policy that are of a type that would be more appropriately included in primary legislation.

**Regulation 5(3)**

Regulation 5(3) exempts an unregistered vehicle operating under trade plates from the requirement to pay RUC.

As we have stated above, in relation to Standing Order ground 315(2)(c), whether such an exemption should be permitted appears to us to be a substantive policy question that should have been considered and determined by Parliament. If Parliament had been able to consider the question, it may well have concluded that there were sound policy reasons why such vehicles should not be exempt from the requirement to pay RUC. One such policy reason may be the consequential effect on other RUC payers who will have to bear a larger financial burden as a result of the exemption given to unregistered vehicles operating under trade plates. Subjecting unregistered vehicles operating under trade plates to the same RUC licence requirements as similar registered motor vehicles is in fact the ministry’s preferred position—it has moved to exempt this class of vehicles only because no

\(^{30}\) Transport and Industrial Relations Committee, Commentary on the Road User Charges Bill (261—2), p. 2.

\(^{31}\) See, for example, the Legislation Advisory Committee guidelines, guideline 10.1.2.
administrative means could be found to issue a RUC distance licence to an unregistered vehicle.\(^3^2\)

The regulations are deemed to be revoked on 31 July 2013. In order to address beyond that date the situation that regulation 5(3) temporarily addresses, the ministry is considering seeking amendments to the Act that would permanently exempt an unregistered vehicle operating under trade plates from the requirement to pay RUC. The fact that the ministry is considering permanently addressing this matter by way of amendment to primary legislation strongly suggests to us that regulation 5(3) is dealing with policy that is more appropriate for parliamentary enactment.

We therefore find that regulation 5(3) contains matter that would have been more appropriate for parliamentary enactment.

**Regulation 5(4)**

Regulation 5(4) amends the definition of “permit” in section 5 of the Act to provide that only overweight, and not over-dimension, vehicles are required to carry either an additional licence or Type H licence.

As we have stated above, in relation to Standing Order ground 315(2)(c), deciding whether to impose a requirement on over-dimension vehicles to carry additional RUC licences appears to us to be a substantive policy question that should have been considered and determined by Parliament. The question of whether over-dimension vehicles should be required to carry either an additional licence or a Type H licence appears to us to be a subject on which different interest groups could well take differing positions, and in respect of which interest groups may well have chosen to submit to select committee. In its evidence to us, the ministry explained that:

> For a typical 44 tonne truck and trailer, more than 80% of RUC relate to weight-related cost factors. As weight increases the costs attributed to road wear increase exponentially and adding an additional 4 tonnes of weight to a 44 tonne vehicle results in an increase in costs attributed of about 20 percent.

> In theory, an increase in vehicle dimensions will also impose a small additional increase in costs, due to extra road space occupied, but a typical over-dimension high productivity vehicle is only marginally longer than a standard vehicle. Vehicles that are significantly over-dimension are also likely to be significantly over-weight and will already incur substantially higher RUC for that reason.\(^3^3\)

The ministry stated that imposing such a requirement would be likely to impose a compliance cost on operators that would be disproportionate to the revenue involved.\(^3^4\) This is a policy assessment, involving analysis of various cost-benefit factors.

The ministry intends that, in order to address the situation beyond 31 July 2013, the section 5 definition of “permit” will be changed permanently through a Statutes Amendment Bill. As with regulation 5(3), the fact that the ministry intends to address this matter permanently by way of amendment to primary legislation strongly suggests to us that regulation 5(4) is dealing with policy that is more appropriate for parliamentary enactment.

---

\(^3^2\) Ibid., n. 4, p. 2.

\(^3^3\) Ibid., n. 4, p. 3.

\(^3^4\) Ibid., n. 4, p. 4.
We therefore find that regulation 5(4) contains matter that would have been more appropriate for parliamentary enactment.

**Regulation 8**

Regulation 8 continues an existing exemption from the requirement to pay RUC for farmers’ vehicles used on the road only in connection with agricultural operations. This exemption has been continued pending the ministry making policy decisions on how best to manage exemptions for light RUC vehicles from the requirement to pay RUC.

By enacting section 40 of the Act, Parliament has effectively endorsed the policy that exemptions from the requirement to pay RUC may be granted where the vehicle will be operated almost exclusively off-road and where the vehicle meets other criteria to be prescribed by regulations. \(^{35}\) Parliament could also be said to have endorsed, by implication, the policy that exemptions for light RUC vehicles should be based on the primary use of the vehicle, rather than on who owns the vehicle. In the case of regulation 8, the key policy decision about exempting light RUC vehicles has already been made by Parliament. Regulation 8 does not contain a policy change; instead, the ministry is using it to maintain a holding pattern, pending more detailed policy decisions.

However, we consider that the effect of regulation 8 is to frustrate the legislative intent that section 40 of the Act should commence on a specified date—that is, by no later than 1 August 2012 if an Order in Council bringing that section into force had not been made earlier. A change to the commencement date of section 40 should have been made by amending the Act to substitute a new date, rather than by using the regulation-making power in section 90 of the Act to promulgate regulations that, in practical terms, extend that date. To the extent that regulation 8 provides for that effect, we find that it contains matter that would have been more appropriate for parliamentary enactment.

---

\(^{35}\) No such regulations appear to have yet been made (under section 89(1) of the Act).
Conclusion

We find that regulations 5(3), 5(4) and 8 of the Road User Charges (Transitional Matters) Regulations 2012

• appear to make some unusual or unexpected use of the powers conferred by the statute under which they are made (Standing Order ground 315(2)(c)); and

• contain matter more appropriate for parliamentary enactment (Standing Order ground 315(2)(f)).

It is on this basis that we recommend that the House disallow regulations 5(3), 5(4) and 8 of the regulations.
Appendix

Committee members
Charles Chauvel (Chairperson)
Katrina Shanks
Hon Lianne Dalziel
Ian McKelvie
Mike Sabin
Report from the Controller and Auditor-General on the Inquiry into the Plumbers, Gasfitters, and Drainlayers Board

Report of the Social Services Committee

Contents
Recommendation 2
Background 2
Current situation 2
Appendix 3
Report of the Controller and Auditor-General on the Inquiry into the Plumbers, Gasfitters, and Drainlayers Board

Recommendation

The Social Services Committee has considered the report from the Controller and Auditor-General on the Inquiry into the Plumbers, Gasfitters, and Drainlayers Board and recommends that the House take note of this report.

Background

On 18 August 2010 the Controller and Auditor-General’s Inquiry into the Plumbers, Gasfitters, and Drainlayers Board was referred to the Social Services Committee of the 49th Parliament for consideration. The Auditor-General’s report raised several issues with the board and made 15 recommendations for improvement.

The Social Services Committee of the 49th Parliament heard evidence from the Office of the Auditor-General and from the Plumbers, Gasfitters and Drainlayers Board and presented an interim report to the House on 15 April 2011. The report noted that the board has been aware of the issues raised by the Office of the Auditor-General and had been working to address them. The previous committee considered it prudent to allow the board more time to implement the recommendations, and indicated it would review progress later.

Current situation

With the commencement of the 50th Parliament this report was reinstated by the House and is now before us for consideration. We acknowledge the issues raised by the Office of the Auditor-General in its report and agree with the course of action taken by the previous committee. The board needs more time to rectify the issues and implement the recommendations. We intend to give them time to do so, and to follow up with the board and to seek an update from the Minister for Building and Construction during this Parliament.
Appendix

Committee procedure

The report from the Controller and Auditor-General on the Inquiry into the Plumbers, Gasfitters, and Drainlayers Board was reinstated by the House in the 50th Parliament on 21 December 2011, and considered by this committee on 8 February 2012.

Committee members

Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Jo Goodhew
Melissa Lee
Jan Logie
Tim Macindoe
Alfred Ngaro
Dr Rajen Prasad
Richard Prosser
Mike Sabin
Su’a William Sio
Content

Recommendation 2
Introduction 2
Background 2
Recovering overseas child support debt 2
Child support arrangements with the Cook Islands 3
Conclusion 3
Appendix 5
Recommendation
The Social Services Committee has considered Petition 2008/116 of Moana Jean Karika Rule and recommends that the House take note of its report.

Introduction
We have received and considered the petition of Moana Jean Karika Rule, which requests that the House of Representatives note that 1,356 people have signed a petition requesting the implementation of a reciprocal agreement between the Government of the Cook Islands and the Government of New Zealand for the enforcement of child support payments so that if a child support application is made in New Zealand and the person named as the paying parent is ordinarily a resident of the Cook Islands, they can be made to pay child support in New Zealand and their Cook Islands income can be used to determine the child support payable and the collection of it can be enforced by the Government of the Cook Islands; the agreement would be reciprocal to also apply to child support applications made in the Cook Islands being enforced in New Zealand.

In a submission to the committee, the petitioner noted that the “favourable relationship” between the Cook Islands and New Zealand inadvertently allows parents who owe child support in one country to reside in the other country, often without that child support obligation being enforced. There was also a lack of knowledge in the community about avenues available to pursue overdue child support from liable parents who reside in the Cook Islands, and a likelihood that the reported number of child support cases in the Cook Islands fell short of the true total, as some custodial parents owed child support may not have come forward because they thought no remedy was available to them.

Background
Child support in New Zealand is governed by the Child Support Act 1991. The Act requires the child to be a New Zealand resident or ordinarily resident in New Zealand, and the parent from whom child support is owed to be ordinarily resident in New Zealand or in a country with which New Zealand has a reciprocal agreement. Child support is determined by either a private agreement or an administrative formula. The administrative formula takes into account the number of children a paying parent is liable for, the paying parent’s income, current family circumstances, and whether custody of the child or children is shared.

Recovering overseas child support debt
The Inland Revenue Department matches information with the New Zealand Customs Service, so it knows when paying parents with significant outstanding child support debt travel in and out of New Zealand. This enables the department to take the necessary steps to recover outstanding debt when the liable parent re-enters New Zealand.
Australia has by far the largest number of overseas parents who are liable for New Zealand children (13,000, or over 95 percent of all overseas child support cases for New Zealand children). Australia and New Zealand entered into a reciprocal child support agreement on 1 July 2000, which allows one country to use the other country to collect child support from liable parents who are living there. It was a mutually agreed proposition, and its enforcement is aided by the fact that Australia and New Zealand have very similar payment systems.

New Zealand and the Cook Islands are both party to the Commonwealth Scheme, which allows custodial parents resident in one participating country to apply for registration of existing orders in another participating country. However, the formula-based assessment New Zealand uses is not covered, as the scheme covers court-based agreements only. The United Nations Convention on the Recovery Abroad of Maintenance 1956 is also unenforceable for the same reason. New Zealand was a party to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, but the Cook Islands was not, so when New Zealand enacts the convention in legislation it will not create any binding agreement with the Cook Islands regarding child support.

It is worth noting, however, that the department has successfully recovered child support debt from 60 States and territories with which it does not have reciprocal agreements.

**Child support arrangements with the Cook Islands**

Currently, New Zealand has a reciprocal agreement on child support only with Australia; it does not have one with the Cook Islands. Under the Citizenship Act 1977, those born in the Cook Islands are New Zealand citizens. Therefore, a custodian living in New Zealand can claim child support from a liable parent living in the Cook Islands if the liable parent is a New Zealand citizen, and vice versa. Assessments can be made under the New Zealand child support system, just as if the liable parent were resident in New Zealand.

The main problems with pursuing overseas child-support debt are obtaining valid information and subsequently enforcing payment. These problems are not limited to the Cook Islands; they arise wherever a liable parent resides overseas.

Although the Cook Islands has the fourth-largest number of overseas liable parents with New Zealand child-support debt, the actual number of liable parents residing there is about 111 (there are no figures available for parents liable for children resident in the Cook Islands residing in New Zealand). This is a much smaller number, and debt, than the equivalent figures for Australia. The relatively small number of cases, coupled with the different administrative systems used in New Zealand and the Cook Islands, and the cost of enforcement and recovery, means that a reciprocal agreement with the Cook Islands has not been a priority.

**Conclusion**

We have given careful consideration to the petition, especially because of the emotional and fiscal impact child support matters can have on custodial parents, paying parents, and the children involved. We appreciate the petitioner's reasoning in her submission that there would be “a number of considerations to contemplate if New Zealand were to explore the possibility of a reciprocal agreement with the Cook Islands,” and agree that it would be beneficial to both countries if child support could be enforced so that the children involved...
were not disadvantaged. However, we consider that because those born in the Cook Islands are New Zealand citizens and the Child Support Act 1991 applies to them, it is not necessary to draw up a reciprocal agreement between the Cook Islands and New Zealand.
Appendix

Committee procedure

The petition was presented to the House of Representatives of the 49th Parliament on 1 February 2011 and referred to the Social Services Committee. The committee received submissions from the petitioner and from the Inland Revenue Department.

The petition was reinstated by the House in the 50th Parliament and came before us. The committee met on 15 February and 9 May 2012 to consider the petition. We heard and received evidence from the Inland Revenue Department, as well as the Minister of Revenue.

Committee members

Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Arden
Hon Jo Goodhew
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Tim Macindoe
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Su’a William Sio

Evidence and advice received

Inland Revenue Department, Submission on Petition 2008/116 of Moana Jean Karika Rule, dated 31 March 2011.

Inland Revenue Department, Response to written question, dated 29 February 2012.

Minister of Revenue, Response to written questions, received 29 February 2012.

Social Security (Youth Support and Work Focus) Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Social Security (Youth Support and Work Focus) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The Social Security (Youth Support and Work Focus) Amendment Bill seeks to amend several aspects of the Social Security Act 1964. It is part of a comprehensive package of welfare reforms to be implemented over 2 years. The bill aims to introduce a new system of support, obligations, and financial assistance for young people, and to extend work availability requirements and work preparation obligations for sole parents, widows, women alone, and partners of people receiving a main benefit.

The Youth Package is a proposed new system of financial support for young people. Most of the benefits received by young people at present will be replaced by the Youth Payment for 16- and 17-year-
olds, and the Young Parent Payment for parents aged 18 years, or 16 to 17 years if they come from a low-income family, are married or in a civil union or de facto relationship, or are single or sole parents in exceptional circumstances.

The bill seeks to introduce a managed system of payments for young people receiving the new Youth Payment or Young Parent Payment. Their essential costs such as rent and power would be paid directly to the relevant provider, and they would receive an allowance and a payment card for living costs. The new system aims to improve the outcomes for vulnerable young people by changing the nature of the assistance and support provided and increasing the expectations on them to meet their obligations.

The Ministry of Social Development would contract service providers to provide “wraparound support” to young people who are receiving the new payments or who are the spouses or partners of older main beneficiaries, and to help disengaged young people into education, training, or employment. These people would be obliged to improve their educational and social outcomes, by means such as full-time education, training, or work-based learning leading to an NCEA level 2 qualification or its equivalent; participating in an approved budgeting programme and fulfilling the associated requirements; and, if they are parents, participating in an approved parenting education programme and fulfilling the associated requirements. The ministry would assist with childcare costs through the Guaranteed Childcare Assistance Payment while the young person was in education, training, or work-based learning.

The bill seeks to allow information sharing between the Ministry of Social Development and the Ministry of Education to assist in identifying the school leavers most at risk of receiving a benefit from the age of 18. It also seeks to allow information to be shared between the Ministry of Social Development and contracted service providers, and by local agencies with the ministry and contracted service providers, to facilitate the delivery of services to help these young people to return to education, training, or employment.

The bill also aims to change the work availability and preparation requirements for sole parents, widows, women alone, and partners by requiring sole parents with children aged 5 years and older to be available for and seek part-time work; requiring sole parents with children aged 14 years and older to be available for and seek full-time
work; extending these work expectations to women receiving the Widow’s and Domestic Purposes—Women Alone benefits and to partners of beneficiaries with children; and allowing Work and Income to direct people to prepare for work. Parents who have another child while on a benefit would have to meet work availability expectations based on the age of their previous youngest child once their youngest child reaches 12 months old. This requirement is in line with current parental leave entitlements for employees, which allow 12 months’ leave for parents.

This commentary covers the major amendments that we recommend and key issues we discussed where we did not recommend amendments. We also recommend some minor technical amendments to clarify the intent of the bill and to correct drafting omissions, which are not discussed in this commentary.

**New Zealand Bill of Rights Act 1990**

Concerns were raised that aspects of the bill discriminated on the basis of age, gender, family status, and employment status. Legal advice from the Ministry of Justice to the Attorney-General was that the discrimination in the bill is justifiable, and that the bill is therefore consistent with the New Zealand Bill of Rights Act 1990. The bill was drafted to provide a degree of flexibility in the application of its provisions, and the chief executive of the Ministry of Social Development is given discretion in some areas—for example, clause 34, new section 60GAF, as outlined below. We recommend no amendments to the bill in this area.

**Information sharing**

The bill seeks to allow the Ministry of Education and the Ministry of Social Development to share information about school leavers, so that the Ministry of Social Development can identify at-risk young people before they enter the benefit system. The ministry or a contracted provider could then deliver services to such young people in an effort to reduce the likelihood of their needing financial assistance in the future.

We recommend amendments to the information-sharing provisions found in clauses 18 and 19 to address concern about the adequacy of the safeguards provided, and to make the information-sharing frame-
work mirror more closely the proposals in the Privacy (Information Sharing) Bill, which is currently before the Justice and Electoral Committee. New section 125GA is being added to the provisions to be inserted by clause 19, to provide for the new information-sharing provisions (new sections 123F, 123G, 125C, and 125D) to be subject to review for consistency with other privacy legislation by the chief executive of the ministry 3 years after Part 1 is enacted. The 3-year review period was chosen in preference to a sunset provision because the latter would require a new consultation procedure for an information-sharing agreement that had already been in operation for some time before the sunset provision came into effect. A sunset provision also assumes that the Privacy (Information Sharing) Bill will be enacted, which is not guaranteed. We also recommend inserting a new clause requiring the chief executive of the Ministry of Social Development to report to the Minister for Social Development on the review and any resulting recommendations for amendments. In addition, a new section 123H requires that the chief executive of the ministry must review the operation of any agreement developed under new section 123F(1) once it has been in effect for 3 years. There is also a requirement in clause 18, new section 123G, that requires consultation with the Privacy Commissioner and the inviting of submissions from representatives of interested parties.

We recommend amending clause 19, new sections 125C and 125D, so that the regulations made under these sections, which relate to the release of information to and by service providers and agencies such as doctors and police, would be subject to the consultation requirements set out in clause 18, new section 123G, as mentioned above. We also recommend amending clause 19, new sections 125C and 125D, to specify the purpose of these provisions and ensure that regulations are made for that purpose; to require that the party releasing the information be satisfied “on reasonable grounds” that the requirements for disclosure are met by the provider; and to make it clear in new section 125D that the information required would have to be relevant to the provision of services.

We recommend amending clause 18, new section 123F, which would allow information-sharing agreements between the chief executive of the Ministry of Social Development and that of the Ministry of Education, to allow the chief executive of the Ministry of Education
to provide any information that he or she considers may facilitate the provision of the services in question.

We recommend inserting new clause 19A in the bill to make it clear that people affected by the information-sharing provisions who are unhappy about the way the provisions are administered would have an avenue of complaint through the Privacy Commissioner.

**Definitions**

We recommend amendments to definitions in clause 20, new section 157. The first is to the definition of “work-based learning” to make it clear that this means learning in the course of employment; therefore, the usual rights and provisions of employment law, such as the minimum wage, would apply. The second is to restrict the definition of a “young person” to those aged at least 15 years, but only for the purposes of services of the kind referred to in clause 18, new section 123E(a). The bill as introduced defines a young person as being between 16 and 20 years old, but we recognise that some 15-year-olds leave school, for example via an Early Leaving Exemption, and we do not want the ministry or its contracted providers to be prevented from helping such young people until they turn 16.

We recommend an amendment to clause 36 to repeal and replace subsection (1) of section 96A, to make it clear that for the purposes of subsections (2)(b) and (c), the definition of “suitable employment” in section 3(1) applies as if the person were a work-tested beneficiary. This would align the provision with the work-availability expectations for people on a benefit by allowing referral for employment of less than either 15 or 30 hours a week.

We are aware of concern about the reference to “suitable” childcare, which would be needed in order for young parents to participate in education, training, or work-based learning, and for sole parents, widows, and women alone with children to be available for work. Some of us consider that it would not be appropriate to define the concept of suitable childcare in legislation or operational guidelines, as it would limit parents’ right to decide upon care arrangements for their children. The intention is to strongly encourage enrolment in early childhood education, which research has shown to be beneficial for children, especially those from disadvantaged backgrounds. Case managers and childcare co-ordinators could help parents or-
ganise suitable childcare; for Young Parent Payment recipients, service providers would undertake this role. The availability of suitable childcare would be taken into consideration, as it is now, when the ministry or service providers were working with parents. Several forms of financial assistance would still be available, such as subsidies for low-income families whose children are attending licensed early childhood education services or are aged between 5 and 14 years. A new Guaranteed Childcare Assistance Payment of $6 per hour would also be introduced, and would cover most teenage parents with children under 5 to help them meet their obligations under the Youth Support package.

**Youth support payments and obligations**

The bill is designed to ensure that young people receiving the Youth Payment or the Young Parent Payment, and those aged 16 to 18 years who are spouses and partners of main beneficiaries, meet the obligations set out for them. The obligations include

- being in, or available for, full-time education, training, or work-based learning leading to NCEA level 2 or its equivalent
- completing budgeting education
- working alongside, co-operating with, and reporting to their service provider or Work and Income
- for young parents, completing parenting education programmes and their associated requirements.

Some of the Youth Payment or Young Parent Payment would be directed straight to the young person’s accommodation and utility costs. Recipients of these payments would also receive a cash allowance of up to $50; any money left after the allowance and their accommodation and utility costs would be loaded onto a payment card for food and groceries. We note that as at 24 April 2012 there were 1,384 suppliers defined as food suppliers for the purposes of the payment card, including 511 supermarkets. We consider that the payment card would attract less stigma than the direct credit letter the ministry has previously used.

We recommend inserting a provision in clause 20 to make it clear that young people could earn the right to manage their own money by complying with certain conditions set out in regulations. Some of us consider this preferable to the alternative of taking self-management
of money as a starting point and imposing direct payment arrangements only in response to breaches of obligations. Some of us are satisfied that the new provision of money management ought to be applied to everyone receiving the Youth Payment or the Young Parent Payment; there is overseas evidence that this is most effective for this age group.\(^1\) We see the requirement to participate in budgeting programmes as an important step to help young people understand their financial situation.

We recommend amending clause 20, new section 170(1)(f), so that young parents receiving the Young Parent Payment would now be required to report to their service providers on their compliance with the obligations set out in section 170(2). Currently, the bill does not include the specific obligations of a young parent regarding their dependent children. This amendment would require a young person receiving this payment to enrol every dependent child with a primary health organisation, keep children under 5 years old up-to-date with WellChild checks or any similar programme established in its place, and ensure those aged under 5 attend an approved early childhood education programme or other suitable childcare while the parent is in education, training, or work.

In keeping with the bill’s policy intent that spouses and partners of main beneficiaries be subject to the same obligation to participate in budgeting discussions with service providers or the Ministry of Social Development as Youth Payment or Young Parent Payment recipients, we recommend that clause 20, new sections 171(1) and (2), be amended to provide that the obligations in section 170(1)(g)(i) apply to young people covered in section 171.

**Sanctions**

We are not recommending any changes to the policy regarding sanctions relating to the Youth Package. However, as these provisions were of interest to submitters we wanted to clarify what the bill actually proposes in regard to sanctions. Young people receiving the Youth Payment or the Young Parent Payment who do not meet their obligations without good and sufficient reason will be subject to sanc-

---

tions. As with the current benefit system, these sanctions would comprise a three-stage approach. A young person on the Youth Payment would have their “In-Hand” allowance and any incentive payments suspended the first two times they failed to meet their obligations. If they did not re-comply within 4 weeks, their total payment including any incentive payments and any supplementary assistance would be suspended until they did comply. A third failure would result in their total payment being cancelled and they would be subject to a non-entitlement period of up to 13 weeks unless they completed an approved 6-week activity.

Those on the Young Parent Payment would be subject to the same sanctions for their first two failures as those on the Youth Payment (except their benefit would not be suspended if they had not re-complied within 4 weeks). For a third failure, the young person would continue to receive 50 percent of their Young Parent Payment and a portion of any supplementary assistance to which they were entitled, to ensure that their child or children were not disadvantaged by their failure. We agree with the ministry that there would be many opportunities for young people to meet their obligations, and that the support of service providers means that the use of sanctions should be minimal.

Service providers

No recommendations for change to the policy regarding external service providers are being made, but due to interest in the role of service providers we thought it prudent to mention their purpose in this bill. The majority of recipients of the Youth Payment or the Young Parent Payment, and the spouses and partners of main beneficiaries, would be referred by the Ministry of Social Development to external service providers. The service providers would provide a wraparound service to support those young people to meet their obligations, as outlined above. Although there were concerns about the use of external service providers, we are satisfied that Work and Income’s experience with contracting to third-party providers, and the overseas research in support of incentive-based, outcome-focused contracting when structured appropriately, means that young people would have the appropriate support and expertise necessary from service providers.
Some of us were concerned about the ability of service providers to adequately support Māori and Pacific Island young people. As is current Ministry of Social Development practice, the Request-for-Proposal process would require service providers to demonstrate success in working with youth, and this would include demonstrating success in working with Māori and Pacific Island youth. Proposals from all community groups, including iwi, and, for example, a collective of marae, would be able to be considered.

Service providers would also be required to identify options for overcoming any barriers to a young person’s ability to meet their obligations, leading towards NCEA level 2 or its equivalent.

**Children, Young Persons, and Their Families Act 1989**

We are aware of concern from the Office of the Children’s Commissioner and the Human Rights Commission among others about young people transitioning from care under the Children, Young Persons, and Their Families Act 1989. We recommend amending clause 20 to make it explicit that young people moving from care via an extended care agreement, custody order, or guardianship order into the new model of financial support could qualify for the payments, provided they met all other eligibility criteria; and to clarify that they would not be subject to an assessment of family breakdown, because evidence of it would already be available.

**Disability**

We heard concerns from some submitters that those with disabilities would not be able to comply with the requirements set out in the bill. We have not recommended any new amendments as existing regulations set out situations where people can be exempted from some or all work availability or work preparation expectations, or obligations to be in full-time education, training or work-based learning: for example, where a parent is caring for a child with special needs or the parent has an illness or disability that prevents them working or limits their work capacity, or where a young person is considered to be unable to reasonably meet their obligations due to a permanent or severe disability that means they would qualify for the Invalid’s Benefit, or meet the qualifications for the Sickness Benefit. Some of
us believe that the regulations adequately protect the interests of disabled children and their families.

**New Zealand Labour Party minority view**

Labour opposes the reforms contained in this bill. We believe that those currently in need of Government support deserve a set of measures that are grounded in evidence and in the reality of the current economic environment, and that address the barriers that exist in moving from the welfare system and into work.

In the past 3 years we have seen tens of thousands of New Zealanders move onto some form of Government support, not because they have experienced a change in their attitude to work but because the economic environment and job market have changed dramatically. We believe that there should be a responsibility on the part of the Government to acknowledge that addressing the structural issues in the economy would go a long way to improving the lot of thousands of Kiwis. Ultimately, if you want to fix welfare, fix the economy.

We believe that by and large, New Zealanders want to work. This is borne out not only by the Household Labour Force Survey, but by the anecdotal evidence of thousands of people lining up outside of supermarkets for a few hundred low-paid jobs and the benefit statistics in the past few years.

The New Zealand Council of Trade Unions articulated this point best when it stated in its submission that “the number on unemployment benefit fell from 162,000 in late 1999 to 17,700 in May 2008…When jobs were there, the number of people on unemployment benefit plummeted. In other words, there was not a policy problem in relation to the structure and availability of the benefit system. Nor is there one today. What has changed since 2008 is the availability of work.”

It is with this lens that we have looked at the reforms contained in this package. It is our view that there is an assumption by the Government that New Zealanders do not wish to work, and therefore punitive measures such as benefit reductions are required to convince them that they should.

We do, however, acknowledge that for many people trying to move off Government support, there are barriers. Surveys have identified these barriers, and for sole parents they include the following: a lack
of work, be it part-time or full-time, not having the appropriate training and/or education for the jobs that are available, and trouble accessing appropriate and accessible childcare or early childhood education.

These became the three tests that we applied to the reforms presented to us by the Government, and on these tests they were either inadequate, or, in our view, will have a negative impact on those they are designed to help.

**Youth services model**

We are very concerned about the content of the youth services provisions, and the way in which these services are currently being contracted. We understand that a very short tender process occurred while this bill was being considered (roughly 2 weeks from the time that the Ministry of Social Development gave a presentation on the package), leaving considerable uncertainty for those involved with the process. Tender documents also reveal that the details of this part of the policy have still not been completed, including the content of parenting courses that teen parents will be compelled to take part in, and at the time of writing they are due to be rolled out in 8 weeks. This is a sizeable package, and we remain deeply concerned at the speed at which providers have been asked to prepare for these changes.

We do not agree with the youth services package. While we have no objection to the concept of wraparound services, and agree this is an area that needed greater resourcing, we believe the Government would have been best to build on the Youth Transition Services model rather than scrapping it and starting again. We are also deeply concerned by the delivery mechanism, the narrowing of contracts to only cover 16- and 17-year-olds, and the use of a bonus payment system. Young people’s experiences are not linear. From our knowledge of Youth Transition Services currently in the field, many young people leave school with sometimes shaky plans that can fall over after a few months or even a year. Under this model, young people will only be able to access services via Work and Income, whereas previously they would have been eligible for the community-based Youth Transition Services.
We are also concerned that the narrow target based on age will mean that some providers just will not bother working with certain vulnerable young people. For instance, the maximum bonus payment is heavily based on the achievement of NCEA level 2, yet many people using services like these now have poor literacy and numeracy and in some cases do not have NCEA level 1. We believe a service worried about its funding levels would have a disincentive to work with a young person like this, who is unlikely to reach the milestones, and therefore will not be eligible for them to receive a $1,200 payment. Quite simply, every young person could be looked at with the lens “Can I afford to work with you?”

The youth services model is also heavily focused on achievement of NCEA. While this is understandable, we do not believe the reality of the situation for many of these young people has been taken into account. A 16-year-old who has left school, often because they believe they would rather be in work or were struggling in a school environment, is not going to be easily coaxed back into a classroom. Under the current model we have, but are replacing, providers are able to offer a range of options for that young person without having to consider the financial incentives attached to each of them as a contractor. We believe that the new model has moved the focus away from the best interests of the young person with the design of its financial incentives.

The Treasury also shared its concern that a system like this could lead to gaming of the system. We believe this is a very valid concern. We heard from submitters about a recent case in the United Kingdom where a provider had done just that when a similar system was introduced. It remains our view that little has been done to prevent this from occurring, and that considerable oversight will be required.

It remains of concern that those who have been most successful in providing Youth Transition Services to date see little merit in the Government’s proposed reforms. None have probably been as successful as the Otorohonga transition service, under the leadership of the chair of the Mayors’ Taskforce for Jobs and local mayor, Dale Williams. As a result of this local model, unemployment amongst the town’s young people has sat at between two and zero people. We believe that it should have been a significant flag to the ministry that based on its programme’s success, it would potentially lose the ser-
vice under this funding model; and as a result, it did not place a bid in the initial tender process.

**Youth Payment card**

The Youth Payment card was raised by many submitters. The Government’s justification for this new method of administering youth benefit payments (for current Independent Youth Benefit recipients and young sole mothers) was that it would improve a young person’s budgeting skills. We were also told that a young person would, over time, be able to “earn back” the right to take over the management of their own money. We have two objections to this argument. Firstly, if the policy aim is to assist a young person to learn budgeting, then surely this is best achieved if they have some control over the way their money is managed. The payment card removes all of the responsibility from the young person, into the hands of a third party. Secondly, we question the assumption that all young people should automatically be put on this card, and instead would have preferred that young people only be moved onto it if they have shown that they are in need of greater assistance with financial management. We believe the card system should be a back-stop provision, not a blanket default measure. We recommended this alternative option as part of the select committee process, but it was rejected.

**Information sharing**

This bill sets out considerable changes to current information-sharing provisions. We accept that for the purposes of ensuring that young people are aware of the services available to them once they leave school, some of these changes are necessary. We are, however, concerned that the Government’s compressed timelines did not allow for the Privacy (Information Sharing) Bill to be completed first, which would have then enabled this bill to more closely reference its final provisions. Although additional safeguards were added during the select committee stage, we were disappointed that these were not able to be tested with the Privacy Commissioner, and that any further review of these provisions and their consistency with privacy legislation will not occur until 3 years after enactment.
Work testing
This bill contains considerable changes to existing work testing provisions. We remain concerned about two elements of these changes. Firstly, we do not believe there was enough discussion about the best interests of the children affected by these work testing arrangements. Circumstances will of course differ for each family, and some sole parents (in fact the majority, based on evidence) will move into work after 4 years on the Domestic Purposes Benefit. But work testing in some cases when a child is as young as 12 months old is counter to research and evidence around child development. While the Government argued that this is a choice that many families no longer have, we would argue that sole parents by default will face greater barriers with the care of their children, and that we should be seeking ways to improve the lot of all families and the choices they have rather than continuing to race to the bottom.

Of course families, including sole parents, will be better off in work. But the question these reforms have not addressed is when. With the Children’s Commissioner arguing that a child who does not have the best start in life comes with a price-tag of $1 million, we believe this question needed to be considered.

Secondly, work testing with no regard to improving investment in training and education for sole parents on the Domestic Purposes Benefit means they will be competing in an already difficult labour market, without (in many instances) the skills required to earn enough to cover the childcare costs associated with this transition.

The continued refusal by the Government to reinstate the original criteria for the Training Incentive Allowance is a case in point, and exemplified by the case of a Domestic Purposes Benefit parent who recently approached one of our members’ offices. She is a sole parent and her child is aged 22 months. She currently works 11 hours per week at a café, which was topped up by the Government. This young mum wanted more for her child than what she felt her current skills could provide, so applied for assistance (via a Work and Income loan) for foundation courses so that she could enrol in a nursing degree. This request was denied on the grounds that this young mother already had work. Such a short-term approach does nothing for the future of our children and our sole parents.
Work testing exemptions

We wish to highlight the need for suitable discretion to be used by Work and Income around work testing exemptions, and wanted this to be explicitly stated in the bill. As a select committee we heard compelling arguments around why sole parents with children who have a disability (which based on ministry research amounts to 25.8 percent of Domestic Purposes Benefit recipients) may need to be exempt from the provisions in this bill. We agree with the need for exemptions and wish to ensure they are appropriately used by the chief executive, an assurance we were given by the ministry.

Childcare and early childhood education

While the Government reforms hint at the accessibility of childcare being a barrier to work for sole parents (by looking to increase assistance for teen parents to $6 per hour per child) the remaining 114,000 recipients of the Domestic Purposes Benefit will not receive any additional support.

We also remain concerned that while the bill sets out that work testing must take into account the availability of “suitable work”, including availability of “suitable childcare”, there is no definition contained in the bill as to what might be considered suitable childcare. We continue to believe that this needs to be set out in legislation, particularly given that the Minister for Social Development floated the idea of loose and informal “babysitter” networks in a Cabinet paper on these reforms.

These reforms also rely on the assumption that currently subsidised or free early childhood education is widely available. We know this not to be the case, especially in low-income communities. We agree with the Children’s Commissioner that reforms should have greater obligations on the Ministry of Social Development and the Ministry of Education to ensure the availability of quality early childhood education and childcare services.

Impact on women

Almost 90 percent of sole parents in New Zealand are women, and will therefore be the most heavily affected by these reforms. As raised previously in this report, we are concerned by the lack of discussion through this process on the importance of valuing the role of
motherhood and balancing this against the transition into work. Our sole parents are also characterised by a high percentage of Māori and Pacific women, who are overrepresented in low-income work. There was sadly little discussion around the types of work that these women are expected to move into, which, based on the profile of our current workplaces, are often low wage. If we are genuinely going to remove barriers to work for these women, “work must pay”, which quite simply means it must cover the additional costs of work, including childcare for shifts that sometimes run into the night and, of course, transport, and we do not believe that a minimum wage of $13.50 an hour does that.

We also believe this bill has not treated young mothers in an even-handed way. These reforms will mean a young woman with a child will stay on a Youth Payment card until she is 19. A male who is, for instance, transitioning from a Youth Payment to an unemployment benefit will move off the card at 18.

Given the impact of this bill on women, we are concerned that the Ministry of Women’s Affairs’ analysis was not included in the regulatory impact statement. We also note that the Ministry of Justice provided legal advice to the Attorney-General that a number of the bill’s provisions amounted to discrimination, but concluded that this was justified. The Human Rights Commission took a counter view.

**Green Party minority view**

The Green Party believes that this bill will hurt New Zealand’s most vulnerable people, increase their housing and food insecurity, encourage discrimination against beneficiaries, and exacerbate the growing gap between wealthy and poor families. The work-first approach ignores the fact that two out of five families living in poverty in this country are working poor. We believe that the best interests of the child should be paramount and included in the purpose and practice of welfare as it applies to children.

**New Zealand Bill of Rights Act 1990**

Many groups raised concerns that aspects of the bill discriminated on the basis of age, gender, family status, and employment status. While advice from the Ministry of Justice to the Attorney-General stated that the discrimination is justifiable, the Human Rights Com-
mission disagreed. The Green Party shares the view of the Human Rights Commission that insufficient consideration of other options has been undertaken to demonstrate that the bill’s proposals are the least intrusive way to meet its policy objectives and that prima facie discrimination is not justifiable.

We believe that discretion, rather than being a guaranteed safeguard, can create a lack of clarity and inconsistency in the application of the rules and make it harder for beneficiaries to find out what they are actually entitled to. In our discussions with community advocates and beneficiaries, while we have heard positive examples of the use of discretion, we have also heard again and again of people not being told of their entitlements, being humiliated, and being talked down to. We would also like to note the increasing number of disputes—for example, Internal Formal Reviews and at the Benefit Review Committee—that seem to reflect this. We have concerns at the increased level of discretion in this bill in this environment.

Service providers and wraparound services

The Green Party still has concerns regarding the contracting out of Work and Income functions. The Treasury warned Cabinet against the contracting-out approach, noting that due to the complex nature of beneficiary casework it would be very difficult to evaluate and ascertain whether contracted providers of employment services are offering the best value for money. We share this concern.

The Green Party supports in principle the concept of investing in young people and providing more supportive developmental services. We are not, however, convinced that these reforms will deliver on that intention. Many young, disenfranchised people have had negative experiences of the State through school, police, and Child, Youth and Family, and building a trusting relationship is essential to assisting them to develop resilience and start seeing their strengths. Requiring community-based organisations, which have often bridged that gap, to report on young people not meeting their obligations will in our view remove the potential for trust and turn community organisations/marae/businesses into arms of the State. We have spoken to several respected providers who have not tendered as they believe it would compromise their ethics. They noted that others have applied even with significant concerns because they
are not sure how the organisation would survive financially without the funding.

We also have concerns regarding the speed of the development of this project and tendering process. There are still too many unanswered questions. One young person raised concerns about the lack of professional qualifications required of the organisations—“So they want young people to be qualified but not the workers.” When we asked young people who they thought should be doing this work, they said “social workers”. They also reflected on caseloads for providers, which speak to the per person financial incentive: “Some promise, promise, promise, then more people come in and you get lost.”

We have not yet seen evidence that providers of services such as budgeting and parenting services, and even appropriate education providers, will be available in the areas of most need or in rural areas, and we worry that this will further compromise effectiveness.

The Green Party is concerned that the tight time-frame for tendering and planning, a lack of clarity of practice, and the ethical challenges will mean money that is being reprioritised from programmes that have been proven to be effective will be wasted.

Information sharing

While pleased with the improvement to the privacy-sharing provisions in this bill, the Green Party is disappointed that the committee has chosen to go ahead without the drafting support of the Privacy Commissioner, and we maintain a degree of concern at the focus on the provision of services rather than sharing information to benefit young people.

Youth Support payments and obligations, and income management

The Green Party shares the concern expressed by the Children’s Commissioner that requiring programmes to lead to NCEA level 2 will not be helpful for young people who have been mostly out of the school system. Setting aspirational targets for educational outcomes will typically disengage the learner. Some young people have come to New Zealand as refugees in their early teens without any formal education. We are concerned their needs will be ignored in this one-size-fits-all approach.
We are also concerned that providers may create hotchpotch learning plans of perceived easiness to achieve NCEA level 2 credits that will not give them the NCEA level 1 literacy and numeracy requirements needed for apprenticeships or full societal functioning.

Concerns have been expressed about the availability and quality of childcare and we support these concerns. We also note that the young mothers and mothers-to-be we spoke with were very conscious of bonding and the importance of spending time with their babies, as well as putting their babies’ needs first. One young mother talked about only being willing to attend a course that she could take her baby to. Another young woman talked about her unwillingness to risk her baby’s health by taking him, with gear, on a bus in the cold and rain. While we believe young mothers should be supported to stay in education, we have concerns that the low income of the benefit combined with family estrangement and limited social networks to offer the necessary practical support, will result in negative outcomes for both parents and children. We support the view of these young women that the best interests of their children need to come first.

Compulsory income management for at least 6 months is unjustifyable discrimination and adds another layer of bureaucracy. This may slow down a young person’s ability to move when they need to. It has also been noted that taking away control of money is not the best way to teach someone how to use money. The Green Party also has concerns regarding the loss of privacy that may arise from income management. Young people have also noted that if someone wants to get around this, they will, but it is just going to create more criminality.

**Extension of work testing**

All of our concerns expressed in our minority view for the Social Assistance (Future Focus) Bill regarding work testing those on the Domestic Purposes Benefit still stand.

The Green Party asserts that the Future Focus work-testing regime has not had any significant impact in moving domestic purposes beneficiaries into paid work.

Domestic violence is at epidemic levels in this country, when research shows that one in three women are likely to experience domestic violence, and some research indicates that around 50 percent
of women on the Domestic Purposes Benefit may be leaving violent relationships. To reduce levels of domestic violence and keep women and children safe, we need to ensure that women are supported to leave those relationships and stay away. Financial support is critical in this equation, as is time to look after the needs of the children. In recognition of this, a work-test exemption has been in place since the introduction of the Future Focus reforms, and yet Work and Income reported that as at February 2012 only 22 people were exempt from work testing because of family or domestic violence. In a meeting of five women who had gone on the Domestic Purposes Benefit after leaving a violent relationship, not one of them was told of the work test exemption, and Work and Income even had a protection order on file for one of them. The Ministry of Social Development has responded to this criticism by saying that it will introduce training. We do not believe this is an adequate response, and it puts lives at risk as the women we spoke to commented: “Some people go back because of money and stress on their children,” and “My parents, who are conservatives, don’t want me to work yet because they say I’m finally putting my kids first for the first time in 13 years, and they need that.”

We also lack confidence that the discretion will support the needs of the 20 percent of parents who have a disability or who have children with a disability.

We absolutely oppose sanctions for parents, as we believe this will have negative impacts for parents and children.

Subsequent children
The Green Party believes this is inconsistent with Whānau Ora, is a breach of women’s human rights, and cannot reasonably be considered to be in the best interests of children. The Green Party believes this provision seeks to punish women for choosing to have babies, even when they may not have chosen to get pregnant and most certainly did not choose to be on the Domestic Purposes Benefit. Referring women to get free long-term contraception is overstepping the role of the State, as is recommending women get an abortion, which some women have reported is happening now.
New Zealand First minority view
New Zealand First is concerned about a number of changes proposed in the Social Security (Youth Support and Work Focus) Amendment Bill. These include
• the use of the private sector in finding jobs
• information-sharing provisions within the bill
• the wider welfare reform package
• the cost to the taxpayer.
Furthermore, we believe the bill is a distraction and Parliament’s time would be better focused on improving economic management and providing the right setting for job creation.

Private providers
New Zealand First has some serious reservations about the increase in the use of the private sector in finding jobs. The goal is to pay private companies or organisations for every person who comes off welfare. While fine in principle, we are not convinced that sufficient audits or safeguards are in place to ensure that these private providers actually assist young people into employment. The case of A4e, where the service provider defrauded the system in the United Kingdom, should serve as a warning. Most submitters were also opposed to allowing external contractors to provide these services, questioning whether these contractors would be competent enough in providing relevant services.

Information-sharing provisions
New Zealand First has concerns around the information-sharing provisions in the bill. The provisions are inadequate and lack important safeguards for protecting personal information. Under new section 125D there is no explanation given as to which organisations will have accessibility rights and which individuals will have their information shared. We find no problem with the Ministry of Education providing information to the Ministry of Social Development. This is with reference to the provisions relating to the use of the National Student Number. With respect to the provisions relating to the use of the National Student Number, we will support the inclusion of a specific provision concerning information sharing between the Ministry of Education and the Ministry of Social Development.
We agree with the Privacy Commissioner that the changes in this bill target a group for whom “trust in authority may already be in short supply.” Young people who are at risk of breaching the conditions of their benefits and have left school before the age of 18 will feel their freedoms being further eroded.

We see the Privacy (Information Sharing) Bill currently before the House as a means of replacing clauses 18 and 19 of the bill, as it would address issues concerned. It would be a framework for all sharing proposed under this bill, thus ensuring consistent application of the Privacy Act 1993 and that individual rights to complain under the Privacy Act are retained.

Wider welfare reform package
New Zealand First has great concerns over the changes in the bill that are a part of a wider welfare reform package. This is in reference to work availability expectations for people receiving the Widow’s Benefit, the Domestic Purposes Benefit—Women Alone, and the Domestic Purposes Benefit—Sole Parent.

We believe that expecting recipients of the Women Alone benefit and Widow’s Benefit to find work is unreasonable given the present job market. The majority of these recipients are women of 50 years-plus who may have spent most of their lives in homemaker or carer positions and may not have the relevant work experience or skills necessary to gain employment, particularly in the current economic environment. We propose a more community-involved initiative where women in this bracket could give back to the community by being involved in projects that are relevant to their experiences. For example, this could be in the form of contributing towards community gardening or parenting groups with a focus on motherhood, etc. The experience these women have to offer is of immeasurable social value.

Sole parents not only have to raise their children alone, but also they would have the added pressure of finding a job in a non-existent job market. No consideration has been given to issues around childcare accessibility, flexibility, and affordability. We believe the proposed changes put an undue burden on sole parents. Furthermore, the changes totally ignore the needs of children.

Research has proven that investment in the early years of a child’s life is vital for establishing an attachment (bond) between child and
parent. A more one-on-one relationship is crucial in the future development of a child. As shown by a submission from Professor Innes Asher, who works at the Department of Paediatrics at the University of Auckland, “the unpaid work of nurturing needs to be given equivalent value to job-seeking and paid work.” Labelling parents of infants and young children as jobseekers is not conducive to this. Uncertainty surrounds employers hiring sole parents with children when a child becomes sick. The bill marginalises widows and lumps them into the same category as young sole parents, with no regard to extenuating circumstances that often befall widows.

**Conclusion**

The Social Security (Youth Support and Work Focus) Amendment Bill does nothing to reduce the cost of unemployment to the taxpayer. Many of the changes contained in this legislation are unfair, Draconian measures that are designed to shame unemployed people into work at a time when there is simply not enough work available. The bill deflects the focus away from the real problem, which is the failure to create new jobs.
Appendix

Committee process
The Social Security (Youth Support and Work Focus) Amendment Bill was referred to the committee on 27 March 2012. The closing date for submissions was 13 April 2012. We received and considered 85 submissions from interested groups and individuals. We heard 21 submissions in Wellington.

We received advice from the Ministry of Social Development. The Regulations Review Committee reported to the committee on the powers contained in clause 18, new sections 123F and 123G, and clause 19, new sections 125C and 125D.

Committee membership
Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Jo Goodhew
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Tim Macindoe
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Su’a William Sio
In our report on the 2012/13 Estimates for Vote Internal Affairs: Minister for the Community and Voluntary Sector, presented on 19 July 2012, we included on page three the following paragraph in relation to the Kia Tūtahi—Standing Together Accord.

The Kia Tūtahi—Standing Together Accord is intended to support the Government’s working with communities. A reference group of government and community groups has been established to examine the practices of government agencies that are setting good examples. We note, as did the Minister, that a number of community groups want to be actively involved in determining the principles of the accord. We look forward to seeing the development of the accord in the coming year.

We have since been informed by the Minister for the Community and Voluntary Sector that the Kia Tūtahi—Standing Together Accord was in fact launched in August last year by the Prime Minister and the previous Minister for the Community and Voluntary Sector.

We wish to correct the paragraph to read as follows:

The Kia Tūtahi—Standing Together Accord was launched in August last year by the Prime Minister and the previous Minister for the Community and Voluntary Sector. The accord is intended to support the Government’s working with communities. We note that a reference group, comprising representatives of seven champion agencies, is gathering examples of good practice in working with communities.

The Social Services Committee recommends that the House take note of its report.

Peseta Sam Lotu-Iiga
Chairperson
Report from the Controller and Auditor-General on Home-based Support Services for Older People

Report of the Social Services Committee

Contents
Recommendation 2
Introduction 2
Progress made since the report’s release 3
Conclusion 4
Appendix 5
REPORT FROM THE AUDITOR-GENERAL ON HOME-BASED SUPPORT FOR OLDER PEOPLE

Report from the Controller and Auditor-General on Home-based Support Services for Older People

Recommendation

The Social Services Committee has considered the report from the Controller and Auditor-General on Home-based Support Services for Older People, and recommends that the House take note of this report.

Introduction

On 14 July 2011 the Controller and Auditor-General's report on Home-based Support Services for Older People was referred to the Social Services Committee of the 49th Parliament for consideration; however, Parliament dissolved before that committee could consider the report fully. At the commencement of the 50th Parliament, the report was reinstated by the House, and is now before us for consideration.

The Auditor-General wanted to ensure that the processes for the management and delivery of home-based support services were of an “appropriate quality” and fit to meet current and future demand, so carried out a performance audit to see how effectively the Ministry of Health and district health boards are ensuring that people aged 65 and over have the care and support they need to keep living independently at home. This is a growing area of health spending, accounting for $224 million spent in 2009/10 by district health boards, which is forecast to increase more rapidly with New Zealand’s aging population. Since the audit we have sought an update, and figures from the Ministry of Health show that health spending in this area was $221 million for 2010/11, and the estimated expenditure for 2011/12 is $240 million.

The Auditor-General’s report found that generally services appear to be delivered adequately; but it identified a number of information deficiencies and included five recommendations to help manage and support service delivery. The Auditor-General noted that her conclusion that the level of services is adequate is “qualified” because of a lack of good national performance information, of mandatory standards, and of clarity on the ministry’s strategy; also because district health boards are not consistently delivering against ministry objectives, and because there was no clear analysis of the impact of extra government funding thus far.

The Auditor-General’s recommendations are as follows:

We recommend that the Ministry of Health:

1. collect and use meaningful and reliable information to ensure ongoing service quality and value for money of home-based support services by:
• specifying a set of national key performance indicators for district health boards to measure service performance;

• working with district health boards on mechanisms to ensure that performance data is reliable and meaningful;

• using performance data to inform policies and strategies that will help district health boards deliver high quality services; and

• sharing with district health boards good practice and benchmarks to drive continuous improvement;

2. through district health boards, evaluate by June 2013 whether the use of a standard approach to assessment and reassessment is improving the way needs are assessed and home-based support services are allocated; and

3. consider making NZS 8158:2003 Home and Community Support Sector Standard mandatory for the provision of home-based support services to older people.

We recommend that district health boards:

4. work collaboratively with others in the aged care sector to develop a complaints system that enables older people to confidently raise any concerns about their home-based support services; and

5. strengthen management contracts to ensure that home-based support staff provide high-quality services and are well trained and supervised.

Progress made since the report’s release

Since the report’s release in July 2011, a number of recommendations have been acted on by the Ministry of Health and district health boards.

Implementation of interRAI

The ministry has adopted interRAI, a clinical needs assessment tool, to enable district health boards to assess the needs of older people, in respect of home-based or residential care. InterRAI is designed to help staff assess the medical, rehabilitation, and support requirements of older people so they can live in their own homes for longer. The ministry is currently rolling out interRAI to district health boards, with the home-based support services phase due to be completed this year and the aged residential care phase to be completed by 2015.

InterRAI should also help address several of the Auditor-General’s concerns about the quality of information available to the ministry and district health boards on the way services are being delivered, and their planning for efficient and effective home-based-support services. We consider the implementation of interRAI to be an important step in improving the provision of home-based support services, and we intend to monitor its progress.
Compliance with sector standards

The ministry has been working with district health boards, the Accident Compensation Corporation, and home and community support providers to strengthen quality assurance processes for home-based support services. As recommended by the Auditor-General, compliance with NZS 8158:2003 *Home and Community Support Sector Standard* is now a requirement in contracts between district health boards and home-based-support providers.

Managing expectations

We are pleased to hear that the ministry meets with and seeks advice from interested parties such as Age Concern, Grey Power, and the Carers Association. The ministry also meets regularly with the Aged Care Association and the New Zealand Home Health Association, which are the two main organisations of providers of older people’s support services; and district health boards are required to consult their populations when planning major changes to their services or the way they are delivered. This consultation process also provides clients with access to a complaints process.

Leadership in the sector

In evidence received from the Auditor-General subsequent to her report’s release, we were told that the Ministry of Health has provided leadership in the sector in response to the Auditor-General’s recommendations, and is working with district health boards and the Accident Compensation Corporation to ensure “more consistent monitoring of home-based-support providers”; it is also securing more reliable, useful information by improving provider reporting, developing national performance indicators, and improving quality assurance.

The ministry is responsible for the planning and funding of disability support services; it told us that it is developing more consistent processes for the ministry, district health boards, and the Accident Compensation Corporation to monitor home-based-support providers, to allow comparison between providers and reduce duplication. The ministry expects to have developed a framework for this purpose by September 2012.

Conclusion

We note that the Auditor-General plans to continue monitoring the Ministry of Health’s progress in implementing these changes. We look forward to hearing of continued improvements and efficiencies when the Auditor-General intends to report to Parliament again on this issue in 2013.
Appendix

Committee procedure

The report from the Controller and Auditor-General on *Home-based Support Services for Older People* was reinstated by the House in the 50th Parliament on 21 December 2011, and considered by this committee on 15 February, 7 March, and 15 and 29 August 2012.

We heard evidence from the Office of the Controller and Auditor-General and the Ministry of Health.

Committee members

Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Jo Goodhew
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Tim Macindoe
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Su’a William Sio
Petition 2011/9 of Wal Gordon on behalf of the Plumbers Gasfitters and Drainlayers Federation NZ and 1227 others

Report of the Social Services Committee

The Social Services Committee has considered Petition 2011/9 of Wal Gordon on behalf of the Plumbers Gasfitters and Drainlayers Federation NZ and 1227 others, requesting that the House urge the Government to establish a Royal Commission of Inquiry into the regulation and governance of the plumbing, gasfitting, and drainlaying industry.

On 18 August 2010 the Controller and Auditor-General’s Inquiry into the Plumbers, Gasfitters, and Drainlayers Board was referred to the Social Services Committee of the 49th Parliament for consideration. The report raised several issues with the board and made 15 recommendations for improvement, which we understand are to be the subject of a review by the Office of the Auditor-General in 2013.

We note that the issues raised in this petition touch on those addressed in the Office of the Controller and Auditor-General’s report, and will monitor the outcome of the review.

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

Peseta Sam Lotu-Iiga
Chairperson
The Social Services Committee has considered Petition 2011/26 of Steven Winyard, requesting that the House pass legislation to stop toddler beauty pageant contests being held in New Zealand, and note that 692 people have signed a petition to that effect.

Having looked at some of the evidence on the effects of child beauty pageants, the Office of the Children’s Commissioner is of the view that they are not positive or useful for young girls, and are likely to have some negative consequences. However, the commission is not aware of any intention to bring child beauty pageants to New Zealand, and therefore we have no matters to bring to the attention of the House.

Peseta Sam Lotu-Iiga
Chairperson
The Social Services Committee has considered Petition 2011/33 of Graeme Axford, requesting that the House recommend that the Government establish a Royal Commission of Inquiry to review all aspects of New Zealand’s child protection system.

Mr Axford previously petitioned Parliament (Petition 2008/121) in September 2011, requesting that the House establish an independent complaints mechanism for Child, Youth and Family, separate from the Ministry of Social Development. That petition was well received, resulting in the Social Services Committee of the 49th Parliament recommending to the Government that it investigate establishing an independent complaints mechanism for Child, Youth and Family, which would be separate from the ministry, and also investigate establishing a mechanism to monitor complainants’ satisfaction with the complaints process in the ministry and Child, Youth and Family.

The Government response to the committee’s report was presented to the House this year, on 20 March 2012. The response advised that the ministry had been directed to set up a process to monitor complainants’ satisfaction with the Advisory Panel to the Chief Executive process. The process, whereby complainants rate their satisfaction and comment if they wish, was introduced in November 2011. Results have averaged 4.5 out of a possible 5. The response also advised that policy development work had been initiated on an independent complaints mechanism for Child, Youth and Family, as part of the process leading to the development of the Green and White Paper on Vulnerable Children. A decision on the need for reviewing the complaints mechanism was expected to follow the release of the White Paper.

The White Paper on Vulnerable Children, released on 11 October 2012, sets out a programme of change for working with our most vulnerable children. It confirms that there will be an independent review of the way the Ministry of Social Development handles complaints about actions taken under the Children, Young Persons and their Families Act 1989, and that an independent reviewer will be appointed to consider whether changes are needed, including a possible independent complaints mechanism.

Although the differently worded petitions appear to seek different things, we are of the view that the matters raised by the petitioner, as evidenced in his submissions, are essentially similar. The strategies outlined in the White Paper and the pending review directly address these matters. Therefore, we have no other matters to bring to the attention of the House.

Peseta Sam Lotu-Iiga
Chairperson
Child Support Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Child Support Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The child support scheme is primarily a back-up arrangement to operate when parents do not live together and cannot reach agreement over the financial support of their children. The measures in this bill, which seek to amend the Child Support Act 1991, are intended to provide for a fairer assessment calculation of child support payments that takes into account a wider range of individual circumstances.

Broadly speaking, the changes in the bill fall into three categories: a new child support calculation formula, which accounts for the bulk of the changes; secondary changes to update the child support scheme more generally; and amendments to the payment, penalties, and debt rules for child support.

The bill also proposes various technical amendments to the operation of the child support formula and the scheme.
Our commentary focuses on the main amendments recommended. Some issues on which our consideration did not result in recommendations for amendment are covered at the end of the commentary.

**Commencement dates**

We recommend an amendment to clause 2 to defer the implementation of the new child support formula from 1 April 2013 to 1 April 2014, and that of the other payment and penalties changes from 1 April 2014 to 1 April 2015. We consider this delay by one year necessary to accommodate the bill’s legislative timeline and to allow the Inland Revenue Department sufficient time to prepare.

We also recommend the insertion of new subsection (1AA) into clause 2 to allow transitional provisions in new Schedule 1A to come into force immediately. This is needed to

- give the Commissioner the power to act as if Part 1 were in force for the purpose of preparing child support assessments in time for the 1 April 2014 commencement date
- enable transitional regulations to be made if necessary to ensure that notices of assessment based on the new formula are given by 1 April 2014.

The transitional provisions in new Schedule 1A would constitute new Schedule 1AA in the Act.

We took advice from the Regulations Review Committee about this new power and the principles that apply to powers of this kind. We made an amendment to clause 8 of Schedule 1AA to allay some of the concerns expressed by the Regulations Review Committee. The amendment would narrow the provision to clarify its limited and temporary transitional purpose.

Some of us are concerned that their advice on mitigating the impact of the Henry VIII powers was not adopted more fully by the committee. The Regulation Review Committee expressed concern that these exceptional powers avoid the use of primary legislation. The motion that “the proposed child support amendment legislation be amended to allow normal and transparent parliamentary scrutiny to apply as recommended in its entirety by the Regulations Review Committee” was defeated.
Applications for assessment against the child support formula

Social security beneficiaries must apply for a formula assessment

Clause 9, new section 9, would require a social security beneficiary who is a receiving carer and has no existing child support arrangement to apply for a formula assessment in relation to every parent of the child.

We recommend amending new section 9 to make it clear that if a social security beneficiary already received child support they would not have to apply for a formula assessment, unless they were receiving child support as a result of an overseas order.

Applications by third-party carers

As introduced, clause 9, new section 10, would require an applicant for an assessment against the child support formula to provide certain specified information.

We recommend amending clause 9, new section 13, to give the Commissioner discretion to require applicants to provide further information if it is necessary to complete a formula assessment, and not take further action until it is received.

We also recommend inserting new clause 22A, which would insert new section 179A into the Act, to allow a third-party (non-parent) carer to waive their right to receive some or all child support payments from a liable parent, for example where a person caring for their grandchild did not wish to receive child support payments from their own child.

Estimation provisions

We recommend deleting clause 12 and replacing it with new clause 11A, which would replace sections 40–45 of the Act. These sections would allow Inland Revenue to base child support income calculations on estimated income for the current year for both parents, and to ensure that receiving carers and liable parents would not incur a debt (for any months before the estimate was made) as a result of an estimation. The main policy change in these sections is that reconciliation should be made only for the future periods for which the
parent has estimated their income, not for the whole year, as is currently required. This would entail a number of consequential and minor technical amendments. For example, under the Act, if a liable parent whose income has fallen significantly applies late in the year for a formula assessment based on an estimated income, he or she could be found to have overpaid child support. Under the present system, the receiving carer has to repay the difference. Under the proposed amendments, any estimate of income resulting in a reduction in child support liability would be applied only to future payments. This would mean that a receiving carer could no longer be found to have incurred a historical debt resulting from an estimation.

**Transitional issues for departures**

As stated under the section entitled “Commencement dates” on page 2, we recommend inserting new Schedule 1A, which would insert new Schedule 1AA into the Act. As well as allowing the Commissioner to prepare new assessments ready for the 1 April 2014 commencement date, the schedule provides for what happens to existing departures that would apply after that date. Determinations by the Commissioner must be applied to the new assessments if they relate to elements in the new formula, otherwise they must be disregarded. Orders of the court must continue to be applied until they expire or one of the parties seeks a variation.

**Establishing care levels**

Because clause 9, new section 15(5), is intended to specify only factors that the Commissioner should consider when establishing proportionality of care, we recommend deleting the paragraphs that refer to decisions that relate mainly to guardianship rather than day-to-day matters. We also recommend amending new section 15(5) to require that, if the Commissioner is satisfied that the number of nights that a child spends with a carer does not reflect accurately the proportion of care provided, the Commissioner must establish the correct proportion of care according to “the amount of time that a carer is the person responsible for the daily care of the child.”

To address inconsistencies in the new section, and for clarification, we also recommend amending clause 9, new section 15(1), to state that unless a parent or carer shows that it must not be relied on, the
Commissioner “must” rely on the contents of a care order or agreement when establishing the proportion of on-going daily care. We also recommend amending new section 15(3) to ensure parents could rebut this presumption.

**Receiving carers and liable parents**

Most of us recommend amending clause 9, new section 17, so that a carer could not be a receiving carer until their proportion of on-going daily care reached 35 percent. However, care from 28 to 34 percent would still be recognised for formula calculations. This aims to remedy the situation where up to three non-parent carers could be entitled to child support. The effect would be that there could be no more than two receiving carers. This change is reflected in other recommended amendments to clause 9, new sections 9, 10, and 25.

We recommend amending clause 9, new section 17, to make it clear that a parent would always be a liable parent, whatever their income, if they provide less that 28 percent of on-going daily care (meaning their care cost percentage is nil) or their income percentage is greater than their care cost percentage.

**Parents and receiving carers to advise of changes**

We recommend amending clause 14, new section 82, by inserting new subsection (4). New section 82 as introduced would require parents and receiving carers to advise the Commissioner of any change in living circumstances (since it might affect their child support liability), and when a liable parent informed Inland Revenue of a reduction in their care level, Inland Revenue would be required to make the appropriate changes from the date of the event. However, if the receiving carer informed Inland Revenue of a liable parent’s reduction in care, Inland Revenue would have to make the change from the date of notification. A potential conflict might arise if both made notifications of the same change. New subsection (4) would give the Commissioner a new discretion to determine when a change of circumstances should be treated as occurring, should the rules in new section 82 give rise to conflicting results. This would be an appealable determination.
Varying child support orders
Clause 21 proposes to amend section 106(1), which allows the court to vary any component, or the application of any component, of an assessment of child support under a formula assessment. Given the complexity of the child support formula, we recommend an amendment to specify that the court may vary adjusted taxable income, living allowance, dependent child allowance, child support income amount, and child expenditure amount. We also recommend the inclusion of a broader power for a court to vary the annual amount of child support for a specified period, or order a specified variation to the annual amount.

Qualifying payments
We recommend amending clause 27, new sections 131 and 131A, to give the Commissioner discretion to reduce the amount of child support payable to recognise “qualifying payments”, which are payments other than assessed child support made by a liable parent for a child’s benefit. This would allow recognition of qualifying payments for more than one child support year, and for agreements to be made at any time. We also recommend allowing the Commissioner to reverse such a decision when a parent’s circumstances change—such as the receiving carer going on to a sole parent benefit.

We consider the provisions regarding qualifying payments in the bill as introduced would be too restrictive, so that very few parents or carers would be able to use them. The proposed amendments would extend the range of qualifying payments to include payments such as school fees.

Living allowance for carers of the sick or infirm
Clause 11, new section 34, would increase the living allowance applicable to parents on a domestic purposes benefit who are caring at home for someone who is sick or infirm. To be equitable, we recommend an amendment to extend the increased allowance to parents who are in receipt of an invalid’s benefit for a single parent with one or more dependent children.
Prisoner and long-term hospital patient exemption
We recommend inserting new clauses 15A and 15B. New clause 15B would provide an exemption for prisoners from having to pay child support when certain income was earned before their imprisonment, but received afterwards. Because payments are often made in arrears, many beneficiaries and employed liable parents receive a final benefit payment or wages on or after imprisonment. This makes them ineligible for the exemption from paying child support for that period, so child support debt is accrued while they are in prison. The exemption seeks to improve prisoners’ compliance with child support by ensuring they will no longer be burdened with outstanding child support debts on their release. For consistency, the recommended amendment would be provided on the same basis for long-term hospital patients (new clause 15A).

Dependent child allowance
We recommend an amendment to clause 11, new section 35, to ensure that all dependent children for whom a parent has responsibility are taken into account when calculating the dependent child allowance. The provision as introduced provides for the dependent child allowance to be calculated for each child in their child support group. However, it includes only children with the same parents, whereas the policy intent is for the allowance to be calculated on the basis of the number of dependent children the parent is responsible for, which may, for example, include children who do not share the same other parent.

Automatic deductions from salary and wages
We were concerned that when a parent is identified as an “automatic deduction person”, the automatic deduction of child support from their salary or wages could result in privacy, cultural, and other issues with employers having knowledge of an employee’s child support details.
We recommend amending clause 27, new section 129, by inserting new subsection (1A)(c), to make it clear that where there are legitimate issues, the Commissioner would have the discretion not to automatically deduct child support payments from salary and wages, but instead to allow alternative methods of payment. A person could
make an application for automatic deduction to be waived, or the Commissioner could exercise discretion on his or her own motion. Our understanding is that before any automatic deduction is put in place, people who would be affected should be informed by Inland Revenue that they can apply for the discretion to be exercised.

**Required identity information**

We recommend inserting new clause 25A to provide for a consequential amendment to Schedule 1A of the Births, Deaths, Marriages and Relationships Registration Act 1995 to allow the Department of Internal Affairs to disclose to Inland Revenue the parentage, dates of birth, and death information for qualifying and dependent children, in addition to the birth, marriage, civil union, and name-change information already allowed to be disclosed under that Act. This would allow the Commissioner to confirm these details, making the scheme easier to administer, both from parents’ and Inland Revenue’s perspective, than it would be if the Commissioner had to contact each parent to obtain the information; around 50,000 parents would be affected.

**Offsetting liabilities**

We recommend inserting new clause 40F to replace new section 152B to allow a liable parent to offset current child support liability against child support entitlements owed to them by another parent either in New Zealand or in a country with a reciprocal child support agreement with New Zealand. For example, this would remedy the situation where one parent might be owed significant arrears of entitlement in respect of a child, but then incur a liability if the other parent took over care of that child.

**Commissioner’s ability to write off liabilities**

**When one party dies**

Currently, the Commissioner cannot write off child support debt when a liable parent or receiving carer dies. The debt remains payable indefinitely, even though repayment is highly unlikely. We recommend amending clause 42 by inserting new sections 180B and 180C, to give the Commissioner discretion to write off financial
support owed when a receiving carer dies, or to write off the debts of a liable parent if there are insufficient funds in the estate to satisfy the liability.

**Incremental penalties**
Clause 36 seeks to amend section 135J by requiring the Commissioner to write off incurred incremental penalties when a payment agreement has been complied with during a review period if the payment arrangement was entered into on or after 26 September 2006 but before 1 April 2014.
We recommend amending clause 36 to allow the Commissioner to also write off incremental penalties for payment arrangements entered into on or after 1 April 2014. This would provide additional incentive for parents to enter into and commit to payment agreements where they might not meet the criteria for write-off under serious hardship.

**Penalties incurred by receiving carers**
We recommend inserting new clauses 40A and 40B to amend section 151 of the Act, and inserting new section 151AA into the Act, to make the charging of penalties due to overpayment of child support at the Commissioner’s discretion rather than compulsory.
Because overpayments are often outside receiving carers’ control, it would be inappropriate for them to be charged penalties. The recommended insertions should address this issue.

**Due to inefficient use of departmental resources and cases of serious hardship**
We recommend extending clause 42, proposed new section 180A, to include provision for the Commissioner to write off some or all child support payable to the Crown if the receiving carer is or was a social security beneficiary and recovery would either or both (a) place the liable parent in serious hardship, or (b) the collection would represent an inefficient use of Inland Revenue’s resources.
Other matters considered

Inclusion of the well-being of the child as a core object

We discussed whether an amendment to include the promotion of the well-being of the child as a core object of the Act should be considered.

Some of us support the view that New Zealand’s obligations under Article 3 of the United Nations Convention on the Rights of the Child, as raised in the submission of the Children’s Commissioner, should be explicitly recognised by inserting a reference to the welfare of the child in the objects clause of the bill (clause 6).

Although the Act focuses on the technicalities of attributing responsibility for child maintenance, rather than what it means for the child, the objects of the Act already include the right of the child to be maintained by their parents. The Act is ultimately intended to provide for the maintenance of children in divided families. While we recognise that the proposal amounts to a policy shift, it is not so far removed from the existing objects of the Act that a general amending bill of this nature could not contemplate such an amendment. This is particularly so if any possible drafting would not include machinery provisions that would further implement the new object. In principle, and in the absence of a specific draft proposal, an amendment of this nature would appear to be within the scope of the bill.

While recognising New Zealand’s international obligations, most of us are of the view that amending the bill in this way would not be appropriate.

 Recommending amendments to object provisions needs very careful consideration, as these provisions provide guidance on the interpretation and implementation of the provisions of the legislation. Additionally, such an amendment would amount to a significant policy shift that was not envisaged when the bill was introduced, one that would be likely to create significant uncertainty in the administration of the Act as it could be understood to place Inland Revenue in the position of having to establish, in each child-support case, whether the individual measures in the Act had achieved this new object.

Instead of amending the bill to reflect New Zealand’s international obligations, we would support a change to administrative practice, whereby Inland Revenue would consult a body better placed to determine the welfare and needs of children (such as the Children’s
Commissioner) before setting administrative guidelines relating to the exercise of discretionary powers conferred under the Act.

**Adequacy of allowances for 0–4-year-olds**
Some of us are of the view that the “cost of children” calculations in Schedule 2 do not account for the additional costs of caring for children aged up to 4 years, such as foregone earnings or paid childcare. However, we note that, given Australian studies have found the cost of caring for a 0–4-year-old, as a percentage of income, was between 4 and 8 percent lower than that of caring for a 5–12-year-old, additional recognition for 0–4-year-olds has been built into the schedule by applying a single rate for 0–12-year-olds. Most of us also agree that the purpose of the scheme was not to compensate carers for indirect or opportunity costs, but to recognise the direct costs of caring for children.

**Impact on women**
We noted that as the majority of receiving parents are female, women are more likely to be adversely affected by the proposed changes than men. However, it was also noted that women who are on a social security benefit, and might be least well placed to cope with a reduction in income, would therefore be largely unaffected as child support payments for their children are retained by the Crown to offset the cost of social security payments.
While we acknowledge that a small number of women who are receiving carers could be worse off, most of us agree that the scheme can be expected to be fairer overall.

**New Zealand Labour Party minority view**
The New Zealand Labour Party believes this bill represents a lost opportunity to address the well-being of children in vulnerable families.

**Welfare of children not prioritised**
In select committee we heard submissions from a large number of submitters representing wider constituencies affected by the legislation. Among the most consistently suggested improvements for the
legislation was making the promotion of child well-being a core object of the Child Support Act.

Most comparable western jurisdictions prioritise children in their relevant legislation.

Failure to amend our legislation might be considered a breach of New Zealand’s commitments as contained in Article 3 of the United Nations Convention of Rights of the Child (UNCROC).

That child well-being should be a core object of the Act was raised in submissions presented by the Auckland Coalition for the Safety of Women and Children, the Child Poverty Action Group, the Dunedin Community Law Centre, the Families Commission, the Human Rights Commission, the New Zealand Law Society, the Office of the Children’s Commissioner, the Equal Justice Project, and the Women’s Studies Association.

Constructively, the Office of the Children’s Commissioner submitted that the objects put forward in clause 6 of the bill should be amended to include within section 4 of the Act both an overarching object promoting child well-being and primary consideration of the welfare and best interests of the child.

Specifically, the Children’s Commissioner suggested a new section 4(a) “to affirm the right of children to be maintained by their parents and the promotion of their on-going well-being and healthy development following parental separation” and a new section 4(l) “to require that, in all decisions and actions made under the Act, the welfare and best interests of the child shall be the paramount consideration”.

Changes to ensure that the legislation is serving the best interests of affected children would ensure social and economic benefits to our country were maximised in future years. We question the Government’s priorities in refusing to include the welfare of the child as a primary object of the legislation.

Our request to write to the Minister to request that broadening of the Act be considered to ensure children are put at the heart of the legislation was blocked by Government members of the committee. A second and subsequent request to seek further advice from officials—on inclusion of reference to UNCROC obligations to the objects whilst preserving the integrity of the Act as giving effect to a clear administrative formula largely free of litigation opportunities—was also blocked by the Government members.
Adequacy of payments
Submitters raised concerns about the adequacy of payments using the formula proposed in the legislation, particularly given that a significant portion of New Zealand’s children are currently raised in poverty. The most recent expert advisory group report on vulnerable children estimates that 25 percent of New Zealand’s children are living in poverty. Officials had been directed to base support amounts on current practice. This means in effect that the current practice of raising children in poverty is perpetuated by the legislation. This is far from ideal.

Pass-on mechanism
Expert submitters recommended using a pass-on mechanism to increase the collection of support payments. International evidence supports use of a pass-on mechanism as a way of improving compliance amongst liable parents. The Children’s Commissioner in particular was critical of the understatement in the supplied Regulatory Impact Statement, which said that pass-on “may” affect payment. International evidence is clear that a pass-on mechanism “does” improve payment rates amongst liable parents. While we acknowledge the fiscal constraints that all governments operate within, we believe the Government should have at least expressed a view on whether the objective of pass-on was worthy of consideration.

Implications for women
The legislation has significant implications for women. On average, women earn less than men and are more likely to be primary caregivers. The overall effect of this bill is to apportion a greater share of the cost of child-rearing to women. Many women would be worse off as a result of this legislation.

We believe the 28 percent shared-care threshold in the legislation is too low. Parents caring for a child two days a week are unlikely to share a proportionate responsibility for providing the basics of life. While food bills might be shared proportionately, the primary caregiver is more likely to be responsible for school costs, uniforms, and clothing, as well as medical, dental, and other treatments.
The chosen threshold is likely to proportionately disadvantage women who remain the most common providers of majority care in a shared-care arrangement.

**Transparency**

We have concerns about the transparency of the formula. To be perceived as fair and to facilitate planning by affected parties, a formula must be as simple as possible to understand. Parents affected by the legislation are generally those who have not been able to find a mutually agreeable sharing of responsibilities and, as such, are likely to experience on-going tensions around the provision of care and sharing of obligations. As a general rule, the more certainty and transparency around future obligations, the better for the sake of harmony in the relationships surrounding the children being cared for.

**Automatic deductions**

We have raised concerns about unintended consequences contained in provisions that strengthen Inland Revenue’s ability to make automatic deductions, without consent, from the wages of liable parents. The legislation normalises the use of such measures. It places the onus on parents to notify Inland Revenue when they believe—for cultural or privacy reasons, or other exceptional circumstances—their employer should not know about their wider family circumstances. It is an “opt out system”.

Until now, automatic deductions from an employee’s wages have only been permitted on an “opt in” basis. Accordingly, Inland Revenue guidelines for notifying liable parents of intent to disclose personal information to an employer have not yet been developed.

Natural justice dictates that a liable parent should have the ability to object to the disclosure of information relating to their personal circumstances before it is provided to an employer. Recent unfortunate and unjust disclosures of personal information by the State mean that we will not be alone in closely monitoring the implementation of this practice.

We are also concerned about additional red tape for affected businesses. In addition to concerns surrounding protection of the employee’s personal information, we have concerns about the imposition of additional responsibilities on employers. The additional cost
of implementing liable parent deductions would rest with the employer, as well as responsibility for confidentiality. These are burdens employers currently do not face.

In cases where personal information is not successfully protected by employers, inadvertently or otherwise, business owners might also be opened up to accusations about misuse of such data in employment disputes. The State currently does not place responsibility for this risk with business, and we are not aware of any consultation with businesses about the effects of imposing these additional compliance costs on them.

Costs of administration

Inland Revenue reports that it is expecting a 15 percent increase in the workload associated with administering what is already “Inland Revenue’s most expensive product to administer on a per person basis”. The Government is expecting costs for administering the system to go up, even beyond the initial additional costs associated with generating resources explaining the new formula and training staff how to use it. It estimates additional costs of $91 million, and has allowed $28 million contingency beyond that in recognition of the significant IT risk involved in setting up the new scheme.

When the legislation does not provide the fairest possible solution on the question of child support, it is difficult to justify the additional costs incurred.

Adequacy of Inland Revenue computer systems

We continue to have concerns about the adequacy of computer systems at Inland Revenue. These concerns have been exacerbated by recent privacy breaches at the Accident Compensation Corporation and the Ministry of Social Development.

The Prime Minister admitted in February 2012 that the 20-year-old legacy FIRST computer system is a reason significant changes to the tax system are not able to be contemplated by this Government. Government officials indicated to the select committee that even the implementation of this proposed legislation is limited by Inland Revenue’s current computer system. It is not able to handle all of the changes proposed in this legislation in one go. This is the reason that the implementation of changes is staggered.
Concerns expressed by the Prime Minister, and recent privacy breaches, raise legitimate questions about proceeding with risky projects of dubious value at a time when Inland Revenue is ill-equipped to handle new policy.

Furthermore, the implementation effort for each new piece of legislation introduced by Inland Revenue is likely to require duplication when a new up-to-date computer system is finally installed at the department. This represents inefficient use of taxpayer resources.

**Concluding remarks**

The Government has had plenty of opportunity to ensure this bill represents a fair way forward. A consultation process that preceded this bill took several years to report back. Yet, despite the significant passage of time, the Government has failed to generate an outcome that is transparent, fair, and representative of value for taxpayer money. Beyond around $100 million in costs associated with administrative changes over ten years, the taxpayer would directly pick up an additional $42 million over the same period. The $42 million is an estimate of the net increase in taxpayer subsidy of the scheme due to reduced expectations of liable parents and more optimistic assumptions about collection of liabilities. This additional cost to taxpayers is hard to justify alongside the introduction of an imperfect system.

The Expert Advisory Group on Solutions to Child Poverty estimated that 270,000 New Zealand children are living in poverty. In our country, 133,000 children live in sole-parent households that are in receipt of child support payments. This legislation represents a missed opportunity to bring many of these children out of poverty in order to ensure they have the best possible start in life.

**Green Party minority view**

**Introduction**

Green Party members of Parliament support the objective of a fair, transparent child support scheme to provide financial support to children whose parents or caregivers cannot mutually agree on the financial contributions they will make to support their children. A key objective of such a scheme should be to maximise the best interests of the child or children concerned.
We do not support the passage of the Child Support Amendment Bill. We are concerned that the complexities of the new formula it introduces would enhance neither fairness nor transparency, and may have disproportionately negative impacts on women, especially sole parents, by reducing their entitlements. We believe that the bill is a missed opportunity to enshrine a commitment to act in the best interests of children within the objects of the scheme. It is also a missed opportunity to demonstrate this commitment by legislating for the pass-on of child support payments to beneficiary parents and for state guaranteed or “advance” child support payments. The costs of administering the new system, estimated by officials to be approximately $91 million, are substantial, and we are not convinced that these costs can be justified for the introduction of a flawed formula that does not maximise child well-being.

United Nations Convention on the Rights of the Child
We heard from submitters, including the Office of the Children’s Commissioner, the Families Commission, the Human Rights Commission, and the New Zealand Law Society, that the bill should amend the objects of the Act to incorporate the best interests of the child. To do so would be consistent with New Zealand’s obligations under Article 3 of the United Nations Convention on the Rights of the Child.

We agree with submitters and are disappointed that the committee has not taken the opportunity to insert such a provision into the objects of the Act. We do not consider the suggestion that Inland Revenue consult with the Children’s Commissioner when setting administrative guidelines relating to the exercise of its discretionary power under the Act is an adequate or appropriate way to give effect to New Zealand’s obligations under this important international convention.

“Pass-on” and “advance” child support payments
One way to improve the child support scheme consistent with a commitment to maximise the best interests of the child would be to legislate for child support payments to be passed on to receiving parents who are beneficiaries, instead of being retained by the Crown. At present, if the receiving parent is a beneficiary, any child support payments from the liable parent are retained by the Crown as a way
of “offsetting” the cost of the benefit. The money paid by the liable parent does not directly benefit the child in any way. This is both a disincentive to liable parents to meet their obligations and a missed opportunity to directly improve the lives of thousands of children.

Numerous submitters, including the Office of the Children’s Commissioner, the Families Commission, and the Child Poverty Action Group, submitted that the child support scheme could substantially contribute to decreasing child poverty if the Crown passed on child support payments to sole parents on benefits. This would be an effective and efficient method of reducing poverty and increasing income support for affected families. This was also a key recommendation of the recent proposals paper by the Experts Advisory Group on Solutions to Child Poverty. We agree and are disappointed that the bill does not take the opportunity to implement this change.

Similarly, we agree with submitters who suggested that the Crown should automatically advance child support payments to receiving parents to avoid the instability and delay of payments when a liable parent does not regularly meet their obligations. This would seem consistent with a child support scheme designed first and foremost to maximise the interests and security of the child, and would also help to alleviate the damage caused to children by poverty and financial instability.

**Inappropriate cost calculations in formula**

We are concerned that the proposed new formula accords extra support to parents with older children in recognition of the fact that there are additional costs associated with having older children in terms of food, clothes, and other expenses. This approach seems to ignore the opportunity costs (for example of paid employment) foregone by parents with younger children, and does not take into account expert advice, including that from the Office of the Children’s Commissioner, that investment in the early years (especially the first three years) is of critical importance to a child’s long-term prospects. We would like to see a formula that better reflects the importance of these early years in the calculation of child support amounts.
Complexity, transparency, fairness, and cost of the new formula

Officials have acknowledged that the new child support formula introduced by this bill is more complex than the formula it replaces. It introduces a large number of new variables that would make it very difficult, if not impossible, for the average parent to calculate or check their entitlements or liabilities themselves. Like the New Zealand Law Society, we are concerned that the complexity of the new formula detracts from the simplicity, efficiency, equity, and transparency of the child support system. Parents should be able to easily understand their liabilities and entitlements so that they might have confidence in the fairness of the scheme. After this bill is passed they would only be able to check their entitlements and liabilities using online calculators that would not be able to provide them with the full information (such as the other parent’s income) needed to accurately calculate the figures. They would have to trust that the complex system has generated a fair outcome.

Furthermore, the complexity of the new formula would place a considerable burden on Inland Revenue’s computer and administration systems. Officials agree that “fundamental changes will be required to Inland Revenue’s child support systems and business processes to administer the reformed scheme because of the additional complexity of the new child support formula” and estimate the total costs (excluding contingency) for system changes and additional work volumes relating to the changes at $91.440 million. This is a significant cost that cannot, in the Green Party’s opinion, be justified given the bill’s dubious benefits.

Reduction of entitlements and disproportionate impact on women

We are concerned that the new formula would result in a disproportionate reduction in entitlements under the child support scheme for female sole parents. Figures suggest that almost 30,000 female parents receiving child support could experience a reduction in their monthly child support receipts as a result of the new formula. In one worked example, a sole parent with two children who spend two nights per week with the other parent would have their annual child support entitlement reduced by 36 percent, or more than $3,000 per year. Such changes would have a significant negative impact on thousands of sole parents and their children, especially women. With ex-
amples like this, we are not convinced that the new formula would produce fairer outcomes than the existing scheme, and certainly not outcomes that prioritise the best interests of the child.

Conclusion
The Green Party has listened carefully to submitters and considered attentively the details of the proposed changes in this bill. While we support the objective of a fair, transparent, and equitable child support scheme, we consider that such a scheme should have at its heart the best interests of the children concerned. We are disappointed that this bill does not take the opportunity to enshrine this principle at the heart of the child support scheme, and we are concerned that it may in fact have the opposite effect. For these reasons we are unable to support this legislation.

New Zealand First minority view
New Zealand First is concerned about a number of changes proposed in the Child Support Amendment Bill.

Lower levels of shared care
The new formula will consider that if a parent has had at least 28 percent (on average two nights a week) of on-going daily care, the cost of supporting a child will be apportioned between parents according to the difference of income, adjusted by their share of care.
We are concerned about what implications this will have on split shared care. For some families with more than one child, the amount of child support may differ for siblings depending on which parent the child stays with.
We support that with the new formula, paying parents would have their share of care acknowledged. In the interest of the child, studies have shown that it is more beneficial for children to have on-going contact with both parents rather than just one.

Determining shared care
The proposed changes will recognise shared care of more than 28 percent. On average this amounts to two nights a week. We are concerned about shared care that does not involve the child staying
overnight. It is common for paying parents to have daytime care which is far more costly than the parent who receives the child support. We accept that there may be issues in calculating hours, which is why nights have been preferred. We support the discretion given to the Commissioner for grounds to depart from formal assessments. Such circumstances should be considered as resulting in an unjust and inequitable decision on the level of financial support to be provided by a paying parent.

We support the recommendation from Inland Revenue to rely on parenting orders or agreements to establish the percentage of shared care for child support. Not only will this provide for the efficient processing of child support, but will also reinforce court decisions made with the best interests of the child.

**Total income of both parents**

We are concerned about the highly complex formula. It will be difficult for parents to determine themselves their liabilities and entitlements.

With using both parents’ income, we are concerned about the complexity of administering the scheme. People change employment and come in and out of work often. When a parent’s income is reduced, the receiving parent will receive less. If the receiving parent’s income changes, the paying parent’s payable amount will also change. With income levels, there is uncertainty and instability. Considering that most of these families have been through a separation, we are concerned that these changes will further impact on these relationships. Furthermore, the proposed changes do not address the possibility of self-employed liable parents to use tax deductions to reduce their child support, which does not reflect their standard of living. The Government’s recent welfare changes will affect this child support scheme. Parents required to enter the workforce also face the possibility of a decrease in the amount of child support they receive from the paying parent.

**Expenditure for raising children**

The new child support formula is set to vary with the age of the child. We are concerned with the assumption made that there is a set amount in raising children depending on their age. The reality is that not all
children at a certain age will cost the same to raise. Different locality is not taken into account, with some children having more costs than others, such as sporting interests, extra tuition, and sick children. There will always be expenses paid by a parent that will not equate to the amount they receive in child support. We are not convinced that the new formula for child support accurately reflects the cost of raising children with different family circumstances and the different socio-economic statuses of different areas of New Zealand.

**Administration and payments**
We are concerned with the complexity of the new formula and the difficulty of administering the scheme when child support will now vary according to shared care-time, parental income, and estimates of expenditure for raising a child at a certain age in New Zealand. Child support amounts will differ every year and with the additional consideration of both parents’ income, there is very little certainty. There is lack of evidence to show that in considering shared care for both parents that this will not result in an increase of child support debt. We understand that with shared care now taken into consideration, child support will be more fair and equitable. However, there is no evidence that paying parents will be more likely to pay child support. There are many other plausible reasons in family dynamics that explain why people refuse to pay child support.

**New ground for the Commissioner to grant a departure from a formula assessment**
We support the recommendation that re-establishment costs be considered after a separation in the calculation of child support. We recognise that when a relationship ends, a parent should be given the opportunity to get on their feet.

**Conclusion**
We support the move for improvement to the current system and we accept that it is difficult to find a new formula for child support that satisfies everyone. However, the new proposed formula is not without some serious concerns.
Appendix

Committee process
The Child Support Amendment Bill was referred to the committee on 8 May 2012. The closing date for submissions was 20 June 2012. We received and considered 59 submissions from interested groups and individuals. We heard fifteen submissions in Wellington. We received advice from the Inland Revenue Department.

Committee membership
Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Simon Bridges
Dr David Clark
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Tim Macindoe
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Holly Walker replaced Jan Logie for this item of business.
Families Commission Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Families Commission Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Families Commission Act 2003 to make a number of changes to the role and operation of the Commission, with the aim of improving decision-making in the social sector. One member of the Commission would be appointed by the Minister of Social Development as Families Commissioner, while the remaining members would remain members, without being appointed Commissioners as they are at present. The Families Commissioner and members would continue to comprise the board. The restructure would include the establishment of a Social Science Experts Panel to provide guidance and academic peer review of any research undertaken by or on behalf of the Commission.
The Commission would also be given a new monitoring, evaluation, and research function, which would require it to determine where evidence and research would help decide or achieve Government priorities, and to commission research and manage research contracts, in the social sector.

The Commission would also be required to prepare and publish an annual Families Status Report, which would measure and monitor the well-being of New Zealand families. It would also be given access by the Government Statistician to individual schedules for research or statistical purposes.

**Membership of the Social Science Experts Panel**

We recommend amending clause 11, new section 18C(1), so that the Social Science Experts Panel would comprise a minimum of four members. The bill as introduced specifies that the panel would have four members charged with providing academic peer review of any research, evaluations, standards, reports, or other publications done or issued by the Commission, and to provide guidance to the Commission.

We recognise that there might be occasions where the range of expertise covered by a four-person panel would not be wide enough to provide peer review and guidance in all the required subject areas. For this reason, we propose that the Panel should be able to appoint additional members if necessary.

**Legislation governing the Social Science Experts Panel**

We recommend amending clause 11, new section 18C, by inserting a new subsection (5) to provide that clause 14(2) of Schedule 5 of the Crown Entities Act 2004 applies to persons to be appointed to the Social Science Experts Panel, and by inserting new subsection (6) so that clause 15 of Schedule 5 of that Act applies to panel members as if the Panel were a committee appointed by the board under clause 14(1) of that schedule. This would ensure that the Panel would come under appropriate provisions pertaining to appointment and payment of members, conflicts of interest, indemnities, and insurance.
Independence of the Commission

We recommend inserting new clauses 4A and 9A. Clause 5, new section 7(2) of the bill as introduced is intended to clarify the Commission’s independence from programmes and interventions that are to be monitored and evaluated. However, we are aware that, because section 7 of the Act specifies the Commission’s main functions, there was concern that the Commission’s autonomy would be affected. We therefore recommend deleting clause 5, new section 7(2), while moving the policy intent in that provision to clause 7, new section 8A. Having the reference to the independence of the Commission from providers of programmes in section 7 gave people the idea that this affected the Commission’s autonomy. For this reason we consider it would be better placed in new section 8A, which deals specifically with the Commission’s monitoring, evaluation, and research function. We expect that this will clear up any confusion about this matter.

We also recommend inserting new clause 4A, which would move the matters currently prescribed in section 17 of the Act to section 6 (Commission established). This would also align the Act with other similar Acts that establish Crown entities, such as the Children’s Commissioner Act 2003. The intention is also to make it clear that the autonomy of the Commission, as prescribed in the Crown Entities Act, remains unaffected, meaning the Commission would continue to have regard for government policy only when so directed by the responsible Minister, and would not be required to give effect to it. New clause 9A would repeal section 17 of the Act, as it would no longer be needed.

Monitoring, evaluation, and research function

We also recommend amending clause 7, new section 8A, to correct the misconception that the Commission merely identifies “opportunities” for evaluation and research. The Commission should also be able to identify existing and on-going evidence and research relating to the determination and achievement of the Government’s priorities and policies.
Access to statistical schedules
We recommend the deletion of clause 11, section 18D, and the cross-heading, because it is no longer required. In the bill as introduced, section 18D allowed the Government Statistician to provide the Commission with access to individual statistical schedules for research or statistical purposes. Since the bill was referred to us, the Statistics Act 1975 has been amended by the Statistics Amendment Act 2012. This amendment allows the Government Statistician, under certain conditions, to provide any person with access to individual statistical schedules for research or statistical purposes, rendering the proposed amendment unnecessary.

Issues
Two other issues featured in our discussion of the bill. These were how the role and duties of the Families Commissioner would be determined, and the role of the Social Science Experts Panel.

The proposed structure of the Commission would see the title of Commissioner removed from all but one of the members, who would be referred to as the Families Commissioner, with the particulars of this role to be determined by the Commission. Previously, the role of Chief Families Commissioner, which could be seen as equivalent to that of the Families Commissioner under the proposed structure, differed from the role of the other Commissioners in that the Chief Families Commissioner was also the chairperson of the board. Some of us were concerned that the amended Act would not specify any particular duties for the Families Commissioner beyond those also to be undertaken by the members of the Commission. However, most of us agreed that the Commission should be allowed to determine the particular duties of its members, and noted that this approach is common for some existing similar entities.

Some of us were concerned that the Social Science Experts Panel’s role, in exercising its academic peer review and guidance function, would be to direct which research and evaluation projects would be commissioned. Our view is that the Commission’s independence could be qualified if the Panel, having been appointed on the joint recommendation of the Minister and the Prime Minister’s Chief Science Adviser, were to have a role in deciding which projects were to be undertaken. However, most of us are confident that the Panel’s
role would be to provide quality assurance, and not to direct the work of the Commission.

**New Zealand Labour Party minority view**

The New Zealand Labour party believes that the changes proposed to the Commission in this bill continue an agenda to fundamentally alter its nature as an autonomous Crown entity into something close to a government department or ministry. These changes, in our view, compromise the Commission and will limit its independence and ability to advocate effectively for families. Given these changes, Labour stands by its policy of disestablishing the Commission and instead establishing a Ministry for Children to focus on policies and programmes that place children and families at the centre of all policy and ensure their interests are paramount.

The Commission’s new roles of managing government contracts and carrying out evaluation of programmes in the social sector are essentially the roles of the Ministry of Social Development. The expertise and funding to undertake these roles are already a central part of the research and evaluation responsibilities of the ministry. These functions are being shifted to the Commission, thereby limiting the tasks the Commission can undertake that emerge from how it sees the interests of families independent of government direction. The ministry will maintain its evaluation capability but limit it to programmes and initiatives only in the state sector. This is a multi-million-dollar programme, while the Commission’s focus on evaluation will be limited to a little over $3 million. Thus we question how serious the Government is about proper evaluation of social-sector programmes. If there is a problem in the evaluation of social-sector programmes, then this is not the way to fix it.

Furthermore, we believe the advocacy function of the Commission will be circumscribed because it will now be required to produce an annual Families Status Report that measures and monitors the well-being of New Zealand families. We believe this is a major function akin to the Social Report produced by the ministry. We believe the cost associated with the scope of this task provided to the select committee by officials is understated. It is probable that the task has been seriously under-s scoped, and therefore will be of limited use. To be done well and be usable this task will duplicate the functions
of the ministry and as a result will limit the ability of the Commission to advocate for families effectively in other areas. We believe this is a ministry role and should be retained there. Its transfer to an autonomous Crown entity effectively limits the ability of the Commission to adequately meet its other roles.

The bill alters fundamentally the governance of the Commission. Where currently the Commission is led by a Chief Commissioner and other Commissioners with considerable breadth of experience and expertise in family matters, in future it will be led by a board of between three and seven members. The bill proposes one Families Commissioner whose role is not defined. It is left entirely to the board to define the role in any way it likes.

Officials have explained to the select committee that this is a similar process to like commissions. In fact this is not the case. Like commissions are those led by the Children’s Commissioner, the Privacy Commissioner and the Chief Human Rights Commissioner. In each of these commissions the roles are clearly defined. The bill takes a very limited view of the role of the Families Commissioner, and it is surprising it has nothing to say about what that one person on the board with that role will do.

Conventionally commissions of this type are led by the commissioner carrying the designation of that particular commission. This convention establishes clearly in the minds of the public who leads the Commission and who can be called to account for the decisions and pronouncements of the Commission. This is the person (or persons) who command attention when the Commission takes a strong position on a matter affecting families, when government policy or performance is being questioned, and when radically different alternatives are being advocated from the Commission’s independent thinking. This is the person with whom the public identify particularly when they need to have their voices heard.

The effective neutering of the position of the Families Commissioner is probably the strongest signal in this bill that the Government is cynical about the Commission and of its intention to morph it effectively into a government department or ministry. This bill effectively destroys the Commission as an independent advocate for families, but it remains in name only to satisfy its coalition agreement.

The New Zealand Labour Party does not support this bill.
New Zealand First minority view

New Zealand First believes that the family unit should be preserved and afforded opportunities to excel, particularly in the case of children. Any initiative that would have the potential to undermine this statement should be reassessed and structured accordingly, so that New Zealand families feel valued, particularly during times of financial uncertainty and hardship.

(Currently, the Commission is governed by a board of Commissioners, who are appointed by the Minister for Social Development. Each appointment is for up to three years with the potential for reappointment. Commissioners work for up to 100 days per year. At present, there are four Commissioners. However the Families Commission Act 2003 states that no more than seven, and no less than three can be appointed.)

The Families Commission Amendment Bill, through its core, will seek to undermine efforts to protect the family unit and children. The proposed changes will minimise the effectiveness of the Commission by reducing the number of Commissioners from seven to just “the one”. Moreover, changes will simultaneously occur regarding the allocation of funding.

We are opposing the proposed changes because these alterations will produce more harm than good.

Centre of excellence for knowledge about families and whānau

Downsizing the number of Commissioners will not reflect the overall mission statement of the Commission. In fact, it will place all the responsibility on one person rather than sharing the duties between the current Commissioners. Although it may be economically and politically more desirable to minimise the number of Commissioners we currently have, that number should not be pared to just the one.

If we are to truly provide a “centre of excellence for knowledge about families and whānau”, then we ought to rethink these proposals more carefully. Minimising the number of Commissioners will not enable better research capabilities nor will it allow the Commission to carry out its work more effectively. In order to provide a “centre of excellence” there needs to be greater emphasis on how this independent Crown entity will provide knowledge about what New Zealand fam-
ilies and whānau are confronted with and how the Commission may attempt to alleviate these social problems.

To that end, the Commission has a moral obligation to gain greater knowledge and concrete experiences about New Zealand families and whānau. We believe that it is the duty of Parliament to ensure that this obligation is well met and carried out effectively.

**Implications for social development**

One of the other major changes concerns the development and espousal of a new Social Policy Evaluation and Research Unit (SuPERU), which will receive half of the Commission’s budget (over four years). The amount of public expenditure it will receive over four years will amount to $32.48 million, from this, $14.2 million will be invested in SuPERU.

The Commission reports directly to the Minister for Social Development, Hon Paula Bennett, who justifies the amount that is being invested into the research unit. However, there is a lack of consideration of the fact that the issues and themes on which the research unit will be focusing are inter-related and cross many social-sector boundaries. Because all social issues are interrelated and may perpetuate other circumstances, it would make more sense for the Ministry of Social Development to use the amount of available funding wisely and with consideration to this fact. For example, the White Paper for Vulnerable Children contains issues and themes that are directly linked to the work that the Commission carries out.

These underlying problems will eventually surface and complicate the work that the Commission administers, especially with one sole Commissioner overseeing the entire body. This will inevitably have dire consequences on the expected outcomes for the Commission, and Parliament will most likely be re-evaluating the work of the Commissioner in the future. These implications can have long-lasting effects detrimental to the future of New Zealand families, especially vulnerable and at-risk families who face many problems.

**Social connectedness for greater knowledge and excellence**

The proposed changes to the Act focus more on changes to governance and budget allocation rather than the people they seek to represent and assist—New Zealand families and whānau.
Greater emphasis needs to be placed on promoting and carrying out more groundwork that creates better understanding and fosters better outcomes for New Zealand families. Investing half the Families Commission’s budget (over four years) in SuPERU will only delay the inevitable; the fact that New Zealand families are already living through all of the issues and themes that their research will conclude with and entail.

New Zealand families are already experiencing economic and social hardship. Changing the governance of the Families Commission and reprioritising its budget will only complicate their lives further with more political barriers to their development. Paying a group of professionals and academics through SuPERU will only emphasise on paper problems that New Zealand families face, rather than research and ground-work needed to work simultaneously and in conjunction with one another.

Minimising the number of Commissioners and reallocating funding for the next four years will only complicate social development goals and the capabilities of the Commission to effectively communicate the realities that New Zealand families confront on a daily basis.

**Conclusion**

The bill proposes changes that are detrimental to the well-being of New Zealand families and whānau. Reducing the number of Commissioners from seven to one will negatively affect the work that the Commission carries out, and if the complication of the projected budget that will be invested into SuPERU is added, the situation gets disorganised, and issues will inevitably surface regarding accountability.

The Commission reports directly to the Minister for Social Development, which should give it more impetus to paint the most realistic picture of what New Zealand families confront and how they may alleviate these barriers to social development. The Commission also needs to be more pragmatic—having only one Commissioner will not carry this task out effectively, nor will splitting off half the budget to SuPERU.

It is for these reasons New Zealand First opposes the bill.
Appendix

Committee process
The Families Commission Amendment Bill was referred to the committee on 24 July 2012. The closing date for submissions was 15 August 2012. We received and considered eleven submissions from interested groups and individuals, and heard evidence from Professor Sir Peter Gluckman, the Prime Minister’s Chief Science Advisor. We received advice from the Ministry of Social Development.

Committee membership
Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Simon Bridges
Melissa Lee
Jan Logie
Le’aufa’mulia Asenati Lole-Taylor
Tim Macindoe
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Su’a William Sio
Denise Roche replaced Jan Logie for this item of business.
# Captioning proceedings of the House and webcasting select committee hearings

Report of the Standing Orders Committee

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Petition 2011/4 of Merrin Macleod</td>
<td>2</td>
</tr>
<tr>
<td>Captioning proceedings of the House</td>
<td>2</td>
</tr>
<tr>
<td>Webcasting of select committees pilot project</td>
<td>4</td>
</tr>
<tr>
<td>Appendix</td>
<td>6</td>
</tr>
</tbody>
</table>
Captioning proceedings of the House and webcasting select committee hearings

Recommendation
The Standing Orders Committee recommends that the House take note of its report.

Introduction
The Standing Orders Committee has considered a matter of procedure and practice relating to captioning proceedings of the House and webcasting select committee hearings.\(^1\)

In its report on the Review of Standing Orders, the previous Standing Orders Committee discussed the need to promote public engagement with Parliament.\(^2\) We consider that the captioning of proceedings of the House and the webcasting of select committee hearings would significantly improve the accessibility of parliamentary proceedings. This report is to inform the House of developments towards the provision of such facilities.

Petition 2011/4 of Merrin Macleod
The petition of Merrin Macleod (2011/4) was presented to the House on 28 February 2012 and allocated to the Government Administration Committee. The petition requests:

That the House take immediate steps to provide live closed captioning of Parliament, and to note that 5,379 New Zealanders have signed an online petition to this effect.

This petition was transferred to the Standing Orders Committee on 8 November 2012, and this report reflects our consideration of the matter it raised.

Captioning proceedings of the House
Access for hearing-impaired community
The 50th Parliament has seen considerable interest in access to parliamentary proceedings for the hearing-impaired. Merrin Macleod’s petition requests a captioning service, and the needs of a hearing-impaired member were considered following the election of Mojo Mathers. Currently her needs as a member are met through a specifically tailored note-taking service funded through the Parliamentary Service, but this does not address the need for access to proceedings for the wider hearing-impaired community.

It is important for the hearing-impaired community to have access to parliamentary proceedings. This is provided for in some other parliaments already. We understand that captioning Parliament TV’s coverage of the proceedings of the House would be a suitable way to provide such access.

---

\(^1\) Under Standing Order 7(b), the Standing Orders Committee may consider and report to the House on any matter relating to the Standing Orders, procedures, and practices on the House.

Captioning

Captioning is the process of displaying text on a television, video screen, or other visual display in either a scrolling or a block format, reflecting the words spoken by participants in the event or programme that is being covered. There are two types of captioning—closed and open. Closed captioning is visible only to viewers who choose to activate this feature through the devices they use to receive the coverage (for example, selecting a menu option on digital television sets or a setting or webcast stream on media players). Open captions are visible to all viewers, and are embedded as a permanent part of the picture so they cannot be turned off. Subsequent screenings of the programme will therefore include the open captions.

Closed captioning is the better option for the captioning of the House’s proceedings, because viewers can choose not to have captions appearing on their screens. Closed captions can also potentially form the basis of a facility for searching video content. A closed captioning service is available for coverage of some proceedings of the Parliament of Canada.

Trial and further development work

As part of our consideration, we asked the Office of the Clerk to organise a trial of captioning. A two-hour recorded trial was conducted by TVNZ’s Access Services in Auckland, and we thank them for their assistance.

The trial demonstrated that the live captioning of parliamentary proceedings is feasible. However, the captioning delivered during the trial was very disappointing, with unacceptable paraphrasing of the words spoken and an unsatisfactory delay before captions appeared. Analysis of the trial emphasised the need for captioned text to be accurate and timely if it is to meet the aim of providing the hearing-impaired community with meaningful access to the House’s proceedings. We support the Office of the Clerk in undertaking further work to deliver a captioning service of a high standard. The dynamic nature of the House’s proceedings, particularly during question time, presents challenges for live captioning. To achieve the standard required, we accept that it will take some time to train staff and to develop systems that overcome some of the technical issues that the trial highlighted.

Significant lead-in periods have been needed in other parliaments that have introduced a captioning service. In the Parliament of Canada, captioning in French was implemented in 2007 following a 2-year pilot project. Similarly, the Parliament of Australia is working towards a deadline at the end of 2014 for the captioning of its proceedings.

We encourage the Office of the Clerk to investigate fully all potential solutions so that a high quality service can be provided. We expect this work to be done with some urgency, so that live captioning can be delivered during the next term of Parliament.

At this stage, we make no recommendation about the range of proceedings that should be captioned, or whether the service should be implemented incrementally.

Captioning of words spoken in Māori

We have considered the implications of captioning for members who wish to speak in Te Reo Māori. At this early stage, captioning in Māori would be highly challenging, as it would require operators to have both great fluency in Te Reo and high-level skills in using the captioning technology. In the meantime, words interpreted from Māori through the simultaneous interpretation service would be subject to live captioning in English.
Legal protection

There are legal risks associated with captioning, as the protection afforded by the Legislature Amendment Act 1992 is limited. We note that the issue of protection for broadcasts of the House’s proceedings is being considered by the Privileges Committee, and hope that it is clarified before any captioning of proceedings is implemented.

Funding for captioning service

A captioning service for the hearing-impaired community cannot be provided from the Office of the Clerk’s baseline funding, and additional funding will be required to establish and continue the service. We encourage the Government to support this measure for making parliamentary proceedings immediately accessible to the hearing-impaired community.

Webcasting of select committees pilot project

Surveys of members and other stakeholders have indicated a demand for televising coverage of select committees. Proceedings of parliamentary committees are webcast in the United States, the United Kingdom, Australia, and Canada.

Arrangements and outcomes for pilot project

In 2013 the Office of the Clerk will implement a pilot project for the webcasting of select committee proceedings. The pilot will webcast public hearings of evidence live from a designated select committee meeting room. Each designated meeting room will have one fixed camera for webcasting, and the clerk of committee will be responsible for turning the camera on to show public hearings of evidence. The camera will film the members of the committee in a wide-angle view from behind the witnesses. The proceedings will be webcast through the Parliament TV web platform (www.parliament.nz).

The pilot project is limited in scope because its cost will be met from the Office of the Clerk’s existing baseline funding. Webcasting all public select committee proceedings would require a substantial amount of additional funding. The outcomes of the pilot project will be as follows:

- a clear indication of the appetite of members, committees, and the public for select committee webcasting
- a set of appropriate rules to govern select committee webcasting
- a list of “lessons learned” in respect of select committee webcasting, for use should further work on webcasting select committee proceedings be pursued
- an indication of the most effective public communications strategy for use should further work on webcasting select committee proceedings be pursued.

Allocation of rooms and notification of expected webcasts

During the pilot project it will be possible to webcast only one select committee hearing at a time, because only the existing Parliament TV webcast channel is available for use. The Office of the Clerk will allocate rooms, including those designated for the webcasting pilot, on the basis of committees’ needs, and will not make any judgment about the newsworthiness of committee proceedings. A committee intending to hear evidence in public and allocated a room with webcasting facilities will have discretion as to whether those hearings are webcast.

Information about expected webcasts from select committees will be made available on the Parliament website.
Feedback about pilot

The Office of the Clerk will invite select committees to provide comments on the proposal for routine webcasts of public hearings of evidence as part of this pilot. Responses will help assess how interested members and committees are in the webcasting of select committee proceedings. If webcasting is eventually rolled out to all select committees, a set of rules for webcasting committee proceedings could be provided as an appendix to the Standing Orders.

The Office of the Clerk will report to us on the results of the pilot project.
Appendix

Committee procedure

The committee commenced its consideration of this matter of procedure and practice under Standing Order 7(b) on 5 April 2012, and met on 8 and 29 November to consider the matter. Advice was received from the Office of the Clerk of the House of Representatives.

Petition 2011/4 of Merrin Macleod was presented to the House on 28 February 2012. It was allocated to the Government Administration Committee, which requested and received a submission from the Speaker. Following agreement from the Standing Orders Committee, the petition was transferred to it on 8 November 2012.

Committee members

Dr The Rt Hon Lockwood Smith (Chairperson)
Hon Gerry Brownlee
Hon Peter Dunne (Deputy Chairperson)
Te Ururoa Flavell
Hone Harawira
Chris Hipkins
Gareth Hughes
Hon Trevor Mallard
Denis O’Rourke
Hon Anne Tolley
The Transport and Industrial Relations Committee has considered Petition 2008/149 of Darryl Monteith on behalf of the Gisborne Rail Action Group, requesting that the House of Representatives note that 3,291 people have signed a petition calling for central and local government to produce a plan, with public input, to see the Gisborne-Napier railway maintained and developed for the benefit of residents, businesses, and the environment locally, regionally and nationally; and the threat by government to mothball or close the line in 2012 be withdrawn and reviewed again in 2020, and has no matters to bring to the attention of the House.

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2008/150 of Vivienne Shepherd, requesting that the House of Representatives work with the councils of Northland to keep the Northland to Auckland rail line open and to enhance its commercial viability by funding a rail spur from the rail line to the deep-water port at Marsden B, and has no matters to bring to the attention of the House.

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2008/151 of Loretia Pomare on behalf of Save Kapiti and the Alliance for Sustainable Kapiti, requesting that the House of Representatives note that 4,072 people have supported a petition requesting that the Government rescind its decision to build an expressway through the Kapiti community, and work with the whole community in a consultative manner to develop a sustainable transport solution, and that the House support this request, and has no matters to bring to the attention of the House.

David Bennett
Chairperson
Petition 2008/138 of George Laird

Report of the Transport and Industrial Relations Committee

Contents

Recommendation 2
New Zealand Labour Party minority view 2
Appendix 4
Recommendation

The Transport and Industrial Relations Committee has considered Petition 2008/138 of George Laird, and recommends that the House take note of its report.

We have received and considered the petition of George Laird requesting that the House of Representatives note that 13,854 people have signed a petition demanding that the Government takes immediate action to ensure that Kiwirail does not reduce its workforce at the Hillside or Woburn workshops and that Kiwirail commits to building rolling stock at these workshops.

The majority of us have no matters to bring to the attention of the House.

New Zealand Labour Party minority view

New Zealand Labour objects to the majority decision of the committee which was to refuse to allow representatives of the petitioner George Laird and 13,854 others to give evidence to the select committee.

New Zealand Labour believes the committee has not been balanced in only seeking a response from Kiwirail which argued it could not afford to build rolling stock in New Zealand. Other parties, including the petitioners, should have been able to provide a counter-view in order to allow the committee to feel informed.

New Zealand Labour believes that the information provided requires external analysis and that the committee has not had the opportunity to do this.

New Zealand Labour believes there is a strong case to be made that the job cuts at Kiwirail’s Hillside plant in Dunedin are due to its decision to outsource rolling stock contracts to China. New Zealand Labour understands that since this decision, Kiwirail has had to re-employ workers to fulfil contracts and there are growing questions around its decision-making and competence in running its operations.

New Zealand Labour believes there is growing public unease around the quality of the wagons from China being brought into New Zealand through the recent contracting decisions. New Zealand Labour believes the committee should have had the opportunity to examine these issues and provide transparency on the quality of decision-making by Kiwirail.

There has been considerable public interest in this issue and New Zealand Labour believes the committee has not taken this into account in refusing to allow a range of submissions.
New Zealand Labour believes there have been representations to the committee and through the media from parties who requested a hearing, and this has been denied.

The principle that underpins the right for New Zealand citizens to initiate a petition to Parliament is an important part of our democracy. New Zealand Labour believes the majority decision to stifle the right of the petitioners to present a case to a committee of Parliament is an erosion of our democracy.
Appendix

Committee procedure
The committee met on 8, 15, and 29 February 2012 to consider the petition. We received a written submission from KiwiRail.

Committee members
David Bennett (Chairperson)
Chris Auchinvole
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Jami-Lee Ross
Scott Simpson
Phil Twyford
The Transport and Industrial Relations Committee has considered Petition 2008/141 of Norman Harvey Wilkins, requesting that the House of Representatives note that 124 people have signed a petition supporting the re-opening of the Gracefield rail line for both freight and passenger transport and that the House support the aim of the petition, and has no matters to bring to the attention of the House.

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/3 of Jan and Cathrina de Klerk, requesting that the House of Representatives note that 231 people have signed a petition calling for the support of a re-examination of Jan and Cathrina de Klerk’s immigration status and that the House support this request.

The committee has no matters to bring to the attention of the House.

David Bennett
Chairperson
Petition 2008/140 of George William Stanley King and 40 others

Report of the Transport and Industrial Relations Committee

The Transport and Industrial Relations Committee has considered Petition 2008/140 of George William Stanley King and 40 others, requesting that the House of Representatives alter the arrangement by which ACC levies are paid for diesel-powered vehicles to a system which would enable all diesel tax and road-user charges to be paid at the pump, with non-road-using vehicles qualifying for a rebate.

The committee received a submission on the petition from the Department of Labour. Having considered this, we have no matters to bring to the attention of the House.

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2008/147 of Geoff Houtman requesting that the House of Representatives

note that 846 people have signed a petition, and a further 222 people have supported an online petition, asking the House to consider whether legislation will be required to facilitate the extension of Auckland’s tram system as part of an integrated system that complements the proposed CBD rail link with the aim of reducing congestion in Auckland.

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

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/6 of Tim Fellows and 127 others, requesting that the House of Representatives

pass legislation so that no immigrant can be expelled from New Zealand for health reasons and that such reasons can no longer be used to determine residency or citizenship.

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

David Bennett
Chairperson
Report from the Controller and Auditor-General, New Zealand Transport Agency: Delivering maintenance and renewal work on the state highway network

Report of the Transport and Industrial Relations Committee

The Transport and Industrial Relations Committee has considered matters raised in the report from the Controller and Auditor-General, *New Zealand Transport Agency: Delivering maintenance and renewal work on the state highway network*, and has no matters to bring to the attention of the House.

David Bennett
Chairperson
Report from the Controller and Auditor-General, Severance payments: A guide for the public sector

Report of the Transport and Industrial Relations Committee

The Transport and Industrial Relations Committee has considered matters raised in the report from the Controller and Auditor-General, Severance payments: A guide for the public sector, and has no matters to bring to the attention of the House.

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/25 of Richard Aslett and 7,436 others, that the House require that KiwiRail retain all Overlander Train current stops, and note that a further 440 people have signed an online petition with the same request. The committee has no matters to bring to the attention of the House.

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/18 of Meng Foon, requesting that the House of Representatives note that 10,240 people have signed a petition calling on KiwiRail and the Government to repair the Gisborne to Napier railway line, and that the House support this demand. The committee has no matters to bring to the attention of the House. However, some members would have preferred to hear a submission from the petitioner.

David Bennett
Chairperson
Immigration Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the Immigration Amendment Bill, and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Immigration Act 2009 to enhance New Zealand’s ability to manage effectively and efficiently a mass arrival of irregular and potentially illegal migrants, and to make New Zealand a less attractive destination for people-smugglers.

It would establish a definition of “mass arrival group”; allow detention under a group warrant, for an initial period of up to 6 months, of irregular and potentially illegal migrants (other than unaccompanied minors) arriving in a mass arrival group; provide for further periods of detention for up to 28 days with court approval, or for release on binding conditions; and empower the making of regulations to suspend the processing of refugee and protection claims.
The bill would also provide that

- the Immigration and Protection Tribunal was not required to conduct an oral hearing in cases where a second or further claim for recognition as a refugee or protected person had been lodged, and had been declined by a refugee and protection officer
- there was no obligation to consider a third or subsequent claim from the same person (while allowing discretion to consider such a claim if warranted)
- second and further claims could be rejected where there had been no material change of circumstances, or where the claim was manifestly unfounded, clearly abusive, or repeating an earlier claim
- review proceedings could not be taken on a matter being dealt with by the Immigration and Protection Tribunal until the tribunal had made a final decision on all relevant matters
- judicial review proceedings could be filed only by leave of the High Court.

Most of us accept the advice received that New Zealand faces an ongoing risk of a mass arrival of illegal migrants and has been targeted unsuccessfully in the past. With people-smuggling and mass arrivals being a constant problem for some of our nearest neighbours to tackle, New Zealand must implement a range of measures to prepare for any future mass arrival event. People-smuggling not only threatens a nation’s sovereign right to determine who can enter a country, but the criminal activity also puts the lives of vulnerable people at significant risk. While this legislation cannot guarantee a mass arrival event will not take place, it establishes important measures that would allow New Zealand to manage and process members of a mass arrival group, and would, with other measures, act as a deterrent to an unscheduled mass arrival.

We accept that New Zealand is a signatory to a range of international instruments that impose obligations on New Zealand for refugees and protected persons. While most submitters argued the bill does not align with New Zealand’s international obligations, most of us are of the view that necessary safeguards have been built into the legislation to ensure compliance with these obligations. Of particular note is the role that a District Court Judge would have in determining whether
the criteria for the grant of mass arrival warrants had been met, including whether the period of detention sought was appropriate.

The question of detention was canvassed by a number of submissions. Detention, in the case of a mass arrival, is for administrative purposes to enable immigration authorities to manage the exceptional case of a mass arrival where the usual processes for dealing with an irregular arrival of migrants could be quickly overwhelmed. Most of us reject the arguments that the detention regime proposed in the bill amounts to mandatory detention. We note that a warrant of commitment could only be granted if such a warrant had been applied for and the warrant was considered by the District Court to be necessary for the reasons set out in new subsection 317A(1)(a). We also note that Article 31(2) of the 1951 Convention Relating to the Status of Refugees provides for restrictions on movements of refugees when necessary. Detention in exceptional circumstances for the purposes of dealing with a large-scale mass arrival is a necessary restriction on movement to maintain New Zealand’s ongoing security and the integrity of our immigration arrangements.

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

Warrants of commitment
We recommend amending clause 12, which would insert new sections 317A to 317E into the principal Act; and schedule 2, which would insert new form 5—Warrant of commitment (mass arrival warrant)—into the Immigration (Certificate and Warrant Forms) Regulations 2010, as follows.

Identification or description of individuals
Inserting new subsection 317A(6), which provides a definition of identity information, along with other amendments recommended to new sections 317A, 317B, and 317C, and to new form 5, would make it clear that the persons included in a mass arrival warrant need not be individually named, but must be otherwise identified or described.

Reversion to individual warrants
Amendments to new section 317B would enable a District Court Judge to treat an application for a mass arrival warrant as a group of
applications for individual warrants of commitment if, having considered the matters in subsection 317B(2), he or she was not satisfied that the criteria for the issue of a mass arrival warrant were met. Amendments to new section 317C would mirror amendments to 317B and would cover applications for variations to mass arrival warrants.

**Places of detention**
Amendments to new form 5 would provide for the situation where different people under a mass arrival warrant might need to be detained in different places.

**Review of mass arrival warrants**
We recommend amending clause 14, which would insert new section 324A into the principal Act, to clarify what applications might be made under the section, and how a District Court Judge must consider and determine those applications.

**Regulations**
We recommend amending clause 15, which would amend section 403 of the principal Act, as follows.

**Suspension of claims**
The amendments to new paragraph 403(1)(ka) would make clear the intention that regulations made under section 400 suspending the processing and determining of certain claims should do so by reference to a set of circumstances or characteristics common to the relevant claims, or to the claimants making them.
New subsection 403(2) would describe the circumstances in which these regulations might be made: that is, where there were problems accessing or assessing information relevant to decisions on the claims to be suspended; or in circumstances where a decision on the claims was unlikely to produce a robust outcome.
Duration of regulations
The bill as introduced would provide for regulations made under section 400 to expire 6 months after their commencement, if not revoked earlier. The insertion of new subsection 403(3) would clarify that such regulations might specify an earlier expiry date and that they would have no continuing effect after that date.

New Zealand Labour Party minority view
The New Zealand Labour Party members of the committee support the Government’s right and duty to protect New Zealand’s borders. We also accept the Government has a responsibility to ensure we are prepared for the eventuality of a mass arrival of asylum seekers. However, we do not support the punitive and unnecessary measures in the Immigration Amendment Bill and the proposed accompanying policy changes. We believe the bill represents a significant shift in direction from New Zealand’s longstanding support of the 1951 Refugee Convention and will undermine our reputation as a positive and constructive global player.

Many of the submitters to the select committee have significant international and local experience in dealing with the human and other rights of asylum seekers. Their evidence has confirmed our view that this bill should not proceed.

Millions of people enter New Zealand every year, tens of thousands obtain student visas, and many more are granted work visas or permanent residency. Our system copes with this with few incidents, and the unlikely threat of a group arrival of more than 11 asylum seekers should not pose a significant problem for the state’s resources and protection agencies.

New Zealand accepts 750 quota refugees a year, which is a tiny proportion of the more than 31 million refugees in the world. In addition around 300 people seek asylum each year, who must face meeting a very high hurdle in proving they should be recognised as convention refugees. Seeking asylum is not some easy ride, as some have suggested, and nor would so-called “economic migrants” meet the test required in the convention.
International obligations

The New Zealand Labour Party members believe there is a conflict between the bill and New Zealand’s international obligations under the 1951 Refugee Convention (and the 1967 Protocol) and other human rights instruments to which New Zealand is a party.

We also believe that the bill imposes unjustifiable limits on fundamental rights in the New Zealand Bill of Rights Act 1990, particularly in regard to mandatory detention by group warrant, and that it would create a different class of asylum seeker, by virtue of the fact they have arrived in a group of 11 or more people.

New Zealand is obliged under the Refugee Convention to protect the human rights of all asylum seekers and refugees who arrive in New Zealand, regardless of how or where they arrive, and whether they arrive alone or as part of a group.

The cornerstone of the UN Convention is the Article 31 declaration that asylum seekers are not illegal immigrants and should not be prejudged without due process, nor detained or penalised by virtue of their method of crossing borders.

The important part of Article 31 is that it provides for fair process and, in ensuring this, also gives the signatory nation the legitimate right to deport failed asylum seekers.

As one submitter stated: “This is very much like the criminal law assumption that innocence must be assumed until guilt is proven. While that is often annoying, especially to enforcers like the Police, most of us would not want the consequences of changing it. Yet that is, in effect, what this bill does.”

We believe there has been confusion between legitimate asylum seekers and illegal economic migrants, and thus the unfortunate use of language such as “illegal migrants” and “queue jumpers”.

Deterring people-smuggling

The stated purpose of the bill is “to deter people-smuggling and to enable the effective and efficient management of a mass arrival of ‘illegal immigrants’ ”.

Research and evidence provided to the committee showed that that mandatory detention of the victims of people-smugglers is not a deterrent and nowhere is this more obvious than in Australia.
From the 1990s to mid-2000s Australia introduced a number of policies aimed at deterring asylum seekers arriving by boat. Despite this, in 2000 and 2001, 94 boats carrying 8,455 people arrived, which is the greatest number of boats and people arriving in Australia in any two-year period between 1976 and 2008.

Punishing asylum seekers does not discourage people-smugglers. The root causes are not in New Zealand, but in the failure of other countries to comply with the UN Convention or to adequately police anti-people-smuggling laws in their countries.

New Zealand is an active player in the Bali process and other international forums and we also have domestic laws to punish people-smugglers under the Crimes Act.

**The threat of mass arrival**

A justification for the bill is that New Zealand “faces an ongoing risk of mass arrival of ‘illegal immigrants’ ”.

The assumptions for the bill are based on modelling the impact of a boat carrying 500 people arriving on New Zealand shores, but the bill defines a mass arrival as a group of 11 or more people.

There is a significant difference between the two, and in any case, a boat carrying any number of asylum seekers has never reached New Zealand’s shores.

Given the nature and danger of our coastline, it is ridiculous and overly alarmist to claim that a boat carrying 11 or for that matter, 500 asylum seekers are going to suddenly appear on our shores out of nowhere. There will be significant warning to enable preparation by the authorities for their arrival and the Government has just spent $200,000 on “Exercise Barrier” to test existing systems and facilities.

**Mandatory detention by group warrant**

As many submitters pointed out, the bill discriminates against those who seek refugee status if they arrive by “mass arrival” in contrast with those who do not, and imposes an unjustified limit on the right not to be arbitrarily detained.

The right to seek asylum is not an unlawful act and detention for the mere fact of having sought asylum is unlawful.
There is no distinction in international law between the obligations owed to asylum seekers based on mode of arrival or arrival as a part of a group, yet this bill imposes a distinction of 11 people sufficient to trigger a proposed detention regime.

Using mandatory detention to penalise asylum seekers for irregular entry into a country contravenes New Zealand’s obligations under Article 31 of the Refugee Convention. The UNHCR has confirmed that detention, as part of a policy to deter future asylum seekers, is contrary to the principles of international protection.

The use of detention for an initial 6-month period (and beyond) raises issues relating to the enjoyment of other rights to which asylum seekers are entitled. Evidence from Australia shows the long-term adverse health and social impacts of detaining asylum seekers in this way and New Zealand should learn from this.

International guidance requires detention to be used only where necessary, as a matter of last resort and for the shortest periods possible. The proposed amendments are at odds with international best practice and natural justice.

Apart from any of this, the Australian experience clearly shows that mandatory detention is extremely costly. In 2011 the cost of detention in Australia was $137,317 per year per person. By contrast community-based processing is up to 90 percent cheaper.

Other issues

We have other concerns with the bill, including the empowering of the suspension of the processing of refugee and protection claims by regulation, the proposed restrictions on family reunification on the basis that a person arrived in New Zealand as part of a “mass arrival”, and the restrictions on bringing judicial review proceedings.

It is important to note that this last provision is not limited to “mass arrivals” but applies across the board to all appellants before the Immigration Tribunal, whatever their status or grounds of appeal. The Government’s justification is that it will “streamline review proceedings”. By circumventing processes that may be inconvenient to the Crown, essential rights for individuals will be eroded.
There is a better way

Even in the unlikely event of a so-called mass arrival of 11 or more people occurring, existing legislation already provides for proper process, including detention, if required, but that must be assessed on a case by case basis.

The Immigration Act 1987 has undergone a significant review in recent years with extensive public input and consultation. This resulted in an overhaul of the legislation, the new version of which was passed in 2009. The Immigration Act 2009 demonstrates the careful balance that can be achieved in the immigration space to ensure that rights are protected and our borders protected. It is a highly regarded piece of legislation internationally.

The lessons from Australia are very stark. Their arbitrary detention and management of asylum seekers has done untold harm, not only to the asylum seekers, who have suffered mental and other health deterioration as a result of detention, but it has polarised the people of Australia and contributed to ill-informed debate.

Further, so-called “boat people” have become a political football where no party is prepared to take the risk of being seen as “soft” on asylum seekers.

We are willing to work constructively on a multi-party basis, to make every effort to find a solution that does not involve what we believe is divisive legislation, that will do harm to our international reputation and erode the careful balance that has been achieved by the Immigration Act 2009.

There is no need for this bill.

Green Party minority view

Members of the Green Party do not support the intent or detail of the Immigration Amendment Bill.

This bill is not necessary

The stated purpose of this bill is to effectively manage the mass arrival of irregular migrants and to make New Zealand a less attractive destination for people-smugglers.

The examples given by the Minister prior to the introduction of the bill, of a freighter carrying 500 asylum seekers that made it to Canada
and a recent boat entering Australian waters saying they wanted to come to New Zealand, do not make a mass arrival by boat in New Zealand any more likely.

The freighter that made it to Canada was funded by a large and wealthy ethnic refugee community in Canada. The cost to that community was in the millions of dollars. New Zealand does not have a community large enough or with the disposable income to be able to purchase a freighter to undertake such a trip.

The biggest barrier to a mass arrival coming to New Zealand is our distance and treacherous waters. Plenty of boats have made it to Australia, mostly from Indonesia; none has made it to New Zealand. This is because we are that much further away than Australia and the risk is so much greater to get here.

We have been told that ten people is the largest group our agencies are able to process within existing processes. We find this implausible.

We have been told that this bill is a deterrent against people-smugglers, and yet there is no mention of smuggling or penalty against smuggling in this bill. It is our view that this creates an impression that people fleeing persecution assess which country has the best policies for settlement and direct their smugglers to take them there. It is our view, and that of many presenters, that this misunderstands or misrepresents the common experience of seeking asylum.

This bill does not have the support of our communities and undermines refugees’ sense of belonging and welcome in New Zealand

None of the submitters who work with or represent refugees in New Zealand supported this Bill.

We heard from people who once sought asylum and people who work closely with asylum seekers who told us that most people entering irregularly by boat are likely to be genuine refugees, and that detention regardless of conditions has a negative impact on the mental health of the asylum seekers and reduces their chances of integrating into New Zealand quickly.

We believe that this bill has already sent a message to existing refugees and asylum seekers that our Government is starting from a point of fear and reluctance to support them. We want to assure refugees and asylum seekers in New Zealand that we stand by our
commitment to the Universal Declaration of Human Rights which enshrines our collective right to seek and to enjoy in other countries asylum from persecution. New Zealand helped draft the Declaration of Human Rights and the right to seek asylum is as important now sadly as it was post world war two. New Zealand only takes up to 750 refugees a year and has not met that target in recent memory. We are willing to work with other parties to seek consensus on how to address any of the drivers behind the numbers of people seeking asylum in our region and also any realistic administrative challenges to processing significant numbers of irregular entries. Sadly we believe this bill does neither of these things and in fact creates an unnecessary barrier to integration and an unfounded fear of asylum seekers, which undermines our trust in each other as fellow New Zealanders. We will continue to seek solutions that provide a real contrast to the persecution and mistrust people have been fleeing.

This bill compromises our protection of fundamental human rights and natural justice

The facility for group detention for groups over 10, as mass arrivals, for an initial period of 6 months and for further periods of detention for up to 28 days with court approval, is, we believe, contrary to the intent of the Bill of Rights Act and Article 31 of the Refugee Convention to which New Zealand is a signatory. Article 31 in particular protects asylum seekers from penalty regardless of mode of entry and requires states not to apply any restrictions other than those that are necessary until their status in the country is regularised.

Through the submission process we have come to believe the Government’s position is based on belief that applying for refugee status directly in a UN camp is more honourable than seeking asylum in a convention country without a camp, such as New Zealand. We believe this demonstrates a lack of understanding about the scarcity of camps, and of convention countries in our region.

Because we find the administrative argument implausible we believe detaining a group because they arrived by boat with more than ten people amounts to an arbitrary detention. The Bill of Rights Act
clause 22 guarantees the right not be arbitrarily arrested or detained. We do not believe a judicial decision on this, based on uncontested advice from immigration officials, is enough of a check to protect against an arbitrary detention.

Further, we consider the restriction on bringing judicial review proceedings undermines our processes of justice. This provision applies not just to anyone who was part of a “mass arrival” but to all appellants before the Immigration Tribunal. The Government believes this will streamline processing, but evidence was given that the opposite may indeed happen. There was very strong opposition to this on the basis of fairness and the need for people to be able to appeal to an independent perspective earlier rather than later. Several high-profile cases of appeal regarding refugee status have shown the country the importance of the role of appeal. We should not start from the point of assuming people are just delaying their removal.

We also strongly oppose limits on family reunification based on mode of entry. People who have had to resort to the most extreme form of escape should not be penalised further for the “sins” of others. It is our opinion that this bill is unnecessary and an embarrassment to our history as compassionate global citizens.
Appendix

Committee process
The Immigration Amendment Bill was referred to the committee on 3 May 2012. The closing date for submissions was 8 June 2012. We received and considered 33 submissions from interested groups and individuals. We heard 20 submissions.
We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Jami-Lee Ross
Scott Simpson
Phil Twyford
Jan Logie replaced Denise Roche for this item of business.
National War Memorial Park (Pukeahu) Empowering Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the National War Memorial Park (Pukeahu) Empowering Bill and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to grant the necessary statutory authorisations and property rights to the Ministry for Culture and Heritage and the New Zealand Transport Agency to enable the completion of the National War Memorial Park (Pukeahu) by April 2015, the centenary of the commencement of the Gallipoli landings during the First World War. Without this legislation, it is unlikely that the necessary statutory authorisations could be obtained in time for the Park to be completed by April 2015, even making use of the streamlined national consenting process available through the Resource Management Act 1991. We consider that the approach taken in this bill is warranted due to the constrained timeframe for completion of this nationally significant project.
We note that the Park is intended to enhance the setting of the National War Memorial, to contribute to New Zealand’s sense of national identity, and to provide for the recognition of New Zealanders who have served, or will in future serve, in military conflicts, including peace-keeping operations and the New Zealand Wars of the 1800s.

We acknowledge the long-term engagement of Taranaki Whānui, through the Port Nicholson Block Settlement Trust and the Wellington Tenths Trust, with the Pukeahu project, and their ongoing contribution to it. We also acknowledge the contribution, in partnership with Government, to the planning, funding, and maintenance of the Park of the Wellington City Council and their ratepayers.

The bill would grant resource consents, heritage authorisations, and building consents, and would provide the designation, powers of entry onto land, and property rights necessary to carry out the project. It would also remove the standard objection and appeal rights available under the Resource Management Act 1991, the Historic Places Act 1993, and the Public Works Act 1981. However, rights to compensation under the Public Works Act would be preserved. Although the bill would grant authorisations and rights directly, it would make them subject to the conditions normally associated with such authorisations and rights. Some conditions require plans or documents to be produced, and the bill would introduce a process for certifying independently that these documents satisfy the requirements of the conditions.

The bill sets out the statutory authorisations known to be required to complete the Park by April 2015; to address the possibility that further rights or authorisations might be required, the bill would enable the Governor-General to grant them by Order in Council. Any necessary Orders in Council would be subject to parliamentary oversight through an expedited disallowance process, and each proposed Order in Council would be required to be scrutinised by a specially convened review panel. The provision authorising Orders in Council would expire on 31 July 2015. This would allow time to address any residual issues.

The bill would also require the establishment of a community forum to provide information and advice regarding the Park. This commentary covers the major amendments we recommend; it does not discuss minor, technical, or consequential amendments.
Preliminary provisions

We recommend amending clause 3 (the purpose clause) by re-stating subclause (1) as a series of separate paragraphs. This would emphasise the special circumstances which the bill seeks to respond to.

We recommend amending the definition of “district plan” in clause 4 to include any changes to the District Plan to which effect must be given under Section 86B and 86F of the Resource Management Act 1991, and any changes to the District Plan notified before the enactment of the Resource Management (Streamlining and Simplifying) Amendment Act 2009.

We recommend amending clause 5 to insert additional land parcels into the definition of “Park land”. The definition in the bill as introduced does not accurately reflect the extent of the area intended to constitute the Park; the amendment would correct this. The amendment would also bring the National War Memorial land within the meaning of “Park”, which would allow landscaping of the area to be integrated with work on the rest of the Park, and would allow the community forum to be consulted on the wider area.

We recommend inserting new clause 5A to clarify the legal status of the plans in schedule 10. The boundaries shown by dashed lines on the plans are indicative only, and the legal description of the areas concerned will prevail if inconsistent with the plans.

Resource consents and designations

We recommend amending clause 7(5)(b) to clarify that resource consents which would be granted by the bill would not lapse on 31 July 2015 if, before that date, they had been given effect or “substantial” work relevant to the consent had been commenced, or an extension of the lapsing period had been granted. We also recommend inserting new clause 7(6) to specify that when considering an application to extend the period until a consent lapses, the consent authority would have to take into account whether substantial progress was being made towards giving effect to the consent and whether approval had been obtained from persons who might be adversely affected.

Authorities relating to archaeological sites

We recommend amending clause 9 by deleting subclause (2). It is intended that the Ministry for Culture and Heritage will under-
take construction works and any archaeological investigations required of it in the designated area under the authority that the New Zealand Transport Agency has obtained under normal statutory processes from the New Zealand Historic Places Trust. The authority conferred in subclause (2) is therefore not required.

Access to property and granting of property rights
We recommend amending clause 16(2) to allow the chief executive of the Ministry to delegate the powers of entry that would be conferred by the bill.

Orders in Council
We recommend amending clause 24 by inserting new subclause (4), so that for a Minister to recommend the making of an Order in Council, he or she must have considered all other reasonably practicable ways relevant to the particular circumstances to achieve the purpose of the legislation, particularly the completion of the Park by April 2015. We consider that this emphasises the intention that the use of Orders in Council should be a last resort, without imposing an unworkable threshold.

We recommend inserting new clause 27A to require the Review Panel to report to the Minister every 6 months on the use of the power to make Orders in Council under the bill, and to require the Minister to present a copy of each report to the House of Representatives. This amendment would allow the House to consider implementing a process, perhaps adopted by sessional order, for specific consideration of these reports.

We recommend amending clause 31, and deleting clause 32, to adjust the disallowance provisions so that an Order in Council would not come into force until 12 sitting days after the day on which it was presented to the House of Representatives. The disallowance procedure in the bill as introduced would have been unworkable. We note that it would be possible for the disallowance process to be followed more quickly in most cases.
Community forum
We recommend amending clause 36 to clarify that the purpose for which the Minister must arrange a community forum is to provide the Minister with information or advice, including information or advice related to the design of the Park; to increase the minimum number of meetings of the forum per year from two to three (at intervals of no more than 6 months); to include the owners of the former Mt Cook Police Barracks and the Tasman Garden Body Corporate in the list of organisations whose representatives must be invited to form part of a community forum; to allow the Minister to invite representatives of more than one group representing the interests of local residents and of more than one group representing road users; and to extend the date on which the community forum provisions would expire to 31 July 2015.

Schedules
We recommend amending schedule 1 to require that relevant landowners must be consulted during the development of required heritage management plans.
We recommend amending schedules 1, 4, 6, 8, and 10 to provide for the necessary statutory authorisations relating to any work that may be required to the Tasman Garden Apartments.
We recommend amending schedule 3 so that where a qualified planner was required to certify the various environmental management plans required for the project, they would be supported as necessary by suitably qualified professionals. We also recommend amending schedule 3 to insert references to the former Mt Cook Police Barracks, the Tasman Garden Apartments, and other properties, as appropriate, because of access issues or proximity to adverse effects.
We recommend amending schedule 4. An amendment to condition 14 would ensure that relevant iwi were advised before on-site archaeological works were commenced. An amendment to condition 17 would require that a qualified archaeologist be consulted when a detailed record of the area of works impacting on the structure of a pre-1900 building was prepared.
We recommend amending schedule 4 and deleting schedule 5 to resolve the duplication of archaeological authorities pertaining to the project.
We recommend amending schedule 7 to add “demolition” to the list of building works requiring a building consent.

**Green Party minority view**

Members of the Green Party strongly support the objective of a National War Memorial Park at Pukeahu, and share the desire for this to be completed in time for the Gallipoli Centenary and Anzac Day 2015.

The proposed National War Memorial Park will provide New Zealanders and overseas visitors with a dedicated space in which to reflect on the loss and sacrifice of life in numerous armed conflicts, to pay respect to the dead, to contemplate the causes for which those conflicts were fought, and to consider the cause of peace and how future armed conflicts may be avoided. It will also provide a haven of valuable green space within the busy environs of the capital city.

However, we have fundamental concerns about the extraordinary powers granted by this legislation. Not only does it remove and replace normal planning processes, limiting the ability for the public and key stakeholders to participate in decision-making about the Park, it also grants the Crown the ability to make further wide-reaching changes by Order in Council, without the usual Parliamentary scrutiny. We are worried at the precedent these powers set regarding the primacy of the rule of law in New Zealand.

As was pointed out by a number of submitters, one of the principles which many New Zealanders have fought to uphold in successive conflicts is the rule of law. There is an unfortunate irony that this principle is being set aside by this legislation in order to expedite a war memorial to commemorate that sacrifice.

We are concerned that this legislation represents a trend in government towards a greater willingness to set aside normal democratic processes in order to achieve a “good” result. The tools in this legislation were developed in response to the devastating Canterbury earthquakes, in a state of national emergency. We were told at the time that these were exceptional circumstances that warranted the granting of extraordinary powers.

The construction of a new National War Memorial Park is not a national emergency. The need to appropriately commemorate the Gallipoli Centenary in 2015 has been known for a long time. Plans for
this particular park were initiated in 2004, but halted in 2009 for cost reasons. Had they been allowed to proceed in the normal way, there would be no need for this legislation.

While the construction of a National War Memorial Park is undoubtedly a “good cause”, we cannot in good conscience support legislation that unnecessarily sets aside the rule of law. To quote the Legislation Advisory Committee in its submission to the Committee:

> The number of “good causes” for which government may wish to use its legislative power is unlimited, and citizens can be adversely affected by apparently “worthy” causes as well as less benign ones… The bill is an awkward precedent and the committee is troubled that the more this sort of device is resorted to, the easier it seems to do it again.

We share these concerns. Indeed we believe that this legislation is an example of the expressed sentiment in action; having created extraordinary new powers for the Canterbury earthquake legislation, it “seemed easier” to the Government to use these powers again to expedite the construction of the National War Memorial Park. Setting aside normal processes to expedite something “important” must not be allowed to become business as usual.

We are pleased with the limited concessions towards greater community involvement in decisions about this park negotiated by the select committee, and with the adoption of changes recommended by the Regulations Review Committee and the Office of the Clerk to somewhat improve the transparency and accountability of the Order in Council process. However our fundamental concern with this legislation remains. Although we wholeheartedly support the construction of a National War Memorial Park at Pukeahu, we cannot support this legislation.
Appendix

Committee process
The National War Memorial Park (Pukeahu) Empowering Bill was referred to the committee on 28 August 2012. The closing date for submissions was 6 September 2012. We received and considered 18 submissions from interested groups and individuals. We heard eight submissions.

We received advice from the Ministry for Culture and Heritage, the Ministry of Transport, and the New Zealand Transport Agency. The Regulations Review Committee reported to the committee on the powers contained in clause 24.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Jami-Lee Ross
Scott Simpson
Phil Twyford

Grant Robertson replaced Phil Twyford for this item of business.
Holly Walker replaced Denise Roche for this item of business.
Holidays (Full Recognition of Waitangi Day and ANZAC Day)
Amendment Bill

Member’s Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Bill and recommends that it not be passed. Labour and Green members did not support this recommendation, and have supplied minority views. If the House decides, however, that the bill should proceed, the committee recommends that it adopt the amendments shown.

Introduction
The Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Bill is a member’s bill in the name of Dr David Clark. The bill seeks to amend the Holidays Act 2003; it is intended to ensure that New Zealanders who work a standard five-day week receive a working day off every year for each of the public holidays listed in the Act. Some public holidays, such as Good Friday, are always ob-
served on a particular day of the week; others, such as Christmas Day and Boxing Day, are observed on a particular date, but, if that date falls on a Saturday or Sunday, the public holiday is treated for employees who do not normally work on those days as falling on the following Monday (or Tuesday as the case may be). Waitangi Day and ANZAC Day are not currently subject to such “Mondayisation”.

The bill would require that when Waitangi Day and ANZAC Day fell on a Saturday or Sunday, employees who would not usually work on the observed day would receive a public holiday on the following Monday. Employees who would normally work on the observed day would receive their public holiday on that day.

Most of us consider that the potential of the bill for negative effects outweighs its positive potential. We all agree, however, that if the bill is passed, it should be passed with the amendments discussed below.

This commentary covers the major amendments that we recommend, including consequential amendments to a wide range of other legislation. It does not discuss minor, technical, or other consequential amendments.

**Commencement**

We recommend amending clause 2 to specify 1 January 2014 as the commencement date. We consider that public access to legislation is improved by the inclusion of a specific commencement date. The first day that would be affected by this legislation is ANZAC Day in 2015; the commencement date we recommend would allow a full year for the public to prepare for the new legislation, for example by revising contracts and other legal instruments that include definitions of “working day” or “business day”.

**Transfer of Waitangi Day and ANZAC Day**

We recommend amending clause 5, which would insert new section 45A (new section 44B in the bill as introduced), by amending new subsection 45A(2), to make it clear that an employee would not be entitled to more than one public holiday for Waitangi Day or for ANZAC Day.
Consequential amendments to other legislation
We recommend inserting new clause 6 to amend the Anzac Day Act 1966, new clause 7 to amend the Waitangi Day Act 1976, and new clause 8 to give effect to new schedules 1, 2, and 3. New schedules 1 and 2 would amend various definitions of “working day”, and “business day” respectively, and new schedule 3 would specify other consequential amendments.
We note that consequential amendments to various Court Rules would also be required; by convention, such amendments are made by Order in Council after consultation with the Rules Committee.

New Zealand Labour Party minority view
This bill seeks to ensure New Zealanders receive their legislated 11 public holidays in every year, rather than only five of every seven years.
It also recognises the increasing importance of both Waitangi Day and ANZAC Day to New Zealanders’ sense of history and identity. The Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Bill is drafted to ensure no-one misses out. It brings the celebration of these days of growing significance to our history and identity into line with practice in Australia, and with the practice for other holidays in New Zealand.
Labour does not accept the view presented by a minority of submitters that Mondayising in some way diminishes Waitangi Day or ANZAC Day. We believe quite the opposite. In the case of ANZAC Day, Australian observers report a growing attendance at ANZAC Day dawn services. It makes sense. People are more likely to get up for dawn services on a Sunday morning when they know they can have a lie-in and time with the family on the Monday that follows. We expect the same will happen here.
The Council of Trade Unions, which represents more people than all of the other submitters combined, spoke in favour of the legislation.

1 Seven Court Rules would be affected: the District Court Rules; the High Court Rules; the Court of Appeal (Civil) Rules; the Court of Appeal (Criminal) Rules; the Supreme Court Rules; the Domestic Violence Rules; and the Court Martial Appeal Court Rules.
Views amongst employer groups were mixed. Groups who submitted against introducing the holidays focused on the increased cost to employers of two additional days’ holiday once every seven years. On the other hand, those who submitted on behalf of employers in the tourism sector focused on the increased profits for their sector that would result from the additional holidays. The only quantitative research done found that 87 percent of over 1,000 small or medium sized business owners surveyed are either actively in support or neutral towards the Mondayising of Waitangi Day and ANZAC Day. Submissions noted that Mondayising is what we usually do in New Zealand. The majority of public holidays in New Zealand are already observed on a Monday (for example Labour Day, Easter Monday, and Queen’s Birthday) or are Mondayised (for example Christmas and New Year holidays).

Mondayising is also normal practice in similar countries. As noted above, it is common practice in Australia. When ANZAC Day falls on a weekend, the following week day is considered a public holiday in Western Australia, Victoria, Australian Capital Territory, New South Wales, South Australia, Queensland, and Northern Territory. A similar pattern emerges for Australia’s national day, Australia Day. All Australian States and Territories recognise an additional public holiday on the following work day, with the exception of New South Wales who only proceed on that basis if Australia Day falls on a Sunday.

Information shared with the committee shows that advice provided to Government by officials has focused on counting the costs of the legislative change without considering the offsetting benefits. For this reason, Government officials note that their cost estimates are “likely to be overstated”.

As officials have pointed out, the calculations they supply for costing the proposal fail to account for a range of ameliorating factors: employment and hours worked by self-employed people (who are not subject to the Holiday’s Act) are included in calculations, while productivity gains from the benefits of having rested workers and extra benefits from increased domestic tourism are not. Also, no account has been taken of the fact that employers can make changes to the way they operate their businesses and who works on which days, further reducing costs.
Labour contends for reasons cited above that the Government’s cost estimate (which amounts to 13 cents per worker per day) is overstated. But even if that were the cost, the greater recognition for the days and the benefits accruing to workers make it worthwhile passing the legislation.

The bill looks likely to pass; the Labour Party thanks the Green Party, New Zealand First, the Māori Party, United Future, and the Mana Party who have all pledged their support.

Labour is surprised at reports that the National Party intends to oppose this bill. The increasing significance of these days to New Zealanders and the importance of time with family, friends, and wider community make a compelling argument in its favour. So too does quantitative evidence that employers favour the bill, perhaps in part because it ensures simpler and more consistent accounting provisions for holidays. Most employers are fair-minded like their employees and can see the benefits of Mondayising far outweigh the costs.

**Green Party minority view**

The Green Party supports good work-life balance for all New Zealanders and we believe this bill will enable workers and their families to enjoy the full entitlement under the Holidays Act of 11 public holidays per year every year. Under the existing Holidays Act in two out of every seven years, public holidays are reduced to nine days a year because Waitangi Day and ANZAC Day are celebrated on a specific calendar day, and when either of those days falls on a weekend, the holiday is not transferred to a weekday.

Four of the other 11 public holidays also occur on the day on which they fall (Christmas Day, Boxing Day, New Year’s Day and the day after) and when these days fall on a weekend, the law provides for transfer to a week day. This is commonly known as “Mondayisation”.

The Green Party maintains that the difference in treatment between Waitangi and ANZAC days and Christmas and Boxing days is an anomaly, and we reject the notion put by some submitters that it would “cheapen” the commemorations of either day, as we have seen no evidence that this has resulted from the Mondayisation of Christmas, for example.
We also note that Australia already transfers ANZAC Day to the following Monday when it falls on a weekend and the day’s commemorations are still held on the 25th of April. We note the New Zealand Council of Trade Union submission, which includes the observation that even with Mondayisation, ANZAC Day events in Australia are well attended.

The Green Party supports the submission from the Tourism Industry Association of New Zealand, which noted that the July 2012 Mind Your Own Business survey of mostly small businesses showed only 13 percent opposition to the Mondayisation of Waitangi and ANZAC Day, with over 50 percent supporting the concept. We agree with the Tourism Industry Association that the Mondayisation of Waitangi Day and ANZAC Day offers the opportunity to increase domestic tourism, and with their assertion that those economic benefits outweigh the small cost to employers. Employers already bear that cost when Waitangi Day and ANZAC Day occur on a weekday, and given that this will happen next in 2015 and 2016 and then not again until 2020 and 2021, they would certainly have ample time to prepare for it.

The Green Party agrees with the New Zealand Council of Trade Unions that New Zealanders work relatively long hours, and we believe that while our combined minimum annual leave and public holiday provisions are not the least generous in the OECD countries, we are lagging behind many European countries.

We support this bill and agree that if it is successful, there should be consequential amendments to other related legislation like the Anzac Day Act 1966 and the Waitangi Day Act 1976.
Appendix

Committee process
The Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Bill was referred to the committee on 25 July 2012. The closing date for submissions was 13 September 2012. We received and considered 32 submissions from interested groups and individuals. We heard eight submissions. We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Jami-Lee Ross
Scott Simpson
Phil Twyford
Dr David Clark replaced Phil Twyford for this item of business.
Supplementary Estimates of Appropriations for Vote Communications Security and Intelligence and Vote Security Intelligence for the year ending 30 June 2012

Report of the Intelligence and Security Committee

The Intelligence and Security Committee has examined the Supplementary Estimates of Appropriations for Vote Communications Security and Intelligence and Vote Security Intelligence, and recommends that these supplementary appropriations for the year ended 30 June 2012, as set out in Parliamentary Paper B.7, be accepted.

Rt Hon John Key
Chairperson