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Reports of select committees on the 2013/14 financial reviews of Crown entities, public organisations, and State enterprises (I.21C)
Introduction

This volume contains select committee reports presented to the House in 2014.

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.
Accounting Infrastructure Reform Bill

(180–1)

Interim report of the Commerce Committee

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Accounting Infrastructure Reform Bill

Recommendation

The Commerce Committee is considering the Accounting Infrastructure Reform Bill, and recommends the House take note of its interim report.

Introduction

The bill continues the changes begun by the Financial Markets Conduct Act 2013 and the Financial Reporting Act 2013. It proposes amendments to the rules on who may perform statutory audits, to the restrictions on legal form for audit firms, to the requirement for independent assurance of financial statements for certain charities, and to the rules relating to how the New Zealand Institute of Chartered Accountants structures itself.

Yesterday we received a letter from the Minister of Commerce asking the committee to consider some issues that are not in the proposed legislation. The Minister points to two main weaknesses in the existing arrangement:

- The Registrar has no guidelines to apply when considering applications for approval. This creates a risk that the Registrar may approve a substandard body or individual.

- There are no ongoing requirements or checks on approved bodies and individuals. This creates a risk that a body approved in the past may no longer be suitable to regulate its New Zealand-based members, or an individual may have dropped below the desired standard, but remains approved.

In order to fully consider these issues, we intend to seek submissions on these points. Attached is the letter we received from the Minister.
Appendix A

Committee procedure

The Accounting Infrastructure Reform Bill was referred to the Commerce Committee on 28 January 2014.

Committee members

Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Mark Mitchell
Hon Chris Tremain
Dr Jian Yang
Appendix B

Letter received from the Minister of Commerce
29 JAN 2014

Mr Jonathan Young  
Chairperson  
Commerce Committee  
Parliament Buildings  
WELLINGTON 6011

Dear Mr Jonathan Young

ACCOUNTING INFRASTRUCTURE REFORM BILL

The Accounting Infrastructure Reform Bill (AIR Bill) has now been referred to the Commerce Committee for consideration.

I would like to draw your attention to an additional issue that has been raised with me by stakeholders. It relates to the Registrar of Companies’ role in approving overseas auditors and professional accounting bodies for the purposes of non-Financial Markets Conduct statutory audits, under section 36 of the Financial Reporting Act 2013. There are two main weaknesses in the existing arrangement:

- The Registrar has no guidelines to apply when considering applications for approval. This creates a risk that the Registrar may approve a substandard body or individual.

- There are no ongoing requirements or checks on approved bodies and individuals. This creates a risk that a body approved in the past is no longer suitable to regulate its New Zealand-based members, or an individual has dropped below the desired standard, but remains approved.

I believe it is important to retain the Registrar’s role in approving overseas bodies and individuals, to ensure businesses can access specialist audit skills which may otherwise be available in New Zealand. However, I believe the process for approval can be strengthened.
I expect that submissions on the Bill from the New Zealand Institute of Chartered Accountants and Certified Practising Accountants Australia will reiterate their concerns on this issue. To ensure that all affected parties have an opportunity to comment, I would like to request that the Committee seek submissions on this issue and propose amendments to the AIR Bill which you consider will alleviate the issue. To focus respondents’ submissions, you may wish to seek views on the suggestions in the attached draft proposal. My officials will be happy to provide a list of approved bodies and individuals if you wish to contact affected parties directly.

This issue is within scope of the AIR Bill. The Bill’s purpose is to enable the accounting and audit industry to be more efficient and effective and it already amends rules on who may perform statutory audits. I believe a solution to this issue would largely involve amendments to section 36 of the Financial Reporting Act 2013 and additional provisions in that Act proposed in the AIR Bill.

Yours sincerely

Hon Craig Foss
Minister of Commerce
Suggested solutions to weaknesses in the process to approve overseas auditors and professional bodies for non-FMC statutory audits

- Add a regulation making power to set criteria for the Registrar to apply in considering applications for "approved" status. Criteria should ensure that overseas auditors meet the necessary level of competence, their work is overseen and their New Zealand clients have an avenue for complaints.
- Require the Registrar to maintain a list of approved bodies and individuals on its website.
- Allow the Registrar to place conditions on approvals of individuals, for example restricting the types of statutory audits an individual is approved to conduct.
- Create a regulation making power to enable the Registrar to charge a cost-recovery fee for applications and/or an annual fee for maintaining the list of approved auditors.
- Require approved bodies to 'recognise' members wishing to perform statutory audits in NZ – i.e. mirroring provisions in clause 30.
- Require an approved professional body to keep any recognition under review, publish a list of 'recognised' members on its website and to cancel or suspend recognition if the requirements are no longer satisfied – i.e. extend clause 31 (new sections 36C, 36G and 36J) to apply to approved associations.
- Require approved professional bodies and individuals to report regularly (we suggest biennially) to the Registrar in a prescribed form, demonstrating how they continue to comply with the approval criteria.
- Require a body or an individual to inform the Registrar if it discovered it was no longer compliant between reports – i.e. mirror clause 31 (new section 36E).
- Require the Registrar to suspend or cancel approval if the criteria are no longer met – i.e. mirror clause 31 (new section 36G).
- Allow professional bodies and individuals a right of appeal to the District Court if approval is denied, suspended or cancelled – i.e. mirror clause 31 (new section 36K).
- In the case of a professional body, suspension or cancellation would have the consequent effect of cancelling or suspending any recognition of auditors granted by the body, unless the Registrar explicitly authorises the auditor to continue to act – i.e. extend clause 31 (new section 36H and 36I) to approved associations.
- Extend the offence in clause 32 (new section 39B) to apply to people holding out that they are recognised by an approved professional body or are approved by the Registrar, if they are not.
- As transitional measures:
  - require approved individuals to reapply for approval, as many may no longer be practising.
  - grandfather existing approved bodies, but require their first report within a year.
Credit Contracts and Financial Services Law Reform Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Credit Contracts and Financial Services Law Reform Bill and recommends that it be passed with the amendments shown.

Introduction
The bill is an omnibus one that seeks to amend the Credit Contracts and Consumer Finance Act 2003 (CCCFA), the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPA), the Private Security Personnel and Private Investigators Act 2010 (PSPPIA), and the Personal Property Securities Act 1999. The bill also proposes to repeal the Credit (Repossession) Act 1997, and incorporate its provisions into an expanded Credit Contracts and Consumer Finance Act. The principal amendments proposed in this bill would

• establish the protection of consumers as the primary purpose of the CCCFA
• require lenders to adhere to responsible lending provisions
Credit Contracts and Financial Services
Law Reform Bill

- establish a Responsible Lending Code to provide guidance and elaborate on lenders’ responsibilities
- increase the disclosure requirements for consumer credit contracts
- make clearer the tests for unreasonable credit fees and default fees
- require all repossession agents to be licensed under the PSP-PIA
- clarify the guidelines for the Courts to reopen “oppressive” credit contracts under the CCCFA
- introduce an infringement regime for minor offences, and significantly increase the penalties for major offences.

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

Commencement
We recommend amending clause 2 to stagger the commencement of the bill’s provisions. The commencement dates for clauses that do not come into force on the day after the legislation receives the Royal Assent will be appointed by Order in Council by the Governor-General; all provisions will be required to come into force within 12 months of the date of Royal Assent. We believe staggered commencement is needed to allow time for the development of the Responsible Lending Code, and for the necessary changes to be implemented in the credit industry.

Interpretation
We recommend amending the definition of “standard terms” in clause 6 to refer to “standard form contract terms that are intended to be contained in a class of agreements”. We consider that this amendment reflects more closely the intent of the bill regarding the standing disclosure requirements.

We recommend amending the definition of credit fees to include fees payable to third parties associated with the creditor, making them subject to the unreasonable fees provisions.
Meaning of consumer credit contract

Clause 11 of the bill proposes amendment to section 11 of the CC-CFA to define a consumer credit contract as one involving credit that is to be used, or intended to be used, “wholly or predominantly” for personal, domestic, or household purposes. We recommend amending this section to make it clear that it is the debtor’s intention for the use of the credit which determines whether they have entered into a consumer credit contract.

Fair Trading Act

We recommend an amendment to add new section 34B(5) to the Fair Trading Act 1986 (Schedule 3). Currently, the Act does not define “layby sales” as a consumer credit contract; this amendment would allow layby sales to be classified as a consumer credit contract if interest charges or credit fees are payable.

Lender responsibilities

A number of provisions in this bill would require lenders to act with care, diligence, and skill when advertising consumer credit, when entering into a consumer credit contract, and in subsequent dealings with the borrower; these are the “lender responsibility principles”. Our recommendations relating to the principles are set out below.

Scope and significance

We recommend inserting new section 9AA (clause 9) to the CC-CFA, an outline provision explaining the relevance of the lender responsibility principles, and when they apply. The bill introduces the concept of responsible lending to New Zealand credit legislation for the first time, and we believe this amendment would be helpful for lenders and consumers. We recommend removing “lessor” from the definition of lender, as the bill does not seek to apply the lender responsibilities to consumer leases.

We recommend amending new section 9B(2)(a) to make it clear that the lender responsibility principles would apply to agreements as they are defined in new section 9A. We have five principal recommendations relating to new section 9B(3). We suggest inserting the word “including” before “by ensuring” in several of the paragraphs
to prevent the misapprehension that responsible lending is limited to
the assistance referred to in those paragraphs.
We recommend amending new section 9B(3)(b) to require lenders
to help borrowers to be “reasonably aware” of the full implications
of entering into a credit contract. We consider that the addition of
the word “reasonably” provides more legal certainty for enforcement
purposes, and strikes an important balance between the reasonable
obligations of lenders and the protection of consumers. We also rec-
ommend requiring lenders to express in “plain language” the terms
of agreements and any subsequent variations to agreements, to help
borrowers and guarantors to reach informed decisions.
We recommend amending new section 9B(3)(e) to expand on “prob-
lems”, defining them as situations where a credit contract has been
breached, or may be breached. We also recommend requiring lenders
to treat borrowers “in an ethical manner” instead of “with respect”.
We believe this wording is stronger, more certain, and consistent with
other legislation.

Guarantees
We recommend the addition of new section 9B(3A) to provide detail
on how the lender responsibility principles would apply to guarantees
and the treatment of guarantors, and supplementing this amendment
by inserting a definition of “relevant guarantee” in new section 9A.
We consider it necessary to make it clear that the principles would
cover guarantors. Guarantors incur risk when giving guarantees of
obligations under credit contracts and therefore require similar pro-
tections regarding entering into transactions, disclosure, and oppres-
sion.

Credit-related insurance
We recommend removing “insurer” from the definition of “lender” in
section 9A (clause 9). We consider that insurers perform a function
distinct from those of lenders and should not be subject to the lender
responsibility principles. However, we are aware that credit-related
insurance products often contribute to problem debt, and consider
they should be addressed in the legislation.
We recommend inserting a definition of “relevant insurance contract”
in section 9A. If the lender arranges credit-related insurance, we con-
sider they should be subject to relevant lender responsibility principles, and recommend adding new section 9B(3B) accordingly.

**Proceedings for breach of legal obligations under other Acts**

We recommend the insertion of new section 9BA to prevent potential double jeopardy, or duplicate concurrent proceedings, if proceedings are taken against a creditor under another Act.

**Responsible Lending Code**

The bill introduces the Responsible Lending Code (clause 9), an instrument setting out detailed guidance for lenders on complying with the (legally binding) responsible lending principles. We have a number of recommendations about the Code, as discussed below.

**Status and content**

We recommend amending new section 9C to clarify the Code’s status as non-binding. We recommend amendments to section 9D to ensure the content of the Code accurately reflects the intent of the responsible lending principles set out in section 9B. We particularly draw attention to section 9D(1)(b)(iii), which refers to lenders giving assistance to borrowers and guarantors for whom English is a second language. We believe this amendment would mitigate the risk of borrowers entering contracts for credit they do not understand and may be unable to afford.

**Preparation of the Code**

We recommend the addition of transitional provisions (new clause 1A of Schedule 1AA) in Schedule 1 of the bill to allow the Minister to prepare the Responsible Lending Code before the principles come into force. We consider this amendment necessary, as the Code sets out detailed guidance to lenders on how to comply with the responsibility provisions; therefore it would be beneficial for the Code to be prepared in advance so as to be ready to come into force at the same time as the lender responsibility principles.
Disallowable instruments

The Regulations Review Committee reported to us on the regulation-making powers contained in clause 9 (see proposed section 9F). We have recommended amendments to this section which would make the Responsible Lending Code a disallowable instrument under the Legislation Act 2012, thus requiring that it be presented to the House of Representatives. As per the amendments we recommend to this bill, the Code would have to be prepared by the Minister, and its legal status would be non-binding. However, compliance with the Code would be evidence of compliance with the responsible lending principles; therefore it is significant enough to justify being subject to parliamentary oversight.

Disclosure

The disclosure provisions in the bill are crucial to increasing consumer protection. However, we believe a number of amendments are needed to make the disclosure requirements wholly effective, and our recommendations are set out below.

Initial disclosure

We recommend amending clause 13 to make it clear that all initial disclosure, including disclosure of the terms of the contract, must occur before a credit contract is entered into. We recommend an amendment to clause 68 to also require the disclosure at this point of a creditor’s trading name and registration number under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Publication of standard form contract terms and costs of borrowing

This bill adds “standing disclosure” to the existing disclosure requirements in the CCCFA. Standing disclosure is intended to inform the wider market about a lender’s standard form contract terms and the costs of borrowing.

We recommend amending sections 9H and 9I (clause 9) to require lenders to provide a copy of standard form contract terms and information about costs of borrowing, free of charge and on request. Lenders could also supply this information electronically with consent from the consumer.
We also recommend that lenders be required to display this information prominently on any website they have, and, if operating from business premises, display a notice which clearly states that this information is available on request. This amendment would prevent any misapprehension that all the terms of all credit contracts would have to be displayed on a lender’s premises.

**Extended meaning of business premises**

We recommend inserting new section 9IA (clause 9) to extend the meaning of business premises. We understand that some lenders operate from a non-fixed location such as a stand, stall or vehicle (such as a truck shop), and we wish to ensure the new standing disclosure provisions apply to them equally.

**Content of continuing disclosure statement**

We recommend inserting new clause 13A, to provide for regulations to prescribe a minimum repayment warning on credit card statements. The warning would detail to the debtor the consequences of paying only the minimum monthly payment on credit card debt, such as higher interest costs over time. The CCCFA already provides for continuing disclosure of revolving credit products, and we consider this amendment is crucial to facilitating financial literacy among borrowers.

**Mandatory disclosure forms**

We recommend amending clause 22 to add new section 32(1A), to make it clear that using prescribed mandatory forms for disclosure would meet the disclosure standards under the CCCFA. We also recommend inserting new clause 22A to make the use of model disclosure statements clear and to distinguish them from prescribed mandatory disclosure forms. Both mandatory forms and model disclosure statements are to be set out in regulations.

**Disclosure of transfer of a creditor’s rights under a consumer credit contract**

We recommend that clause 19 be amended to provide for regulations to be made to exclude securitisation and covered bond arrangements
from the new transfer disclosure requirements. This is because in these cases the initial lender usually remains the first point of contact for the debtor, even though the creditor’s rights under the credit contract are held by another party.

**Pawnbroking contracts**

We recommend the insertion of new clause 12A to exempt pawnbroking contracts from Part 2 of the CCCFA, because disclosure is already provided for in the Secondhand Dealers and Pawnbroking Act 2004. Pawnbrokers would remain subject to the responsible lending provisions.

**Effect of cancellation**

We recommend an amendment to clause 21 regarding the cancellation of a contract during the “cooling-off” period. We wish to set out clearly the calculation that creditors undertake to determine the amount owed by each party; debtors and guarantors should not be liable for any interest, fees, or other charges specified in the contract except as provided for in new section 30.

**Fees and charges**

We are aware that unreasonable fees and excessively high interest rates and charges can contribute to high and sometimes spiralling household debt levels. The bill as introduced includes a number of significant amendments to constrain the charging of unreasonably high fees and default interest; our amendments to these provisions are discussed below.

**Default interest charges**

Clause 23 as introduced would prevent creditors charging default interest on an amount greater than the amount of the default. At present, if a debtor defaults on a payment, lenders may be able to specify an amount as being payable earlier than would be the case if there had not been a default (under an acceleration clause). We recommend amending clause 23 to disallow default interest charges on an earlier payable amount, and consider that this would reduce the likelihood
of debt levels increasing at a rate that might be unmanageable for borrowers.

We recommend exempting on-demand credit facilities, such as an overdraft on a cheque account, from this clause as the nature of such facilities allows creditors to demand full repayment at any time (new clause 23(2)).

Prepayment fees

We recommend amending clause 25 to state explicitly that a fee for repaying a loan before term is unreasonable if the amount charged exceeds a reasonable estimate of the loss of the creditor from the prepayment of the loan. Prepayment fees (as defined in the clause) would apply exclusively to fixed-rate consumer credit, where full or part payment of the loan before the due date results in a loss for the creditor.

We also recommend an amendment to this clause to separate administration costs from the prepayment fee and specify them separately. (Whether such an administration fee is unreasonable is to be determined under new section 44.) We believe these amendments would restrict prepayment fees and provide greater certainty for the Courts in determining whether or not they are reasonable.

Other credit fees and default fees

We recommend an amendment that replaces sections 44 and 44A (of clause 26) to establish reasonable standards of commercial practice as a consideration for the Courts when determining whether credit fees or default fees reasonably compensate creditors for costs or losses. Our proposed amendment would restore some of the wording in the CCCFA; for example, it refers to “reasonably compensating” the creditor, where the bill as introduced referred to a “reasonable estimate of the creditor’s reasonable average costs”. We consider that the amended wording would provide more certainty for creditors. However, we consider that the reasonable standard consideration should be subordinate to the principle that credit fees and default fees should only reasonably compensate the creditor.

Our amendment confirms and makes it clear that reasonable standards of commercial practice are not intended as a separate basis for calculating credit or default fees, but only to inform the main test
(which concerns costs and losses). We also recommend the addition of new section 44B “Compliance with the Code is evidence that the fees are not unreasonable”, which would allow further guidance on credit and default fees to be incorporated into the Code.

**Fees and charges passed on by creditor**

We are aware that many lenders sell credit-related insurance products to borrowers, upon which they can charge a reasonable commission. We recommend amending clause 27 to prohibit this charge if the borrower is required by the creditor to buy insurance from a particular insurer, or particular insurers, or the insurance is to be financed by the credit contract with that lender. Without seeking to limit the charging of reasonable commissions by lenders, we consider that they should not be able to gain financially from a transaction in which the borrower cannot exercise choice.

**Recovery of payments**

We recommend inserting new clause 27A to require lenders to refund, or credit against any outstanding balance, any payments received from a debtor to which the lenders were not entitled. This would prevent a creditor (for example a truck shop operator) from giving debtors a “credit” which must be used to acquire goods or services from the creditor.

**Unforeseen hardship**

Under the CCCFA borrowers can apply to their creditor to change their loan term, or reduce or postpone payments on the grounds of unforeseen hardship. We recommend amending section 55(1A) (clause 31) to clarify what the debtor must specify in their written application. We recommend amending section 55(1B) to make it clear that a debtor who has made an application cannot make another application in relation to the same credit contract within 4 months of the date of the previous application, unless the reasons are materially different. Our amendment is intended to mitigate the risk of multiple applications being lodged by a debtor for the purposes of stalling enforcement action by the creditor.
Obligation of creditor and treatment of notices
We recommend amending clause 33, which sets out the obligations of lenders in their treatment of unforeseen hardship applications. We are recommending drafting improvements to make it clear that a creditor may not commence or undertake any enforcement action whilst such an application is being considered. We also recommend requiring creditors to notify borrowers of their receipt of the application, any request for additional information required to consider the application, and their decision by written notice; we recommend inserting clause 34A which sets out in detail how these notices may be given to the debtor.

Repossession
The bill as introduced proposes a number of significant provisions relating to repossession, which would have the effect of introducing a regulator and offences for repossession agents, and would require the licensing of repossession agents under the PSPPIA. We have suggested a number of amendments to the repossession provisions which are set out below.

References to credit contracts include security agreements
We recommend the addition of new section 83AB (clause 43) to make it clear that agreements in which security interests are taken in connection with a credit contract were to be treated as part of that credit contract. This amendment would ensure that if a separate security agreement existed the repossession provisions would still apply. We recommend inserting new section 83BA to make it clear that this Part of the Act does not itself create the right to repossess consumer goods.

Prohibitions relating to security interests
We recommend moving clause 8 to clause 43 (inserting section 83ZGA) and clarifying its intent. New section 83ZGA would prohibit security interests being taken over certain essential consumer goods including bedding, medical equipment, identification documents, and cooking equipment. We consider this to be a crucial consumer protection. We note here that items of cultural significance
and children’s toys were not included as they can be difficult to define, and we do not wish to impede consumers’ access to credit.

Rules that apply before repossession
We recommend amending new section 83C (clause 43) to require creditors to comply with the responsible lending principles that relate to repossession. We recommend moving section 83B(2) to section 83CA and clarifying its intent. New section 83CA would require all consumer goods given for a security interest to be specifically identified by item (rather than by kind) in the credit contract. This is a significant change from the current legislation, which allows all present and future acquired goods to be repossessed. Our amendment would prohibit repossession of more items than the security interest specifically identifies.

We recommend extending the repossession warning notice expiry date in subsection 83D(4) from 28 to 60 days; we consider that this would allow enough time for creditors and borrowers to attempt a resolution and for repossession agents to locate missing goods. We recommend amending section 83E, which would allow debtors to voluntarily deliver goods to creditors, to apply to all consumer credit contracts, not just credit sales (as might be inferred from the reference to “returning” goods).

We recommend three main amendments to section 83G. They would require complaints to be in writing; clarify the meaning of an enforcement action; and make it clear that if a complaint about enforcement action had been made, and no agreement reached, the complaint would be taken as resolved unless the debtor referred it to a dispute resolution scheme within 14 days of notice being given by the creditor. We also recommend the addition of new section 83GA to prevent subsequent complaints being lodged by a debtor for the purposes of stalling enforcement.

We recommend adding new section 83HI to ensure that obligations on lenders using disabling devices are enforceable.

Rules that apply at time of repossession
We recommend the addition of new section 83JA (clause 43) to set out clearly the obligations regarding repossession if the borrower is not home at the time of the repossession. Our amendment requires
that the premises not be left obviously open and that a written notice be left for the borrower. We are aware that securing the property would not be possible if entry had been forced; however the appearance of a closed property would lower the risk of theft. We recommend amending section 83M to prohibit repossession on Sundays and public holidays. Section 83N requires creditors to be registered under the FSPA in order to exercise repossession rights. We recommend amendments to make it clear that any persons carrying out repossession would be required to be licensed (or otherwise certified) under the PSPPIA, regardless of the registration status of the creditor.

**Rules that apply after repossession takes place and notices**

Section 83T (clause 43) sets out requirements for lenders when selling repossessed goods; we recommend an amendment requiring them to obtain the best price reasonably obtainable at the time of sale (for consistency with wording in the Property Law Act 2007). We recommend clearly defining the amount a debtor would be liable to pay when reinstating a credit contract for repossessed goods under section 83V. New subclause 83V(3) makes it clear that calculation of creditor’s costs would be subject to the rules governing the unreasonable fees provisions. We recommend allowing creditors to serve notices (except the repossession warning notice and post-repossession notice) electronically if a borrower has provided an email address for this purpose.

**Enforcement and remedies**

It became apparent to us that there is a lack of awareness among consumers that remedies for breaches of the CCCFA can be sought through the Courts, disputes tribunals, and dispute resolution schemes; we recommend amendments to clauses 44, 45, and the insertion of new clause 45A to clarify the jurisdiction of each. We recommend removing the reference to the Responsible Lending Code in clause 49(2) to prevent civil remedies being sought regarding a non-binding instrument.

We recommend increasing the cap on statutory damages in sections 89(1)(c) and (d), and 89(2) to $6000, to provide a more effective deterrent (clause 47). We recommend increasing the limits on penalties for offences, as set out in section 103 of the CCCFA, to $200,000 for
an individual and $600,000 for a company (clause 58). This amendment would align the penalties with those set out in the Fair Trading Act 1986. We recommend the addition of new section 108(1A) (clause 60), which would provide a definitive test for when the Court should disregard convictions and other misconduct when considering making a banning order. This test is similar to a test in the Sentencing Act 2002. We also recommend that the offence of obstruction of repossession be removed from the bill.

**Infringement offences**

We consider that many minor breaches of the CCCFA are difficult to enforce, as they require remedies to be sought through the Courts, which can be costly and time-consuming. We therefore recommend the introduction of an infringement notice regime (new sections 102A (clause 58), 105A to 105F (new clause 59A)), under which infringement notices could be issued by the Commerce Commission. We have restricted infringement offences to breaches involving a minor misconduct and straightforward issues of fact. More serious offending should lead to a conviction under section 103 (clause 58). Accordingly, we consider that infringement notices would most appropriately be used in response to minor breaches of the disclosure provisions, such as failure to comply with a request for a copy of a creditor’s standard form contract terms.

**Oppression**

The CCCFA contains provisions for Courts to “reopen” credit contracts where they are found to be oppressive; these provisions relate to all credit contracts. Reopening a credit contract enables the Courts to readjust payments and order the transfer of property between the parties. We recommend amending clause 63 which sets out the matters the Courts must consider when deciding whether to reopen a contract. New paragraph (da) of section 124 would add whether a credit contract is a consumer credit contract as a consideration. Although this section applies to all credit contracts, consumers are more vulnerable than businesses and require greater protection. The amendments to paragraph (g) replace the reference to “comparable arrangements” offered by other creditors with one to “the same or substantially sim-
ilar” arrangements. We consider this wording provides greater legal certainty. We recommend amending paragraph (j) to align it with the wording in the lender responsibility principles relating to whether agreements are expressed in a clear, concise, and intelligible manner. We recommend amending paragraph (n) to refer to creditors acting “lawfully” rather than “reasonably”.

Financial Service Providers (Registration and Dispute Resolution) Act 2008

The FSPA requires financial service providers (this includes persons providing credit under a credit contract) to be registered. One of the requirements for registration is for providers to become members of an approved dispute resolution scheme. We recommend amending section 5 (new clause 74A) to require persons who are creditors under a credit contract (rather than just those who only provide credit) to be registered. This would ensure that consumers had access to dispute resolution where debts had been on-sold, for example to a debt collection agency.

We recommend inserting new sections 15AA and 18AA (clauses 80 and 84) to clarify the extent of the Financial Market Authority’s powers. This amendment would allow, for example, the authority to prevent overseas financial service providers registering in New Zealand solely to bolster their reputation; we consider this would strengthen New Zealand’s financial regulation regime. We recommend allowing the FMA to act on its own discretion when considering deregistration of a financial service provider; this has resulted in a proposed amendment to section 18A (clause 84). Our recommended amendment to section 34 in clause 87 would allow the Registrar of Financial Service Providers to share information with the Commerce Commission, for, among other purposes, enforcement.

We recommend amending subclause 98(4) to allow requirements for approved dispute resolution scheme rules to be introduced through regulations. New subclause 98(8) is intended to ensure that approved dispute resolution schemes can impose compensation for non-financial matters in relation to repossession complaints. We also recommend that clause 100 be amended to require dispute resolution schemes to communicate with the Commerce Commission if they
receive a series of complaints about a single creditor or a class of creditors.

**Regulations**

Clause 65 of the bill details the regulation-making powers contained in the legislation. The Regulations Review Committee reported to us on the exemption powers contained in new section 138(1)(ab). We have recommended the insertion of new section 138(1AA) which sets out clearly the circumstances in which the exemption power could be exercised. This amendment would ensure that an exemption from the Act’s provisions would be granted only in appropriate circumstances. In line with advice received from the Regulations Review Committee, we recommend inserting a requirement for the Minister’s reasons relating to an exemption in regulations made under new section 138(1)(ab) to be published with the regulations.

**Application of amendments to existing agreements**

We recommend Schedule 1 be amended to clarify that the bill does not apply to existing agreements except in the certain specified circumstances, including the following:

- disclosure, where a request, variation to an agreement, transfer of a creditor’s rights, or the issue of a continuing disclosure statement occurred on or after the commencement date of the relevant provisions
- hardship applications made on or after the commencement date of the relevant sections
- lender responsibility principles where a variation to a contract occurred on or after the commencement of clause 9.

These transitional provisions mean that overlapping regimes will be operating for some time, particularly in the credit fees and repossession areas. However, we point out that repossession is mostly used under short-term credit contracts only, and best practice guidelines enjoin caution before imposing new legal requirements on existing contracts.
Other matters
We gave careful consideration to a number of other matters that did not result in amendments to the bill. Our comments on two of these matters follow.

Interest-rate caps
We are aware that interest-rate caps have recently been implemented in Australia and that similar legislation has been introduced in the United Kingdom. Caps offer a form of consumer protection by setting an upper limit on the amount of interest which can be charged on consumer credit. Whilst restricting interest rates may offer consumers protection from one form of high-cost credit (short-term, high-interest-rate compounding loans) we consider that it may also have unintended consequences. They include restricting access to credit for consumers, and also that the interest-rate which is the upper limit coming to be viewed as a target or “reasonable”. We consider that the provisions included in the bill (and our amendments), especially as they relate to disclosure, unreasonable fees, and responsible lending, would reduce the risk of lenders offering unaffordable credit.

Introducing the Department of Internal Affairs as a regulator of repossession agents
The bill as introduced requires all repossession agents and repossession employees to be licensed, or hold a certificate of approval, under the PSPPIA. This would have the effect of making the Department of Internal Affairs the regulator of the licensing requirements for repossession agents. We understand that this change might cause concern, as private security personnel and private investigators are perceived as having functions distinct from repossession agents. Repossession agents and other occupations included under the Act undertake operations regarding property (including entry to houses) which might put peoples’ property or safety at risk—for example, security alarm consultants are included in the Act. In addition, we understand that some firms which carry out private investigations and security services also carry out repossession services. We therefore consider using the existing licensing regime is appropriate, and point out that
regulators would, if required, have the backup of the Police during enforcement.

**Labour and Green Party minority view**

Labour and Green members welcome this legislation as the long awaited outcome of the review of the CCCFA which was commenced in 2008. This legislation provides greater protection for consumers and we support the significant majority of the provisions in the bill. We continued to be concerned about the delays in providing greater regulation and protection in the consumer credit market. Many vulnerable consumers have been trapped in cycles of debt and despair as a consequence of these delays.

**Other credit and default fees**

We are disappointed that the provisions in the bill as introduced to clarify the tests for unreasonable credit fees and default fees have been amended in a way that risks a continuing lack of clarity in this area and reduced consumer protection. We believe this is an area that should be reviewed by the Ministry of Business, Innovation and Employment after a couple of years of operation.

**Interest-rate caps**

The biggest gap in the bill is the failure to include interest-rate caps for third-tier lenders. Interest-rate caps have been introduced in an increasing number of jurisdictions including Canada, the United States, Australia, South Africa, many European countries and Japan. The United Kingdom announced as recently as December 2013 that they would be introducing interest-rate caps on pay-day loans. Interest-rate caps are a necessary element of provisions to protect consumers from predatory and unscrupulous lenders who charge excessive interest rates. Labour and Green members note that it is not uncommon in communities that annual percentage interest rates of over 50 percent, 100 percent, or even higher are standard practice for third-tier lenders. This bill fails to directly address this issue. The stated reasons for not including interest-rate caps do not seem to have been problematic in other jurisdictions. While other elements of the bill will provide greater protection to consumers, the omission of an in-
Interest-rate cap will allow excessive interest rates to continue to be offered to some of our most vulnerable consumers.

**Enforcement**

To ensure the protections provided in the Credit Contracts and Financial Services Law Reform Bill actually improve the conduct of the consumer credit market will require adequate resources provided to inform lenders and borrowers of the changes and to the Commerce Commission to enforce the legislation.
Appendix

Committee process
The Credit Contracts and Financial Services Law Reform Bill was referred to the committee on 17 September 2013. The closing date for submissions was 1 November 2013. We received and considered 70 submissions from interested groups and individuals. We heard 44 submissions, which included holding hearings in Auckland and Wellington.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in clause 9 and clause 65.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Mark Mitchell
Hon Chris Tremain
Dr Jian Yang
Carol Beaumont and Alfred Ngaro participated in this item of business.
Accounting Infrastructure Reform Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Accounting Infrastructure Reform Bill and recommends that it be passed with the amendments shown.

Introduction
The bill is an omnibus one that seeks to amend the Auditor Regulation Act 2011, the Charities Act 2005, the Financial Reporting Act 2013, and the New Zealand Institute of Chartered Accountants Act 1996. The main purpose of the bill is to allow the accounting and audit industry to be more efficient and effective. The principal amendments proposed in this bill would

- amend the rules as to who may perform statutory audits
- replace references to “chartered accountant” in legislation with “qualified statutory accountant” or “qualified auditor”
- allow audit firms to incorporate
- introduce a requirement for the independent assurance of the financial statements of large and medium-sized charities
• allow the New Zealand Institute of Chartered Accountants (NZICA) to enter into an arrangement with its Australian counterpart to form, in effect, a trans-Tasman institute.

Our commentary discusses the main amendments we recommend to the bill. It does not cover minor or technical amendments. We received a submission from the NZICA which made a number of recommendations which we believe we have adequately addressed.

Professional accounting bodies and audit companies
Changes proposed in the bill would allow audit companies to perform statutory audits. Whilst we support these changes, we recommend an amendment to clause 5 (new section 9(2C) of the Auditor Regulation Act) to make it clear that accredited bodies can investigate and discipline their members who are operating within audit companies. We recommend an amendment to clause 6 (new section 10(3)) to ensure that provisions of the Auditor Regulation Act related to cancellation or suspension of licences could apply where a director or a partner of an audit firm was held responsible for a Financial Markets Conduct audit.

Definition of “qualified auditor” and “qualified statutory accountant”
The bill as introduced includes a requirement for qualified auditors and statutory accountants to be members of an accredited body. We consider that auditors carrying out statutory audits need to be regulated to protect consumers. Accredited bodies provide a means of self-regulation, and already have established processes for assessing, monitoring, and disciplining members. We recognise, however, that requiring membership in legislation might raise issues relating to the right to freedom of association under the New Zealand Bill of Rights Act 1990.

We recommend an amendment to clause 31 (to insert new section 36M) to exempt from membership of an accredited body an auditor who the body is satisfied is a practising member of a religious society or order “whose doctrines or beliefs preclude membership of any organisation or body other than the religious society or order”. Our amendment would allow such people to be qualified auditors if they had an agreement with an accredited body to comply with its code
of ethics and its rules regarding regulatory matters, and they met the body’s requirements for recognition. We understand a comparable provision is included in the Employment Relations Act 2000. New section 36O sets out the requirements for such arrangements.

We also recommend extending the definition of qualified statutory accountant in a similar way (clause 27 and new section 36N in clause 31). This would provide for members of these religious societies or orders to be subject to substantially similar professional requirements as the members of an accredited body. In all cases the body would retain powers to cancel or suspend recognition if the agreement was not adhered to (as set out in new section 36G(1A) of clause 31). We note that the new provisions in sections 36M to 36O of the bill are enabling only; accredited bodies would not be required to enter into these types of arrangements. We considered this matter in detail, to the point of seeking further advice from officials with respect to any precedent and comparative legislation.

Approval of overseas auditors
The Financial Reporting Act includes provisions for the Registrar of Companies to approve overseas individuals to act as qualified auditors in New Zealand, and to approve associations of accountants, whose members would then be able to act as qualified auditors. We received a letter from the Minister of Commerce after the referral of the bill, suggesting amendment to remedy two weaknesses in these provisions. They are a lack of guidelines for approval, and of any ongoing requirements or monitoring of overseas auditors. Our recommended amendments to these provisions are set out below.

Qualifications of auditor
We recommend amending clause 30 to require that overseas associations recognise individual members as being eligible to perform non-Financial Markets Conduct statutory audits, before they perform them. The association would be required to notify a member of such recognition, maintain a record of recognised members on its website, and keep recognition under review (as set out in clause 31, new sections 36IA, 36J, and 36C). The bill includes similar requirements regarding members of accredited bodies.
Competency requirements and conditions
We recommend amending clause 31 (insertion of new section 36AA) to require the Registrar to take into account prescribed matters and be satisfied the applicant meets prescribed requirements and minimum standards when approving overseas associations or individuals. We believe that establishing detailed criteria in regulations is necessary to ensure that overseas auditors meet a prescribed level of competence and have their work monitored, and to give their New Zealand clients access to redress if necessary. These matters, requirements, and minimum standards to be taken into account would be prescribed in regulations made by the Governor-General by Order in Council. All approvals must be notified by written notice, as required by new section 36IA.

New section 36AA also allows fees for approval applications, and for the submission of ongoing reports (under new section 36AB), to be prescribed by regulations. We consider that fees are appropriate, as the Registrar would have to undertake significant additional work relating to approvals.

We recognise that overseas associations and individuals may pose a higher risk than their local counterparts. We therefore recommend inserting new section 36AA(4) and (5) in clause 31, to allow the Registrar discretion to impose conditions on an approval, by written notice.

Appeals relating to recognition or approval matters
New section 36K in clause 31 provides for appeal to the District Court against decisions of accredited bodies or approved associations to decline, cancel, or suspend recognition. We recommend extending this provision to include declined, cancelled, or suspended approvals. Decisions under sections 36M to 36O (of clause 31) would not be eligible for appeal, as accredited bodies would not be under a duty to enter into arrangements under those provisions.

Regular reporting
We recommend inserting new section 36AB (clause 31) to require approved associations and individuals to report to the Registrar in order to maintain their approval. Reporting requirements would be set out in regulations prescribed by the Governor-General by Order in Council. We consider this necessary to make sure overseas-qual-
ified auditors were continuing to meet standards. Any associations or individuals who fail to meet this requirement would have their approval suspended. We also recommend inserting new subsections 36AB(2) and (3), so that associations and individuals would be required to notify the Registrar if they were aware they no longer fulfilled the requirements.

Cancellation of approval
We recommend amending clause 31 to insert new section 36G(1B). This provision would allow the Registrar to suspend, or cancel, an approval if approved associations or individuals requested the cancellation, no longer met the prescribed requirements or minimum standards, or failed to comply with a condition. Once approval had been cancelled, re-approval could not be sought within the time specified in a written notice, as set out in new section 36G(5).

We recommend amending new section 36H(2) (clause 31) to make it clear that if the approval of an association were cancelled or suspended, any recognition by that association is also cancelled or suspended. This is consistent with the provisions for the cancellation or suspension of an accredited body.

Register of approved persons
We recommend an amendment to clause 31 (insertion of new section 36JA) to require the Registrar to publish the name, and town or city of the principal place of business, and any conditions of approval, of all the approved individuals and associations on a public register. The purpose of the register would be to allow people to check whether a person was approved, and to learn of any important conditions relating to the approval. Provisions relating to the search of the register are set out in new section 36JB.

Offences
We recommend amending the offences in new section 36L (clause 31) and new section 39B (clause 32) to include making false declarations to gain approval, and falsely claiming to be an approved association or individual.
Transitional provisions
We understand that a number of approved overseas associations and individuals may need transitional provisions should this bill be passed. We recommend amending Schedule 1 to allow existing approvals to continue for one year after the provisions come into force (unless the approval is cancelled sooner). The association or individual would be required to seek re-approval under the new requirements within this period.

Other amendments
We recommend a number of other amendments to the bill.

Declaration of non-activity
We recommend amending the bill by inserting new clause 32A, which would require entities that would otherwise be “large” to declare to the Registrar if they had been inactive (in the relevant accounting period) in order to be exempt from being considered “large”. This parallels a provision of the Financial Reporting Act 1993.

Transitional provisions for changes to the Charities Act
The bill proposes a number of changes to the Charities Act relating to audit and financial assurance. We recommend an amendment (resulting in new Schedule 1AA) to make it clear that the new provisions would apply only to accounting periods that commenced on or after the date the provisions come into force.

Electoral Act audits
We recommend amending Schedule 2 to allow recognised bodies corporate to perform audits of a political party’s election expenses under the Electoral Act 1993.
Appendix

Committee process
The Accounting Infrastructure Reform Bill was referred to the committee on 28 January 2014. We presented an interim report to the House on 30 January 2014. The closing date for submissions was 3 March 2014. We received and considered 16 submissions from interested groups and individuals. We heard five submissions.
We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in clause 2.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Mark Mitchell
Hon Chris Tremain
Dr Jian Yang
Report from the Controller and Auditor-General, Discussion Paper: Learning from public entities’ use of social media

Report of the Commerce Committee

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Report from the Controller and Auditor-General, Discussion Paper: Learning from public entities’ use of social media

Recommendation

The Commerce Committee has considered the report from the Controller and Auditor-General Discussion Paper: Learning from public entities’ use of social media, and recommends that the House take note of its report.

Introduction

Over 64 percent of the population uses social media; the Controller and Auditor-General’s paper considers the different ways that organisations use social media to engage with the public. It draws information from eight case studies, of seven public entities and one non-governmental organisation, which included surveys of chief executives and senior managers. The project sought to determine what benefits were gained from their use of social media and compare them with expected benefits.

The paper did not attempt to evaluate each organisation’s use of social media or analyse the associated expenses; the aim was to uncover how social media was being used and establish any benefits.

Main findings

We found the discussion paper interesting and valuable. It distilled eight “success factors” from the experiences of the case study organisations.

- Leadership: this included openness to opportunities provided by social media and encouraging innovation.
- Strategy: the use of social media should be targeted and deliberate to achieve specific purposes.
- Implementation: investment of staff time is often more important than capital.
- Risk management: risks must be managed but this should not be a barrier to engagement.
- Integration: social media should become part of regular operations.
- Adaptability: organisations should learn from experience and adjust accordingly.
- Measurement: organisations should form an idea of “success” and then monitor how the results of their use of social media compares with it.
- Communication: organisations should consider how the use of social media may change the way they communicate with the public.
Comment

We noted that particular organisations aim to engage various demographics, which is often related to the purpose of the website or page. We were glad to hear that the risk associated with communicating via social media is being managed well, with many organisations restricting who can access accounts.

We have no further matters to report to the House.
Appendix

Committee procedure
We met on 17 April and 22 May 2014 to consider the report from the Controller and Auditor-General Discussion Paper: Learning from public entities’ use of social media. We heard evidence from the Office of the Auditor-General.

Committee members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Mark Mitchell
Hon Chris Tremain
Dr Jian Yang
2012/13 financial review of the Commerce Commission

Interim report of the Commerce Committee

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Recommendation

The Commerce Committee recommends that the House take note of its interim report on the financial review of the 2012/13 performance and current operations of the Commerce Commission.

As part of the Commerce Committee’s ongoing financial review of the Commerce Commission, we received a letter from Progressive Enterprises Limited through their solicitors Russell McVeagh. We wish to bring this to the attention of the House, and have appended the letter to our report. We have also appended the corrected transcript of our 20 March 2014 hearing of evidence with the Commerce Commission.
Appendix A

Approach to this financial review

We met on 8 April 2014 to consider this matter relating to the financial review of the Commerce Commission.

Committee members

Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Mark Mitchell
Hon Chris Tremain
Dr Jian Yang
Appendix B

Letter received from Russell McVeagh on behalf of Progressive Enterprises Limited

RUSSELL McVEAGH

28 March 2014

Mr Edward Siebert
Clerk
Commerce Committee
Parliament Buildings
WELLINGTON 6160

Dear Sir

REQUEST FOR ACCESS TO INFORMATION UNDER STANDING ORDER 232

1. We act for Progressive Enterprises Limited ("PEL"). We write in relation to the Commerce Committee's inquiry into the issue of alleged market misconduct by PEL’s supermarket business, Countdown, and the subsequent investigation of those allegations by the Commerce Commission.

2. In light of the Committee's inquiry, PEL requests under Standing Order 232 that the Commerce Committee as soon as is practicable provide it with a copy of all material, evidence and any other information that the Committee currently possesses about PEL, relating to those allegations and the Commission’s investigation.

3. PEL takes very seriously any issues of market misconduct. It is concerned to ensure it properly investigates all and any such allegations.

4. In order to do this effectively, PEL requires complete records of the concerns that have been raised and the comments that have been made.

5. The Commerce Committee last week received submissions relating to the Commerce Commission's current investigation. There has been media reporting of the comments made, which, although not a full record, demonstrates a real risk that PEL's reputation may seriously be damaged.

6. In accordance with Standing Order 232 and the principles of natural justice, PEL requests all materials relating to the abovementioned issue, in order to assess the extent of that potential damage, and to decide on any response it might need to make.

7. In PEL’s view, immediate access to all materials the Committee possesses is necessary to prevent and limit ongoing serious reputational damage.
8. We look forward to the Committee’s response. Please do not hesitate to contact the writers should the Committee have any questions.

Yours faithfully,
RUSSELL McVEAGH

Tim Clarke | Sarah Keene
Partner | Partner

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Appendix C

Corrected transcript of hearing of evidence 20 March 2014

Members
Jonathan Young (Chair)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Ruth Dyson
John Hayes
Melissa Lee
Mark Mitchell
David Shearer
Poto Williams

Witnesses
Dr Mark Berry, Chairman
Dr Stephen Gale, Telecommunications Commissioner
Brent Alderton, Chief Executive
Kate Morrison, General Manager, Competition

Young Dr Berry, welcome. Dr Gale and Mr Alderton—good to have you here at the Commerce Committee. We have an hour with you. Apologies for being a little bit late; we've had a pretty busy meeting this morning. If you could address us for up to 7 minutes, around about then, and then we will come to questions. Thank you, sir.

Berry Thank you very much. I'm the chairman of the Commerce Commission. Mark Berry is my name. With me are Dr Stephen Gale, Telecommunications Commissioner, and our chief executive, Brent Alderton. Look, I'll start off and keep to those time limits.

During the last year, 2012-13, the commission obtained $39 million in penalties and $63 million in compensation for affected consumers. That has been a very good year, we think—if you measure our success in those terms. Over and above those kinds of awards, we have actually had significant achievements in other ways in terms of preventing further harm. For example, one of our Fair Trading Act cases relating to a company, Love Springs, resulted in people in vulnerable areas being misled. Expensive filtered water systems were being sold in the poorer areas to people who were told “this causes cancer” and other mischievous allegations. So we’ve shut down those kind of practices for that.

I'll touch very briefly—as you will know from those figures, we have had significant litigation outcomes in the last year. I'll mention, quickly, three. The first was in the merits review relating to input methodologies. These are the rules and processes relating to regulated entities such as the electricity

58
lines businesses, gas pipelines, and these are matters like asset valuation and the cost of capital or rate of return. So after 3 years of litigation, our rulings were endorsed by the High Court in virtually all respects. Out of 58 legal challenges, there were only two minor findings where the court made adjustments. That is a truly significant outcome, because what this decision means is that it protects the interests of consumers, because it effectively prevents the transfer of around $2 billion from consumers to regulated businesses.

The second case I’ll mention briefly is air cargo. I’ve talked about that other years. This has been a long-running cartel case relating to air cargo. We settled with the last of the 11 defendants—Air New Zealand—in the course of the last calendar year. The total penalty for those cases, involving 11 airlines, was $43 million in penalties as well as $3 million in costs.

The last litigation matter I’ll mention very briefly is Credit SAIILS. Again, I mentioned this last year. We achieved a very favourable settlement with Forsyth Barr and Crédit Agricole to return to harmed consumers what they had lost with an investment product that was represented to be low to moderate risk. I am pleased to report that of the $60 million that we achieved in the settlement fund, all of that money has now been returned to investors, but for $17,000—we couldn’t find one person after extensive attempts.

Young

Sorry, how much was that amount? Sixty million?

Berry

Sixty million—six zero. So we have returned that to everybody except for one person for $17,000. Very quickly—two current cases that I’ll just mention briefly in passing. Late last year we announced that we would be issuing legal proceedings against three banks, ANZ, ASB, and Westpac, regarding the sales of interest-rate swaps to rural customers. Work continues on this area, and we expect to file proceedings by the end of the month. I should add we have been asked to keep the Primary Production Committee informed on this, and we will be writing to them in the near future.

Also last month, as you’ll know, we launched an investigation into allegations made against Countdown of anti-competitive behaviour. While the investigation has significant public interest, we will not make any further comment until the investigation is concluded, which is our standard investigation practice. While I am on the topic of the Countdown investigation, I would like to record that I am not actually on the panel dealing with this issue. I have a potential conflict arising from a previous case I acted in some years ago when I was in private practice. However, Mr Alderton is involved with the investigation, so he is in a position to answer any questions that you may have.

I will touch very quickly on the construction industry. That’s another significant area of activity. Last year we had a number of competition and consumer investigations in that sector. Most significantly, we had a cartel case involving the supply of timber for commercial construction in Auckland. The case involved price fixing between PlaceMakers and Carter
Holt Harvey. We have taken proceedings against Carter Holt Harvey. Fletcher Building was actually the leniency applicant in that case. Yesterday the High Court held a penalty hearing into that case that you would have seen reported in the media this morning, and the decision in that case is reserved.

While on construction I’ll also mention that we have heard stories about anti-competitive behaviour concerning tying or bundling of materials by a larger merchant in Christchurch. I’ve been in close contact with Roger Sutton, the chief executive of CERA, about concerns that both Roger and I have heard regarding Fletcher Building’s position on the Christchurch market. I have offered to go to Christchurch to meet with participants in the building industry who have concerns, and that offer still stands. Roger Sutton advises me that despite his attempts to find persons wishing to report a complaint and to discuss it with me, he has yet to find anybody who is prepared to do that.

Cosgrove Excuse me—could I just ask why you went to CERA? Because the agency that has jurisdiction over that is EQC, not CERA. It’s nothing to do with CERA. It’s EQC.

Berry Look, they’re conversations Roger and I have had—he mentioned to me he had been hearing these concerns, and I said, look, can you tell me about them so we can do something. That simply is how it happened.

Cosgrove Can I invite you—you may want to check with EQC, because EQC are the agency—

Berry That’s right. We have had conversations with them as well.

Dyson Why would anyone complain to them?

Berry Sorry, complain to…?

Dyson CERA.

Berry Look, I mean, Roger is talking to a lot of people in Christchurch. He wouldn’t have been looking for that. We didn’t stop there. We actually sent staff down to Christchurch, and we’ve spoken to five residential building companies, Master Builders, and a significant procurer of construction services, and the outcome of those conversations is that none of those builders actually said they had those problems. There were other viable suppliers, namely Carters and ITM. So we had taken steps to follow up what we were hearing, and the evidence we gathered didn’t support those allegations. So, as I say, our door is open and I am more than happy to go down—

Cosgrove Did you provide anybody with anonymity?

Berry Yes. Those people we spoke to, we treat them as confidential complainants so that they were at liberty to talk freely to us.

Cosgrove So you’d entertain people coming forward as individuals or whatever to offer evidence and you’d accord them anonymity?
Berry  As a matter of standard practice when we have a complainant coming to us, we have a position of confidentiality for that.

I’ll deal very quickly with our work in the fair trading and credit contracts arena. The commission was part of a combined agency investigation into pro forma invoicing. This was Operation Edit led by the Serious Fraud Office—we worked with them. Six suspects were arrested and charged under the Crimes Act. In the course of this year we have also, for the first time, prosecuted under the Crimes Act—again, in the pro forma invoicing sector. That trader was sentenced to 10 months home detention for false billing practices.

In terms of lower-tier lenders, we’ve made 81 lender visits to all persons we could identify, in areas such as South Auckland, Porirua, and so on. Following those 81 visits, we issued four warnings and 29 compliance advice letters. So that represented the level of offending that was potentially there, and we were able to talk to these people and have steps taken to see what remedial matters could be taken.

Young  Thank you. Have you got anything further to say, sir? Because we can come to questions right now.

Berry  OK, just very briefly—that covers our competition and consumer arena. In terms of our regulatory arena, I was just going to point out that we have made significant progress in getting the Part 4 regime in place. In dairy, we did the first statutory review of Fonterra’s milk price.

Just one last matter I’ll raise is that we have completed the three reports on Auckland, Wellington, and Christchurch airports on the effectiveness of information disclosure requirements. Again, that is well publicised. We found that Auckland’s pricing was essentially in line with our approach to regulation—Wellington and Christchurch, there were issues, and we’re pleased to see that Wellington is looking to re-consult on price and Christchurch is looking to redo its methodologies on a forward-looking basis.

Young  Thank you very much, Dr Berry. Firstly, just before we come to Mr Cosgrove, congratulations on some of the achievements that you have fought for and won this last year and certainly the benefit going to consumers, so our congratulations as a committee for that.

Cosgrove  Mr Berry, look, I preface these questions—I bear in mind what you’ve said about the grocery issue. You may or may not be able to answer these questions, and I accept that upfront. I’m going to ask you some process questions, which I would have thought your team could answer. I’m going to ask you some specific ones, but the answers are yours. Can you confirm that you have now received a number of complaints and/or evidence of retrospective payments, including complaints that include bullying and intimidation, in respect of the grocery issue?
Alderton  We have certainly received a number of complaints.
Cosgrove  Would that number be in excess of 30?
Alderton  No.
Cosgrove  OK. Can you confirm that after a complaint of a $2 million retrospective payment was made to the commission that that complaint, once it reached your desk—and I’m not accusing you guys of anything—effectively vanished because Progressive Enterprises went to the supplier and basically said it was a big mistake, they didn’t want $2 million, and it just vanished off the face of the earth? Could you confirm that?
Alderton  No, I can’t confirm that.
Cosgrove  You can’t. OK. Thank you. Can you confirm—that you be using section 98 of the Act, and will be invoking that to compel anybody, members of the industry, to provide evidence to you?
Alderton  Section 98 is certainly an option to have that open to us, yes.
Cosgrove  Is it your intention, if parties refuse to cooperate with you, that you will invoke that provision?
Alderton  We could do that, yes.
Cosgrove  You could do that. Have any parties or any individuals refused to assist you in your inquiries?
Alderton  Not that I’m aware of.
Cosgrove  Will your inquiries—do they go simply to the Progressive Enterprises/Countdown company, or is this inquiry going to look at retrospective payments and the allegations made across the grocery industry?
Alderton  It’s in relation to Progressive Enterprises/Countdown.
Cosgrove  Can I ask you why you haven’t thought to widen that to the industry? It’s a very small industry.
Alderton  Certainly. The allegations that were made were in relation to Countdown and Progressive Enterprises. We will be talking to a number of parties across the industry though as part of that investigation. If we found information that warranted widening that, then we would make that decision at that time.
Cosgrove  So can I ask you for your rationale as to yes, there have been a series of complaints in respect of Progressive, but we only have two or three players in this industry, why you wouldn’t proactively widen your investigation to look at the whole industry, given that there are similarities?
Alderton  We haven’t received—the allegations were in relation to Progressive Enterprises and Countdown, and we’re following the normal sort of process we would in an investigation of this type.
Cosgrove  So would it be fair to say you have received no complaints—the only complaints you have received are surrounding the activities of Progressive Enterprises/Countdown, not other players in the industry?

Alderton  By far the majority of the complaints that we have received, because we have asked for complaints about Progressive Enterprises and Countdown, are in relation to those companies.

Cosgrove  The vast majority. So is it fair to make the assumption that you have received complaints about other industry players?

Alderton  There are general industry complaints that have been received, yes.

Cosgrove  OK. So my question is gently if you have received—because you’ve said you act on complaints, so you have a series of complaints about Progressive Enterprises. You’re now saying you have a series of complaints that go industry wide. So my question is why would you not prudently widen your investigation to the entire industry? You now have complaints about everybody, it seems.

Alderton  No—just to be clear, I didn’t say that we have a series of complaints that go wider than the industry.

Cosgrove  No, no—wider than Progressive Enterprises/Countdown.

Alderton  Wider than Progressive Enterprises or Countdown.

Cosgrove  OK. So my question is gently if you have received—because you’ve said you act on complaints, so you have a series of complaints about Progressive Enterprises. You’re now saying you have a series of complaints that go industry wide. So my question is why would you not prudently widen your investigation to the entire industry? You now have complaints about everybody, it seems.

Alderton  That is correct.

Cosgrove  So those complaints would be about other players in the industry?

Alderton  The complaints we’ve had are primarily about Countdown and Progressive Enterprises. Without going into the specifics of what’s said around those, we have to make a call as to whether it is appropriate to open an investigation or widen an investigation. It’s our assessment at the moment, based on the information we have and looking at what those complaints mean against the Act, that it is not appropriate at this time to widen the investigation.

Cosgrove  And that’s based on the number—

Alderton  It’s based on our enforcement criteria.

Cosgrove  Well, OK, I’m just trying to understand, because you’ve had a serious complaint from my colleague Mr Jones. You’re now saying you have other complaints, presumably providing evidence reinforcing the original complainant, Mr Jones, about Progressive Enterprises and Countdown. And then you have a series of other complaints about other players in the industry. What’s the threshold? One complaint, three complaints, two complaints? Because I would have thought, efficiency-wise, given it is a
small industry, you would look at the lot, especially if you’ve had complaints about others?

Alderton That’s a decision we have to take all the time on these sorts of things. If there are matters that are simply isolated or don’t meet some of the other thresholds that we use in our enforcement criteria, then we don’t broaden the investigation or start an investigation, in fact.

Cosgrove Could I ask you—and, again, I might step over the bounds, you tell me. You’ve received complaints, presumably, about alleged retrospective payments?

Alderton I don’t think it’s appropriate that I answer that.

Cosgrove Can I ask you, for the record, have you received complaints about other matters, including bullying and intimidation?

Alderton I’m not prepared to answer that.

Cosgrove Thank you. Can I ask you—and this may be a technical question. Can you tell me, because there’s been some conjecture about this, what is the difference between a retrospective payment and forward payments based on retrospective data? Because I’m advised by the chief protagonist in this that this is the argument that is being made. But putting that aside, could you tell me what the difference of that would? Because it seems to me it is money for nothing either way.

Alderton That would involve me speculating. Simply, what we do is make an assessment of the behaviour against the Act.

Cosgrove OK. And just for the record, when I asked you about the $2 million retrospective payment complaint that disappeared, are you—forgive me, I think you said you couldn’t comment or you couldn’t confirm it. Can you confirm that there was a complaint of that order of magnitude?

Alderton No, I can’t confirm that.

Cosgrove So you’re not—you just simply can’t comment on it?

Alderton That’s correct.

Cosgrove And have you had, in terms of complaints, complaints from individuals as well as companies?

Alderton We’ve had complaints from a wide range of people. Clearly, when they phone they might be speaking on behalf of a company or they may be putting their own position. But most of the suppliers to supermarkets are companies.

Cosgrove Sure. And could you tell me what actions—and I presume this is a process question—are you undertaking to proactively go out and seek evidence and complainants?

Alderton We will be approaching suppliers to the supermarket, including those who haven’t complained to us.

Cosgrove Finally, are you in a position to give us an idea of the process and the timeline on this investigation?
**Alderton**  Sure. So at the moment we’re basically in the information-gathering stage. That will involve both looking at documentary evidence and interviews. Until we’ve done that, it’s very difficult to be specific about how long this will take. But my expectation is that it could take several months to complete this investigation.

**Cosgrove**  And for the record, anybody seeking to provide you with information would be guaranteed anonymity?

**Alderton**  That is correct. Unless we’re required by the law to release that information, we will guarantee anonymity, yes.

**Cosgrove**  Is Progressive Enterprises/Countdown cooperating with you in all aspects of this inquiry?

**Alderton**  Yes.

**Young**  The Commerce Commission deals with, as we’ve just heard, complaints across the spectrum of all sorts of activities that happen here in New Zealand particularly. As this committee has been progressing the Credit Contracts and Financial Services Law Reform Bill, which is focusing particularly on loan sharks, my question to you is: what sort of presence do you have in those communities that are affected by issues around loan sharks?

**Berry**  As I have mentioned, we did 81 visits to lower tier lenders, and so we have endeavoured to talk to people affected in and around that part of the community. We have actually just appointed a dedicated credit advocacy adviser and that person has extensive grassroots community experience with budgeting and financial services, and so look, you know, we appreciate that we can do more in that zone and that’s our first step, to get somebody with very, very extensive experience of that kind, working more closely within those communities. We do a lot, and we can do more, and that is our goal.

**Young**  So what sorts of activities would that person be doing in those communities, in terms of working with the people?

**Berry**  Look, I mean, she has a wide network of contacts through budget advisory services and all those kinds of organisations, and so this is somebody who’s been in the sector for a long time and has a lot of grassroots connections that she will be able to work on. I can get our General Manager, Competition, to give you further elaboration on the person in question and how we see her functioning in the foreseeable future. Kate Morrison is our General Manager of Competition.

**Young**  Great. Thank you.

**Morrison**  Good morning. Just to elaborate on Dr Berry’s description of the new role. It’s designed specifically to enable us to better connect with the communities that we need to, in order to better administer and enforce the law. To date we’ve used agencies such as family advisory services, Family Budgeting Services, and worked actively with them. We’ve got two active investigations that have been referred to us from those types of groups. We
do work directly with groups of providers or lenders, including, as referenced, the lower tier lender visits. We work with truck shops in the communities. We’re doing direct work, but the role is envisaged over time to make us better connected with what’s happening on the ground, what harm is being done, better understand the lending practices in a fast way, in a more intelligent way, and better address them, either through our own mandate or through other agencies and with other agencies.

Young That’s good. OK, in terms of the Consumer Law Reform Bill that’s soon to be enacted, what sort of work are you doing around that in the communities, in terms of education around the provisions that are in that bill?

Berry Again, I will get Kate to speak to that, but we have had a very active programme putting together fact sheets so that as each of the new consumer law tranches of the provisions comes into effect, we have advice to the market place as to our interpretation and approach to that, but I can just get Kate to give you a feel for the fact sheets we’ve done and what’s in the pipeline.

Morrison So the lead up to the consumer law reform for us has been one of heavy investment primarily in providing educative materials across the board. That’s to business stakeholders and community groups, for example. We’ve published a series of fact sheets about the first set of laws that have been implemented and we’re proposing to do the same in the next 3 to 4 months for those that will be implemented. The way that we promulgate those and make sure that the people who need to know about it do know about it is—obviously there are multiple points. We’re working through things like chambers of commerce. We’re working through places like community groups. We use our website as a portal and we’ve had, for at least the last 7 or 8 months, the ability to sign up. If you’re active in this area and you want to know about what the changes are and what the commission thinks the rules mean, and how we’re going to consider their enforcement, then you can sign up and become a recipient of information as we put it out.

Bakshi That’s good to know—what you’re doing right now. But for a lot of vulnerable consumers, English is not the first language for them. It is a second language. What are you doing to help them to understand those laws and what rights they have?

Morrison We’re very aware of that issue. Last year, during Money Week, which I think was September last year, we worked with the financial literacy commissioner and provided our materials directly to a number of a groups who might provide their materials to their communities in a different way. So, some Māori groups took our materials, and whilst they didn’t translate them into Te Reo, they did translate them in a way that they thought was more usable directly for their community. We think that’s a really great way of getting our message out. We intend to build on that. We do also have plans to translate some of our fact sheets. Last year we also did a smaller version of something called “Know your rights” around the credit law, and made that available again through citizens advice bureaus, and would hope
that other active groups would work with their communities to make that more accessible.

Following on from the new role that we’ve created, the credit advocacy role, that is specifically to help not just the information we need from the community to help us enforce the law, but to help make sure that our messages are accessible to the communities that need them most.

Morrison  It can do.

Mitchell Just quickly on that. If it is translated, do you guys check the translation to make sure that nothing has been changed in the translation, which can happen sometimes?

Morrison Unintentionally.

Mitchell As I say, for us that’s work—we haven’t done the direct translations yet. The experience that we had last year with the financial literacy community was learning for us, and it wasn’t translation but it was saying actually sometimes the way you guys talk isn’t the way our communities talk. Can we take this message? We looked at that, but I wouldn’t call it a right of authorship. I’d say that we wanted to enable those groups to talk directly to their community members, so they could better understand what the law was for.

Mitchell Just very quickly on your portal and your website, are you monitoring how many visits you sort of are getting to that? I mean, I’m interested to know whether people are actually going to the site and having a look.

Morrison I don’t have that information but I know we do monitor that kind of information, so it would be part of our performance matrix. There’s no point having these sites if we don’t know that they’re being used. Certainly my anecdotal feedback is that businesses particularly are signing up and receiving that information.

Mitchell Excellent. Thank you.

Lee Just a very quick supplementary question on the issue with ethnic communities—how much of a presence does the Commerce Commission have in their community, in terms of do they actually know about your existence, because often, as my colleague said, they speak in a different language and they may not know about your existence or the kind of work that you do, and the rights of their own people, because they have been often ripped off by their own community? So how much presence do you have, is one question. The other is, in terms of the complaints that you receive, there will be a vast array of complaints from different people having different issues, whether it’s actually price fixing or loan sharks, or whatever, how much complaint are you receiving from the ethnic communities, and does it actually say something about their understanding of the role that you play and the issues that they face?

Morrison When we investigate particular matters or potential breaches of the law, we obviously end up working in specific communities, and I would concur with your reflections around harms in those communities sometimes. As I’ve
already said, that credit advocacy role is specifically designed to help us get better in this sphere, but we are, by no means, blind to it. In terms of the complaints, my own experience is that a lot of those complainants would come through other more grassroots groups, and so our work has been in making sure that we’ve got really great connectivity with places like citizens advice bureaus or in particular family and budget advisory services, because I think that you might be right on one level, that we need to have several ways to hear about and learn about harm under the laws we enforce, and that’s what we’re working on.

Lee
The reason I say that is because they are a certain percentage of the population, and if you’re not having a certain percentage of the population complaining from that sector, they’re not actually being represented. They’re actually possibly not getting the right information to deal with the issue. So it might be work that you might have to focus on.

Berry
We do recognise the issue, and that’s what generated the creation of this new position. We’ve got high hopes of really starting to work harder in that territory.

Shearer
Could I just go back to Progressive Enterprises one more time—

Cosgrove
Might be two more times.

Shearer
Two more times—could you just elaborate a little about how you’re going about this examination? Are you getting calls from people? Are you going out and meeting people?

Chair
Well, he’s answered that question before, but anyway.

Shearer
Pardon?

Chair
He asked the question and he answered it, but repeat it, if you like.

Alderton
Yes. So, we received complaints on this—

Chair
Wasting time.

Cosgrove
It’s a serious issue, and it’s his time, not yours. Sorry.

Alderton
We are receiving complaints, assessing those, working with Progressive Enterprises to get information from them, and we will be approaching others, for example, other suppliers who haven’t complained to us.

Shearer
So people are coming to you actively, in terms of emails or phone calls or coming to see you in person?

Alderton
That’s correct.

Shearer
And so you will then—say if there’s one fish supplier that has complained, you will be going out and meeting other fish suppliers or whatever and checking with them whether the same issues have been facing them as well?

Alderton
Potentially, yes. That’s correct.

Shearer
Have you started doing that yet, or is it…?

Alderton
The investigation is at a very early stage. It is simply following the sort of process that we would normally follow in one of these investigations, and,
as we get more information, that can lead to the position where we have to explore other avenues. So it’s certainly as we would normally do.

Shearer
And the way that it normally happens—because I’m not familiar with how you normally do things—you would go back to Progressive Enterprises with a bundle of complaints, or you’d go back to them with individual ones, or how does it sort of work in terms of the to-ing and fro-ing?

Alderton
Sorry, could you just clarify the question?

Shearer
Well, you get a complaint from a supplier; do you go back to Progressive Enterprises and say—how—

Alderton
Absolutely. We may well seek more information from Progressive Enterprises in relation to something that a particular supplier says to us, yes.

Shearer
And so that would be an ongoing—that wouldn’t be just one meeting and another meeting in 2 or 3—

Alderton
Yes, that is correct.

Cosgrove
And you have the power to obtain documents?

Alderton
Yes, we do.

Cosgrove
And compel witnesses?

Alderton
Yes, we do.

Cosgrove
Are you looking at any activity of Progressive Enterprises, Countdown, or other players outside the New Zealand jurisdiction?

Alderton
No.

Cosgrove
Are you precluded in any way from looking at behaviour of companies acting in New Zealand in other jurisdictions to, for instance, see if they’re at it over there, as they may well be here?

Alderton
We can only act within the jurisdiction that we have under the Commerce Act in New Zealand, so—

Cosgrove
But that doesn’t stop you, within New Zealand, observing or gathering evidence that might come across the Ditch, presumably. So, as long as it’s within the 12-mile limit, you can look at it?

Berry
Yeah. Look, we do work closely with other agencies. So if we just talk generically on that issue, the ACCC is the organisation with jurisdiction in Australia to look at on matters, and we do engage in regular information sharing.

Cosgrove
So are you, in respect of this case?

Berry
Because you’ve asked about supermarkets, I’d have to go back to Brent, sorry.

Alderton
We talk with the ACCC. We talk with the ACCC all of the time. It’s a normal part of our business. We are not sharing evidence in this case at this time.
Cosgrove  Are you talking with them in terms of—normally, you would talk to a kindred organisation and say “Look, are you guys having the same difficulties there?” especially given the ACCC has embarked on inquiries anyway. That would be a logical thing to do, the same way the police might ring up their counterparts in Aussie and say “Is Joe up to no good over there as well?” to try and get, perhaps, a pattern of behaviour. Are you going to be interacting with the ACCC over this inquiry?

Alderton  I’d be speculating. It would depend on what information we needed and what information we had.

Shearer  Dr Berry, you mentioned a conflict of interest. Can I ask what that conflict of interest might be?

Berry  I was in practice as a barrister before I joined the commission, and I acted for a number of suppliers 8 years ago in relation to similar kind of fact situations—not identical, but similar. I don’t think technically I’ve got a strict conflict, but out of an abundance of caution, given the profile of this, I have decided to step aside. Having said that, there is a panel of commissioners and staff overseeing it, and these kind of issues do happen from time to time where individual commissioners have conflict, so it’s as simple as that.

Cosgrove  I would have thought if you’d acted for suppliers, you might be called as an expert witness, perhaps.

Shearer  Can I ask your opinion on this, then!

Berry  It’s so long ago I actually struggle to remember what it was about, to be honest.

Cosgrove  No, I thank you for declaring that. You might want to offer your services for a large fee to Judith Collins.

Chair  Right, ha ha. Yeah. Now, can I come to just a question around the telecommunications sector. I note that you plan to review your use of the Herfindahl-Hirschman Index, which actually measures competitiveness. Why are you doing that?

Gale  Shall I answer that, Chair?

Chair  Yeah. Thank you.

Gale  For a while there in our regular monitoring of the mobile market, we’ve reported on this concentration measure, but in respect of the nationwide market shares. So for those not familiar, the HHI index is a measure that you make out of market shares. In this case we’ve been reporting it on the basis of subscriber numbers in the companies, and the way we’ve done it up to now is then what’s been published under the decision we’ve made about monitoring that market, we’ve published that on the base of nation market shares.

It’s been clear to us for a while that as a measure of concentration, it’s not fully reliable, because, for example, Vodafone has a very strong market share in Auckland and Telecom has a much stronger market share in other
parts of the country. So averaging across different regions of the country gives you a slightly misleading view as to the level of concentration. So when we break it up, we’ll find higher levels of concentration measured by that. And we’re going to do that by customer group and by region.

Chair OK. So what measure are you going to start using instead of that?

Gale Well, we use the same measure, but we just break up the market into regions and then to customer classes.

Chair Right. Yeah. OK, because it’s most able—and when it works in regions.

Gale Yeah. And the other thread to that is that we’ve revealed recently, but we’ll now more regularly report, that concentration measure by revenue as well as by—because you’ll be aware that the market shares by subscriber, some things have a share of the lower revenue customers than others.

Chair Right. OK. Thanks very much indeed for that answer.

Cosgrove Can I again return just briefly to our favourite subject. Would you have any objection, Dr Berry—would the commission have any objection to appearing before this committee once you’ve reported in your normal process in public to take this committee through your report findings once they are concluded and reported back?

Alderton This is in relation to Progressive Enterprises?

Cosgrove Indeed.

Alderton I’d be very happy to.

Chair Well, that would be a committee decision.

Cosgrove I know. I’m just being polite and asking; I have no other objective. Are you likely to—I know this is putting the cart before the horse, but you’ll be aware of remedies that exist in other jurisdictions, Australia and the UK, in terms of a grocery code of practice. Is it likely that you—if there is a finding that there’s a difficulty, would you be looking at those jurisdictions and others for remedies?

Alderton The code of practice is really a policy issue, from our perspective, and—

Cosgrove Indeed. But you’ll be recommending, if there is an issue, presumably, remedies?

Alderton It’s something that we could comment on, but we need to go through the investigation process.

Cosgrove But in your normal process, once you’ve conducted a recommendation, is it your normal practice to recommend remedies that a Government, legislatively or otherwise, could put in place?

Alderton It’s not common in relation to our investigations.

Cosgrove So, what, you’d just simply issue a finding of—

Alderton That’s correct.
—if you like, guilt or innocence, as it were. And how detailed is that finding normally?

Very detailed in some cases. So, for example, if you have a look at the Credit SaILLS investigation close-out report, which is on our website, you’ll see that there is quite some detail there.

And in terms of your findings, you will obviously look at legal breaches. Would you look at, if you will, non-legal breaches? So, for instance, intimidation is a legal issue, but behaviour that might fall within the law but is grossly unethical—bullying, intimidation, other things? Would you normally make comment on that sort of behaviour?

Basically, what we do is—the investigation report is an assessment of the facts against the Acts that we enforce. So it would be framed around that.

So comments about strict legal breaches only?

Correct.

In terms of jurisdiction, are you likely—in the same question as the ACCC—are you likely to seek advice from the office of the adjudicator of the grocery code of practice either in the UK or their equivalent in Australia? Are you likely to interact with the ACCC or your equivalent in the UK as well, given they’ve had significant issues?

We would certainly, in the ordinary course of events, interact with those sorts of agencies.

And so you may well, in respect of this inquiry?

We may well do.

OK. Do you feel you have enough resource to deal with this inquiry?

Yes, we do.

So there’s no other special requirements you’d need from the Crown?

No.

Can you give us an idea of what sort of resource you’re putting into this in terms of FTEs or…?

We have seven investigators actively on the matter at the moment, with—

Seven? How many investigators do you have, roughly?

Investigators? About 180-odd staff in total. About half of those work in the regulatory area. We’ve probably got—Kate, could you—

Approximately 50.

About 50?

Between 40 and 50 people.

So you’ve got seven on it full-time.
Alderton Correct, and then—no, not full-time. There’s seven actively on the case, and then there’s economics and legal resource around that. So it would be more or less that.

Cosgrove Have you liaised with the police or the Serious Fraud Squad, or if you haven’t are you likely to in respect of these inquiries?

Alderton I don’t think it’s appropriate that I answer that.

Mitchell I was just wondering if you could really just quickly run through the process from the time the complaint arrives with you, and the other thing that I was going to ask is, you know—obviously you’re able to offer confidentiality, which I think is really important, especially talking about the investigation that my colleagues are discussing, but, and I’m not telling you to suck eggs here, all I’m just interested in myself is, for example, if you had to go back and you had a line of questioning to a customer about a supplier but the line item may actually inadvertently identify the actual supplier that’s come to you with information, do you have sort of systems around that so that you could—

Alderton We deal with these sorts of issues all of the time and we would not compromise the information or the identity of the complainant in any way through the process. So we would be very careful about it. We are very careful about it. We do have systems and processes that allow us to deal with that and that is what we do.

Cosgrove Sorry, just for the record, for those who will be following this, you can give a guarantee to parties who may wish to come forward and provide information that their anonymity will be secured?

Alderton That’s correct.

Cosgrove Thank you.

Mitchell Sorry, just coming back to the original question, can you just quickly take us through your process when you do actually receive a complaint.

Alderton So we—you mean in this specific example?

Mitchell Well, actually, no, just in your—it doesn’t even need to be this specific case.

Alderton So we receive a complaint, often into our contact centre, which is where we receive between 9,000 and 15,000 complaints a year. Those are then assessed by a group of managers and investigators in the competition branch as to whether there is likely to be a breach of the Act and an assessment against the other enforcement criteria that we have. If it basically looks like there is an issue here that requires investigation, we open an investigation and then we would seek information and make an assessment of that information against the Act that we are looking at it under.

Mitchell And depending on how complicated the case is, they can vary from what sort of a time frame, in terms of dealing with it?

Alderton There are some matters that are able to be dealt with in a day through to those that take several years, depending on the complexity of the matter,
whether we need to bring in external economics or legal resource, but often, or sometimes, you can resolve an issue with a simple phone call, and we can do that as well.

Cosgrove  Have you or will you be putting parties under oath when you are—sorry, in the ordinary course of business for an inquiry such as this, would you put parties under oath when they provide evidence to you?

Berry  If we conduct a so-called 98(c) hearing where we compel somebody to come before us and to give evidence, that would be on oath.

Cosgrove  So if somebody were to come voluntarily and make serious allegations and the inquiry proceeding, if information is voluntarily provided, you wouldn’t put them under oath?

Berry  If it was voluntarily provided, we would potentially end up getting them to do an affidavit or a statement, or to present some kind of sworn statement to us, but we typically only would involve a section 98(c) hearing and have people under oath where they weren’t prepared to come forward and to discuss matters with us voluntarily.

Cosgrove  And is it the norm that you would put the accused—if you like—party, under oath?

Berry  In most cases parties under investigation do cooperate and do fully provide answers to us, and in most cases we will put out section 98 notices requesting documents. So we do ensure that documents are produced against that kind of discipline.

Cosgrove  I suppose my question really goes to: the party can provide information and cooperate, or the party may—say, voluntarily—have a different order of magnitude if they know they’re under oath, even though they’re providing that information voluntarily and cooperate. So do you distinguish between those two issues?

Berry  I think when a person under investigation gets a letter from us demanding all the documents under our 98 notices, you know, we have confidence that they will come forward and honour that. They do run a risk if they don’t properly comply and if there are subsequently proceedings, you know, there are discovery and other techniques and methods that do provide a check in terms of the documentary evidence. I think it’s fair to say that there is proper disclosure. I mean, the risks are so high for parties who don’t properly comply that we will discover the documents. Information gathering just really hasn’t been a problem in the bulk of our work.

Cosgrove  Do you give parties the option?

Berry  No. If we want the information, we demand it. Look, sometimes our information request might be too demanding and too wide, and we will typically then agree: OK, well, look, we might trim it back—instead of all of this over the 3 years, give it to us over the last year. And we might get information in tranches. We need to work cooperatively and make a reasonable request. But we will start out usually with fairly broad information requests and we do have wide powers. There’s a lot of cases
where we can access the telephone records and bank accounts. We always
do those under section 98 notices. So that the banks and telephone
companies aren’t breaching confidence, they do provide that evidence
under command.

Cosgrove And this might sound strange, but if a party requested to be put under oath,
would you agree to that?

Berry Oh, if they wanted to, yeah, I don’t think we strike that, but—

Shearer Can I just supp. off that? I me an, you mentioned bank accounts and
telephone details etc. Can you just give me an indication—in your inquiries,
is that normally the case and would you anticipate, for example in this case,
that that might be needed?

Berry It depends on the fact of the case. When we were looking at these pro
forma invoicing scams, it was very helpful to get the bank accounts just to
see who they’d been sending false invoices to and where the money was
coming into. There was another case recently of a dating agency that was
running a fairly bogus scheme of events, and we executed search
warrants—

Cosgrove Anybody we know?

Berry I can’t say I know the identity of any of the customers, but we were able to
get exactly what money was going into the bank account and where it was
going. So when we started the investigation, having that kind of data at the
beginning was pivotal to how we then framed and shaped the investigation.

Shearer Did you anticipate in this particular case that that might be necessary, to
look at bank accounts and phone records?

Alderton It’d be purely speculating at this time. I don’t think—

Chair Yeah. Can I ask a question now. You mention in your initial presentation,
Dr Berry, about the interest rates swaps that I believe that you’re going to
be starting proceedings on at some time in the future. Just some questions
around that—presumably this is around about financing farms, etc. Can you
tell us the quantum figure that you feel has been put on the farming sector
regarding what you feel may be unfair?

Berry Look, I don’t have an immediate answer. What we have given to the
Primary Production Committee is the actual total number of the book of
transactions. You know, we are still working our way through ascertaining
what the actual harm is. We have the value of the loans that are covered by
that, but, of course, that doesn’t equate to what may be the harm that is
involved. So I don’t have those numbers immediately, but I can come back
to you with those.

Young So in terms of the harm factor, were there a number of farm foreclosures,
or—what sort of data do you have behind that? Are you free to be able give
us—

Berry Anecdotally, there are stories of foreclosures of some farms, but look, at the
end of the day that’s not actually the issue facing us. We would have to
establish that the banks did not give proper disclosure in advice to farmers and that they were misled in terms of what they were walking into. So any compensation that would attach would be related to the harm, if it was demonstrated, in any given case, and then there is also the prospect of penalties if the matter goes to trial.

Chair Right. So what stage are you up to with this?

Berry We’ve conducted an extensive investigation and, as I mentioned, we have announced before Christmas that we have reached a view that there is a likely breach of the Fair Trading Act, in our view, and that it is our intention to file proceedings.

Cosgrove Could you tell me, again, returning to our other subject—can you confirm whether any parties have been threatened with reprisals, commercial reprisals, or otherwise—

Alderton No, I can’t confirm that.

Cosgrove —if they have approached the commission?

Alderton No, I can’t confirm that.

Cosgrove And can you confirm whether parties who have approached the commission have been threatened that if they continue to cooperate, there will be commercial or other reprisals?

Alderton No. As I say, what we’re trying to do here is make sure that, to the greatest extent possible, obviously, these complainants’ information is kept confidential and that there is no way to identify them so—

Cosgrove Well, presumably you would look at if there was a widespread—what I’m saying, I suppose, is you would presumably look at activity where parties had been warned off, because that would be circumventing justice, presumably.

Alderton Had been warned off?

Cosgrove Well, have been told “If you go near the Commerce Commission, don’t come Monday.”, or “… nothing will be on the shelf next year.”

Alderton I’m not aware of any matters.

Cosgrove But if that was occurring, that would be perverting the course of justice, presumably.

Alderton Basically, our assessment is against the Commerce Act. So what we’re doing is collecting the information and making the assessment of the behaviour against the Commerce Act or other Acts that we enforce.

Cosgrove Would you be asking parties if they are under duress or have been under duress or threatened with commercial duress, when you speak with them? Because I would have thought that would have been reasonably germane.

Alderton We’ll be collecting the information we need to make the assessment under the Act.
Chair: Understanding that this is the financial review of the Commerce Commission and, probably, digging deep into some of these cases is not necessarily the purpose of this meeting. Do we have any further questions?

Right. Well, thank you very much, gentlemen, for attending here today. We appreciate your time here.

**conclusion of evidence**
Energy (Fuels, Levies, and References) Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation
The Commerce Committee has examined the Energy (Fuels, Levies, and References) Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Energy (Fuels, Levies, and References) Act 1989. New Zealand has an oil stockholding treaty obligation under the Agreement on an International Energy Program. The bill proposes to expand the purpose of the Petroleum or Engine Fuel Monitoring Levy to include the cost of meeting the oil stockholding treaty obligation.
Our commentary discusses the main amendments we recommend to the bill.
Purpose clause
We recommend amending clause (4)(1)(ba) to state that a purpose for which the levy may be applied is for the Crown to meet the reasonable costs and expenses of compliance with

New Zealand’s obligation under Article 2 of the International Energy Agreement, to maintain the emergency reserve commitment set out in that Article.

This would have the effect of limiting the scope of the levy, by clarifying the purposes for which it may be used. Clause 5 of the bill provides for the levy amount to be prescribed by regulations.

Payment of the levy
We recommend an amendment to clause 8 to reflect changes made to section 30 of the Energy (Fuels, Levies, and References) Act after this bill was introduced.
Appendix

Committee process
The Energy (Fuels, Levies, and References) Amendment Bill was referred to the committee on 5 March 2014. The closing date for submissions was 17 April 2014. We received and considered four submissions from interested groups and individuals. We received advice from the Ministry of Business, Innovation and Employment.

Committee membership
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Mark Mitchell
Hon Chris Tremain
Dr Jian Yang
Gareth Hughes replaced Julie Anne Genter for this item of business.
Petition 2011/ 76 of Ben Dowdle on behalf of Unmask Palm Oil

Report of the Commerce Committee

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Petition 2011/76 of Ben Dowdle on behalf of Unmask Palm Oil

Recommendation

The Commerce Committee has considered the Petition 2011/76 of Ben Dowdle on behalf of Unmask Palm Oil, and recommends that the House take note of its report.

Introduction

We have considered the Petition 2011/76 of Ben Dowdle on behalf of Unmask Palm Oil, which was presented to the House on 30 August 2013 and then referred to the Commerce Committee. The petition requests

that the House make mandatory the labelling of palm oil if used as an ingredient in any product for sale in New Zealand, and note that 3,705 people have signed an online petition supporting this request.

Palm oil is an edible vegetable oil derived from the fruit of oil palms, and is one of few highly saturated vegetable fats. Palm oil is mostly used as an ingredient in food, and its growing popularity in the food industry is attributed mostly to its low cost and the stability of the refined product when frying. In addition, a number of palm-based oleochemicals are used in consumer goods such as shampoos, lotions, and cleaning products.

The growing use of palm oil has led to the clearing of forests in parts of Indonesia and Malaysia to make space for palm-oil monoculture. This has resulted in significant losses of the natural habitat of the orangutan, and raised social and environmental concerns. The Ministry for Primary Industries estimates that anything between 10 and 50 percent of consumer products sold in New Zealand contain palm oil.

Summary of petitioner’s concerns

We heard from the petitioner Ben Dowdle, who represents Unmask Palm Oil, an Australasian campaign for mandatory labelling of palm oil on consumer products. We were told that the campaign is advocating the use of sustainable, certified palm oil—not a boycott of the product.

Under current labelling laws in New Zealand and Australia, foods containing any vegetable oils, including palm oil, can be labelled generically as containing “vegetable oil”. Mr Dowdle is concerned that this makes it difficult for consumers to exercise choice if they wish to avoid palm oil for health or ethical reasons. He recommended that all oils be labelled in a bracketed list; for example “vegetable oil” might appear as an ingredient on a label followed by a list of its sources: “(soy, canola, and palm)”. Unmask Palm Oil holds that consumers have a right to be informed about what they are consuming, and that providing information is also good business practice. In New Zealand and Australia distributors are required to provide information about the ingredients they use on the product label, a website, or via a customer hotline. Mr Dowdle said that it can, however, be difficult to find out which products contain palm oil; we were told that in one case it took six hours to audit a typical pantry of food.
We heard it argued that relying on voluntary labelling of palm oil can penalise companies which choose to inform consumers, and mandatory labelling would create a level playing field for businesses. Mr Dowdle drew attention to the fact that the United States have made palm oil labelling mandatory, and the European Union will introduce a similar requirement later in 2014.

Response from the Ministry for Primary Industries

We heard from the Ministry for Primary Industries about the food labelling regime. New Zealand has a joint labelling system with Australia under Food Standards Australia New Zealand (FSANZ). Current food standards require that palm oil be labelled if it is sold as a food by itself; if it is present as an ingredient in food, it may be labelled as vegetable oil.

Under the food labelling hierarchy agreed by New Zealand and Australia, labelling of oils and fats is mandatory when there is a high consumer risk or potential detriment; for example, allergenic oils such as peanut and soya are labelled to protect consumers. However, for foods that are deemed to be lower in risk, voluntary or self-regulation is preferred; companies may choose to label their products “free range” or “palm oil free” to appeal to consumers’ values. Any such claims are regulated under the Fair Trading Act 1986. Compliance costs for businesses and the desirability of simple food labelling requirements must also be taken into account when assessing whether labelling the source of vegetable oils should be made mandatory.

We were told that work is being done under FSANZ to inform the 10 food Ministers in Australia and New Zealand about refining the labelling of sugars, fats, and vegetable oils added as ingredients to food, including the mandatory labelling of palm oil. A three-year evaluation is expected to be completed in mid-2015, and Ministers to make decisions on the basis of this advice.

Conclusion

The consumption of palm oil is an important consumer issue. To assist in our consideration of this petition we requested further information from the Ministry for Primary Industries as to how similar jurisdictions have approached the labelling of palm oil in consumer products. We noted that in Canada tropical oils, such as palm oil, are required to be labelled specifically because of their higher saturated fat content. In the United States each individual oil ingredient of a food must be stated by name in order of its prevalence in the food. Similarly, the European Union has adopted a law which will require all sources of vegetable oil to be declared in the ingredients list of food labels. This law will come into force in December 2014.

We consider that the concerns of the petitioner are relevant and important. However, significant work is already under way at FSANZ, which we understand will address the labelling of oils and sugars in products sold in both New Zealand and Australia. We await the outcome of the review of food labelling, and the subsequent decisions of food Ministers, with interest.
Appendix

Committee procedure
The committee met on 19 September 2013, 3 July, and 24 July 2014 to consider this petition. We received and considered two submissions from interested groups and individuals. We heard evidence from the petitioner and the Ministry for Primary Industries.

Committee members
Jonathan Young (Chairperson)
Kanwaljit Singh Bakshi
Hon Clayton Cosgrove
Clare Curran
Kris Faafoi
Julie Anne Genter
Mark Mitchell
Hon Chris Tremain
Dr Jian Yang
The Education and Science Committee has considered Petition 2008/139 of Judy Taligalu McFall-McCaffery and John McCaffery, and 6686 others, requesting that the House urge the Government to introduce and fully fund Pacific languages literacy and English literacy development through bilingual education programmes for Pacific students. This petition contributed to our decision to hold an inquiry into Pacific languages in early childhood education, which we have recently reported to the House. We have no other matters to bring to the attention of the House.

Dr Cam Calder
Chairperson
Industry Training and Apprenticeships Amendment Bill

Government Bill

As reported from the Education and Science Committee

Commentary

Recommendation
The Education and Science Committee has examined the Industry Training and Apprenticeships Amendment Bill, and recommends that the amendments set out below be passed. The committee is unable to agree on whether the bill should be passed.

Introduction
The bill seeks to amend the Industry Training Act 1992 and repeal the Modern Apprenticeship Training Act 2000. The bill is intended to establish a comprehensive apprenticeship system that provides the same amount of support to all apprentices, to focus industry training organisations (ITOs) on setting skills standards for their industries and arranging training, to clarify the functions and powers of the New Zealand Qualifications Authority (NZQA) in relation to ITOs, and to establish criteria for quality assurance in the process by which the responsible Minister recognises an organisation as an ITO.
This commentary covers the key amendments we recommend to the bill. It does not cover minor or technical amendments.

**Recognition of Industry Training Organisations**

We recommend amending clause 11, new section 5, so that the Minister could impose or amend conditions on the recognition of an ITO only as reasonably necessary to maintain the quality and effectiveness of industry training. New section 5 would give the Minister the power to recognise ITOs, including the power to impose conditions as the Minister sees fit.

We consider that the power to impose conditions on recognition should be subject to a test of reasonableness and limited to the need to maintain the quality and effectiveness of industry training. Conditions on an ITO’s recognition are intended to underpin compliance with the requirements for recognition, or to respond to poor performance or non-compliance.

**Governance assessment**

We recommend amending clause 16, new section 13B, to allow NZQA’s quality assurance requirements for ITOs to relate to the quality of governance only where governance is relevant to the quality of industry training and assessment. We heard concern expressed by some submitters that the bill as introduced might allow NZQA to take a larger role in the governance of ITOs, but this was not the intention and the proposed amendment should make this clear.

We also recommend amendments to new section 13B and elsewhere throughout the bill, including new section 1A in clause 7, to clarify that ITOs are responsible for maintaining skill standards, as well as developing them. We also recommend that the quality assurance requirements should include requirements relating to the ITO’s ability to maintain approval by the NZQA for the ITO’s programmes or training schemes, and to assess students against skill standards.

**Compliance notices**

We recommend amending clause 15, new sections 11C and 11D, to allow NZQA to issue a compliance notice to an ITO if the ITO does not act upon a quality assurance improvement notice. The bill as
introduced would allow NZQA to issue a quality assurance improvement notice to an ITO, containing instructions for a particular course of action. However, it does not provide for any consequences if the ITO fails to address such a notice. These amendments would allow the Minister to cancel an ITO’s recognition or impose conditions on that recognition if it fails to comply with the quality assurance improvement notice and a compliance notice.

**Apprenticeship training code**

The bill as introduced would allow the Minister, by notice in the *Gazette*, to issue an apprenticeship training code setting out the responsibilities of apprentices, their employers, and persons carrying out apprenticeship training. We recommend amending clause 17, new section 13F, to make it clear that compliance with the code is mandatory. We also recommend amending new section 13F to allow the Minister to consult any person or organisation he or she considers appropriate before issuing an apprenticeship training code. We also recommend a further amendment requiring the notice to specify the date the code comes into force.

We recommend amending clause 17, new section 13I, to clarify that apprenticeship training codes would be a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012.

**Functions of the Tertiary Education Commission**

We recommend amending clause 16, new section 13, to make the Tertiary Education Commission (TEC) responsible for monitoring the compliance of all persons carrying out apprenticeship training activities with the apprenticeship training code. The bill as introduced would require the TEC to monitor ITOs’ compliance with the apprenticeship training code, but not that of other persons carrying out apprenticeship training activities, who would be obliged to comply with the code. We therefore consider the TEC should have wider oversight of compliance.
Industry Training and Apprenticeships Amendment Bill

**Annual fee**
The bill seeks to introduce a requirement for ITOs to pay an annual fee to NZQA. We recommend amending clause 25, to introduce into the Education Act 1989 the necessary authorisation for the NZQA to charge that fee. We also recommend amending clause 15, new section 11F(2), to allow the annual fee prescribed by the NZQA to cover reasonable costs it incurs in issuing quality assurance improvement notices, in addition to covering other costs. The bill as introduced would not allow NZQA to recover from ITOs costs relating to quality assurance improvement notices.

**Application fee**
Clause 6, new section 11 as introduced allows ITO applications for recognition to include a prescribed application fee to be paid to NZQA. We recommend amending clause 11, new section 6(2), to specify the relevant statutory power for the NZQA to charge the application fee.

**Consequential amendments**

**Changes to Schedule 1AA**
We recommend adding new clause 1A to Schedule 1AA to clarify that the bill would apply to all ITOs recognised before the bill came into force. The bill is intended to apply to all ITOs, but Schedule 1AA as introduced does not make this clear.

**Minority view**

**New Zealand Labour Party, the Green Party of Aotearoa New Zealand, and the New Zealand First Party**
While there are aspects of this bill that we can support and that will improve the operations of the apprenticeship and industry training system, it has two fundamental flaws that mean we cannot support its further progress.

The major problem with the bill is the proposal to allow organisations other than industry training organisations to be directly funded by the Government to organise and undertake industry training. We believe that this process allows for the de-facto privatisation of in-
Industry training. There was virtually no support for this proposal from submitters to the select committee and we believe it has the potential to damage the provision of quality industry training in New Zealand. One of the underlying reasons for government funding of industry training is that it will equip workers with skills that are transferable across an industry nationwide. Directly funding individual businesses to organise and run training risks compromising that principle and could lead to training that is business specific rather than industry applicable. It also opens up the possibility that the Government will end up funding training that would and should be done by the business itself. Direct funding will also only work for large businesses which will undermine the effectiveness of ITOs and potentially lead to higher costs for smaller businesses who have to rely on ITOs to organise training.

ITO s have undergone a significant period of restructuring, which submitters made clear is making a real difference to the performance and services they offer. Putting in place a system that will undermine this is short-sighted and could erode the growing confidence of businesses in ITOs.

The second significant area of concern is the proposal to remove the skills leadership function from the purpose of ITOs. We were told that having this as a legislated role for only one part of the industry training system meant that others were not involved. Leaving it open with no organisation specifically responsible would, we were told, see more people step up. This is simply a hope, has no evidence to back it up and we do not believe it is a responsible course of action. The skills leadership role is an important component in ensuring that the future skill needs of industry are identified, understood and factored into the provision of training. It is a role ideally suited to ITOs as representative of industry, and taking it away makes no sense.

Without movement on these two issues we are unable to support this legislation.
Appendix

Committee process
The Industry Training and Apprenticeships Amendment Bill was referred to the committee on 5 November 2013. The closing date for submissions was 19 December 2013. We received and considered 30 submissions from interested groups and individuals. We heard 17 submissions.

We received advice from the Ministry of Education and the New Zealand Qualifications Authority.

Committee membership
Dr Cam Calder (Chairperson)
Catherine Delahunty
Hon Jo Goodhew
Colin King
Tim Macindoe
Tracy Martin
Chris Hipkins
Simon O’Connor
Grant Robertson
Dr Megan Woods

David Clendon replaced Catherine Delahunty for this item of business.
Science New Zealand, which represents the seven Crown research institutes (CRIs), is dedicated to increasing awareness of the value of science and technology in creating economic, environmental, and social wealth for New Zealand. The seven institutes collectively employ more than 3,600 people—two-thirds of all scientists working in New Zealand. Many of them are immigrants, and we heard that many scientists migrate to New Zealand specifically for the experience of working in a CRI, which Science New Zealand considers indicative of the strength of the CRI model.

Most of the research conducted by CRIs is initiated in response to a business’s requests for a specific product, or to achieve a specific goal. We heard that CRIs account for 75 percent of external research and development spending by New Zealand businesses.

CRIs are also involved in the National Science Challenges project. Science New Zealand supports the project, as it recognises that certain areas require a sustained, multi-disciplinary approach by multiple CRIs, so it makes sense for these challenges to be addressed nationally. Science New Zealand is also dedicated to ensuring high-quality science is taught in schools, and taught in a way that is relevant to New Zealand, to maintain a cohort of eager scientists.

We support the work of Science New Zealand in representing the CRIs collectively, and found their briefing informative and interesting.

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

Dr Cam Calder
Chairperson
The Education and Science Committee has considered the report from the Controller and Auditor-General Schools: Results of the 2012 audits, referred to it by the Finance and Expenditure Committee, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Dr Cam Calder
Chairperson
Education Amendment Bill (No 2)

Government Bill

As reported from the Education and Science Committee

Commentary

Recommendation
The Education and Science Committee has examined the Education Amendment Bill (No 2) and recommends by majority that it be passed with the amendments shown.

Introduction
The Education Amendment Bill (No 2) proposes amendments to the Education Act 1989 relating to the regulation of the education profession by creating a new body, the Education Council of Aotearoa New Zealand (EDUCANZ). It also proposes amending the regulatory framework for teaching and the disciplinary regime for teachers, amending the governance arrangements of tertiary education institutions, strengthening the quality assurance arrangements in the tertiary education sector, and strengthening the legal framework governing the care and support of international students. The policy objectives of the bill are to ensure that New Zealand’s education sector is equipped to meet the challenges and opportunities of the contemporary learning context, create a regulatory framework that pro-
motes accountability and high standards, and drive continuous improvement in the sector.
This commentary covers the major amendments that we recommend; it does not discuss minor or technical amendments.

**Commencement and disallowable instruments**

We recommend amending the bill to ensure that Schedule 19 and clause 1 of new Schedule 20 would both come into effect on the day after the date on which the bill received the royal assent. The bill as introduced would allow specific sections relating to international education to come into force by Order in Council. The Regulations Review Committee considered the circumstances of the bill were not “rare and exceptional”, so did not justify commencement by Order in Council. The amendments we propose would accommodate the committee’s concerns.

We also recommend amending clause 38, new sections 364, 372, and 383 to provide that Gazette notices regarding the fixing of fees made by EDUCANZ under these sections are disallowable instruments for the purposes of the Legislation Act 2012; to state where copies of the notice can be found and obtained free of charge; and to require that they be published on the EDUCANZ website. We also recommend amending new section 387 to provide that the code of conduct for teachers is a disallowable instrument for the purposes of the Legislation Act.

**Membership of EDUCANZ**

We recommend amending Schedule 3, new Schedule 22, clause 1(2) to include a requirement that at least five council members be teachers registered under section 353, who hold a practising certificate under new section 361 as inserted by clause 38. The bill as introduced proposes establishing a new professional body to lead and promote high-quality teaching, a nine-member council. The bill as introduced sets a maximum of five teachers out of the nine council members, but no minimum. We consider it important that practicing teachers be represented, as they will understand the profession best. The proposed amendment would make EDUCANZ’s composition reflect the membership provisions of other similar regulating bodies. The vast majority of submissions on this bill related to this clause.
Discretion when registering teachers

We recommend amending clause 38, new section 353, regarding teacher registration. The bill as introduced details the criteria that a person must meet to be registered as a teacher. It excludes anyone who has been convicted of a specified offence under Schedule 3, new Schedule 21. We propose amending this clause so that people who have been convicted of a specified offence but who have been granted an exemption will be able to be registered, provided EDUCANZ considers that they have met the necessary criteria.

Mandatory reporting of dismissals and resignations

We recommend amending clause 38, new section 392(2). The bill as introduced would require an employer to immediately report to EDUCANZ when a teacher resigned if the resignation came within 12 months of the employer advising the teacher of dissatisfaction with, or its intention to investigate, the teacher’s conduct or competence. Our proposed amendment would extend this requirement to notifying EDUCANZ of situations where the employee held a fixed-term position and left when the term expired, if the expiration was within 12 months of the employer advising the employee similarly, so that mandatory reporting would be consistent for teachers on a fixed-term contract and teachers who leave a permanent position.

We also recommend amending clause 38, new section 393. The bill as introduced would require the recent employer of a teacher to report to EDUCANZ if it received a complaint about a teacher’s conduct or competence while he or she was an employee. Our proposed amendment specifies that any such report must be in writing, and include a description of the complaint, and what action, if any, the employer took regarding the complaint. The addition of these procedures would be consistent with the processes set out in clause 38, new sections 392, 394, and 395.

Powers of Complaints Assessment Committee

We recommend amending clause 38, new section 401. The bill as introduced would allow the Complaints Assessment Committee of EDUCANZ to censure a teacher who was the subject of a complaint, impose conditions on or suspend their practising certificate, annotate the register or the list of authorised persons in a specified way, or
direct EDUCANZ to impose conditions on any subsequent practising certificate after agreement with the teacher and the complainant. There is sufficient provision in respect of serious misconduct in existing legislation.

The proposed amendment would clarify that these sanctions could only be imposed regarding misconduct that was not serious; serious misconduct would be dealt with by the Disciplinary Tribunal.

We also recommend amending new section 410, to allow EDUCANZ to initiate investigations of matters of teachers’ competency. This would be consistent with comparable procedures of other professional regulatory bodies.

Audit and moderation functions of EDUCANZ
We recommend amending clause 38, new section 382. The bill as introduced would require the new council to audit and moderate at least 10 percent of practising certificates each year. We recommend amending this to make clear that the provision would apply to 10 percent of the practising certificates, including renewals, issued in the year in question.

Powers of EDUCANZ
We recommend amending clause 38, new section 383, to allow EDUCANZ to charge for the provision of goods and services that are consistent with its functions. This amendment is intended to clarify that, as a body corporate, EDUCANZ would be able to charge for goods and services.

Appointment of members by councils of institutions
We recommend amending new section 171C, to allow tertiary education institutions to co-opt members onto their councils, up to the size of the council as set out in its constitution. The existing legislation allows councils to co-opt members by means of direct appointment, and our proposed amendment would see this situation continue. Direct appointment of members allows councils to acquire skill sets that are needed at particular times.
Accountability for individual duties
We recommend amending clause 9, new section 176B. The bill as introduced would allow the removal of members of university’s councils if they did not comply with their individual duties, as set out in new section 176A. Our proposed amendment would add a reference to section 222AJ which relates to the removal of polytechnics’ council members in similar circumstances. This is necessary as a consequence of repealing section 222AI relating to the accountability for individual duties of members of councils of polytechnics.

Disclosure of financial interests
We recommend amending clause 9, new section 176E to clarify that it is the councils of institutions, rather than the actual institutions, that will not be covered by the provisions of the Local Authorities (Members Interests) Act 1968. This Act includes provisions for the disclosure and management of council members financial interests, which are inconsistent with the more specific provisions in section 175 of the Education Act 1989. The proposed amendment would clarify that university and polytechnic councils are bound by Education Act provisions, rather than those of the Local Authority (Members Interests) Act.

Transition to new councils
We recommend amending schedule 1, new schedule 19, clause 9, which includes provisions for the transition to new university and polytechnic councils. These provisions would allow the Minister to give directions he or she thought necessary to ensure that a new council would deal effectively with the business before it after the transition. Our proposed amendment would require the Minister to consult with the council in question before issuing such directions.

Code of practice for pastoral care of international students
We recommend amending clause 24, section 238F(1A)(b) to specify that the proposed code of practice for the pastoral care of international students supports the Government’s objectives for international education by ensuring that international students have
a positive experience in New Zealand that supports their educational achievement.

The New Zealand Labour Party minority view

The New Zealand Labour Party is concerned that the changes proposed in this bill have been overwhelmingly opposed by those submitting to the committee, that many useful changes proposed by submitters have been ignored, that robust evidence to support the changes has not been produced, and that the changes are being rushed through in the face of overwhelming opposition.

Creation of EDUCANZ

The proposed Education Council of Aotearoa New Zealand (EDUCANZ) has amongst its functions providing leadership and direction to the teaching profession and enhancing the status of teachers and education leaders, yet an overwhelming number of submissions presented to the committee were opposed to the bill.

Of the 937 submitters commenting on the proposed establishment of EDUCANZ, only six submitters fully supported the proposed amendments, while 855 were completely opposed. Many submitters considered that the model represented low trust in teachers.

A significant number of submitters were concerned that there were no provisions in the bill for a guaranteed number of teachers on the council of EDUCANZ, and that there is no provision for those governed by the new professional body to have a say in who represents them on the council. While the Labour Party welcomes amendments to ensure that at least five of the nine members of the council are registered teachers, we remain concerned that the lack of democratic representation undermines the integrity and independence of the whole organisation.

The majority of submitters commenting on the proposal to replace the existing code of ethics with a new code of conduct were opposed to the move, seeing it as indicative of a low-trust attitude to the profession and a move away from an aspirational to a more punitive approach. Many submitters were also concerned that the inclusion of any relevant minimum standards set by the State Services Commis-

Commentary
sioner could potentially “gag” teachers, preventing them from making public comments on Government policy affecting education.

A number of submitters expressed concern that the functions to be exercised by EDUCANZ were too wide in scope, particularly given the lack of democratic representation on the council. They were also concerned that the expanded powers could have a financial impact on teachers who pay for the operation of the organisation yet have no say in how it is governed.

The requirement for EDUCANZ to undertake audit and moderation of at least 10 percent of practicing certificates each year could present significant additional cost to the teaching profession for little gain. Best-practice research suggests that the best teacher appraisals are those that are conducted in a collegial manner in a high-trust environment. The compliance focused changes in this bill cut against that notion.

We also share many submitters concerns about the proposal to extend the scope of Limited Authorities to Teach, which seem to completely contradict the Government’s stated desire to establish high standards for the teaching profession.

Changes to tertiary institution governance

At no point in the process of submissions has there been either a sufficient explanation for the proposed changes to tertiary institution governance or the mischief they are designed to remedy.

One lone submitter said that smaller councils were more efficient and that the number of council members should be reduced further, but most submitters said that there was no evidence to demonstrate a correlation between university council size and efficiency or performance. On the contrary, evidence was repeatedly provided of prestigious overseas universities with councils very much bigger than the proposals in this bill. Evidence was also tabled (University of Auckland submission) that showed that a similar reduction in the size of polytechnic councils had not produced better performance; in fact, quite the contrary was true. While there might not be a cause and effect relationship, that evidence certainly did not support the view that smaller councils improved performance.

Every university submitter, including students’ associations as well as staff, unions covering staff, Vice-Chancellors, and Universities NZ
opposed the provisions of these clauses. The loss of specified provision for staff and student representation was one of the major concerns. Labour shares this concern. Allowing student and staff representation is very different from prescribing it in law, and all submitters on this point spoke about the benefits of guaranteed representation of the people who work in the university and the people who pay to attend, together with Māori, Pasifika, and other community representation. In addition, concerns were expressed regarding the impact of the number of ministerial appointees to councils. The number and accountability of ministerial appointees would damage the academic independence of New Zealand universities in the view of all submitters on this point, and would harm the international reputation of our universities. Autonomy is one of the international indices by which universities are ranked. In the view of submitters, this provision in the bill would damage our international reputation. International standing is critically important to international students, on whom our universities increasingly rely for funding. Damage in this area would damage all universities’ academic reputation as well as our international student recruitment.

The role of universities as critic and conscience of society is one taken very seriously by our academic community. The level of ministerial influence exercised by this bill is intolerable in the view of the Labour Party. It compromises the universities’ autonomy, will harm their reputation and undermine their social critic and conscience function.

One submitter also raised concerns that certain clauses such as clause 9, sections 176A and 176B, were incompatible with sections 160 and 161 of the primary legislation, the Education Act 1989. Labour remains unconvinced that the proposed changes have been adequately set against other provisions in the primary legislation and believes this needs further consideration.

Taken together, these clauses will work to harm the performance, reputation, and societal role of New Zealand’s universities and Labour is opposed to them.

**Green Party of Aotearoa New Zealand minority view**

The Green Party of Aotearoa New Zealand is unable to support this bill. Despite the improvements to some of the procedures around
registration and teachers disciplinary issues the bill sets up a new organisation to represent teachers with broad unclear goals and strong education sector opposition. It also undermines the governance of universities by limiting the numbers and roles on their governance bodies. The clauses relating to the proposed new EDUCANZ body, and on university governance changes, were vigorously opposed by a large number of submitters from all parts of the education sector. The Green Party supports these submitters in their genuine concerns.

**Membership of EDUCANZ**

The proposed amendment to Schedule 3, new Schedule 22, and clause 1(2) to require at least 5 council members to be registered teachers and to hold a practicing certificate is supported by the Green Party.

**Purposes and Functions of EDUCANZ (Clause 382)**

Clause 382(1) is a broad statement with unclear and ill-defined language. What is meant by “providing leadership and direction to the education profession”, “enhancing the status of teachers” and “identifying and disseminating best practice”? It is unclear whether these functions are meant to be different from the work of the Education Review Office or Ministry of Education. The changes to the New Zealand Teachers Council functions were a concern to many teachers who were comfortable about a robust registration system but very unsure what these new functions mean and what they will actually achieve. There are concerns that the council will be used to advance the Government’s privatisation agenda and the Green Party believes the absence of a clear rationale for the changes has not assisted the sector to have faith in the bill. It is not clear whether a new educational bureaucracy is being created with undefined roles and powers at a time when the sector has major policy differences with the Government. We believe these clauses needed to have been coherently negotiated and justified or removed. A teachers council could be a logical place for professional development and best practice support but the case was not made for this by the Government.
Name of EDUCANZ (Education Council of Aotearoa New Zealand)
A number of submitters opposed the change to the name and requested that the word “teachers” be included in any title of the board. Given that this a professional body for teachers we support their comments. This broad title aligns with the vague and broad goals at the beginning of clause 382. It implies teaching is not at the heart of the functions of this body without being clear about its role.

Limited Authority to Teach (365)
The clauses relating to Limited Authority to Teach (LAT) are opposed by the Green Party as they build a long-term reliance on this model and avoid a requirement to commit to professional development and teacher training. The need for an expanded LATs role was not clearly explained. Teacher shortages should be addressed by workforce planning. Clause 370 allows for LATs to hold three-year terms and the also requires these staff to have no educational skills or plan to develop one except being “of good character”, having a police check, and the person running the early childhood education centre or school being satisfied with their capacity. This may well facilitate charter schools but does nothing to strengthen the profession.

Code of conduct
The bill proposes a change from a code of ethics to a code of conduct for teachers. There are no reasons given for this change and teachers are understandably wary of a shift from a high trust professional model to a more prescriptive mechanistic rule book. The Green Party supports a high-trust model which reflects the profession.

Student right of appeal
The bill rightly provides the teaching profession with some appeal rights over disciplinary decisions. The Green Party supports the suggestions from Youth Law that this also be made available to students and their families. We believe students and their families should have the right to appeal to any independent body, such as the Youth Court, to mediate a more restorative practice approach than expulsion from schools. We recognise this is seen by most of the committee as out-
side the scope of this bill, but the Green Party thinks this bill is a good place to create some consistency around appeal rights and that this idea is no more random than the vague provisions on the EDU-CANZ functions.

**Tertiary education institution governance**

The Green Party strongly opposes the clauses of the bill relating to

- contradictions between function of the university and ministerial powers over board,
- ministerial control of appointments,
- representation of legitimate interests and groups, and
- removal of members.

There was a tiny minority of submitters who saw any value in the changes proposed around tertiary governance.

One submitter who was an expert in governance and management said that the bill had confused the functions and applied the “lean-ness” which works well in management to the governance structures which need to be larger, more open and representative of institutional diversity.

A huge range of submitters, from emeritus professors and university leaders to student association representatives from all the national universities, challenged the university governance provisions. The changes were described as “molesting” universities by a very senior academic leader. The Green Party rejects the bills plan to cut numbers on councils, and give the Minister of Education huge powers to appoint and remove board members. The undermining of student and staff representation has been soundly rejected by all university submitters.

An issue of legal consistency was raised by a professor of law that is of concern to the Green Party. It was pointed out that the legal definition of universities as critic and conscience of society and strongholds of academic freedom is being contradicted in this bill by the clauses that give appointment powers to the Minister and removal powers based on badly drafted unclear criteria. Put simply this means people who disagree with a government can potentially be removed. This is draconian.

The universities feel our reputation as a country and our knowledge of effective university governance models is utterly compromised by
this bill. We support their concerns that these clauses are ideologically driven and unnecessary.

Most of the provisions relating to teacher registration in the bill are innocuous. However we cannot support the bill while it sets up a body with unclear functions which cannot be owned by the teaching profession, and which undermines university governance to an unprecedented level.

The bill has been modified to recognise one major concern for teachers but otherwise remains a huge disappointment to the education sector from early childhood education to university level and we cannot endorse it.

**New Zealand First minority view**

New Zealand First is unable to support the Education Amendment Bill (No 2) as there are several areas of concern that were raised by submitters that have not been addressed by the committee prior to its reporting back to the House. We will outline the major areas that we believe require addressing below.

We would first address the overwhelming number of submitters who spoke against the changes to the university councils. During the numerous oral submissions it became obvious that the suggested reduction in representation is not required and in fact could put our international educational reputation at risk. For this reason New Zealand First will not support these amendments.

With regard to the establishment of EDUCANZ. It is our view that the removal of “teacher” or “teaching” from the name of the council is an attack on the “profession” of teaching. It is an attempt to change the common understanding of qualified educational professionals and open the door to a wider acceptance of untrained, unqualified, and unregistered individuals inside our compulsory education sector.

We agree with submitters that section 349, as currently worded, does not provide sufficient recognition of trained, qualified, and registered teachers. There is no provision for the preferential appointment of trained, qualified, and registered teachers over individuals holding a Limited Authority to Teach (LAT), or that schools should only be able to appoint a LAT when they have shown that they have fully endeavoured to appoint a teacher as described previously. We accept that
exceptions will be needed, just as they are now, to access individuals with skills in learning areas not ordinarily supported by the New Zealand Curriculum, but believe that these positions are best identified by the schools themselves not at the whim of the individual who is seeking employment.

It is our view that the purpose of this body should be to regulate and lead the teaching profession by focussing on registering and de-registering teachers, awarding practising certificates and monitoring initial teacher education. The bill’s proposed purpose statement is too broad and starts to impinge on the duties of the Ministry of Education in some areas and the Education Review Office in others. Our concern is heightened in light of the fact that this new body will be funded from Teacher’s Registration Fees, which could be substantially increased with the broadness of that suggested. We agree with submitters that section 382, subsection (1)(c) should be removed.

We also see the shift from a code of ethics to a code of conduct as another move away from the high-trust model required to maintain an aspirational profession.

While this is not an exhaustive list of concerns raised inside this legislation it provides an outline of the areas of greatest concern which leads to our inability to support the legislation further.
Appendix

Committee process
The Education Amendment Bill (No 2) was referred to the committee on 13 March 2014. The closing date for submissions was 30 April 2014. We received and considered 1,568 individual submissions from interested groups and individuals, and 1,156 form submissions. We heard 296 submissions, holding hearings in Auckland and Christchurch as well as Wellington.

We received advice from the Ministry of Education. The Regulations Review Committee reported to the committee on the powers contained in clauses 2 and 21.

Committee membership
Dr Cam Calder (Chairperson)
Maggie Barry
Catherine Delahunty
Chris Hipkins
Colin King
Tracey Martin
Tim Macindoe
Hon Maryan Street
Hon Maurice Williamson
Dr Megan Woods

____________________________
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General, *Central government: Results of the 2012/13 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.

Paul Goldsmith
Chairperson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General, *Earthquake Commission: Managing the Canterbury Home Repair Programme*, and has no matters to bring to the attention of the House.

Paul Goldsmith
Chairperson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *Effectiveness and efficiency of arrangements to repair pipes and roads in Christchurch*, and has no matters to bring to the attention of the House.

Paul Goldsmith
Chairperson
Standard Estimates Questionnaire 2014/15

Report of the Finance and Expenditure Committee

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Standard Estimates Questionnaire 2014/15

Recommendation

The Finance and Expenditure Committee recommends that the House take note of the Standard Estimates Questionnaire for 2014/15, 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 2014/15 Estimates of Appropriations. The questionnaire is attached as Appendix B.

The Standard Estimates Questionnaire for 2013/14 was used as the basis of the 2014/15 questionnaire. After consultation with the Office of the Auditor-General, we resolved to revise the questionnaire as described below to improve its pertinence to and usefulness for the 2014/15 Estimates examination.

Content

The questionnaire is designed to be brief and high-level, asking only for information supplementary to that supplied in the Estimates. It is not expected to be burdensome. The main focus is on Votes and planned expenditure rather than on the operations of departments and other Crown entities, which are examined in the subsequent financial reviews.

The objective of the questionnaire is to elicit matters on which Vote Ministers may wish to elaborate orally before a committee, and to help committees target their examination of Votes with the administering departments or entities.

New questions

In the light of changes to legislation governing the public sector, we have included the following additional questions:

• How have the 2013 amendments to the Public Finance Act 1989 and the Crown Entities Act 2004 affected the Vote?

• Please provide details of any multi-category appropriations and any appropriations administered by your department against which other agencies may incur expenses (“administration and use” appropriations). Please indicate how and when you expect them to be reported on.

• Please indicate if you expect to report on any of the appropriations under the Vote separately from the annual report, and if so, how and when they will be reported on.

We have also included new questions about savings expected from improving efficiency:

What expectations have been signalled by the responsible Minister regarding efficiency savings to be achieved under this Vote in 2014/15? Where are those savings expected to be found? Please indicate how the funds saved are intended to be applied (returned to the Crown, or reinvested, and if so, in what.)
Changes to previous questions

For clarity and simplicity, we have reworded question 3 from the 2013/14 questionnaire to the following: *What adverse effects have fiscal pressures had on the appropriations and the outputs sought under this Vote in 2014/15, and on expected output performance? How will these pressures and effects be managed?*

We have adjusted the fourth bullet point of question 5 in the 2013/14 questionnaire to reflect changes to the Public Finance Act. This question now ends with: “…the agencies receiving or using the funding.”

We have removed the final bullet point of question 5 of the 2013/14 questionnaire, relating to any changes to Votes arising from the Canterbury earthquakes, as we believe this question is no longer needed.

We have dropped question 14 of the 2013/14 questionnaire, relating to improvements to performance information, as we consider that such a line of inquiry is more appropriate for financial reviews than for Estimates examinations. This is especially so with Crown entities, as it is the Crown entity and not the department administering the Vote that is responsible for the quality of the performance reporting. We are satisfied that the Office of the Auditor-General’s financial review briefings to committees draw attention to any improvements considered warranted in a public entity’s performance reporting.
Appendix A

Committee procedure
The committee met on 5 and 12 March 2014 to consider the Standard Estimates Questionnaire 2014/15.

Committee members
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
Appendix B

Standard Estimates Questionnaire 2014/15

Outcomes desired from the Vote

1. Which agencies incur expenditure under this Vote, and who are the responsible Ministers? What outcomes are sought from the Vote, and how do these agencies contribute to these outcomes? Please indicate where outcomes desired from the Vote are shared with another Vote or department, and explain how results against these shared outcomes will be reported.

2013 legislative changes

2. How have the 2013 amendments to the Public Finance Act 1989 and the Crown Entities Act 2004 affected the Vote?

3. Please provide details of any multi-category appropriations and any appropriations administered by your department against which other agencies may incur expenses (“administration and use” appropriations). Please indicate how and when you expect them to be reported on.

4. Please indicate if you expect to report on any of the appropriations under the Vote separately from the annual report, and if so, how and when they will be reported on.

Expenditure under the Vote

5. 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 2014/15. If applicable, please provide a copy of the department’s 4-year budget plan and the associated organisational development plan (workforce strategy).

6. What adverse effects have fiscal pressures had on the appropriations and the outputs sought under this Vote in 2014/15, and on expected output performance? How will these pressures and effects be managed?

7. What financial risks have been identified in relation to this Vote? How are any financial risks that have been identified being monitored and managed?

8. What expectations have been signalled by the responsible Minister regarding efficiency savings to be achieved under this Vote in 2014/15? Where are those savings expected to be found? Please indicate how the funds saved are intended to be applied (returned to the Crown, or reinvested, and if so, in what).

9. Please explain briefly the significant changes and reasons for them, affecting this Vote for 2014/15, 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 or using the funding.

• Any funds carried forward or transferred from previous appropriations.

• Any changes to staffing levels in the 2014/15 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.

10 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

11 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 2014/15 year?

• How will the performance of the Crown entities be monitored to ensure the risks are well managed?

12 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

13 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?

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

15 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 2014/15? If so, please provide the following details regarding this expenditure:

• the total budget for 2014/15, compared with the overall departmental budget
• the purpose of each engagement
• the reason that internal resources cannot be used.

16 How have any mergers and machinery-of-government or other structural changes made in 2013/14 affected the Vote?

17 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

18 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?

19 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 2014/15 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.
Taxation (Annual Rates, Employee Allowances, 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, Employee Allowances, and Remedial Matters) Bill, and recommends by majority that it be passed with the amendments shown.

Introduction

The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill seeks to make amendments to various Acts, including the Income Tax Act 2007, the Tax Administration Act 1994, the Income Tax Act 2004, the Goods and Services Tax Act 1985, and the Child Support Act 1991. The bill would set the annual rates of income tax for the 2014–15 tax year (the same as those in 2013–14), and make the following principal changes:

• setting clearer rules for whether employee allowances and accommodation are taxable
• strengthening the thin capitalisation rules that apply to non-residents
• removing distortions in the tax treatment of “black-hole” expenditure, and reducing compliance costs
• making legislative changes to give effect to foreign account information-sharing agreements related to the United States’ Foreign Account Tax Compliance Act (FATCA)
• making it clear how the tax rules apply to deregistered charities
• conferring tax-exempt and donee organisation status on community housing entities that meet specified criteria
• amending the tax treatment of certain land-related lease payments
• adding two charities with overseas-based purposes to the list of charitable donee organisations.

The bill would make several other policy and remedial changes, including alterations to the rules for GST, child support, and Working for Families, to ensure they are clear and work as intended. It also proposes various minor technical amendments. This commentary discusses the more significant amendments we recommend to the bill. It does not include discussion of technical or inconsequential amendments.

**Commencement**

Clause 2 provides for a number of the bill’s provisions to apply retrospectively; we are also recommending the retrospective application of some amendments. We are satisfied that the justification for back-dating these provisions is sound, and that taxpayers would not be unreasonably affected.

**Land-related amendments**

**Acquisition date of land**

Clause 7 of the bill seeks to amend subpart CB of the Income Tax Act 2007 to clarify the time at which land is considered to have been acquired for tax purposes. At present, there is considerable uncertainty on this issue, as the Act’s definition of “land” is wide and includes an interest in land, an estate in land, and an option to acquire an estate or interest in land; and a typical sale and purchase agree-
ment entails the acquisition of different interests and estates in land at different times, which are merged when the title is registered. The test proposed in the bill is based on a “first interest” principle: that is, the relevant date would be that on which a person first acquired an equitable or legal interest in, or option on, the land.

We are concerned that the wording in the bill as introduced is insufficiently clear, and recommend some amendments in clause 7(1) to convey in a less circular way how the “first interest” test would apply. We also recommend the insertion of two exceptions to the general rule: the first to cover a situation where a company that was intended to own the land had yet to be formed; the second a situation where the nature of a person’s interest in land changed (for example from leasehold to freehold) as the result of the exercise of an option. In this situation, they would be treated as having made a new acquisition.

We also recommend the insertion of clause 7(2) to make clear the policy intention that proposed section CB 15B would apply to disposals of land from the date of the bill’s introduction; so its acquisition could have taken place before the bill was introduced.

**Land-related lease payments**

Clause 9 of the bill would insert new section CC 1B in the Income Tax Act 2007 to tax certain land-related lease transfer payments which can be substituted for lease surrender and lease premium payments, both of which are taxable.

We recommend amending clause 9 and inserting new clause 9B to address the position of perpetually-renewable leases, commonly known as Glasgow leases. As such leases are more akin to a freehold estate than normal commercial leases with a defined term, we consider that they should be excluded from the ambit of the proposed changes. Any payment made on the transfer or surrender of such a lease would remain non-taxable and non-deductible.

We consider that clause 9, new section CC 1B(3)(c), is overly broad and recommend amending it so that an arm’s-length transaction between a landlord and an incoming tenant would not be taxable under the proposed new rule.

Clause 8 would make payment for a permanent easement exempt from the tax. We recommend amending this clause to make it clear
that the exemption would apply to a one-off payment, but not to periodic payments, which are more in the nature of rental.

For consistency with other wash-up provisions in the Act, we recommend the insertion of clause 57B, inserting section EI 4B(5B), to allow a landlord to receive the balance of deductions for a lease inducement payment if the lease is terminated early.

Employee allowances
The bill proposes changes to the rules in the Income Tax Act 2007 for employee allowances, and in particular the treatment of employer-provided accommodation and accommodation payments. The changes are designed to avoid the uncertainty associated with the current rules; their overall effect is expected to be revenue-neutral. We propose a number of amendments to improve the workability, clarity, and fairness of the proposed rules.

Accommodation expenditure
We recommend extensive amendment of clause 11 (section CE 1) to improve the definitions of “accommodation” and “employer”; to introduce four exceptions where accommodation provided in connection with employment would not be subject to tax; and to provide a regulation-making power so that other exemptions could be made in the future.

Our recommended amendment of section CE 1(2) would introduce four exceptions to allow for situations involving shift work or remote workplaces, where we consider that it would be inappropriate to tax accommodation provided in connection with employment. The exceptions we propose would cover mobile workplaces such as ships, trucks, or oil rigs; a station in Antarctica; lodging provided for shift workers such as fire-fighters, ambulance staff, and care-givers; and accommodation provided at remote locations where an employee is expected to fly in and out, such as mines in Australia.

While we consider these indicative exceptions reasonably comprehensive, we recognise that other situations not currently foreseen may arise where it would also be inappropriate for work-related accommodation to be taxed. We therefore recommend the insertion of section CE 1(4) to allow other types of excluded accommodation to be added by Order in Council.
In the bill as introduced, clause 12 (section CE 1B(4)) would require the taxable value of accommodation that employees shared to be apportioned evenly between them. We recommend an amendment to allow uneven apportionment if the employees involved, and their employer, agreed it was reasonable, for example to reflect a difference in the size of their rooms.

We considered submissions on the treatment of accommodation at boarding schools, and heard of concern about the difficulty of accurately valuing staff accommodation. We received advice from Inland Revenue that it will be issuing operational guidance about how such accommodation should be valued. We therefore are not recommending any amendment on this issue.

Exception for ministers of religion

The bill (clause 24, inserting new section CW 25B) would codify the long-standing administrative practice of capping the taxable value of church-owned accommodation provided for ministers of religion at 10 percent of the minister’s remuneration. It would also broaden the definition of “minister of religion” to include non-Christian religions. We concur with the provisions proposed, but recommend some amendments to refine and simplify them. We also recommend repositioning the provisions to clause 12 (section CE 1E), so clause 24 would be deleted.

The main changes we recommend are, first, simplifying the formula to be used in the taxing provision (section CE 1E(2)) so it is less cumbersome to administer; second, allowing an adjustment for apportionment of the use of a minister’s home between work and private use when an area is used “wholly or mainly” for work purposes, rather than only if it is used “exclusively” for work purposes, as proposed in the bill as introduced (section CW 25B(4)(a)). Thirdly, we recommend refining the definition of “minister of religion” in proposed section CE 1E(5). Our amended wording would still include ministers of non-Christian religions, but would avoid uncertainty by ensuring that administrators and other staff were not caught by the definition.
Time limits when expectations change
Clause 20 would insert new sections CW 16B to CW 16F making accommodation provided by an employer for secondments or capital projects tax-free for limited periods of time.
We recommend some amendments in section CW 16B to make the definitions clearer and avoid uncertainty. We also recommend an amendment to insert new sections CW 16C(3) and (4) to allow for more situations where expectations change about the length of a project or secondment. We note that the bill as introduced makes it clear that when expectations changed so as to exceed the relevant time limits, the accommodation would become taxable from the date on which the expectation changed. We recommend replicating this treatment in situations where the expectation changes to one within the relevant time limit, so that in such circumstances the accommodation would become exempt from the date on which the expectation changed.

Meal payments
Clause 22 (new section CW 17CB) aims to elucidate the tax rules concerning work-related meals; the full amount of meal payments and light refreshments would be exempt if provided for a work-related event, with payments linked to work-related travel exempt for up to three months. We recommend some amendments in clause 22 to clear up some remaining areas of uncertainty.
In proposed section CW 17CB(2), we recommend making it clear that “light refreshments” could include snack foods as well as tea or coffee. We also recommend the deletion of paragraph (i) from this section to avoid disadvantaging part-time employees who work less than 7 hours a day but may still be entitled to light refreshments at work.
We recommend amending clause 22 to insert section CW 17CB(7) to mirror the provision applying to accommodation, allowing an extension of the time limits in exceptional circumstances.
Our recommended insertion of section CW 17CB(8) would clarify the interaction between the proposed rules and those relating to fringe benefit tax. The policy intention is that meals provided directly by an employer should remain subject to fringe-benefit tax.
Regarding the commencement of these provisions, we are aware of some uncertainty about the extent to which meals have been taxable or exempt, and employers will have taken different positions on the issue. We recommend that the provisions be backdated to 1 April 2011 and that a transitional provision be inserted in clause 34, new section CZ 30, so that employers who have previously treated work-related meals as exempt could apply the new rules retrospectively. If an employer has treated the expenditure as taxable, they would not be able to rely on section CZ 30 to apply the new rules retrospectively to make the expenditure exempt, but they could use the new rules from 1 April 2015. We believe this approach is consistent with the way similar issues have been treated, and has the benefit of removing uncertainty for employers; it would allow the status quo to continue without the need to re-open tax positions, provided they fell within the new rules.

**Black hole expenditure**

The bill contains several provisions addressing the tax treatment of certain types of “black hole” expenditure: capital expenditure by a business that is neither immediately deductible for tax purposes, nor depreciable over time. The bill would allow deductions for expenditure on failed or aborted applications for resource consents, patents, and plant variety rights, but would claw back the deductions if the taxpayer subsequently sold property acquired as a result of the expenditure or used it in obtaining new intangible property. The bill would also allow deductions for certain company administration costs that are currently taxed.

We recommend amending clause 16 (new section CG 7B) to accord more closely with the policy intent that deductions for expenditure on aborted or failed applications be clawed back only to the extent that the property obtained was subsequently used in the lodging of a patent application or in obtaining the grant of a resource consent or plant variety rights. Our proposed amendments would also help to make clear which income year the clawed-back income would be allocated to.

Clause 39 would allow a deduction for expenditure on an unsuccess-ful resource consent application. We recommend that this provision be extended to cover similar situations by allowing a deduction for
expenditure on a resource consent application that has lapsed or been surrendered.

Clause 44 would introduce three new deductions for some company administration costs. New section DB 63 would allow the direct costs associated with paying a dividend to be deductible, although not the dividend itself. New section DB 63B would allow a deduction for expenditure incurred on annual listing fees to maintain registration on a stock exchange; however the initial listing, being more in the nature of a long-term capital expense, would remain non-deductible. New section DB 63C would allow a deduction for expenditure on annual general meetings; however, the cost of special or extraordinary meetings would be non-deductible.

We note that the proposals are generally taxpayer-friendly. We realise there could be some dissatisfaction about the items excluded from deductions, but consider that the bill strikes an appropriate balance in this respect.

Deregistration of charities

The bill aims to provide a clear set of rules for charities that are deregistered (principally through clauses 19, 27, and 107–110, inserting new sections CV 17, HR 11 and HR 12 in the Income Tax Act 2007). As well as making it clear how the general tax rules apply, the bill would establish opening values for assets held by a deregistered charity when it became subject to tax, and prescribe how the assets should be treated. We are recommending several changes to the proposed rules to ensure they are clear and fair, and work as intended.

In the bill as introduced, deregistered charities are referred to as “ceased” charities. We note that deregistration does not mean a charity ceases to operate; deregistration can arise from a simple failure to comply with administrative requirements, and a charity may well continue to serve a charitable purpose after it has been deregistered. We recommend referring instead to “non-exempt” charities.

Clause 19, inserting new section CV 17, provides for the calculation of a deregistered charity’s liability for tax on accumulated assets from the day the entity is removed from the Charities Register. To allow for the possibility of an appeal, or interim reinstatement on the register, we recommend amending this requirement so that the relevant date would be the “day of final decision”, when all appeals had
been exhausted. We recommend similar amendment of clauses 27 (section CW 41) and 108 (section HR 12).

Clause 27, amending section CW 41, would allow a grace period in which a deregistered charity would remain tax-exempt pending a final ruling, as long as it acted in accordance with its constitution or rules as lodged in the Charities Register. We endorse this approach but recommend some amendments to simplify the provision.

We recommend the insertion of clause 105B, amending section HF 11, so a deregistered charity that was eligible to become a Māori authority could elect to do so retrospectively. This would avoid a perverse outcome where the entity was taxed at a higher rate for its retrospective tax obligations while registered as a charity than for its obligations after deregistration.

Clause 108 would insert new section HR 12, prescribing the tax liabilities for non-exempt charities after deregistration. We recommend an amendment (new section HR 12(2)) to make it clear that if an entity were re-registered as a charity before the end date when a final decision was made on its status, it would not be required to distribute its assets or pay tax on them.

Following consultation with Māori groups, we recommend amending clause 108(1), proposed section HR 12, so that assets received as part of Treaty of Waitangi settlements would not be subject to tax on deregistration. This would accord with Government policy of enabling the transfer of settlement assets without tax consequences.

In clause 108, we recommend inserting new section HR 12(3)(b) so that a deregistered charity could distribute its assets in accordance with its constitution or rules, rather than, in the bill as introduced, “for charitable purposes”. This seems to us a fair way of dealing with a charity that was deregistered because it was found not to have a charitable purpose.

Clause 110(1), amending section LD 3, aims to give donors more certainty that tax relief on their donations would not ordinarily be reversed if the entity they donated to were later deregistered. We recommend amended wording to convey this intention more clearly. We also note that in the bill as introduced, the wording of new section LD 3(1)(ab) would make all entities on the Charities Register eligible for donation tax credits, even if their purposes were focused overseas.
As this was not the intention, we recommend that this section be amended.

Community housing entities
Clause 29 would insert new section CW 42B into the Income Tax Act 2007 to address uncertainties in the current rules applying to community housing entities that help low-income households to afford homes. The proposals would allow tax-exempt and donee organisation status for community housing entities that met certain criteria. We fully support the intent of the provisions—to assist non-profit organisations working to make housing affordable for people in their communities—but consider that the exemption is framed too narrowly in the bill as introduced. We recommend a number of amendments to ensure the provisions are clear and achieve their purpose.
In clause 29 as introduced, the exemption would apply only to community housing entities that provide new housing. We recommend an amendment so the exemption would also apply for existing housing, and new housing products. We also recommend that such an entity not be compelled to reinvest any profits in itself, but be allowed to distribute them to a parent or other entity provided it was also for charitable purposes. We further recommend an amendment to make it clear that income earned by a community housing entity from sources other than its housing activities, such as interest or investment income, would also be exempt.
As for determining who a community housing entity could provide housing assistance to while qualifying for the exemption, it is intended that a framework would be set out in regulations. Clause 159, inserting new section 225D in the Tax Administration Act, would establish this regulation-making power. Factors to be taken into account would include a person’s geographic location and assets, and their household composition and income. We considered whether such criteria should be included in this bill, but accept that the proposed approach would allow more flexibility for other relevant factors to be considered by the Ministers of Housing and Revenue in making their joint recommendation to the Governor-General about regulations.
We note the general intention that the income of the person or household to be assisted should fall within the lowest quartile of household
income according to survey data published by Statistics New Zealand (proposed section 225D(2)(c)). However, this section also allows the income maximum to be adjusted “by any appropriate economic factor (for example: geographically isolated increases in living costs)”. We see this flexibility as important, since regional variations in housing values could make housing difficult to afford in some areas, even on incomes above the lowest quartile, and we would expect Ministers to keep such considerations in mind when applying the criteria. On this basis, we do not propose any amendment of clause 159.

Finally, we would not wish to see difficulties arise under these rules simply because a household being assisted by a community housing entity managed to lift its income over time above the lowest quartile. Such improvement is to be hoped for. We therefore recommend amending clause 29, proposed section CW 42B(1)(b), so the income test would apply at the time they first received assistance from the community housing entity.

**Thin capitalisation rules**

The thin capitalisation rules seek to ensure that foreign-owned companies investing in New Zealand pay their fair share of tax, by preventing non-resident investors from artificially loading debt into their New Zealand investments to limit their tax exposure. The bill would address two main scenarios in which the existing rules fall short: when two or more investors act in concert; and when the debt of a worldwide group of companies is sourced from shareholders rather than third parties, which can allow excessive gearing of the group’s New Zealand investments.

We recommend several largely technical and drafting amendments to ensure the rules are clear and work as intended. This commentary does not describe them in detail, but in substance the following are the main changes we recommend.

In clause 90, we recommend amending the definition of “non-resident owning body” to provide more certainty. Our proposed changes would restrict the definition so it applied only in relation to debt linked to shareholders. The part of the definition regarding proportionality of ownership interests would also be changed, with the reference to “approximate” proportionality replaced by a specific anti-avoidance provision applying to arrangements structured to avoid the
intent of the proportionality rule. The anti-avoidance provision is in proposed clause 100B, inserting new section GB 51. Clause 93, proposed sections FE 16(1D) and (1E), would prohibit a relatively rare type of arrangement known as “asset uplift”, which can increase the amount of debt a New Zealand company holds without a corresponding increase in the value of the parent company’s assets. Because it would be difficult and costly to estimate previous uplifts in asset values, we recommend amending this provision to apply only to increases occurring after the rules came into effect.

While the rules would restrict the amount of debt attributable to a New Zealand company’s worldwide owners, clause 94, proposed section FE 18(3B), would allow an exemption for a shareholder owning less than 10 percent of a member of the worldwide group, if the shareholder’s debt was widely traded on a recognised exchange. We understand that this test might be overly restrictive and recommend that it be adjusted to an ownership threshold of 5 percent, or where the shareholder’s debt was widely traded.

**Foreign account information-sharing agreements**

We considered at length the provisions in the bill regarding the sharing of account information (principally clause 158, inserting new Part 11B in the Tax Administration Act 1994). They respond to the United States law known as FATCA (the Foreign Account Tax Compliance Act), which is due to come into effect on 1 July 2014. FATCA is part of a global effort to combat international tax evasion. It will require financial institutions in all countries to provide information to the US tax authorities about the accounts of their customers who are US taxpayers. To reduce the compliance costs of FATCA for New Zealand financial institutions, the Government is currently negotiating an inter-governmental agreement with the USA. The bill’s provisions would give effect to the agreement, and any future similar agreements, and are needed to over-ride privacy provisions that would otherwise constrain information-sharing by financial institutions. The bill would authorise financial institutions to obtain the required information and provide it to Inland Revenue, which would in turn transmit it to the US tax authorities under the existing exchange-of-information mechanism in the double tax agreement between the two countries.
About half the submissions we received on the bill concerned these FATCA-related provisions. Much concern was expressed that providing such information would breach individuals’ privacy rights, and constitute a form of discrimination contrary to the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993. It was argued that the proposals would entail the release of data about spouses and children who were not “US persons” in American tax law. More broadly, the view was expressed that the US system of taxation based on citizenship rather than residency is unjust, and that FATCA and the inter-governmental agreement impinge on New Zealand’s sovereignty and should not be accepted.

On the other hand, the financial services industry was generally supportive of the proposals in the bill, expressing the view that failure to comply with FATCA is not an option. Non-compliance would entail significant penalties, effectively amounting to a 30 percent tax on banks’ investment and funding income from the USA, which banks rely on to provide mortgage finance and commercial loans in New Zealand; it would therefore adversely affect New Zealand citizens more broadly.

**Assessment**

We considered these issues carefully, seeking comment from the Ministry of Foreign Affairs and Trade. While we sympathise with the concerns, and initially shared a number of them, we have reached the view that the proposed inter-governmental agreement, and the amendments proposed in this bill to implement it, are in New Zealand’s best interests. We therefore support the proposals in the bill, recommending just two relatively minor amendments.

It is important to note that the USA will be implementing the FATCA legislation from 1 July 2014, whether or not New Zealand passes this bill and enters into an inter-governmental agreement. US citizens living here still have a duty to pay tax as required by US law, and from 1 July New Zealand financial institutions will be required to supply certain information about their accounts, or face severe penalties. Significantly, we note that banks’ US investments provide much of the capital used to provide mortgage finance to New Zealand home-owners; a 30 percent withholding penalty could result in this source of funds drying up.
The agreement and this bill would mitigate the effects of FATCA on New Zealand and New Zealanders, and establish certain safeguards. In particular, the 30 percent withholding penalty would be avoided for individuals and would be far less likely to apply for financial institutions; reporting thresholds would be specified to exclude the need to report on accounts below a certain value; and people who are not “US persons”, including joint account-holders, would not be reported on. We recognise that such safeguards may not satisfy all the concerns of those whose account information will be provided to the US tax authorities, but we consider that they would go some way to allaying concerns about family members who are not US citizens. We are satisfied that the secrecy provisions of the double tax agreement between New Zealand and the USA will safeguard the information provided, but note that recourse would remain available under the Privacy Act 1993 if any information should be wrongfully shared. The Ministry of Justice has said that the bill appears consistent with the Bill of Rights Act. Finally, we note that reciprocal information-sharing by the United States with New Zealand is envisaged under the agreement; we endorse this. Some of us, however, would have preferred to see reciprocity required by this legislation, rather than being left for negotiation in a yet-to-be-signed inter-governmental agreement.

We support global efforts to combat international tax evasion and accept that New Zealand’s global reputation would suffer if we were not seen to be playing our part.

Proposed amendments
We recommend two amendments in clause 158 to prevent the over-reporting of information and improve the workability of the proposed provisions.
Under the bill as introduced, financial institutions would be prevented from collecting data (such as citizenship information) from customers, and from reporting data to Inland Revenue unless the account balance exceeded the threshold set in the inter-governmental agreement. We accept that it could be impracticable for banks to wait until 31 March, when account balances are known, before collecting information about customers’ citizenship. A lengthy initial exercise will be necessary to determine which customers are US
citizens; thereafter, the logical point for collection of this information would be when a new customer opened an account.

We therefore propose that financial institutions be permitted to collect the information needed for FATCA purposes even before knowing the year-end account balances; for the protection of privacy, however, they would continue to be prevented from reporting data unless the account balance exceeded the threshold. Our recommend amendment in clause 158, proposed section 185F(7), would achieve this result by making the reporting of data that is not required to be reported an “excluded choice”.

Regarding timing, proposed new section 185M(2) would require financial institutions to report all the necessary information to Inland Revenue within 2 months after the end of the tax year on 31 March. Inland Revenue would then have 4 months to collate the data and report it to the US tax authorities. After considering the logistics entailed, we recommend an amendment to allow 3 months for each party to complete the work required.

Financial arrangements

Agreements for sales or purchases in foreign currency

The bill would make various changes to the tax rules for foreign currency arrangements, largely to reduce their complexity and improve compliance. We recommend a number of technical amendments in clauses 64–66; most are intended to improve and simplify the rules as they apply to smaller entities which are not required to use international financial reporting standards in their accounting.

Taxation of life insurance businesses

We recommend a retrospective amendment to correct an unintended consequence of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013, which has had an adverse effect on a particular life insurance business because of the way it had previously interpreted tax law. Our proposed amendment, to be made by inserting clause 59D to amend section EW 8 of the Income Tax Act 2007, would partially restore the original law applying before the 2013 Act regarding elections to treat some short-term agreements for sale and purchase as financial arrangements.
Remedial matters
We recommend a number of largely technical amendments, mainly affecting the rules for mixed-use assets, goods and services tax, and exemptions for CFCs (Australian-controlled foreign companies) and FIFs (interests in foreign investment funds resident in Australia). The amendments are designed to ensure that the legislation accords with the original policy intent. We comment below on two aspects of our recommended changes.

Mixed-use assets
Clauses 47 to 49 would make several remedial changes to the rules for mixed-use assets in subpart DG and section DZ 21 of the Income Tax Act 2007. The rules provide for apportionment of expenses (including interest) on assets that are used by the owner both privately and to earn income.

However, in a number of areas taxpayers apparently remain uncertain how to apply the new rules, and in some cases the rules give rise to incorrect results. We recommend the insertion of clauses 47B to 47E to address some of these issues; we note that others will require work by Inland Revenue to determine an appropriate solution.

Our proposed clause 47B, amending section DG 9, would adjust the apportionment formula to allow for instances of capital use of an asset as well as income-earning and private use.

Clause 47C, inserting section DG 11(8B), and clause 47D, inserting section DG 16(1)(1B), would address the problem that the land value required to be used under the rules is too high in certain circumstances, for example where a farm-stay cottage is on the same title as the entire farm, or where a mixed-use asset is on leasehold land.

Clause 47E would align the definition of “asset income” in the quarantining rules (sections DG 16 and DG 17) to prevent taxpayers from accessing amounts that have previously been quarantined, as this would go against the policy intent of the provision.

GST rules for rest homes and retirement villages
Clause 161 of the bill proposes changes to the definitions of “dwelling” and “commercial dwelling”. It appears that these changes combined with the proposed “wash-up” rule in clause 168 would result in some retirement villages and rest homes being required
to refund any input tax deductions claimed over the period 1 April 2011 to 31 March 2015 on GST incurred in acquiring residential units. As such deductions were claimed in good faith, we consider it appropriate to provide relief for the small number of taxpayers affected over the period concerned. We recommend amending clause 169 (section 21 HB) to provide what we believe are satisfactory options for these taxpayers.

**New Zealand Labour Party minority view**

Labour reserves its position on this bill subject to changes at committee stage. We broadly support changes to thin capitalisation rules and black hole expenditure, and also recognise the difficult position the Government’s slow progress on FATCA matters has brought to bear on the banking sector. We note, however, many areas where the bill is weak because haste has prevailed over reason, and submitters’ concerns have not been fully addressed.

**FATCA**

The Government is negotiating an inter-governmental agreement that reports on any New Zealand citizens deemed by the USA to be “persons”, including those born in the USA who have not lived as adult citizens there.

Labour members of the committee are concerned that Parliament is being asked to pass legislation empowering the ratification of an inter-governmental agreement yet to be negotiated. This obviates the usual checks and balances that come with Parliamentary scrutiny normal to a democracy. Officials noted it was more common process that any Parliamentary treaty be examined before relevant legislation is introduced.

While disturbed about the slow progress on negotiations and aware of the material size of the punitive financial threats non-compliant financial institutions may face, we are concerned the legislation allows agreements that are not reciprocal.

Labour members wanted to amend the legislation to reflect the principle of reciprocity. While asserting that the United States Government’s position was that this was a reciprocal agreement, the committee majority failed to have these principles enshrined in the New Zealand legislation.
Labour is committed to reducing tax avoidance. A reciprocal agreement would give more tools to Government to that end. We remain concerned that community-minded New Zealand citizens and businesses are required to carry a disproportionate share of the tax base that supports the infrastructure we all depend upon. Sadly, some individuals and multinational businesses are noteworthy for the lengths they are willing to go to to avoid paying their fair share.

Labour members remain concerned that the Government is not requiring a full reciprocal agreement, and does not appear to be using the leverage of a negotiation process to forward objectives that reduce the tax avoidance and evasion from which New Zealand suffers.

We are also concerned that in response to the imposition of this legislation, New Zealand citizens wishing to revoke US citizenship may face unreasonable imposition of cost as a result of the USA’s punitive exit provisions, including taxes that are triggered by the renunciation of US citizenship. Because the final form of the inter-governmental agreement has not been agreed, no commitment could be given by officials that suitable de minimus or relevance exemptions would apply.

**Accommodation expenditure**

KPMG submitted that a private benefit test should be applied to determine the taxable nature of an employer-provided allowance or benefit, such as accommodation, finding this approach would limit the number of specific exemptions required and would minimise disputes with the IRD about the value of the benefit provided.

Labour shares concerns expressed by KPMG and other submitters in respect of rule changes around accommodation expenditure. The rushed nature of the legislation means that more exceptions were being proposed and considered through the select committee process. Officials were unable to provide a convincing reason why the current law should change as proposed, and tax experts’ concerns that further tidying-up legislation will be required look set to eventuate.

KPMG in a supplementary submission suggested the number and nature of submissions received in respect of employee allowances during the select committee process was due to the bill’s approach producing unfair and uncertain results.
Community housing entities

Labour members note anomalies in the provisions relating to community housing entities. In particular, the law changes as proposed amount to governance by fiat. The Minister would have wide-ranging discretionary powers to approve or disapprove of charitable exemptions. This delegation to the Minister of the effective right to confer lower taxes on some but not all taxpayers is bad law. Under guidelines proposed but not in legislation, mixed housing areas look set to be excluded. This cuts across the efforts to attract teachers, doctors, and other professionals to areas with prohibitive housing prices. Additionally, a trust supplying housing to teachers in a remote area appears likely to be granted exemption while a school with housing for teachers would not. How a Minister would apply the rules to decide which groups win his or her favour is by no means clear in the legislation.

Process

The legislation was put out for consultation over the Christmas–New Year period for a shorter time than is customary. Similarly, the committee majority have sought to rush the bill back to the House without as thorough examination as is warranted. This rushed process has led to the law changes proposed being poorer than would otherwise be the case.
Appendix

Committee process
The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill was referred to the committee on 10 December 2013. The closing date for submissions was 5 February 2014. We received and considered 97 submissions from interested groups and individuals. We heard oral evidence from 30 submitters.

We received advice from the Inland Revenue Department, the Treasury, the Ministry of Foreign Affairs and Trade, and our specialist tax advisor, Therese Turner.

Committee membership
Paul Goldsmith (Chairperson)
Maggie Barry
David Bennett
Dr David Clark
John Hayes
Hon Shane Jones
Dr Russel Norman
Hon David Parker
Rt Hon Winston Peters
Jami-Lee Ross
Hon Kate Wilkinson
Gareth Hughes replaced Dr Russel Norman for this item of business.
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *The Auditor-General's Auditing Standards 2014*, and has no matters to bring to the attention of the House.

Paul Goldsmith
Chairperson
The Finance and Expenditure Committee has considered Petition 2011/0101 of Penelope Mary Bright and 13 others, requesting

That the House conduct an urgent inquiry into why New Zealand Auditor-General Lyn Provost did not disclose that she was a shareholder in Sky City Entertainment Group Ltd at the time she declined to conduct an urgent investigation into the failure of the Organised and Financial Crime Agency of New Zealand to carry out “due diligence” on the increased risk of money-laundering arising from the New Zealand International Convention Centre (Bill) 2013.

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

Paul Goldsmith
Chairperson
The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *Central Government: Results of the 2012/13 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.

Paul Goldsmith
Chairperson
Report from the Controller and Auditor-General, Draft Annual Plan 2014/15 (including the Auditor-General’s proposed work programme for 2014/15)

Report of the Finance and Expenditure Committee

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Report from the Controller and Auditor-General, Draft Annual Plan 2014/15 (including the Auditor-General’s proposed work programme for 2014/15)

Recommendation

The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General Draft Annual Plan 2014/15 (including the Auditor-General’s proposed work programme for 2014/15), and recommends that the House take note of its report.

Introduction

Under the Public Audit Act 2001, the Controller and Auditor-General is required to present to the Speaker, at least 60 days before the beginning of each financial year, a draft annual plan describing the Auditor-General’s proposed work programme for the year. A finalised annual plan must be presented to the House before the beginning of each financial year.

The Auditor-General may take into account any comments from the Speaker or any committee of the House when preparing a final version of the annual plan. The Auditor-General is required to indicate in the final version of the annual plan the nature of any changes to the work programme priorities suggested by the Speaker, or by 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

For the 2014/15 work programme, the Auditor-General proposes a theme of “governance and accountability”.

Audit work

The core of the office’s work (about 87 percent) remains the annual audits of public entities’ financial reports. In 2014/15 it expects to provide audit opinions on about 3,800 financial statements and about 400 performance statements.

The Auditor-General will publish sector reports on the results of the 2013/14 audits, grouped by central government, local government, and state-owned enterprises.

The office also works with public entities to help them improve their performance information and use it to consider their effectiveness and efficiency.
Performance audits and special studies

The office’s performance audits will focus on how governance and accountability mechanisms in the public sector support effective public spending and investment. It intends to report on the following topics:

- Education for Māori: performance information and accountability
- The public accountability system: how people can hold public entities to account
- Auckland Transport: governance and accountability of the Auckland Manukau Eastern Transport Initiative
- The effectiveness of governance models in the environment sector
- Canterbury rebuilding: a follow-up to its earlier report on the Earthquake Commission’s management of the Canterbury Home Repair Programme
- Canterbury rebuilding: governance arrangements for community projects in Christchurch
- Audit committees in the public sector
- Inland Revenue Department’s business transformation programme.

Inquiry reports

The office’s inquiry work responds to requests received. The Auditor-General says she has been concerned for some years that such work places increasing pressure on the office’s resources. She is currently reviewing the way inquiry work is managed, and plans to make some changes from July 2014 to help the office to be more transparent about the consequences of major inquiries for other parts of the planned work programme.

Completing work from 2013/14, and plans for 2015/16

In 2014/15 the office will complete the following reports from its 2012/13 work programme, which focussed on service delivery:

- Reports on how the Ministry of Social Development and the Accident Compensation Corporation manage their cases to deliver client-focused services
- Education for Māori educational success (third report)
- Auckland Council: a service performance review of the council’s building and resource consent processes
- Primary growth partnerships
- Whānau Ora’s progress so far.

It will also prepare an overview report on the results of its work on service delivery.

In 2015/16 the Auditor-General plans to concentrate on the theme of “investment and asset management”.

Comment

We agree with the Auditor-General that “governance and accountability” is an appropriate theme for the coming year’s work programme in view of the big recent changes in legislation affecting public-sector accountability arrangements, and new financial reporting
standards developed by the External Reporting Board. It is also particularly appropriate
given the focus on improving public sector performance and the continuing need for fiscal
restraint, which make high-quality governance essential.

We would be interested in some attention being given by the Auditor-General to Crown
Research Institutes. We wrote to other select committees seeking their views on the draft
annual plan, and will pass on the comments we have received to the Auditor-General for
consideration. They include a suggestion by the Commerce Committee about bringing
forward work currently planned for 2016/17 relating to information systems, data quality,
and changes in information management, in view of the large government IT projects in
progress. It was also suggested that the annual plan note that the office has a mandate to
provide proactive advice, in addition to its review work.

We note the Auditor-General’s caveat that she may need to modify the work programme
outlined in the draft plan if unforeseen work arises, such as a major inquiry.

We appreciate this opportunity for select committees to provide feedback and input on the
Auditor-General’s proposed work programme, given the importance of her office’s work in
providing assurance that public entities are operating and accounting for their performance
as Parliament intended.
Appendix

Committee procedure
The committee met on 7, 21, and 28 May 2014 to consider the report from the Controller and Auditor-General Draft Annual Plan 2014/15 (including the Auditor-General’s proposed work programme for 2014/15).

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

Committee members
Paul Goldsmith (Chairperson)
David Bennett
Dr David Clark
John Hayes
Dr Russel Norman
Simon O’Connor
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Hon Kate Wilkinson
Whole of government directions regarding procurement, ICT, and property functional leadership

Report of the Finance and Expenditure Committee

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Whole of government directions regarding procurement, ICT, and property functional leadership

Recommendation

The Finance and Expenditure Committee has examined the whole of government directions on functional leadership in procurement, ICT, and property, and recommends that the House take note of its report.

Summary

The proposal comprises three distinct directions under section 107 of the Crown Entities Act 2004 for whole of government approaches in the functional leadership areas of procurement, information and communications technology (ICT), and property. It forms part of the Better Public Services programme, designed to improve the effectiveness of business functions common to government agencies, and to reduce their costs.

The directions would extend the approaches required in government departments to most other Crown entities.

The proposal is in line with amendments made in 2013 to the Crown Entities Act 2004, which widened the range of purposes for which whole of government directions could be made, and allowed the Government to be more selective about the entities to which a direction applies.

Direction regarding procurement

Government rules for sourcing set out internationally recognised minimum standards of good practice for procurement. At present, however, they apply only to public service departments. This results in inconsistent practices among government agencies, and missed opportunities to improve the way government agencies do business.

The direction regarding procurement seeks to extend the rules of sourcing to about 100 additional entities, including all statutory Crown entities, all Crown entity companies including Crown Research Institutes,¹ and all companies listed in Schedule 4A of the Public Finance Act. School boards of trustees would not be covered by the direction, as more work is needed to understand their current procurement practices and determine whether applying the rules to them would deliver significant benefits.

The direction would take effect from 1 February 2015, to allow time for organisations to adjust their processes. It would double the amount of procurement expenditure covered by the good practice standards set out in the rules, from about $10 billion to $20 billion a year.

¹ While Crown entities are required to give effect to such directions, Crown Research Institutes must “have regard to” them.
We note that about 2 percent of this total represents all-of-government contracts for goods and services commonly used by government agencies. The forecast savings from such contracts over their life are currently estimated at about $350 million. The direction would require Crown entities to purchase from such contracts; many already do so voluntarily. An additional $5–10 million in savings annually is expected as a result.

**Direction regarding ICT**

The Government Chief Information Officer leads government ICT programmes, with the aim of providing system-wide assurance and integrated digital services throughout the state sector. At present the ICT Action Strategy and Plan apply only to government departments. The direction would extend them to include district health boards (DHBs) and several Crown agents with substantial investment in and a high volume of ICT business transactions: the Accident Compensation Corporation, the Earthquake Commission, Housing New Zealand Corporation, the New Zealand Qualifications Authority, New Zealand Trade and Enterprise, the New Zealand Transport Agency, and the Tertiary Education Commission.

The direction is expected to make government ICT more efficient and effective by enabling commonality, coherence, and cost savings, and by allowing the Government Chief Information Officer to provide wider leadership, and guidance on managing risks associated with ICT plans and investment. It would also help in discharging the officer’s mandate to make sustainable savings of $100 million a year on the state sector’s ICT transactions by 2017.

**Direction regarding property**

Most Crown agents already voluntarily follow the functional leadership approach to property strategy, standards, and processes. By making the approach compulsory, this direction would secure the cooperation of the others, so the Property Management Centre of Expertise can fulfil its mandate for improving capability, effectiveness, and efficiency in government. The direction would be applied to all Crown agents except DHBs and the New Zealand Blood Service—an additional 26 entities.

The direction would apply to Crown agents’ offices and public-interface property, but not to operational areas. DHBs and the New Zealand Blood Service are excluded from the direction for this reason, as all their office space is within operational sites.

The direction would require entities to comply with the mandated standards, tools, and processes for managing property, to cooperate with the centre of expertise in developing property strategies, and to obtain approval before entering into contracts for the acquisition or disposal of leased or owned property. As soon as practicable, they would be expected to implement the standard average workplace density of 12–16 square metres per full-time-equivalent.

During consultation, government entities expressed support for the proposed direction; some adjustments were made to provide requested clarification. The additional costs incurred by the directions are not expected to be great, as most Crown agents have already been applying the requirements. While the centre of expertise would recover the costs of its guidance and monitoring, the bulk of savings would remain with the Crown entities.
Comment

Overall, we support the proposed whole of government directions, in view of the benefits likely to be gained from economies of scale, efficiencies, and sharing expertise and capability among more of the state services. We are satisfied that the proposal meets the legislated criteria for the issuance of whole of government directions, and would not impinge on Crown entities’ statutorily independent functions. We note that the response to consultation on the proposed directions was generally supportive, and that the directions were adjusted to meet some specific concerns.

We considered the compliance burden involved in the functional leadership arrangements, particularly for smaller entities. We are reassured that a de minimis threshold applies, so that excessive processes would not be required for smaller contracts. Similarly, we consider it important that smaller suppliers should not be shut out of Government contracts. We were told that the policy approach seeks to achieve a healthy level of competition, balancing efficiencies of scale with encouragement of new suppliers. Emphasis is placed on tendering for contracts of the right size for potential suppliers, and ensuring that smaller suppliers are not deterred by overly bureaucratic processes. We sought and received further information about measures used for monitoring how well the government rules of sourcing and their application are working.

We asked whether the sourcing rules consider the benefits of the income tax and GST paid by New Zealand suppliers. We were told that the rules do not accord preference to New Zealand suppliers. They require agencies to apply specific principles of government procurement, which include getting the best value for money, accounting for all costs and benefits over the lifetime of the goods or services procured, and making balanced decisions that consider social, environmental, and economic effects. In applying the principles, agencies can consider all potential benefits to the Government, including tax benefits.

Regarding property, we note that the government standard, which entities would be expected to meet when practicable, relates to the amount of space used per employee, rather than the cost of the space. Some of us question this approach, believing it ignores the potential benefits to be gained from locating more of government services in regions where property values are lower than the main centres. We heard that a cost-per-employee measure is considered impractical for several reasons. A space standard is widely accepted practice, and allows for the effect of market forces on costs, while maintaining comparable standards of accommodation for all agencies. As to quality and safety standards, we were told that the Property Management Centre of Expertise regularly assesses and benchmarks these standards against good practice in the private sector, and comparisons indicate that the government cost per workstation is virtually identical to B-grade accommodation in the private sector.
Appendix

Committee procedure
The committee met on 7, 14, and 28 May 2014 to consider the whole of government directions. We received advice from the State Services Commission and the Treasury.

Committee members
Paul Goldsmith (Chairperson)
David Bennett
Dr David Clark
John Hayes
Dr Russel Norman
Simon O’Connor
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Hon Kate Wilkinson
The Finance and Expenditure Committee has considered the Supplementary Estimates of Appropriations for the year ending 30 June 2014, which consist of changes to existing appropriations and new appropriations proposed since the Estimates for 2013/14 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.

Paul Goldsmith
Chairperson
The Finance and Expenditure Committee has considered Petition 2011/77 of Roy Reid, requesting that, pursuant to the Citizens Initiated Referenda Act 1993, an indicative referendum be held on the following question: “Do you support the Government selling up to 49% of Meridian Energy, Mighty River Power, Genesis Power, Solid Energy and Air New Zealand?”

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

Paul Goldsmith
Chairperson
Petition 2011/78 of Deidre Kent and 877 others

Report of the Finance and Expenditure Committee

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Petition 2011/78 of Deidre Kent and 877 others

Recommendation

The Finance and Expenditure Committee has considered Petition 2011/78 of Deidre Kent and 877 others, and recommends that the House take note of its report.

Introduction

We have considered Petition 2011/78 of Deidre Kent and 877 others, requesting that the House initiate a Parliamentary inquiry into the best options for securing the on-going stability of New Zealand registered banks to ensure they never need to be bailed out by their customers or New Zealand taxpayers (and note that a further 244 people have signed an online petition supporting this request). We also request this inquiry should include:

1. an examination of The Chicago Plan Revisited by Jaromir Benes and Michael Kumhof on the IMF’s website
2. the ways New Zealand can initiate or support this important reform.

Submission from petitioners

The petitioners express concern about the stability of the banking system in New Zealand. They consider the current monetary system inherently unstable, and are concerned that the exposure of New Zealand’s large banks to derivatives increases the risk of a bank failure. In particular, the petitioners are concerned that the system of open bank resolution introduced by the Reserve Bank could require that banks be bailed out by their depositors.

The petitioners seek an inquiry to consider ways of improving the stability of the banking system. They would like consideration to be given to the 1930s proposal for monetary reform known as the Chicago Plan, which called for the separation of money creation from the credit functions of the banking system, as discussed in an IMF working paper of August 2012, The Chicago Plan Revisited.

Response to petition

We note that the Reserve Bank of New Zealand is required to assess and report publicly twice a year on the soundness and efficiency of New Zealand’s financial system. In its last Financial Stability Report in May 2014, it judged that New Zealand’s financial system is sound, and stronger now than it was from 1999 to 2007, before the global financial crisis. It said that the banking system is well capitalised, with funding and liquidity buffers comfortably above minimum requirements, and non-performing loans continuing to decline.

As the Reserve Bank has prudential oversight of registered banks, we sought its comments on the issues raised in the petition. The Reserve Bank told us it agrees with the petitioners that the stability of New Zealand’s banking system is vital, and says it is committed to enhancing it. The bank notes that there was no serious suggestion that any bank in New Zealand was at risk of insolvency during the global financial crisis. New Zealand banks

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1 We reported to the House on 30 May 2014 about the Reserve Bank of New Zealand’s Financial Stability Report, May 2014 (Finance and Expenditure Committee, L3P).
follow conservative business models compared with many of their international counterparts. Nevertheless, the Reserve Bank took steps to shore up areas of potential weakness highlighted by the crisis, by implementing a liquidity policy and requiring banks to strengthen the quality and quantity of capital they hold.

The Reserve Bank considers the risk of a bank failure in New Zealand to be very low, but points out that its supervisory approach explicitly does not seek to create a zero-failure regime. It says such an aspiration would be neither achievable, nor desirable. It maintains a strong focus on crisis management to ensure that, in the rare event of a crisis, the costs associated with a bank failure would be mitigated. It comments that it is strongly opposed to the bailing out of financial institutions, and has implemented measures so that banks need not be bailed out by taxpayers or customers.

**Open bank resolution**

The Reserve Bank considers that its open bank resolution (OBR) policy provides a mechanism to manage the failure of a bank so as to mitigate considerably the cost and hardship for depositors, by ensuring that they can retain access to a large portion of their funds throughout a crisis. The final allocation of losses would see the cost of the failure borne by shareholders in the first instance, with only residual costs falling on depositors and other creditors. Regarding the petitioners’ concern about an apparent flaw in the OBR approach, the Reserve Bank comments that authorities would be able to act to stem a flood of deposits. It also notes that the OBR policy would allow banks to shield very small depositors from losses by applying a very slightly higher charge on other creditors. In this way, it would allow a significant proportion of New Zealanders to be fully protected from failure.

**The Chicago Plan revisited**

Regarding the approach proposed in the Chicago Plan, the Reserve Bank agrees with the petitioners that such a framework could not be practicably or realistically implemented. It also agrees that a system of controlling money supply through a central bank monopoly on the creation of money and credit would not prevent financial instability. It considers the current system, whereby money supply is influenced indirectly by changing the price of money via the official cash rate (OCR), to be the most effective tool to influence the demand for credit and hence the money supply.

**Exposure to derivatives**

We also sought specific comment from the Reserve Bank in response to the petitioners’ concern about the pronounced increase in banks’ derivatives contracts over recent years. The Reserve Bank said its prudential focus is on the underlying risk of the derivative contracts that banks hold, which tends to be significantly less than is indicated by the notional value of the contracts. It noted that New Zealand’s capital adequacy framework requires banks to measure and report their market risk using methodology established by the international Basel Committee on Banking Supervision. Banks also apply their own internal limits to manage their risk exposure.

The Reserve Bank told us it has not had any prudential concerns with the market risk positions reported by New Zealand banks to date. Nevertheless, it continues to work with the international regulatory community to strengthen the framework governing the derivatives markets, and prudential policies for the financial system more broadly.
Conclusion

Having considered the issues raised by the petition in the context of the current regulatory and supervisory framework for New Zealand banks, we do not consider that a parliamentary inquiry into the stability of the banking system is needed. We recommend that the House take note of this report.
Appendix

Committee procedure
Petition 2011/78 was referred to the committee on 4 September 2013.
We met between 16 October 2013 and 2 July 2014 to consider the petition, and received written evidence from the petitioners and from the Reserve Bank of New Zealand.

Committee members
Paul Goldsmith (Chairperson)
David Bennett
Dr David Clark
John Hayes
Dr Russel Norman
Simon O’Connor
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Hon Kate Wilkinson
Report from the Controller and Auditor-General, Maintaining a future focus in governing Crown-owned companies, February 2014

Report of the Finance and Expenditure Committee

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**Report from the Controller and Auditor-General, Maintaining a future focus in governing Crown-owned companies, February 2014**

**Recommendation**

The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *Maintaining a future focus in governing Crown-owned companies, February 2014*, and recommends that the House take note of its report.

**Introduction**

This study formed part of the Auditor-General’s work programme in 2012/13 under the theme: “Our future needs: is the public sector ready?”. It considered how the boards of Crown-owned companies think strategically about the future. The report seeks to provide Parliament and the public with a sense of how Crown-owned companies’ practices maintain a focus on the future, the challenges they face, and insights and lessons from those working within the commercial model for governing and delivering public services.

The study drew on interviews with the chairpersons, board members, chief executives, and monitoring agents of 20 state-owned enterprises, Crown research institutes (CRIs), and other Crown companies. Together, the entities studied control a sizeable portion of Crown assets—about $28.3 billion—with revenue of about $5.1 billion a year.

**Findings from the study**

The Auditor-General told us that her office found many excellent examples of future-focused practice in Crown-owned companies. Some, such as KiwiRail and New Zealand Post, are highly focused on the future because their operating environments are particularly uncertain. They are thinking purposefully, and using the challenges they encounter to stimulate positive change. Some others were singled out by the Auditor-General as “quiet achievers”, positioning their people and assets well to respond to new opportunities; they include MetService, Scion, AsureQuality, Plant & Food, and Geological and Nuclear Science. The boards of such entities tended to take a proactive approach with management, monitoring officials, Ministers, and other stakeholders about expectations, roles, and strategy, and responded to events strategically.

Disappointingly, however, the study also found inconsistency in the application and quality of future-focused practices, with none of the entities studied consistently applying all of the desirable practices on a regular basis. For example, an entity might be doing well in preparing for down-side risks, but not thinking sufficiently about the strategic contribution of its operations to public service. The Auditor-General told us she is concerned about the variation in practice among Crown-owned companies; she had expected to find more consistency. To encourage improvement, she and her staff met with all of the entities involved to discuss the report.

An important challenge highlighted by the review is the inherent tension in the governance arrangements for Crown-owned companies. How the balance between commercial and
public-good interests is managed is fundamental to an entity’s ability to focus on the future. Those that manage the tensions successfully appear to use three important practices: good information flows; mutual respect; and a common understanding between boards, Ministers, and monitoring agencies of the Crown company’s purpose, role, and public contribution.

The study confirmed that many aspects of maintaining a future focus are common sense for experienced boards and managers: such things as keeping abreast of issues in the sector and industry; knowing what is going on in the business; making time for strategic planning; thinking about and forecasting the future; setting goals and expectations; seeking feedback; and making technology a normal part of business.

The study also highlighted the importance of the entities’ accountability statements (the statements of corporate intent and, for CRIs, statements of core purpose) as a means of judging their performance against clearly-stated objectives. The Auditor-General said that improving the quality and usefulness of such planning and performance information has been a long-standing concern of her office.

The report concludes that many entities are managing their assets well and positioning themselves against uncertainty, but it is important that boards take a proactive approach, and consciously prepare for risks. The Auditor-General suggests that improving their understanding of their company’s limitations, and therefore their appetite for risk, will help governors to prepare for shocks.

**Asset management**

Regarding Crown companies’ asset management, we have asked the Auditor-General for the detailed data behind the averages in her report, as we would find it useful in assessing the performance of individual entities. The Auditor-General said it is not always easy to provide meaningful data in disaggregated form, but she would see what could be done. She also noted that more information will emerge from her office’s work programme in 2015/16, which will focus on investment and asset management.

**Balancing commercial and public interests**

The Auditor-General observed that it has been more than 25 years since the state-owned enterprise model for governing and delivering certain public services was set up. She recalled that it was originally seen as a form of “half-way house” to prepare the entities for sale; however, the model appears to have become a more permanent feature of New Zealand’s public management system, with other types of Crown-owned companies such as CRIs being set up. She suggested it may be time to step back and reflect on the model.

We agree with the Auditor-General that the governance model for Crown-owned companies entails inherent tensions which can be difficult for boards to manage. We sought her views on whether boards are acknowledging the difference from purely commercial entities, and what they are doing to balance profit considerations against their social responsibilities. The Auditor-General said there is a variety of practice, and no magic formula for achieving a successful balance. The entities that did well were careful to mould the two interests together, based on a clear common understanding between the board and Ministers about the company’s purpose and how that purpose fits into the public-sector context.
Television New Zealand

We note that TVNZ was one of the entities studied, and asked how it is coping with the challenge of balancing commercial and public interests now that it does not have a charter for guidance. The Auditor-General said she had met with senior management rather than the board in this instance, but it was clear they were thinking strategically about the future. This was to be expected given the way changes in technology are affecting the whole broadcasting industry. She said she did not come away with any concern about how it is balancing its public and commercial roles.
Appendix

Committee procedure

We met on 2 and 23 July 2014 to consider the report of the Controller and Auditor-General *Maintaining a future focus in governing Crown-owned companies, February 2014*. We heard from the Office of the Controller and Auditor-General.

Committee members

Paul Goldsmith (Chairperson)
David Bennett
Dr David Clark
John Hayes
Dr Russel Norman
Simon O’Connor
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Hon Kate Wilkinson
Report from the Controller and Auditor-General, Reflections from our audits: Our future needs - is the public sector ready?

Report of the Finance and Expenditure Committee

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Report from the Controller and Auditor-General, 
Reflections from our audits: Our future needs - is the public sector ready?

**Recommendation**

The Finance and Expenditure Committee has considered the report from the Controller and Auditor-General *Reflections from our audits: Our future needs – is the public sector ready?* We recommend that the House take note of this report.

**A valuable overview**

This report by the Auditor-General is an unusual one: it draws together broad observations from her office’s work over the past 18 months in carrying out its financial and performance audits of public entities and in-depth inquiries. For the first time, the Auditor-General had asked her staff to consider their work under a broad theme. The topic chosen was the important question of how prepared the public sector is for the changes and challenges the future holds.

The aim was not to find a definitive answer, but to encourage people to think about the big issues facing the public sector and, by highlighting examples of good and bad practice, to encourage improvements. It comments on a wide range of economic, social, and environmental issues and suggests areas for further thought.

We consider the report a useful contribution to enhancing thinking about the issues facing New Zealand. While specific to the public sector, we believe it is relevant to all New Zealanders. We commend the report’s brevity—no small achievement when covering such a broad topic. We agree with the Auditor-General that she is uniquely placed for an overview of the entire public sector, and are pleased that she is making this opportunity to engage with the public and seek their feedback.

**Summary of the observations**

The report’s contextual section echoes previous work by the Office of the Auditor-General and the Treasury, observing that New Zealand’s well-being depends on interdependent social, environmental, and economic factors. It briefly summarises some of the challenges the public sector needs to prepare for, such as the fact that New Zealand has spent more than it earned in all but four of the past 55 years; the concern about Māori educational achievement; the inevitable ageing of our population; and planned investment in public infrastructure.

In terms of the management of public finances, the report notes that New Zealand’s system ranks well internationally, but in the Auditor-General’s view it needs to move up a gear to face the challenges ahead. In particular, more attention should be paid to financial advice on investments, funding, and managing public resources. The Auditor-General will

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1 For example, the Auditor-General’s June 2013 report *Public sector financial sustainability*, and the Treasury’s July 2013 report *Affording Our Future: Statement on New Zealand’s Long-term Fiscal Position.*
also continue to press for financial reporting by agencies that is simple, understandable, and useful to the public.

Looking at New Zealand’s natural resources and physical assets, the report notes that biosecurity and biodiversity are essential for both the environment and the economy, and they rely on long-term planning, prioritisation, and good data. However, performance to date presents a mixed picture, with strategies not always implemented according to plan. The report recommends improving the way the public sector prioritises its actions and ensures that the intended results are delivered. Lessons from the Canterbury earthquakes also show that the public sector needs to prepare not just for likely risks, but also those that are unlikely but catastrophic.

In the report’s section about people, the Auditor-General notes that some recent inquiries by her office raised concerns about governance, so this will be a future focus of her office. She recommends that the public sector work specifically on building and maintaining expertise in governance and management, as well as capability in general.

Finally, the report suggests that the public sector should continue to explore better ways of communicating with citizens so that they are empowered to contribute to choices and to shape the public services they receive. Her office is already working to do so, for example by sharing its findings, data, and aspects of its work on its website, and participating in various public forums.

The Auditor-General told us she had initially thought this thematic way of reflecting on audit work was unique, but she had recently learned of a similar exercise in Sweden. She intends to liaise with officials in Sweden to see if lessons can be drawn from their methodology.

**Follow-up and future work**

We are pleased that the Auditor-General is using this report as the basis for speeches and public meetings with various public-sector and community groups, to encourage discussion and feedback. We heard that the response so far has been positive; community groups in particular have found the meetings informative, prompting lively discussion about ways they can contribute. The Auditor-General intends to explore further opportunities for public engagement with her office’s work.

We hope to see the observations made in the Auditor-General’s report borne in mind by all public-sector agencies. We also believe this thematic approach to thinking about the public sector as a whole can provide a valuable lens for use by Parliamentarians. We particularly encourage select committees to make use of such reflections in their financial scrutiny of public entities.

We note that the Auditor-General will continue to adopt themes as an overlay to her office’s work. The theme in 2013/14 has been “Service delivery”, and future themes will be “Governance and accountability” in 2014/15, and “Investment and asset management” in 2015/16. We agree that announcing themes in advance should help to direct the public sector’s attention to strengthening these areas.

As to other possible areas of focus, we indicated that we would welcome more discussion about the place for risk in the public sector. A culture of aversion to risk might stifle important opportunities for innovation and development, and there may be ways of encouraging calculated risk-taking. Another area we would like to see explored is the scope
for exchanges of staff between the public and private sectors and academia. We believe a cross-flow of ideas could be mutually beneficial.
Appendix

**Committee procedure**

We met on 2 and 23 July 2014 to consider the report of the Controller and Auditor-General *Reflections from our audits: Our future needs – is the public sector ready?* We heard from the Office of the Controller and Auditor-General.

**Committee members**

Paul Goldsmith (Chairperson)
David Bennett
Dr David Clark
John Hayes
Dr Russel Norman
Simon O’Connor
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Hon Kate Wilkinson
Report from the Controller and Auditor-General, Watercare Services Limited: Review of service performance

Report of the Finance and Expenditure Committee

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Report from the Controller and Auditor-General, Watercare Services Limited: Review of service performance

Recommendation
The Finance and Expenditure Committee has considered the report of the Controller and Auditor-General Watercare Services Limited: Review of service performance, and recommends that the House take note of its report.

Introduction
Under the Local Government (Auckland Council) Act 2009, the Auditor-General’s mandate was expanded to require her office to review periodically the service performance of the Auckland Council and each of its council-controlled organisations. This report covers the first such review.

About Watercare
With the amalgamation of Auckland's local authorities into a single Auckland Council in 2010, Watercare Services Limited became responsible for supplying all water and providing all wastewater services in the Auckland region. It took on the assets and liabilities relating to water supply and wastewater from the region’s former local authorities. The nature of the organisation changed significantly: previously a bulk supplier to seven entities, Watercare is now responsible for about 370,000 customers, 40 treatment plants, and 16,000 kilometres of pipes.

The Auditor-General chose to focus on Watercare for her office’s first review of Auckland Council’s service performance because the change was so significant, both for Watercare as an organisation, and as a new approach to water services in the Auckland region.

The focus of the office’s review was on Watercare’s relationship with its customers: its call centre, how it explains its tariffs to customers, and its billing and debt management processes; it did not cover the entirety of Watercare’s operations.

Auditor-General’s findings
The Auditor-General said the review found that Watercare has been largely successful in its efforts to provide good customer service. Her office has recommended several improvements it could make, but we were told that they should be seen as ways it could enhance performance, rather than of correcting any serious deficiencies. The Auditor-General said the findings are essentially a “good news story”.

Things Watercare has done well include moving to standardised tariffs in place of the highly complex and variable rates charged by seven previous councils; introducing monthly billing; running an efficient customer call centre with good rules and processes; and taking an efficient and accurate approach to reading meters. Recommended improvements include explaining more transparently how tariffs are set and why changes are made; and explaining the use of estimated meter readings, as every other bill is based on an estimate. The Auditor-General also suggests that Watercare adopt a code of practice for debt
recovery, and update its policy on restricting water supply. The office notes that Watercare’s approach to water restrictions is reasonable: very few customers have had their supply restricted, and households with young children, the elderly, or people in poor health would never be restricted. However, its standard letters to customers in arrears raise the prospect of restriction, which may cause unnecessary alarm.

We were pleased to learn that Watercare has accepted the Auditor-General’s recommendations, and has already acted on some of them.

**Areas for future attention**

We expressed some disappointment to the Auditor-General that her office’s review did not consider the reasonableness of Watercare’s charges. We note that efficiencies of scale allowed Watercare to introduce a standard water tariff in July 2011 that was lower than any of the seven councils had previously charged: in particular, customers in rural areas enjoyed large reductions. Recently, however, Watercare has increased its water connection fee in urban Auckland by 23.5 per cent, and has signalled rises to come in its “infrastructure growth charge”. Such increases prompt concern about affordability for residents, especially at a time when efforts are being made on various fronts to reduce costs in Auckland’s housing market. We asked how closely the Auckland Council is overseeing the activities of council-controlled organisations, and whether the Auditor-General was looking into issues of affordability.

The Auditor-General told us that Watercare’s recent increases were announced after her office’s review, which was focused on the way the organisation interacts with its customers, rather than all of its operations and pricing structures. She noted that the Auckland Council is reviewing the accountability of the organisations it controls, and her office will consider the issues raised once it is completed. More broadly, the Auditor-General said that reviewing the governance of council-controlled organisations and subsidiaries nation-wide is on her office’s work programme. We indicated that we place high importance on the accountability of council-controlled organisations, and suggested that an annual review might be appropriate.

We note that the Auditor-General is already planning two further reviews: of Auckland Council’s building consent process, and of the governance and accountability arrangements for the Auckland Manukau Eastern Transport Initiative (AMETI) projects. We will examine the reports on these reviews with interest, as we believe the findings, particularly regarding building consents, may well have broad national relevance.
Appendix

Committee procedure
We met on 2 and 23 July 2014 to consider the report of the Controller and Auditor-General Watercare Services Limited: Review of service performance. We heard from the Office of the Controller and Auditor-General.

Committee members
Paul Goldsmith (Chairperson)
David Bennett
Dr David Clark
John Hayes
Dr Russel Norman
Simon O’Connor
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Hon Kate Wilkinson
**New Zealand Superannuation and Retirement Income Amendment Bill**

**Government Bill**

As reported from the Finance and Expenditure Committee

**Commentary**

**Recommendation**

The Finance and Expenditure Committee has examined the New Zealand Superannuation and Retirement Income Amendment Bill, and recommends that it be passed with the amendments shown.

**Introduction**

The bill seeks to amend Part 2 of the New Zealand Superannuation and Retirement Income Act 2001 to facilitate the efficient and effective investment of the New Zealand Superannuation Fund by the Guardians of New Zealand Superannuation, and to help protect the Guardians from liability.

The principal change would be to allow the Guardians to control Fund investment vehicles (FIVs). At present, section 59 of the Act prevents the Guardians from controlling any other entity. This restriction is considered inconsistent with the Guardians’ obligation under the Act to invest the Fund in a way consistent with best-prac-
tice portfolio management, and to maximise returns without undue risk to the Fund as a whole. Allowing the use of FIVs is expected to enable the Guardians to structure Fund investments more efficiently, resulting in cost savings, and to manage risk more effectively. Other amendments proposed in the bill would make the following relatively minor changes:

- protecting the Guardians from the potential challenge that their investment decisions lack statutory authority in relation to the Crown Entities Act 2004 or the New Zealand Superannuation and Retirement Income Act 2001
- allowing the board of the Guardians to delegate the operational functions of appointing external fund managers and custodians, and granting powers of attorney
- making it explicit that the Fund is not an entity separate from the Crown; the current wording of the Act leaves some uncertainty about the sovereign nature of the Fund.

The bill would also make consequential amendments to the Income Tax Act 2007 relating to the use of FIVs. All income generated by the Fund would, however, continue to be captured within the New Zealand tax base.

**Validation provision**

Clause 5 of the bill would amend section 49 with the aim of strengthening confidence in commercial transactions entered into by the Guardians, preventing them from being challenged on the basis that they conflicted with the Crown Entities Act 2004 or the New Zealand Superannuation and Retirement Income Act 2001. After considering points raised by the Legislation Advisory Committee, we recommend replacing clause 5 in the bill as introduced with a different formulation, which we believe would achieve the intended purpose in a more straightforward way.

**Fund investment vehicles**

Clauses 6 and 7 of the bill would amend section 59 and insert new section 59A to permit the Guardians to use FIVs for the purpose of investing the Fund. We note that at present the Fund uses collective investment vehicles, for example to target certain geographic regions
or industry sectors. A Fund investment vehicle would allow it to select more specifically the products it wished to invest in, without the costs it currently incurs in adapting a collective investment vehicle to its preferences.

No controlling interests
We note that allowing the Guardians to control a Fund investment vehicle would be an exception to the general rule in section 59 of the Act that prohibits the Guardians from controlling any other entity.

It should be noted that the prohibition on control does not preclude the Fund from 100 percent ownership of assets. For example, its present investments include purchases of land, livestock, trees, and infrastructure, including farming and forestry machinery. While the Fund effectively “controls” these assets, such investments do not entail control of the business entity—the farm or forestry operation.

We are aware that the Guardians are working to increase the proportion of the Fund invested in New Zealand assets, and that the limited size of the New Zealand market means it must purchase real assets as well as shares if it is to do so while maintaining a diversified portfolio with a prudent level of risk. We consider that its approach to date strikes an appropriate balance within the requirement of section 59.

We gave thought to whether the use of FIVs and continuing growth in the size of the Fund could affect this balance, if for example the ownership of various assets through investment vehicles effectively gave the Fund the ability to control an operating entity. We consider it desirable to reinforce the intention that FIVs be passive holding entities, but we also accept that considerations of diversification and risk management might make some classes of asset a desirable investment for the Fund, so the question of effective control of an operating entity might arise. We see it as desirable that the Act provide a mechanism for scrutiny and control of the governance arrangements in such a situation.

To these ends, we recommend amending clause 7 by inserting new sections 59A(1A) and 59A(1B). Subsection (1A) would reinforce the expectation that investments through FIVs would be passive, by requiring the approval of the Minister of Finance for any instance in which this would not be the case. Subsection (1B) would allow the
Minister of Finance to specify the class of investment or entity for which an FIV could be used, and to stipulate governance arrangements for the entity with the aim of ensuring that the Guardians were not involved in controlling the entity’s business operations.

We consider that these amendments would provide a suitable balance between allowing the Guardians access to new vehicles to invest the Fund efficiently and effectively as it grows, and complying with the Act’s intention that the Guardians not be involved in the business operations of the entities in which the Fund is invested.

**Application of the Official Information and Ombudsmen Acts**

We recognise the importance of Fund investment vehicles being transparent and accountable, with information about their use available to the public. We therefore considered whether the Official Information Act 1982 should apply explicitly to FIVs. There is a risk, however, that this might reduce the effectiveness of FIVs by discouraging the participation of private investors. We note that the Guardians themselves are subject to the OIA (with the usual scope for withholding commercially-sensitive information), and that the discharge of their obligations would require them to ensure that they obtained information about the use and operation of Fund investment vehicles. We consider that these reporting and accountability requirements would ensure appropriate disclosure about the use and operation of FIVs, without the need to make FIVs directly subject to the Official Information Act. For similar reasons, we consider it sufficient that the Ombudsmen Act 1975 applies to the Guardians, without also making FIVs subject to it.

We recommend inserting subsection 59A(3A) in clause 7, to make it clear that these two Acts do not apply to a Fund investment vehicle directly, but that they apply to the Guardians in respect of information held by the Guardians about a Fund investment vehicle.
Appendix

Committee process
The New Zealand Superannuation and Retirement Income Amendment Bill was referred to the committee on 19 March 2014. The closing date for submissions was 5 May 2014. We received and considered three submissions from interested groups and individuals, and heard oral evidence from one submitter. We received advice from the Treasury.

Committee membership
Paul Goldsmith (Chairperson)
David Bennett
Dr David Clark
John Hayes
Dr Russel Norman
Simon O’Connor
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Jami-Lee Ross
Hon Kate Wilkinson
International treaty examination of the Agreement between the Government of New Zealand and the Government of the United States on Enhancing Cooperation in Preventing and Combating Crime

Report of the Foreign Affairs, Defence and Trade Committee

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International treaty examination of the Agreement between the Government of the New Zealand and the Government of the United States on Enhancing Cooperation in Preventing and Combating Crime

Recommendation
The Foreign Affairs, Defence and Trade Committee has conducted an examination of the Agreement between the Government of New Zealand and the Government of the United States on Enhancing Cooperation in Preventing and Combating Crime, and recommends that as the process is developed, Parliament should be advised on a six-monthly monthly basis about the number of requests and individuals affected, by a report to Parliament from the responsible Minister.

Introduction
The Agreement provides for the reciprocal exchange of fingerprint data and relevant underlying information between the United States and New Zealand, as permitted by each country’s domestic legislation, for the purpose of preventing and combating crime. The agreement applies to offences that are punishable by a maximum term of more than one year’s imprisonment.

The agreement would allow New Zealand law enforcement and border agencies to check biometric and biographical information with their US counterparts, and vice versa. The agreement also allows for the possibility of reciprocal exchanges of DNA data if this is permissible under the domestic laws of both countries.

We were told that about 20–25 requests for biometric information from the United States are made each year through existing arrangements, such as Interpol. The implementing arrangement will limit the volume of requests from the United States, which will reduce or limit administrative costs.

For New Zealanders not to be disadvantaged by the United States Visa Waiver programme, New Zealand is required to share information for the purpose of preventing, detecting and investigating crime, particularly terrorism. This treaty formalises the information-sharing arrangements.

Thirty of the 36 countries involved with the Visa Waiver Programme have signed or are close to signing the agreement.

We are concerned to ensure that it would not be possible to charge and extradite a person on relatively minor grounds and then impose a more serious charge after extradition. We understand that extradition legislation would not allow this to happen and furthermore that extradition legislation is a different legal process from information sharing.
Privacy concerns

During our consideration we raised various concerns about the privacy of the information which would be supplied by New Zealand and the extent to which biometric and criminal information would be exchanged between the jurisdictions. We were told that until both parties have a fully operational and automated fingerprint identification system linked to criminal records and the government of the day in both jurisdictions have agreed on terms of access, data may be supplied only in response to individual requests approved by the Minister of Police, in instances which comply with each country’s domestic law.

At present the data sharing system is a manual one, requiring someone to search national databases for a fingerprint match or any relevant information which could legally be provided to a requesting jurisdiction. We were concerned that if data sharing became automated, it might afford the United States unhindered access to New Zealand databases holding DNA, biometric, and biographical information on our citizens. There would be no parliamentary scrutiny of a decision to allow or request access to automated fingerprint databases in either country should they become available, but a decision would be taken in New Zealand by the Minister of Police and possibly Cabinet. We considered that once as the process is developed that Parliament should be advised on a six-monthly basis about the number of requests and individuals affected by a report to Parliament from the responsible Minister.

Until an automated system is agreed by both parties, all requests would be processed manually in both countries. Once an automated system is in place, there needs to be safeguards to prevent indiscriminate or mass searches of databases.

Article 2.2 of the Agreement requires that a fingerprint check may only be sent to the other party where the fingerprint check is “for the prevention, detection and investigation of crime”. Furthermore the particular crime being investigated must carry a penalty of one year’s imprisonment or more, as set out in Article 2.3. Any queries could be conducted only in individual cases, and in compliance with the querying party’s national law.

It is conceivable that a database containing New Zealand DNA records could be included in the Agreement in the future, but this would require specific legislation, which would undergo full parliamentary scrutiny. We were told that there are technological, legislative and operational barriers at present to sharing DNA profiles. The involvement of a DNA database would be relevant only once the technology was available, and if legislation permitted, and both parties agreed.

Conclusion

We consider that the security and administrative precautions regarding the Agreement need to be sufficient to ensure that information in a database cannot not be used improperly. We therefore recommend that once as the process is developed that Parliament should be advised on a six-monthly basis about the number of requests and individuals affected by a report to Parliament from the responsible Minister. With the adoption of that recommendation we support the agreement.
Appendix A

Committee procedure
The treaty was referred to the committee for examination on 18 September 2013. We met on the 17 October and 14 November 2013, and 30 January 2014 to hear evidence and consider it. We heard evidence from the Ministry of Justice, the Ministry of Foreign Affairs and Trade, New Zealand Customs, New Zealand Police and the Ministry of Business, Innovation and Employment.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
Appendix B

National Interest Analysis


Executive summary

1. The United States and New Zealand Governments have agreed to enter into an Agreement on Enhancing Cooperation in Preventing and Combating Crime.

2. The Agreement provides for the reciprocal exchange of fingerprint data, and any relevant underlying information as permitted by each country’s domestic legislation, for the purpose of enhancing the cooperation between New Zealand and the United States in preventing and combating crime. The Agreement applies to offences that are punishable by a maximum term of more than one year imprisonment or more serious penalty. The Agreement also allows for the future possibility of reciprocal exchange of DNA data if permissible under the national law of both Parties (there are no plans to implement this part of the Agreement at this stage).

3. The objective of taking Treaty action is to formalise and enhance the cooperation between the United States and New Zealand to prevent and combat crime, particularly terrorism more effectively. Criminal activity increasingly spans international borders, necessitating close cooperation and information-sharing between law enforcement agencies around the world. The Agreement recognises that information sharing is an essential component in the fight against crime. The Agreement also recognises the importance of respecting fundamental rights and freedoms, notably privacy.

4. The Agreement would give New Zealand law enforcement and border agencies (Police, Immigration New Zealand, New Zealand Customs) the ability to check biometric and biographical information held by the United States Department of Homeland Security and agencies such as the Federal Bureau of Investigations (FBI). It would apply only when investigating offences with a sentence of one year or more and for the purpose of obtaining criminal history and identity information. This would help enhance New Zealand’s national security against criminal activities and threats.

5. There are no significant disadvantages to New Zealand from entering into the Agreement. It is expected that the financial and operational costs of processing requests will be managed within existing baselines of New Zealand Police and Immigration New Zealand because of the implementation arrangements outlined in paragraph 30.

Nature and timing of proposed treaty action


7. No specific date is proposed for entry into force of the Agreement as it will depend on when both countries have completed their respective domestic procedures such as passing legislation.
8. Under Article 24 of the Agreement, each Party is required to notify the other, through diplomatic channels, that they have taken the steps necessary to bring the Agreement into force. This notification to the United States will occur as soon as practicable after implementing legislation has been enacted and any necessary regulations have been promulgated in New Zealand.

9. Articles 8, 9 and 10 of the Agreement will only enter into force following the conclusion of a separate implementing arrangement and after a later notification, through diplomatic channels, that each Party is able to implement those articles on a reciprocal basis. Due to legislative, technological and operational constraints, there are no plans to implement this part of the Agreement at this stage.

Reasons for New Zealand becoming Party to the treaty

Background to the Agreement

10. In January 2009 the United States asked New Zealand to enter into negotiations towards an Agreement on Enhancing Co-operation in Preventing and Combating Crime.

11. The Agreement provides for the staged reciprocal exchange of fingerprint data and DNA profiles, and any relevant underlying information as permitted by each country’s domestic legislation, for the purpose of enhancing the cooperation between New Zealand and the United States in preventing and combating crime. The Agreement applies to offences that are punishable by a maximum term of more than one year imprisonment or more serious penalty.

12. New Zealand is a member of the United States Visa Waiver Programme (VWP). In 2007, the United States Congress passed the Implementing Recommendations of the 9/11 Commission Act. This Act created additional information-sharing requirements for VWP countries. The Agreement implements those information-sharing requirements for the purposes of preventing, detecting and investigating crime, particularly terrorism.

13. Thirty of the 36 countries also part of the VWP have already signed or are close to signing such an Agreement. Australia signed a memorandum of understanding in 2011, but this arrangement has not yet entered into force. Retaining membership of the United States VWP is dependent on New Zealand signing such an Agreement.

Key features of current situation

14. Police already exchange information with US agencies for law enforcement purposes. This Agreement will formalise this exchange.

15. Immigration New Zealand already shares biometric and other information relating to foreign nationals with the United States Department of Homeland Security and Department of State via the Five Country Conference (FCC) Data Sharing Protocol. This arrangement has been in place since 2011 and has been highly successful in managing risk in the immigration cycle. However, checks are only conducted against the United States immigration data holdings, not criminal data holdings, and does not cover data sharing relating to New Zealand or US nationals.

Policy objectives

16. The Government’s policy objective in taking the treaty action is to enhance cooperation and engagement with the United States to prevent and combat crime. As an open economy
and society, New Zealand is not immune from transnational crime and benefits from international cooperation on law enforcement. Increasingly, states are developing new mechanisms to share information and intelligence or to conduct cross-border investigations.

17. The All of Government Response to Organised Crime (Ministry of Justice, August 2011) noted that well-targeted, intelligence-directed efforts and international cooperation and engagement are essential to an effective response to transnational organised crime.

Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Advantages of treaty action
18. There are a number of advantages to New Zealand from entering into the Agreement with the United States, including that it:

- Enhances New Zealand’s partnership with the United States. Entering into the Agreement will further enhance an increasingly close political, security and economic relationship, including allowing New Zealand to retain its membership of the US visa waiver programme.
- Enhances national security against criminal activities, particularly terrorism, and protects against individuals with criminal records in the United States seeking sanctuary in New Zealand.
- Formalises existing cooperation (through INTERPOL and under mutual assistance legislation) between New Zealand and the United States.
- Gives New Zealand agencies (Police, Immigration New Zealand, New Zealand Customs) enhanced access to biometric, biographical and criminal history information held by the United States Department of Homeland Security and agencies such as the FBI.
- Offers potential for future benefits if technological and legislative solutions allow for more timely and effective information to be shared among law enforcement and border agency partners.
- Gives Immigration New Zealand access to a wider range of information to assess travellers applying for visas or seeking to enter or remain in New Zealand, provided the information is required to prevent, detect and investigate a crime.

Disadvantages of treaty action
19. There are no significant disadvantages to New Zealand of entering into the Agreement. There will be administrative costs associated with sharing information, which are set out below in the section “The costs to New Zealand of compliance with the treaty”.

Disadvantages of not taking treaty action
20. Not signing the Agreement could result in the United States removing New Zealand from the VWP when VWP countries’ compliance is considered by Congress in June 2013.

Legal obligations which would be imposed on New Zealand by the treaty action, the position for reservations to the treaty, and an outline of any dispute settlement mechanisms
21. By taking treaty action, New Zealand will be legally obliged to:

- Designate one or more national contact points to receive and implement requests for information (Article 7);
On request, confirm or deny whether a fingerprint matches a fingerprint held by the New Zealand database (Articles 3, 4, and 5);

Supply any further personal data in accordance with national laws, if a fingerprint match is confirmed (Article 6);

Process any such information as described in the above points fairly and in accordance with national laws (Article 12);

On request, correct, prevent access to, or delete data received, in accordance with national laws (Article 14);

Give notice should any information be inaccurate or unreliable (Article 14);

Maintain a record of all requests received and made (Article 15);

Ensure the appropriate security is in place to protect personal data (Article 16);

On request, inform the United States of the processing of the data supplied and the result obtained (Article 18); and

Regularly consult the United States on the implementation of the Agreement (Article 20).

22. Reciprocal obligations will apply to the United States.

23. The Agreement does not provide for reservations or declarations.

24. Article 20 deals with consultation. It provides that in the event of any dispute regarding interpretation or application of the Agreement, the Parties shall consult each other in order to facilitate its resolution.

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

25. Legislation is required to give New Zealand agencies authority to share information with the United States under the Agreement.

26. Subject to the Agreement being presented to the House of Representatives and examined by select committee in accordance with Standing Orders, the implementing legislation will be included in an Organised Crime Amendment Bill.

Economic, social, cultural and environmental costs and effects of the treaty action

Economic

27. Concluding the Agreement will allow New Zealand to remain part of the VWP which allows VWP eligible travellers to travel to the United States for tourism purposes for up to 90 days without a visa. The VWP is a central tenet of already close people-to-people, tourism, and trading links between the United States and New Zealand. The loss of the VWP programme at this time would be jarring to the bilateral relationship, and to the economy. It would not only make it more difficult for personal travel, tourism, and transit stops through the United States, but it would remove one of the few avenues available to New Zealand businesses to make short, bureaucracy-free trips to the United States for the purpose of meetings, networking, and business development.

Social, cultural or environmental

28. By facilitating greater cooperation between the US and New Zealand, the Agreement will assist in reducing crime. There are various social benefits of reducing crime, such as reducing victimisation and increasing public safety.
29. There are no cultural or environmental effects rising from the Agreement.

**The costs to New Zealand of compliance with the treaty**

30. There will be administrative costs associated with responding to requests for information under the Agreement as the majority of requests made under the Agreement are likely to be from the United States to New Zealand. The implementing arrangements for the Agreement are likely to include measures to limit the volume, timing and processing of requests. It is envisaged that the financial and operational costs of processing requests will be managed within existing baselines of New Zealand Police and Immigration New Zealand.

**Completed or proposed consultation with the community and parties interested in the treaty action**

31. The Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry of Business, Innovation and Employment; New Zealand Police; Customs New Zealand; Department of Internal Affairs; the Inland Revenue Department, and Crown Law have been consulted. Department of Prime Minister and Cabinet has been informed.

32. The Privacy Commissioner has been informed about the Agreement.

**Subsequent protocols and/or amendments to the treaty and their likely effects**

33. Article 23 deals with amendments to the Agreement. Either Party may request consultations with respect to amending the Agreement. The Agreement may be amended by written agreement of the Parties at any time.

**Withdrawal or denunciation provision in the treaty**

34. Article 23 deals with termination of the Agreement. The Agreement may be terminated by either Party with three months’ notice in writing.

35. Any decision to terminate the Agreement would be subject to the usual domestic approval process.

**Agency disclosure statement**

36. The Ministry of Foreign Affairs and Trade has prepared this extended national interest analysis. It has undertaken an analysis of the issue of implementing the Agreement and the potential legislative and regulatory changes necessary to bring about implementation.

37. The sharing of information contemplated under the Agreement is consistent with New Zealand’s obligations as a good international citizen and enhances cooperation in preventing and combating crime.

38. The Ministry of Foreign Affairs and Trade is of the view that the policy options considered will not impose additional costs on business; nor impair private property rights, market competition, or the incentives for business to innovate and invest; nor override fundamental common law principles.

Penelope Ridings  
Divisional Manager, Legal Division  
Ministry of Foreign Affairs and Trade
Petition 2011/86 of Chris Hipkins

Report of the Foreign Affairs, Defence and Trade Committee

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Petition 2011/86 of Chris Hipkins

Recommendation

The Foreign Affairs, Defence and Trade Committee has considered Petition 2011/86 of Chris Hipkins and recommends the House takes note of its report.

The Foreign Affairs, Defence and Trade Committee has considered the petition of Chris Hipkins requesting that

the House urge the Government to take all action possible to stop whaling in the Southern Ocean and note the petition of Isaac Scott and 4,972 others calling for a stop to whaling in the Southern Ocean.

The petition was presented by Chris Hipkins, but was the result of the ongoing efforts of Isaac Scott, who organised the collection of the signatures. Isaac Scott, who is twelve years old, gave a presentation to us on the injustice of continued whaling in the Southern Ocean. Following his appearance we asked the Ministry of Foreign Affairs and Trade what New Zealand was doing in the international arena to stop the practice of whaling.

New Zealand has a long-standing position of opposing Japanese whaling in the Southern Ocean. Successive governments have called on Japan to end its whaling programme. New Zealand recently conveyed to Japan our extreme disappointment that it continue to conduct whaling operations, and it has made it clear that whaling vessels are not welcome in our ports.

Japanese whaling boats regularly enter Southern Ocean waters to kill endangered species of whales under the guise of research whaling as permitted by Article VIII of the International Convention for the Regulation of Whaling (1946). New Zealand and other like-minded countries widely accept that non-lethal methods are sufficient to conduct scientific research on whales. New Zealand provides support for non-lethal research programmes, among other measures to help put an end to whaling.

New Zealand also uses diplomatic and legal avenues to discourage whaling. It works with members of the International Whaling Commission to support whale sanctuaries, and raises the issue of whaling with Japan at every opportunity. Legally, New Zealand has lodged an intervention before the International Criminal Court of Justice in a case brought by Australia, arguing that Japan’s killing of whales for scientific purposes fails to meet the stringent requirements of the International Convention for the Regulation of Whaling. A decision on the case is expected in the middle of this year.

We thank Isaac for his tenacity in obtaining 4,972 signatures calling for a stop to whaling in the Southern Ocean, and for his eloquent and passionate appearance before this committee. We share his belief that Japan’s continued “scientific” whaling programme should be illegal under international law, and support New Zealand’s continuing efforts to bring an end to whaling in our region.

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

Committee procedure

The petition was referred to the committee on 14 November 2013. The committee met on 12 December 2013 and 30 January 2014 to hear evidence and consider the petition.

Committee members

John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
International treaty examination of the Minamata Convention on Mercury

Report of the Foreign Affairs, Defence and Trade Committee

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International treaty examination of the Minamata convention on Mercury

Recommendation
The Foreign Affairs, Defence and Trade Committee has conducted the international treaty examination of the Minamata Convention on Mercury and recommends that the House take note of its report.

Introduction
The purpose of this convention is to protect human health and the environment from releases of mercury and mercury compounds resulting from human activity. Mercury is a toxic pollutant, which can circulate globally in the oceans and the atmosphere for years, and can cause significant harm to human health and the environment.

This convention seeks to control mercury releases in a number of ways. It would ban primary mercury mining, require permits for trade in pure mercury, and regulate specific mercury products, processes, and releases to air, land, or water. The convention also targets artisanal and small-scale gold mining, and includes provisions on mercury stocks, storage, and contaminated sites.

New Zealand’s most significant anthropogenic mercury sources are industrial gold and silver production, geothermal energy, and wastewater treatment. Other sources include coal-fired power generation, industrial iron and steel production, importing products containing mercury, and mercury in the waste stream.


Issues raised by submitters
The submissions we received all supported New Zealand’s decision to sign the convention, and the introduction of measures to reduce mercury in the environment and its use in industry.

Mining
Article 7 of the convention requires party states to take steps to reduce and, where feasible, eliminate artisanal and small-scale gold mining that uses mercury, and to create a national action plan for capacity-building and financial assistance in countries where artisanal and small-scale gold mining is “more than insignificant”.

Submitters representing the minerals industry said that ratifying the convention would not impose an unfair or unreasonable burden upon them. Mercury is currently used in some artisanal or small-scale gold mining operations in New Zealand to separate gold from processed rock material. They considered that this process is conducted safely and responsibly, and wished to continue the supply of mercury for these mining operations; the
risks associated with mercury were dealt with sufficiently under New Zealand’s current workplace and environmental legislation and regulations. They believed moves to phase out the use of mercury in other industries, such as medical products, would eventually lead to small-scale mines adopting other methods of separation.

The Green Party interpret the convention as applying to new releases of mercury as a result of hard-rock mining activities on previous mercury mine sites, and the creation of tailings dams from large scale hard-rock gold and silver mining where mercury is present in a toxic state in the mined material. They believe these activities should not be permitted.

**Dairy industry**

Article 8 of the convention requires parties to control and, where feasible, reduce emissions of mercury and mercury compounds into the atmosphere, and Annex D lists coal-fired power plants and industrial boilers as point sources of mercury emissions.

While supporting the convention, the dairy industry raised concerns about its implementation. They were concerned that the coal-fired boilers used in many dairy plants would be captured by the convention, as they emit small amounts of mercury. They were uncertain what would represent the “best available techniques” and “best environmental practices” (BAT and BEP) under the convention regarding their boilers, and thus the cost implications for them of the convention.

They argued that there was a risk that the convention’s uncertain BAT criteria might supersede New Zealand’s Resource Management Act controls, to which the industry currently adheres. The possible cost of updating existing boilers to comply with the treaty was unknown. It was also pointed out that most of the industry’s coal-fired boilers are small by international standards, and BAT experience is limited to much larger coal-fired boilers.

We understand that the international negotiations for the convention had focussed on standards for boilers of 50MW capacity or higher; a 2011 Energy Efficiency and Conservation Authority study indicated that the largest coal-fired boilers in New Zealand at that time were 43MW.

We understand that BAT and BEP guidance will be negotiated by all signatories, and is very unlikely to exceed existing controls in New Zealand. Under Article 2, BAT will take into account the “economic and technical considerations for a given Party or a given facility”, and will be applicable “under economically and technically viable conditions”, while “taking into consideration the costs and benefits”. Similarly, BEP would mandate “the most appropriate combination” of measures and strategies, which New Zealand would need to determine itself. Officials will engage with industry on New Zealand’s position in BAT and BEP negotiations over the next year once draft guidelines are available.

We also note that the convention would require BAT and BEP only for new coal-fired boilers, from five years after the convention enters into force. It may relieve submitters to learn that BAT would not apply to existing coal-fired boilers, unless they underwent substantial modification which resulted in a “significant increase” in mercury emissions.

**Dental amalgam**

Article 4 paragraph 3 of the convention requires a party to take measures for mercury-added products in accordance with Part II. This part requires parties to phase down their
use of dental amalgam, while taking into account their domestic circumstances, and to adopt two or more measures from a list of nine, set out in Part II of Annex A: Products subject to Article 4, paragraph 3.

We heard several presentations on the use of dental amalgam in tooth fillings, both for and against its continued use.

Those opposing it gave evidence on the effects of mercury toxicity on the general population. One submitter told us that research he had carried out over a number of years in nearly 400 patients gave a mean mercury reading of 5.9 micrograms per cubic metre in their mouths, released as vapour from their amalgam fillings; for a room to be considered safe, a reading of less than 0.1 micrograms of mercury in the atmosphere is required.

In their view, dental amalgam fillings degrade over time, the mercury content in them leaches out to accumulate in other organs and tissues. They estimated that mercury toxicity contributed to at least 10 to 20 percent of the ill health in patients they saw as general practitioners, attributing it to conditions such as insomnia, fatigue, depression, Alzheimer’s disease, joint pain, heart arrhythmia and hypertension.

In their view, despite the effort it would take to safely remove the large number of amalgam fillings in this country, removal would be preferable to and less expensive than dealing with large numbers of patients presenting with conditions such as Alzheimer’s disease.

Another submitter opposed to mercury amalgam fillings described the effect of having been poisoned by mercury amalgam dental fillings as a child and her increased health and well-being that had followed since their safe removal.

Those in favour of the continued use of dental amalgam argued that it had been used safely in dental fillings for over 100 years, and noted the high proportion of New Zealanders with dental decay, which needed to be addressed. The submitter confirmed that international research on the safety of dental amalgam conflicted with the research cited by earlier submitters. In the submitter’s long experience of treating patients, none had complained about any conditions resulting from their amalgam fillings. As a profession, dental practitioners would be most concerned about any health risks associated from their regular contact with mercury, and were unaware of any research that indicated any link. They also cited international research that indicated that more recent methods of filling tooth cavities, such as composites, carried other possible risks to patient safety and the environment.

We are not equipped to judge professionally the merits of these various arguments about the safety of dental amalgam, and cannot make such a finding in the context of this treaty examination exercise. We would therefore encourage well designed research, capable of international scrutiny, being undertaken to confirm or dispel the concerns we have had presented to us.

The National Interest Analysis for the convention is attached as Appendix B to this report, and a transcript of an extract of the hearing of evidence as Appendix C.
Appendix A

Committee procedure
The convention was referred to the committee on 5 November 2013. The committee called for public submissions on the convention. The closing date for submissions was 29 January 2014. The committee received 14 submissions from organisations and individuals and heard five of the submissions orally. The committee met between 21 November 2013 and 13 March 2014 to consider the convention.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
Appendix B

National Interest Analysis: Minamata Convention on Mercury

Executive summary

1. The Minamata Convention on Mercury (“Convention”) is a major international development in controlling the harmful effects of mercury pollution. Agreed on 19 January 2013, it was signed in October 2013 by the EU and 91 countries, including New Zealand, in Minamata, Japan.

2. The Convention’s purpose is to protect human health and the environment from anthropogenic (man-made) releases of mercury and mercury compounds. Mercury is a toxic pollutant that can circulate globally through the oceans and the atmosphere for years or even decades, and can cause significant harm to human health and the environment, sometimes very far from its point of origin. Acute or chronic exposure can be fatal. The World Health Organisation (“WHO”) lists it as one of the top ten chemicals of major public health concern.

3. Humans are mainly exposed to mercury through emissions in the air, and from eating certain foods (mostly marine fish). The United Nations Environment Programme (“UNEP”) estimates that anthropogenic releases have increased mercury in Arctic marine animals by 10 – 12 times, compared to pre-industrial times. Mercury concentrations have also been increasing in the North Pacific Ocean over the last few decades, alongside the industrialization of East Asia. Further increases in emissions will have “long-term consequences for commercial fisheries and all consumers of marine and freshwater foods”.

4. To reduce these impacts, the Convention controls anthropogenic mercury releases in a number of different ways. It bans primary mercury mining, requires permits for trade in pure mercury, and regulates specific mercury products, processes, and releases to air, land and water. The Convention also targets artisanal and small-scale gold mining, and includes provisions on mercury stocks, storage, and contaminated sites.

5. This Convention is strongly aligned with the way New Zealand deals with anthropogenic mercury. It aligns with other international obligations, and takes account of New Zealand’s existing strong controls of mercury use and release. It could therefore be implemented into New Zealand law simply, and without needing to create extensive new regimes or specialised agencies. With its reasonable financial obligations and low costs to implement, ratifying the Convention and becoming a Party can provide strong benefits to New Zealand.

6. These benefits include phasing-out import of non-essential mercury products, which will decrease mercury in the waste-stream and ensure New Zealand does not become a dumping ground for out-of-date products high in mercury. It would protect New Zealand’s access to essential mercury products and mercury waste disposal facilities, as international
controls on these uses of mercury develop over time. Ratifying would also help avoid further risk to Pacific fisheries, contribute to protecting global human health and the environment, and maintain New Zealand’s international environmental reputation.

7. The advantages to New Zealand ratifying the Convention outweigh the associated disadvantages. There are no significant risks or disadvantages identified that argue against New Zealand becoming a Party. This National Interest Analysis (“NIA”) concludes that it is strongly in New Zealand’s interest to ratify the Convention.

Background to the Convention
The need for global action

8. Mercury is a naturally occurring heavy metal which can cause toxic effects on humans and the environment. It is released through natural processes like volcanic and geothermal activities, or through human processes. Man-made mercury emissions primarily come from gold mining using mercury, and combustion of coal (especially coal-fired power stations). Human activities continue to increase the mercury in the air, oceans, fresh water and soil, creating “a global threat to human and environmental health”.

9. Mercury can travel globally through oceans and the atmosphere, and cycles through these processes for years, or even decades. It accumulates in ecosystems and food chains, particularly fish, and is passed on to larger animals and humans who eat those foods. Health effects include significant damage to lungs and kidneys, as well as the nervous, immune and digestive systems. Chronic or acute exposure can cause neurological and behavioural disorders, and can be fatal.

10. Mercury mainly reaches humans through emissions in the air, and eating marine food where mercury has accumulated. Mercury levels in the oceans’ top 100 metres has doubled in the last 100 years from man-made releases, and take years or decades to be removed from circulation. This effect is now reaching the Pacific, as mercury levels in the North Pacific Ocean has increased over the last few decades in parallel with industrialization in East Asia.

11. Artisanal and small-scale gold mining continues to be the most significant source of mercury emissions to air. This process involves mixing mercury with gold ore to remove the gold, and then burning off the mercury. It is heavily used in Sub-Saharan African, South and Southeast Asian, and South American regions. Mercury levels in the air around artisanal and small-scale gold mining burning sites “almost always exceed” recommended WHO recommended levels for public areas.

12. UNEP estimated that approximately 1,960 tonnes of anthropogenic mercury was emitted to air in 2010, and at least 1,000 tonnes released to land and water. Further increases in anthropogenic mercury emissions will have long-term consequences for

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2 Above n 1, p i.
3 Above n 1, p iii.
4 Above n 1, p 28.
5 Above n 1, p 12.
7 Above n 1, p 9.
8 Above n 1, p iii.
commercial fisheries and consumers,\(^9\) which creates a particular risk for fisheries-dependent countries, including many Pacific Islands.

13. The United Nations ("UN") recommended global action to control mercury use in 2003, and UNEP agreed in 2009 that a global legally binding instrument be created.\(^10\) All governments were invited to participate in negotiations between 2010 and 2013, and a text was agreed on 19 January 2013.

14. New Zealand’s objectives in the negotiations were to protect human health and the environment from the harmful effects of mercury, and to reduce anthropogenic mercury emissions. New Zealand aimed to ensure the Convention took into account wider environmental initiatives, was consistent with existing international agreements, and contained reasonable financial, compliance and administrative obligations. Other criteria included flexible trade controls, a focus on the most globally significant sources of mercury releases, and appropriate management or remediation of mercury-contaminated sites. These objectives and criteria were met by the final agreed text of the Convention.

11 Australia, New Zealand and Oceania are estimated to contribute 1.1% of the global anthropogenic mercury emissions to air (UNEP Global Mercury Assessment 2013, p 11).

**Mercury in New Zealand**

15. New Zealand’s most significant anthropogenic mercury sources are industrial gold and silver production, geothermal energy, and wastewater treatment. Other sources include coal-fired power generation; industrial iron and steel production; importing products containing mercury; and mercury in the waste stream.


17. As a result, anthropogenic mercury is not a significant pollutant in New Zealand.\(^11\) New Zealand does, however, rely on other countries for access to essential mercury products, and facilities that can dispose of mercury in an environmentally sound way.

**Nature and timing of the proposed treaty action**

18. New Zealand signed the Convention when it opened for signature in October 2013. It is proposed that New Zealand ratify the Convention. This will involve deciding New Zealand’s phase-out dates for certain products under the Convention, amending relevant laws and regulations, and sending a formal letter to the UN agreeing the Convention applies to New Zealand (an instrument of ratification).

19. Under Article 31, the Convention will come into force 90 days after fifty countries deposit instruments of ratification, acceptance, approval or accession. If New Zealand is among the first 50, the Convention will become binding on New Zealand when the Convention enters into force. If New Zealand is not among the first 50 to ratify, the

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\(^9\) Above n 1, p 32.

\(^10\) Decision 25/5.

\(^11\) Australia, New Zealand and Oceania are estimated to contribute 1.1% of the global anthropogenic mercury emissions to air (UNEP Global Mercury Assessment 2013, p 11).
Convention will bind New Zealand 90 days after the instrument of ratification. Countries are “Parties to the Convention” only when the Convention becomes binding on them.

20. The Ministry of Foreign Affairs and Trade (MFAT) notified Tokelau of New Zealand’s intention to sign the Convention. Due to the subject matter of the Convention and the difficulty Tokelau would have complying with obligations, it was not necessary to undertake a formal consultation process. Tokelau has not raised any issues with this approach. Accordingly, ratification of the Convention will not extend to Tokelau.

**Reasons for New Zealand becoming a Party to the treaty**

21. There are several significant reasons in favour of New Zealand becoming a Party to the Convention.

22. Primarily, New Zealand will be contributing to global efforts to protect human health and the environment. The Convention will reduce global anthropogenic releases of a dangerous pollutant, and meet New Zealand’s objective to help protect human health and the environment from anthropogenic mercury.

23. The Convention primarily meets these goals by:
   - Banning new primary mercury mining,\(^{12}\) and phasing out existing primary mercury mining within fifteen years;
   - Controlling mercury in a number of ways, including trade in mercury, phasing-out specific non-essential products and processes (with certain exceptions), disposing of mercury wastes, and appropriate treatment for mercury-contaminated sites;
   - Focussing on the most significant sources of mercury; and
   - International collaboration, and capacity building for developing countries.

24. Secondly, the Convention will reduce the amount of mercury imported in products, which decreases the amount of mercury in the New Zealand waste stream. Global phase-out dates ensure that New Zealand does not end up a dumping ground for out-of-date mercury products after the rest of the world phases them out.

25. Thirdly, becoming a Party will protect our access to essential mercury products, and to environmentally sound facilities for mercury waste. New Zealand relies on other countries for these uses of mercury. As the Convention is reviewed and international rules around mercury develop, the best way for New Zealand to protect its interests will be for to participate in the negotiations as a Party. This ability to maintain access to essential products and disposal facilities meets New Zealand’s criteria for flexible trade controls.

26. Fourthly, supporting the Convention will help avoid further risk to Pacific fisheries, where mercury levels have been increasing. Mercury circulates in oceans for much longer than in the air (about 11 years in the ocean compared to 2 years in the air),\(^{13}\) so immediate action to reduce anthropogenic emissions is needed to avert further potential harm to the Pacific in the future.

27. A fifth reason to become a Party is that it will maintain New Zealand’s international environmental reputation and credibility. The Convention aligns well with New Zealand’s

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\(^{12}\) “primary mercury mining” or “primary mining for mercury” means mining in which the principal material sought is mercury. Often a number of minerals will be found in the same area due to the geomorphological processes that create them. The Convention does not restrict mining for any other minerals.

\(^{13}\) Above n 1, p 21 and 27.
other international obligations on hazardous chemicals and waste, and with New Zealand’s national mercury controls. The Convention supports New Zealand’s other measures aimed at dangerous pollutants, including other international agreements and existing laws and regulations.

28. Internationally, the Convention complements New Zealand’s obligations under the Basel Convention\(^\text{14}\) (hazardous waste), the Rotterdam Convention\(^\text{15}\) (hazardous chemicals and pesticides), the Stockholm Convention\(^\text{16}\) (chemicals that are persistent organic pollutants), and the Montreal Protocol\(^\text{17}\) (ozone-depleting substances). Emissions controls may also provide co-benefits for climate change mitigation.

29. Domestically, New Zealand’s existing mercury use and laws already meet most of the obligations under the Convention (see “Measures” section below). The Convention recognises efforts already in place to control mercury releases, which was one of New Zealand’s criteria in the negotiations, and helps ensure the Convention has reasonable financial, compliance and administrative obligations.

30. Finally, New Zealand’s support will help ensure the Convention has the largest possible impact. The more international support for the Convention, the more likely it is to achieve its goal of protecting human health and the environment from increasing anthropogenic releases of mercury and mercury compounds.

Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

Advantages:

31. Advantages to New Zealand from the Convention include:

Global, regional and local environmental benefits

- The Convention will reduce the effects of mercury pollution globally, including in the Pacific, by banning primary mercury mining and therefore reducing the amount of mercury able to be released. It will also strengthen the capacity of individual countries to control mercury emissions and releases, encouraging tighter national control over the most significant sources. Phasing-out specific non-essential products will decrease the amount of mercury in the global and New Zealand waste stream.

Protecting access to essential international markets

- New Zealand relies on access to international markets for essential mercury products, and environmentally sound mercury waste disposal facilities. As the Convention and international rules around mercury use develop, being a Party would enable New Zealand to participate and protect its interests in these essential areas of mercury use.

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\(^{15}\) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous chemicals and Pesticides in International Trade.

\(^{16}\) Stockholm Convention on Persistent Organic Pollutants.

\(^{17}\) Montreal Protocol on Substances that Deplete the Ozone Layer, protocol to the Vienna Convention for the Protection of the Ozone Layer.
Maintaining and enhancing environmental reputation

- Ratifying the Convention would demonstrate continued support for international action to reduce harm from dangerous pollutants. As a small country, New Zealand relies on constructive engagement to achieve its international goals. New Zealand has fostered a positive international environmental reputation by implementing other environmental agreements, and early commitment to the Convention would help maintain this reputation, and environmental credibility in overseas markets.

Reinforcing existing domestic and international policy on mercury

- The Convention is closely aligned with New Zealand’s existing domestic policy measures to control anthropogenic mercury, and complements New Zealand’s other international environmental obligations.
- This alignment will enable New Zealand to implement most of the Convention at little or no cost or disadvantage to New Zealand. For example, New Zealand has had no primary mercury mining since the 1940s, so a ban on further primary mercury mining would have no impact (the Convention does not control mining other than where mercury is the primary mineral sought). The Convention also phases-out specific mercury-intensive manufacturing processes, but none of these processes take place in New Zealand.

Potential disadvantages

32. There are two potential disadvantages, which are both low risk.

33. The Convention requires countries to phase out import, export and manufacture of certain non-essential mercury products by 2030. These products include certain forms of batteries, lamps and measuring devices (“Listed Products”), and apply with various thresholds and exceptions. New Zealand does not manufacture any of the Listed Products, and is phasing out all of their use already. The Listed Products are largely forms of older technology, and are being internationally phased out in favour of lower- or mercury-free alternatives. As New Zealand does not control manufacture of the Listed Products or their alternatives, there is a low risk that the phase-out of import or export of the Listed Products could hasten New Zealand’s phase-out of these products, and increase costs on New Zealand consumers.

34. This risk will be mitigated by consultation on phase-out dates with New Zealand users and other countries, before New Zealand chooses appropriate dates. Any necessary exemptions to postpone phase-out dates in the Convention will be recorded in New Zealand’s ratification documents.

35. There is a very low risk of binding guidance being developed by the Conference of the Parties requiring higher environmental emissions controls for new facilities in an agreed list of facilities. This list includes coal-fired power plants and industrial boilers, certain mineral smelting and roasting facilities, waste incineration facilities, and cement clinker production facilities (“Agreed Facilities”). If a new Agreed Facility opens later than 5 years after the Convention enters into force for that country, they must comply with guidance on “best available techniques and best environmental practices”. This term will apply to emissions of mercury only, and take into account economic and technical considerations, and costs and benefits.
36. The first Conference of the Parties will decide on “best available techniques and best environmental practices” guidance, but it is considered very unlikely to exceed New Zealand’s existing environmental requirements. This low risk could be further lessened by New Zealand ratifying the Convention early, and participating in the negotiations themselves.

**Overall assessment of advantages and disadvantages**

37. Overall, the benefits to New Zealand becoming a Party outweigh the disadvantages. Mercury pollution is increasing both globally and in the Pacific region, and would be addressed by this Convention. While New Zealand has reduced the effects of anthropogenic mercury domestically, mercury pollution is a global environmental issue. Ratifying the Convention would meet New Zealand’s objective to reduce harm from anthropogenic mercury, and to reduce mercury emissions. It is an added benefit that the Convention does so consistently with New Zealand’s existing domestic controls and international obligations on mercury.

**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**

38. The majority of the obligations in the Convention are consistent with New Zealand’s existing practice, and would require very little in the way of implementation (see next section for measures required to implement the Convention).

39. The Convention requires Parties to:

- **Control existing primary mining for mercury**\(^{18}\) or specific mercury mixtures\(^{19}\) (including phasing it out within 15 years), and ban new primary mercury mining (Article 3)
- **Endeavour to identify stocks of mercury, specific mercury mixtures or specific mercury compounds**\(^{20}\) above certain amounts, and ensure environmentally sound disposal of mercury from particular sources (Article 3)
- **Comply with an international consent regime for import and export of mercury and specific mercury mixtures** (Article 3)
- **Take appropriate measures to phase out, by 2020, the import, export and manufacture of specific types of products that contain mercury** (with exceptions and the ability to lodge exemptions), and to discourage new mercury products without environmental or health benefits. The list of products includes particular batteries; switches; relays; lamps; cosmetics; pesticides and biocides; topical

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\(^{18}\) “mercury” means elemental mercury (Hg(0), CAS No. 7439-97-6).

\(^{19}\) “specific mercury mixtures” means mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight.

\(^{20}\) “specific mercury compounds” means:

- Mercury (I) chloride (known as calomel);
- Mercury (II) oxide;
- Mercury (II) sulphate;
- Mercury (II) nitrate;
- Cinnabar; and
- Mercury sulphide.
antiseptics; and measuring devices (such as thermometers and sphygmomanometers) with feasible alternatives (“Listed Products”). Parties must also take certain measures towards dental amalgam (Article 4, Annex A).

- Take appropriate measures to control then phase out specific manufacturing processes that use mercury, take measures to control mercury releases from those facilities, and discourage new processes without environmental or health benefits (Article 5, Annex B).

- Take steps to reduce and where feasible eliminate artisanal and small-scale gold mining that uses mercury, and to create a National Action Plan to assist with access to capacity-building and financial assistance if a country determines that its levels of artisanal and small-scale gold mining are “more than insignificant” (Article 7, Annex C).

- To take measures to control mercury emissions from specific types of existing facilities (“Agreed Facilities”), including inventories of emissions. The Agreed Facilities are coal-fired power plants and industrial boilers; smelting and roasting processes for lead, zinc, copper, and industrial gold; waste incineration facilities; and cement clinker production facilities. If an Agreed Facility opens later than 5 years after obligations entered into force for that country, that facility must use “best available techniques and best environmental practices” for mercury emissions (Article 8, Annex D).

- Take measures to control releases to land and water from sources that are significant and not controlled by other parts of the Convention, including inventories of releases (Article 9).

- Take measures to ensure environmentally sound storage of mercury, specific mercury mixtures, and specific mercury compounds, and cooperate to enhance capacity building to meet this obligation (Article 10).

- Take appropriate measures to manage in an environmentally sound manner specific waste consisting of, containing or contaminated with, mercury or general mercury compounds, only recover mercury for allowed uses, and import and export mercury wastes in accordance with international rules such as the Basel Convention (Article 11).

- Endeavour to develop appropriate strategies to identify and assess mercury-contaminated sites, and manage the sites in an environmentally sound manner (Article 12).

- Provide, within New Zealand’s capacities, resources to implement the Convention in accordance with national policies, priorities, plans and programmes (Article 13).

- Cooperate to provide, within New Zealand’s capabilities, capacity building and technical assistance, and promote and facilitate technology transfer and access (Article 14).

- Promote and facilitate the exchange and public dissemination of information on mercury and general mercury compounds, as well as endeavouring to cooperate on research (Articles 17 to 19).

- Report to the Conference of the Parties on measures taken to implement the Convention (Article 21).

40. Under Article 32, the Convention is not subject to reservations.

41. Under Article 25, disputes between Parties should first try to be resolved by negotiation. If the dispute is not settled, it gets submitted to either an arbitration procedure.
or the International Court of Justice ("ICJ") if all Parties to the dispute have elected that option. If Parties have not elected the same option, after 12 months the dispute can be submitted to a conciliation commission at by any Party to the dispute (Annex E). In line with New Zealand’s practice in other relevant international environmental conventions, it is not proposed that New Zealand opt for arbitration or submission of disputes the ICJ.

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

42. Overall, the obligations in the Convention are strongly consistent with the current use of mercury in New Zealand. New Zealand law controls mercury in a number of ways, and the following legislation is already consistent with obligations in the Convention:

- The Resource Management Act 1991 ("RMA") regulates discharges of mercury, and primary mining for non-Crown-owned mercury. There are National Environment Standards for contaminated sites, and a fund that helps identify, assess and remediate contaminated sites. The RMA is enforced by regional councils or territorial authorities.
- The Hazardous Substances and New Organisms Act 1996 ("HSNO") regime regulates import, use, packaging, storage and disposal of mercury and general mercury compounds. HSNO is monitored and enforced by the Environmental Protection Authority ("EPA").
- The Health and Safety in Employment Act 1992 addresses mercury in the workplace, and is enforced by the Ministry of Business, Innovation and Employment.
- Import and export of mercury wastes are managed under the Imports and Exports (Restrictions) Act 1988 ("IERA"). The EPA manages the permitting systems under IERA, and enforcement is carried out by the New Customs Zealand Customs Service ("Customs").

43. Other obligations in the Convention are consistent with existing practice, but would need minor legislative or regulatory amendment to confirm the status quo (for example, banning primary mercury mining and manufacturing processes that do not take place in New Zealand). Minor amendments are likely to be needed in the RMA, CMA and HSNO, and the Working Tariff Document. A non-legislative implementation approach has not been identified.

44. Three obligations would require changes to existing practice and law (likely to HSNO and the IERA regulations). These changes would be to establish a permit process for import and export of mercury and specific mercury mixtures, to phase-out import and export of the Listed Products, and to ensure mercury wastes are exported for recovery only when consistent with the Convention.

45. There are existing agencies and laws already dealing with the mercury sources covered by the Convention, and therefore no need for new agencies or a mercury act. A single regime would in fact increase costs, and overlap with existing processes. Given the low use of mercury in New Zealand, this option would be an overly regulated response for an already well-controlled area.
46. It is proposed instead that a Bill implement the Convention by amending existing law. This Bill has not yet been approved or awarded any placement in the legislative programme, but can enter the legislative bid process after decisions about phase-out dates have been made. The legislative bid process determines when Bills are introduced, and amendments to regulations could come into effect at the same time.

47. The proposed Bill and regulation changes would:

- Ban new mercury mining (likely in the RMA and CMA) and specific manufacturing processes that use mercury (likely in the HSNO regime).
- Establish a permit function for import and export of mercury and specific mercury mixtures (likely in the IERA regulations).
- Restrict import, export and manufacture of the Listed Products by the selected phase-out dates, and monitor other uses of mercury that may lead to manufacture of new mercury products and processes (likely in the HSNO regime).
- Ensure that mercury waste is exported for recovery only when consistent with the Convention (likely in IERA regulations).

48. Other obligations would be implemented through the policy and practice of relevant agencies, including the Ministry for the Environment (“MFE”) and the EPA (for example national reports, financial resources, capacity building, and technical assistance).

49. The Convention requires reporting to show compliance, and this reporting would measure the success of the proposals against New Zealand’s objective to reduce the harm from anthropogenic mercury.

**Economic, social, cultural and environmental effects of the treaty action**

**Environmental effects**

50. The Convention is expected to have positive long term environmental effects globally, regionally and in New Zealand. Banning primary mercury mining will reduce new mercury available for redistribution, and greater international collaboration will reduce and mitigate the impacts of mercury already in circulation. Phasing-out import of the Listed Products would reduce mercury in the New Zealand and global waste stream, and ensure that New Zealand does not become a dumping ground for mercury products that no other country accepts.

51. Relevant resource management requirements and long-term environmental policy trends have resulted in laws and regulations controlling mercury emissions, releases, storage, disposal and contaminated sites. These requirements are broadly in line with those in the Convention.

**Economic effects**

52. Ratifying the Convention would have a low overall impact on the economy. Most obligations are met under existing practice, and the remaining few obligations do not require significant changes to New Zealand law or practice.

53. There are three possible negative economic effects.

54. The “Potential disadvantages” section notes a low risk that transitioning away from some Listed Products may increase costs on consumers. To some extent, this risk arises regardless of ratification, because other countries manufacture these products and can phase them out under the Convention by themselves. The Convention provides sufficient
flexibility to ensure that New Zealand can select appropriate phase-out dates based on the impacts on industry, and the phase-out dates of other countries. As an example, Appendix 1 details New Zealand’s use of the Listed Products in 2012.

55. Secondly, there may be minor administrative costs to apply to import or export mercury or specific mercury mixtures. This cost is not likely to be significant. In any case, New Zealand will also face these costs as trading partners become Parties to the Convention. The reason for this de facto compliance is because the Convention requires a similar certification for trade with non-Parties. This low cost will therefore eventuate regardless of whether New Zealand ratifies the Convention.

56. Lastly, there is a remote possibility that guidance on “best available techniques and best environmental practices” could exceed existing New Zealand emissions controls. Agreed Facilities established 5 years or more after the Convention enters into force are required to meet guidance developed by the Conference of the Parties on “best available techniques and best environmental practices” for mercury emissions. As noted above, it is very unlikely that internationally agreed guidance would exceed New Zealand’s existing requirements. The scope of the existing Agreed Facilities in 2012 is attached as Appendix 2 (although “best available techniques and best environmental practices” will apply to new facilities only, not existing ones).

Social and cultural effects

57. There are no specific cultural or social effects anticipated by the treaty action.

The costs to New Zealand of compliance with the treaty

58. There would be minor fixed financial costs required to comply with the Convention. Parties will face two types of financial obligations after the Convention enters into force (likely 2016 or 2017).

59. The first cost is an international subscription to help pay for the Secretariat, and the administrative costs of the Convention. While the exact cost will not be confirmed until the Convention is operational, other similar Conventions require $10,000 to $20,000 NZD per year, per Convention. This cost can be met through Vote Environment’s existing non-departmental appropriation “International Subscriptions”.

60. New Zealand would also be required to contribute “within its capabilities” to the Global Environment Facility Trust Fund (“GEF”), to assist developing countries to implement the Convention. New Zealand and other countries already contribute to the GEF under other UN agreements. Negotiations on how much countries will contribute to the GEF happen every four years, with the next round finishing in 2014. New Zealand’s final contributions will be decided in the next round of negotiations, and will be met as part of New Zealand’s regular contributions to the GEF.

61. There are unlikely to be any hidden costs for Government outside of minor administrative costs for the EPA and Customs, and the cost of creating a Bill. Maintaining inventories of emissions and releases will be a minor on-going cost, but are already taking place and can continue to be met through the Vote Environment multi-class output appropriation “Environmental Management Obligations and Programmes”.
Completed or proposed consultation with the community and parties interested in the treaty action

62. The following Government agencies have been consulted in the preparation of this NIA: MFAT, the Ministry of Business, Innovation and Employment, the Ministry for Primary Industries, the New Zealand Customs Service, the Department of Conservation, the Ministry of Health, the EPA, the New Zealand Transport Agency, and the Treasury.

63. Consultation on the Convention has taken place in a number of ways.

64. In 2009, MFE commissioned an inventory of mercury sources, uses and levels for 2008, which identified the most common uses of mercury. This inventory required broad contact with industry, representative bodies, and central and local government, and was completed in accordance with a UNEP Toolkit designed to identify expected sources of mercury use. This engagement identified users of mercury, and levels of use.

65. In 2010, the Environmental Risk Management Authority (“ERMA”, now the EPA) approached mercury users from that inventory with a discussion document, “Negotiations for a Global Legally Binding Agreement on Mercury”. This consultation sought general support for some type of mercury convention to inform the New Zealand negotiating position in the second round of negotiations. Approximately 49 companies, industry bodies, local councils and government agencies were approached directly for their views and comments on particular issues, and the discussion document was released to the public in general through the ERMA website. Only 19 responses were received, but these were generally supportive of a mercury Convention. These views were used to develop New Zealand’s interests for the negotiations, particularly those relating to recovery of waste mercury, contaminated sites, primary mining, and relevant emissions sources.

66. Throughout 2010 to 2013, MFE undertook targeted consultation with industry bodies, companies, government departments, non-Governmental organisations and local councils to seek views on uses of mercury, interests and proposed text. This engagement was also used to inform New Zealand’s interests, and negotiating positions.

67. In 2012, MFE identified iwi living in areas with potentially increased mercury levels, and invited these groups to provide any concerns, views or issues with the direction of the negotiations. No responses were received.

68. In 2013, MFE commissioned a second mercury inventory. This inventory required direct contact with approximately 170 industry stakeholders, councils, and government agencies to estimate mercury use in 2012. This inventory was based on an updated UN toolkit to identify known uses of mercury. Organisations were informed that a mercury convention text had been agreed, and information on mercury use was sought.

69. The groundwork laid through this consultation and engagement has provided a good understanding of the impacts of the Convention on New Zealand. This view will be supplemented by further consultation on expected phase-out dates, both with New Zealand industry and international trading partners.

70. Once appropriate phase-out dates are selected, these will also be tested through the legislative consultation to implement the Convention. As a result of the consultation to date, mercury stakeholders will be well-primed to engage in this further consultation.
INTERNATIONAL TREATY EXAMINATION OF THE MINAMATA CONVENTION ON MERCURY

Subsequent protocols and/or amendments to the treaty and their likely effects

Amendment process

71. The Articles of the Convention may be amended under Article 26. Any Party may propose amendments, which the Secretariat must communicate to Parties at least six months before a meeting to adopt them. Amendments are adopted by a three-fourths majority of Parties present and voting, but only become binding on Parties that ratify, accept or approve the amendment.

72. The Articles of the Convention can be contrasted to the annexes. The Articles set out substantive obligations, while the annexes set out lists that are subject to the Articles (for example, the Listed Products are in an annex, while the obligations to phase them out is in an Article).

73. Under Article 27, the process to amend annexes is slightly different from Articles. Amendments to annexes are proposed and adopted in the same way, but become automatically binding after one year, except on Parties that object (tacit acceptance). Parties can choose, however, that amendments to annexes only apply to them if they lodge a new, specific ratification, acceptance or approval (explicit acceptance). Parties must make it clear which form of acceptance will apply to them when they first become a Party to the Convention.

74. Guidance on “best available techniques and best environmental practices” is also relevant. While not an “amendment”, it is binding on Parties under Article 8. Parties must ensure that Agreed Facilities established later than 5 years after the Convention comply with “best available techniques and best environmental practices”. As described above in the “Potential disadvantages” section, it is considered very unlikely this guidance would require amendments to New Zealand’s existing environmental controls. No other guidance is binding in this way.

Likely amendments and non-binding guidelines

75. No amendments to the Articles are anticipated at this time. The Convention notes that new annexes may be developed in future establishing requirements around environmentally sound interim storage of mercury, and mercury wastes. These annexes would be subject to the annex adoption and entry into force procedures outlined in paragraphs 71 to 73 above.

76. Conferences of the Parties must also adopt various non-binding guidelines. These guidelines will include the permit process for trade in mercury and specific mercury mixtures, criteria for deciding how much mercury is being emitted from different sources, best available techniques and best environmental practices for releases of mercury to land and water, inventory methodologies, and finance.

77. The Conference of the Parties will review the Listed Products in Annex A and the manufacturing processes in Annex B within five years of the Convention entering into force.

Withdrawal or denunciation provision in the treaty

78. Article 33 sets out withdrawal from the Convention. Any Party may withdraw by giving written notification to the Secretary-General, at any time after three years after the Convention entered into force for them. Withdrawal takes effect either one year from the date of that notification, or any later date specified.
79. There would be no significant impact on New Zealand’s economic growth forecast as a result of the implementation of the Convention, but legislative changes are required. Therefore, MFE has determined the adequacy of this NIA, and it has been reviewed by MFAT.

80. This NIA analyses whether it is in New Zealand's interest to ratify the Minamata Convention on Mercury. There are no key gaps, assumptions or dependencies in the analysis other than those identified in this paper. Similarly, there are no significant constraints, caveats or uncertainties concerning the analysis beyond those noted.

81. The primary uncertainties identified are:

- Exact funding value known when Convention operational
  
  The Convention prescribes two types of funding: an annual subscription to assist with the administration of the secretariat, and voluntary contributions to assist with developing each country’s ability to implement the Convention. The exact value of this funding will remain uncertain until the Convention is operational. Similar subscriptions to other Conventions have been $10,000 to $20,000 per Convention, per year. New Zealand’s level of voluntary funding will be decided through GEF replenishment negotiations in 2014.

- Potential cost of transition to Listed Product alternatives
  
  Alternatives are largely available for the Listed Products, and New Zealand can time its phase-out to ensure consistency with international trends and a minimal impact on businesses. However, it is possible some costs could be required to transition to some alternatives. New Zealand does not manufacture these products, so will be reliant on international markets whether a Party to the Convention or not.

- Relevant legislation currently under review
  
  Some legislation identified is currently under review (for example the RMA, HSNO and the Health and Safety in Employment Act 1992). It will be important to monitor these amendments to ensure that relevant obligations in the Convention are taken into account.

- Guidelines to be developed on “best available techniques and best environmental practices” for new Agreed Facilities
  
  Guidance on “best available techniques and best environmental practices” will be developed at the first Conference of the Parties. Any Agreed Facilities established later than 5 years after the Convention enters into force for that country will need to comply with this guidance. It is highly unlikely that New Zealand would need to change environmental controls to implement this obligation, and this risk is considered very low.

82. Ratification and implementation of the Convention will not impair private property rights, market competition, or the incentives on businesses to invest, nor will it override fundamental common law principles. It may impose minor additional costs on importers and exporters of mercury and specific mercury mixtures. However, ratification is considered likely to benefit New Zealand overall.

83. This NIA follows strictly the guidelines under Standing Order 395, thoroughly establishing the rationale for New Zealand’s implementation of the Convention. MFE’s view is that the paper clearly demonstrates that the benefits of implementation outweigh the identified costs and risks.
Appendix 1: New Zealand’s 2012 use of Listed Products to be phased-out under the Convention

Note that New Zealand does not manufacture any of the Listed Products.

<table>
<thead>
<tr>
<th>Types of specified products</th>
<th>Use in New Zealand to be phased out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Batteries</td>
<td>Mercury oxide batteries (0.19% of 2012 battery imports) and zinc air batteries with a mercury concentration greater than 2% (between 0 and 5% of 2012 battery imports). These batteries are primarily used in older forms of technology, and are being phased out in favour of newer alternatives.</td>
</tr>
<tr>
<td>Switches and relays</td>
<td>There is an indefinite exemption for switches and relays where no feasible alternative exists.</td>
</tr>
<tr>
<td>Lamps – CFLs and LFLs</td>
<td>This category is primarily mercury-containing energy saver light bulbs (“CFLs”) and fluorescent tube lights (“LFLs”), with mercury contents above certain thresholds. The large majority, if not all, of these types of lamps imported into New Zealand are below thresholds, and would be unaffected by this obligation.</td>
</tr>
<tr>
<td>Lamps – HPMVs</td>
<td>High pressure mercury vapour lamps are primarily used domestically in older street lights – a study in 2001 estimated that approximately 20% of New Zealand street lights remain HPMV (or approximately 39,525). The New Zealand Transport Agency recommends alternatives to HPMV lights both due to whole-of-life value and performance, and HPMV lamps are already being phased out. Councils will be consulted on appropriate phase-out dates.</td>
</tr>
<tr>
<td>Lamps – CCFLs and EEFLs</td>
<td>These lamps are primarily found in liquid crystal display (“LCD”) screens in televisions and computers. Industry representatives indicate that these lamps are being phased out. There is an indefinite exception where feasible mercury-free alternatives are not</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>--------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Certain mercury containing cosmetics</td>
<td>Cosmetics containing mercury are either banned in New Zealand, or fall within exceptions to the Convention.</td>
</tr>
<tr>
<td>Pesticides, biocides and topical antiseptics</td>
<td>There are no mercury pesticides or biocides registered in New Zealand. Ministry of Health states it is unlikely there are any topical antiseptics containing mercury in New Zealand, and certainly not in any significant amount. The impact on New Zealand of phasing these products out is expected to be minimal.</td>
</tr>
</tbody>
</table>
| Electronic measuring devices with feasible mercury-free alternatives | Major users such as larger hospitals, the New Zealand Meteorological Service and calibration facilities are phasing out most uses of mercury in these instruments.  
There is an indefinite exception where feasible mercury-free alternatives are not available. |
Appendix 2 - New Zealand's 2012 Agreed Facilities listed for emissions under the Convention

Note that existing Resource Management Act 1991 controls are sufficient to meet obligations towards these facilities, but any new facilities established later than 5 years after the Convention enters into force for New Zealand would be required to meet guidance on “best available techniques and best environmental practices” for mercury emissions.

<table>
<thead>
<tr>
<th>Specified emissions sources</th>
<th>Facilities in New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal-fired power plants</td>
<td>There is one power station with four coal-fired units (Huntly).</td>
</tr>
<tr>
<td>Coal-fired industrial boilers</td>
<td>There are up to 180 coal-fired industrial boilers operating in New Zealand, mainly in small operations of between 0.2 and 20 MW, but up to 43 MW. The boilers affected will depend on guidance from the Conference of the Parties about the definition of “industrial”, and how to estimate the 75% of emissions subject to obligations. This guidance is anticipated to target only the largest boilers.</td>
</tr>
<tr>
<td>Smelting and roasting processes used in the production of: Lead; Zinc; Copper; and Industrial gold.</td>
<td>There are no smelting and roasting processes for lead, zinc or copper in New Zealand. There are also no smelting processes for industrial gold in New Zealand, and no traditional “roasting” processes. The Macrae’s mine in Otago does use a form of heat extraction however. Although it is unclear whether this would be a “roasting process” under the Convention, the potential obligations would already be met by the RMA in any case. The Macrae’s mine processes approximately 73% of New Zealand’s industrial gold. New Zealand’s industrial gold production in 2012 was 10.2 tonnes.</td>
</tr>
<tr>
<td>Waste incineration facilities</td>
<td>There is one hazardous waste incinerator in New Plymouth, and a ban on any further hazardous waste incineration facilities anywhere else in New Zealand. There is one medical waste incinerator in Greymouth, and a sewage sludge incinerator in Dunedin.</td>
</tr>
<tr>
<td>Cement clinker production facilities</td>
<td>There are two cement plants in operation, currently operating in Northland (Golden Bay) and on the West Coast (Holcim). The Holcim plant has announced it will close in 2015 or 2016.</td>
</tr>
</tbody>
</table>
[Introductions] We’ve read your submissions. Are there some particular points you want to draw to our attention, or any things that you haven’t written that you would like to say?

Butler  I’ll start by giving a little bit of background. The College of General Practitioners set up an environmental working party to advise the college on matters of environmental medicine, because they were aware that the environment plays a very important role, particularly in chronic disease. I, myself, and Dr Damian Wojcik, my colleague here, were part of that group, that working party, for many years. During that time we learnt quite a lot about mercury as one of the very important toxins. Damian has made mercury a bit of a sub-specialty in his practice. The submission process, by the time we got to hear about it, was very near the end so I got a submission in and Damian didn’t manage to. He’s much more knowledgeable about the subject than I am, so I’ve brought him along to actually do the presentation as he works with mercury in his practice every day. So he’ll actually speak to the submission, to the issue, if that’s OK, on my behalf.

Goff  Can I just raise a question of clarification, through you, Mr Chair? You’re presenting the submissions, oral and written, as individuals or on behalf of the GPs college?

Butler  Not on behalf of the college. We are both fellows of the college, but—

Goff  Does the college have a position on the issue?

Butler  We haven’t approached the college—the college changed its structure and disbanded all of its working parties some time ago, so there’s not currently
an environmental working party, so we haven’t gone back to the college, and the time frame would have made it very difficult to have done that anyway.

Goff

Has the college ever had a position on the use of mercury and amalgam—a former position?

Wojcik

Not to my knowledge. I am a fellow of the Australasian College of Nutritional and Environmental Medicine and lecture on this topic. But again, we don’t have a particular position on it. I would be a knowledgeable presenter and lecturer on the field.

Goff

So it doesn’t have a position, one way or the other, the college itself?

Butler

No—as part of the environmental working party we covered a lot of issues. The only one that we came out as a college on was actually genetic engineering, and the college made a public statement on that. But the other issues we didn’t actually go back to the college to ask them to come out with a position. But we’re happy to do so.

Goff

Well, the issue has been around for decades. I was just curious that the college hadn’t debated it and come up with a position on it.

Butler

Well, I guess it’s a matter of a particular issue coming up for discussion, and with this it would have been great. I was chairman of the Auckland faculty quite recently, and it would have been great if the college had been asked for a position on that. People like Damian and myself, who have been part of the environmental working party in the past, could have worked with the college to put in a submission.

Hutchison

Can I just ask you a supplementary question to that. As far as you know then, is it true that neither the Royal New Zealand College of General Practitioners or the Royal Australian College of General Practitioners has a position on this, whereas certainly both the New Zealand Dental Association and the Australian Dental Association do have a position on it? Is that correct?

Butler

I don’t know about the Australian college. It’s like most organisations, if they haven’t been asked for a position, they don’t have one. Obviously the dental association has had to have a position on this because it is actually core to their work, and they’ve actually had to ask for exemptions, I believe, to actually do what they’re doing with mercury, from what the law would be. But as doctors we don’t actually use mercury in our practices, and it is a great opportunity, with this Minamata Convention, to potentially ask the colleges about that.

Hayes

Have you read the convention?

Butler

I’ve just read a summary of it, but I haven’t read it in detail, no.

Hayes

The sort of question in our minds is does the convention actually impact on you—

Butler

What’s that, sorry?

Hayes

Does the convention actually impact on your work as dentists?
Butler  I’m a doctor. I’m a general practitioner.

Hayes  Doctor or dentist. It’s not clear to us that the convention actually has an impact on your work.

Butler  I think it will potentially have a massive impact if it regulates to remove mercury from the environment and from mercury being used as a dental filling. We see the health consequences of mercury every day in our practices. Unfortunately they’re unrecognised by those who don’t—you know, we’re not taught about toxicology at medical school. We had one toxicologist professor who requested that toxicology be taught, but apart from his couple of lectures we had during our whole course, we didn’t have any toxicology. So we’ve had to learn about toxicology ourselves, as a side interest, and I first learnt about mercury as being part of the environmental working party when somebody came to present to us about the problems of mercury. Up until then, I didn’t know such a thing existed.

Wojcik  My background is a GP. I’m also a police doctor, with a Master of Forensic Medicine, and I’m a Fellow of the Australasian College of Nutritional and Environmental Medicine, a lecturer on metal toxicology, and mercury and lead toxicity in general. Over the last 20 years I have treated many patients who have come to me with possible mercury toxicity, with chronic fatigue, with depression, with poor immune systems, and so on. Over the years I have formed an opinion that mercury is a very important and under-recognised source of pathology in my general practice patients.

As you will appreciate, there is a vast voluminous body of research and science showing mercury to be toxic to animals and humans. The difficulty is translating that research to our famous scientists and to those great mercury environmental catastrophes, like Minamata. There is difficulty connecting those events with the patients who walk into our surgery with a mouth full of mercury fillings, which give off mercury vapour, which I would like to show to you in a moment.

That has taken time for me to form an opinion and to continue research. Approximately 5 years ago I was given a research grant to purchase a mercury vapour analyser, and I used the same meter that is used by the hazardous unit in the Fire Service in Auckland. When an office, a room, a bedroom is considered to be contaminated, they take the meter in, they set it up a certain distance off the ground, and every 10 minutes do a reading, and, over 8 hours, average out the time-weighted exposure. They want a reading of 0.1 or less. If the reading is between 1 and 5, that room or school science lab or bedroom must be decontaminated. The carpets must be taken up, the walls decontaminated, and no one can stay in that room.

In my series of just under 400 patients, doing an air draw from the mouth, one single base line, the mean is 5.2 and I have had readings up to 59 micrograms per cubic metre. If you have a hot drink of tea or coffee, then you increase the amount of mercury released, and the level goes up by approximately 50 percent. So one lady recently had a level of 50 and it went up to 130. That’s a huge, massive amount of mercury in the air, in the mouth, that is breathed into the lungs every day, 24/7, for decades. That
exposure leads to ill health, particularly in susceptible sub-populations, and there is a genetic marker that helps us to pinpoint those.

If you want to do a simple experiment, you can take a UV light, shine it into your mouth in a dark room, and you will see the black mercury smoke coming off the fillings. Mercury is not held as a stable, inert alloy in the mouth. It is an unstable toxic element.

The next point I want to make is that if you do radioactive labelling—

Hutchison Does that include mercury as a dental amalgam?

Wojcik That’s exactly what I’m talking about, yes.

Hutchison So you are saying that it is unstable as an amalgam?

Wojcik Yes, if you take a filling, when it has just been placed, you cut it through the middle and look at it with a scanning electron microscope, you have a shiny surface. If you look at the same filling 5 years later, it is more honeycombed and porous. The mercury content drops from 52 percent to 45 percent. You do another 10 years, 15, 20. You find eventually the filling is very latticed and honeycombed, and the mercury content drops with time. That mercury is deposited in tissues, where it accumulates. The radioactive labelling studies have shown this very conclusively, where if you place 203 radioactive mercury into amalgam fillings, you place them in a sheep or a rhesus monkey, and 30 days later, if you do an analysis of where the mercury is, it is in every tissue in the body, after 30 days—eyeball fluid, brain, spinal cord, heart, kidneys, testicles, ovaries, and, most importantly, it crosses trans-placentally into the pregnant ewe or pregnant rhesus monkey. The levels in the foetus are higher levels than in the host mother. So those studies are available within the scientific literature.

There is no question that mercury is released from mercury amalgam fillings. Over time it builds up, and the common presenting illnesses that I see are, particularly the cognitive, with memory impairment, with mood impairment, with alertness and awareness impairment, with tremor, with balance problems, with peripheral nerve issues, and so on. The peak presenting time is between 45 and 50 for women, and 50 to 55 in men. That, as you can appreciate, is the time when you have the largest amount of mercury fillings, and if you look at the graph of age versus surface of fillings it comes to a peak around that time. But it has taken some time for me to amass enough data from my practice series, and I have now a series of 3,200 patients, including 2,500 consecutive new general practice patients, and when you look at the health disability of those patients, you can find a dose response with the amalgam surfaces. I can show that. I have tabled that as one of my research projects, so I can show a dose response.

The ill-effects of mercury are more and greater in women, and you have a stronger relationship from age 20 to 60, because as you will appreciate, after the age of 60 you lose more teeth, you have less fillings perhaps, but certainly between age 20 and 60 there is a very strong, statistically significant dose response curve in my research.
Shearer You ran through a number of the symptoms that were prevalent, that you noticed. How do you isolate that to mercury versus whatever else might be happening in somebody’s life?

Wojcik That’s a very good question, David. The health outcome that I use is questionnaire, with 110 symptoms taken from the mercury literature and the textbooks, and each symptom is graded 0 doesn’t apply, 1 mild, 2 moderate, 3 significant. For every person who first comes to my practice, I administer this questionnaire, and that includes the cancer patients, the chronic fatigue patients, and all the healthy patients. I use that as a measure to determine their health outcomes.

What I can tell you, and what I have published in 2006, is that when you treat patients with a high score, with mercury amalgams, and symptoms and signs that are compatible with the literature, you follow them up, 12 to 24, and in my case, 41 months mean follow-up time, the improvements in their health score, which lowers significantly, is highly significant, compared with those patients who remain untreated, they have a mouth full of mercury, and they cannot afford, they are not committed, they are not convinced to go ahead with that work, and their scores are virtually the same and sometimes slightly worse, and occasionally a little bit better. But they are not even close to the cohort of patients that I have followed up, long term, who have been treated. That, to me, helps to confirm that mercury is at least a significantly important contributing factor in the patients who are presented to me with their chronic ill-health.

I should say that the patients who come to me also have been to many different sources and avenues to try to recover their health. They have been to a hospital physician, a rheumatologist, they have been to a cardiologist, they are on antidepressants perhaps for 12 to 24 months and the medication doesn’t work as well, they’ve got a tremor that doesn’t remit, and you can do testing particularly a provocation urine test, which helps to determine tissue levels. But when you look at those patients and you say: “Well, I think this person’s got mercury as a major contributing factor.”, and you treat them accordingly, then they get health benefits that they had not obtained from any other source of medical intervention.

Some of the sickest patients that I have treated with mercury have had no mercury amalgam in their mouths. One of the sickest patients I had was a young 21-year-old lady who had been admitted to hospital with severe fatigue and she became weaker and weaker. Eventually she was unable to feed herself. The only muscle she could move in her body was her eyebrows. She could say yes, no, no, yes, yes. Her father had to feed her, clean her, and dab saliva away. She was discharged from the hospital, with no diagnosis.

The GP rang me up and said: “Would you please see her, because I think she’s dying and I don’t know what to put on her death certificate.” She had an extremely elevated blood-mercury—one of the few where the blood has given the answer; five out of about 400 or 500 patients only. Her source of contamination was a broken fluorescent light tube, a long strip fluorescent
light tube that had fallen on to the carpet in the room where she was working and studying at her grandparents’ house. She also had an APO-E 3/4 genotype, which means that she is in the 20 percent or so of the population who are particularly sensitive to mercury, and she became extremely unwell because of that. It took nearly 4 years of treatment to get her to the point where she could walk again, and that’s a particularly important case.

You must also be aware that many of our patients, when they die, go to the crematorium and the mercury is vaporised into the air because we do not have a requirement for selenium filters, unlike some of the Scandinavian countries. Some of the patients who have consulted me have been goldminers who are exposed to mercury in their line of work, and from time to time I have patients who eat a large amount of fish, tuna fish, which has methyl mercury in it, and they develop mercury symptoms because of it.

I think that will sort of do as a basic introduction.

Hayes Can I just ask you about selenium. Does selenium absorb molten mercury?

Wojcik Selenium is very low in New Zealand. It’s endemically low. Selenium binds to mercury with an extremely high affinity constant of about $10^{30}$, and in the initial stages, when I’m treating mercury toxic patients, I give them selenium, precisely to bind the mercury, and they do get some short-term relief, although selenium doesn’t promote the excretion of mercury, but it does help to lessen the toxic effects. I think probably the symptoms of mercury toxicity are more prevalent in New Zealand because of our selenium deficiency. That’s a very good point.

Goff Just in terms of the statistics that Paul has set out in his letter, he said that over 30 percent of your patients have symptoms consistent with chronic mercury toxicity. Why would it be that high, and is that consistent with what other GPs in other parts of the country would find if they tested?

Wojcik That’s a good question; thank you. There are two parts to the answer. The first is that many patients come to my practice as new patients, specifically with the possibility of mercury toxicity, so my practice would have a significantly, shall we say, increased percentage of patients where mercury was an issue. That said, I would estimate that mercury contributes to at least 10 to 20 percent of the ill-health that we see as general practitioners, bearing in mind the common symptoms of mercury toxicity are insomnia, fatigue, depression, painful joints and ligaments, heart arrhythmias, and hypertension, of which mercury can contribute to all of those symptoms and there are papers and studies to show that well.

If you allow that 1 percent of the population has got the APO-E 4/4 genotype, then you would have to say, almost a dead cert, 1 percent of our general practice population, if they have mercury fillings, will be mercury toxic. The 3/4 genotype, as another 20 percent, would be a significant proportion.

I don’t believe that a large epidemiological study has been done yet, but I would like to contribute to that work because at the moment I’m trying to
validate a useful tool, namely the Health Mercury Questionnaire. I’m trying to validate the mercury vapour analysis, so that I can make an estimate of what a person is being exposed to, and from that I will then have a tool which colleagues in a standard general practice may be able to use to answer your question.

Goff Thank you for that. Mr Chairman, it occurs to me that this is very interesting stuff and it may be important, but in the nature of the convention that we’re looking at, it’s not a major part of the decision we make here. If the situation is—and I’m a layperson; I can’t tell. I can listen to your evidence and I’ll listen to others this morning. It would seem to me that taking that up, through the College of General Practitioners, as an issue to push for such a study would be important. You’ve done a lot of work on it. I’m not dismissing your views; nor am I confirming your views. I don’t have the ability to do either. But if the situation is as you describe, it would be a very serious situation, and the public would at least want to know, one way or the other, that a proper study had been done, to either confirm or to dispel the concerns that you’re raising.

Wojcik Thank you. That study has been done in Sweden, of course. In 1992, on the evidence that was then available for mercury amalgam toxicity, the scientists and doctors involved in that presented the study, and interestingly they proposed a time line to phase out amalgams in 1992 to 1997, over a 5-year time period.

Goff In Sweden.

Wojcik In Sweden. The people leading the charge in that situation were the insurance companies, because what they realised is that the patients with no amalgams in their mouths, versus the control group, were getting very few pay outs on their behalf. The insurance company was getting the premiums, but very few pay outs, versus the people with a mouth full of fillings, and it was the insurance companies that actually were pushing the progress along. What happened in Sweden was that they actually hastened the phase-out, over a 2-year period, from 1992 to 1994, because of the evident health losses initially and the evident health gains when they made that decision.

Goff Can I ask you, if it has been phased out in Sweden, and we’re now talking about 20 years ago, what studies have subsequently been done to demonstrate any change in the health characteristics of the Swedish population as a result of that?

Wojcik Yes, that would be a very good question. I’m hoping to talk to a Swedish researcher in August, at a conference at which we will both be presenting, and if I can get some information I would be very happy to give that back to you.

Goff Thank you very much.

Hayes What’s the alternative to amalgam?

Wojcik The alternatives are white composites. They’re now extremely good. The interesting thing is that at a dental school mercury amalgam is taught, the
dentists leave, but then when they go to CME programmes they’re taught about porcelain, white composites, and so on.

If you want to learn about mercury amalgam replacement and composites you actually have to learn from older colleagues. I believe there is an anomaly there that should be addressed. There are good alternatives, there are safe alternatives, and we don’t need to have mercury 2 inches away from our brain any more.

Henare

So what happens to the millions of people who have mercury fillings? Do you yank them all out, or what?

Wojcik

You have to do it safely and advisedly, because if you get them drilled out, every which way, then you have mercury vapour flying around. You get a very large peak of mercury exposure. So you must find a competent dentist who will do it with protection, with a rubber dam, with suction.

Henare

Yeah, but I’m talking about millions of people. I’m not just talking about one or two. You are talking about millions and millions of people around the world who have had mercury fillings.

Wojcik

Exactly, but then how much more are we going to spend on Alzheimer’s dementia? Mercury is the only metal that has been shown conclusively to cause the three unique lesions that you get in Alzheimer’s dementia and in no other condition. You get it with aluminium, but you certainly get it with mercury.

Goff

Obviously the profession most at risk here will be making the next submission, but are you aware of any studies of dentists who are drilling out amalgam fillings every work day of their life, that they are suffering from symptoms of mercury poisoning? One argument is that once it’s in your tooth it’s stable, but if you’re taking it out then it obviously will create more vapours or whatever, so wouldn’t that show up in epidemiological studies of dentists suffering from—

Wojcik

It certainly does, and in the paper that I tabled before the committee, the paper by Mutter, Naumann, and Guethlin, “Comments on the article “The toxicology of mercury and its chemical compounds” by Clarkson and Magos (2006)” Critical Reviews in Toxicology (July 2007); 37:537-549, has outlined the occupational studies done with dentists. As you will appreciate, it’s a very delicate—

Goff

Sorry, have you tabled that?

Wojcik

I’ve got some things for the committee.

Goff

Oh, you’d like to table. Thank you.

Wojcik

As you can appreciate, the effects on our dentists is a very delicate matter, but you can look at the infertility issues, for example, you can look at depression and suicide—

Goff

Which is a factor, I think, among dentists. I always thought it was the nature of the work they had to do every day.
Well, exactly. If you had to look and work in a mouth the size of a little matchbox all day, you probably would go crazy anyway. However, I think to be fair to our dental colleagues, I think that they have certainly a large occupational exposure, which they bear on our behalf. If they were drilling and filling with white composites, that would go very quickly. I believe that that's something we could do for our dental colleagues.

You see, mercury amalgam is a simple, effective, long-lasting dental restorative. The problem is it releases mercury, and it does cause toxicity in the body.

Just a few little points. Firstly, would you agree that the Minamata Convention is really designed to reduce harmful effects from mercury exposure, and that as far as we know in New Zealand, only about 1 percent of the dental component is associated with environmental waste? That’s the first thing—in that order. But I take it we’re all in agreement that the Minamata Convention is something worth supporting.

Yes.

The second point I’d make is, you’ve told us that there is a need for epidemiological studies that are accepted in world literature, because unfortunately we haven’t got those available. Would you accept that your observational studies do indeed need to be designed to a level that they would be acceptable in evidence-based scientific screening?

Sure. As part of my forensic medicine Masters I had to do epidemiology—

Sure. I’m just asking you about the methodology.

Sure. So I am mindful of that in trying to design and present my work, to get a proper control group, so I’ve managed to get 200 never-amalgam patients versus others.

The third and last thing, really, is pretty simple. The Dental Association has a diametrically opposed view to your own, and basically affirms the safety of dental amalgam as a restorative material and that over the whole life of restoration, amalgam doesn’t cause any adverse health effects. Why is it that you have such a different view than the main body? Is there anything specifically hard-evidence-based scientific data that is recognised in the world literature that causes you to have such a different, diametrically opposed view?

Yeah, sure. We live a long way from the centres of excellence and research in the world, namely Europe, Germany, Sweden, and I believe that there are political reasons behind the decisions that are made, and that’s probably about as much as I could say.

So are you saying that in this modern age our medical academics, authorities, researchers, and opinion makers do not have the ability to be able to access the world literature and world evidence to keep up with it? Are you basically saying we’re not there, in New Zealand?

We’re not there, on that page, with respect to mercury.
Butler I think that’s a very important point, Paul, that the toxicology is not—dentists are dentists. They are not toxicologists.

Hutchison The question was about our researchers, our academics in this area, who look to try to achieve a scientific evidence base behind policy making.

Shearer Could I just come off that a bit as well. I mean, do you believe that, given the very diverse sorts of opinions from both the dental industry and within your own, it seems a bit strange that the gulf is so wide? Is there a vested interest in ensuring that amalgam is continued on, given that there are alternatives?

Wojcik That would be part of it.

Goff Although the “vested interest” would work in the opposite direction. If dentists thought that it was dangerous, they would be the people in the front of the queue, wouldn’t they, saying: “We’ve got to get rid of this.”?

Wojcik Amalgams are very simple and quick to put in; composites are a lot more technically difficult. They take more time. So many dentists say, well, look, you just use amalgam because they last. They put them in quickly. You just chew off the high spots. So technically they’re very simple to apply. That’s part of it. I think that if there was a directive to phase out mercury, then that would happen.

Butler The other thing is, we’re the people who see the people who are affected by mercury, not the dentists. The dentists deal with the mouth. They’re working with a particular material that is a very user-friendly material. It started being used in the 19th century, and has been the mainstay of the profession ever since. They’re very wedded to that. They’re not toxicologists. They’re not trained in toxicology. We aren’t either, but we have, through the environmental working party—as GPs we took an interest in toxicology. We were lectured by people who have an interest in toxicology. We’ve developed our knowledge in that area. In countries such as Sweden, which have brought their toxicologists to bear in this area, the main reason they initially decided to clean up was environmental. In New Zealand it’s not safe to put mercury in the dentists’ drain. It might end up in the sewer. But it is safe to put it in their patients’ mouths.

Shearer I notice your piece in your submission here is quite ironic.

Butler Exactly.

Shearer There’s very strict safeguards around disposing of mercury, except when you put it in somebody’s mouth.

Butler That’s right. Exactly. It’s the same amalgam that gets put down the sewer, so if it’s so safe and stays perfectly attached as amalgam, why is it so dangerous to put it down the sewer? You know, it isn’t, and unfortunately we have a collective denial about the fact that we are living with this toxin. I am from Whakatāne. I’m actually living back in my home district at the moment. The local DHB is still putting mercury in the mouths of our children. The State is paying for that to happen.
Under the precautionary principle, that should not be happening. If we don’t have the evidence, we should stop doing it until we have the evidence. We shouldn’t wait until we’ve done a 10-year study in New Zealand and continuing to use a known poison. We have a responsibility as New Zealanders and particularly as part of the public health service to actually stop this happening.

Wojcik
I should say—just one moment—with respect to the research, Paul. Professor Bill Glass from the occupational medicine division wanted to set up a teaching and a research faculty for environmental medicine, environmental toxicity, and so on, at Otago many years ago. He was one of our foremost occupational medicine specialists. You know, he was told that we don’t have any environmental toxins in New Zealand. We don’t have any environmental toxins. And so he then went into private—

Hutchison
I must say, Mr Chairman, and perhaps you could comment on it, but I find that as difficult to believe as your statement that 10 percent of symptoms that come to GPs are contributed to by mercury contamination. I know of nowhere in the literature where such a statement could be upheld. I think it’s really important to hear solid evidence-base behind what you’re saying, or it makes it pretty difficult to translate into policy.

Wojcik
Well, you see, it’s what paradigm you use to look at the symptoms. You see, when we see general practice patients, they don’t present with a left little finger dropping off due to mercury or lead, very specific. They come with non-specific ill-health, largely. But, you see, if they come from the district behind a dioxin-producing plant and they’ve got extreme fatigue, you might suspect possibly they’ve got dioxin in their system as a cause. If they’re a dentist and they come with a tremor or memory loss, you might suspect that they’ve got mercury as a contributing factor.

I believe from my research, which I’ve published and lectured on, on an ongoing basis, that we need to have a paradigm shift to acknowledge the environmental base of many of our general practice patients. That’s the insight of the College of Nutritional and Environmental Medicine.

The alternative is just to treat people for symptoms with medication to get them functional, without ever addressing the underlying causes.

Butler
I think if we’re putting grade 1 poison, mercury, one of the most toxic substances on the planet, in gram quantities in people’s mouths, what does one expect is going to happen?

Henare
Shouldn’t we all be falling over, then?

Butler
Well, I don’t know about your family. I’ve lost my wife to breast cancer. I have got multiple friends who have got problems. My own mother is suffering with dementia at the moment. I have people all around me in my own family life who are suffering from problems that have been linked in the literature, with hard evidence, to mercury. The fact that Paul is saying that we need hard evidence of a link between mercury and health, we actually do have that hard evidence. Nobody is looking at the evidence.

Hayes
So isn’t it a public health issue?
Butler It is a public health issue.

Hayes So presumably you’re talking to the public health system?

Butler We’re general practitioners and we are here, taking time off work, spending
a fortune coming down here, having the committee meeting being cancelled
so we actually lost our tickets and had to rebook to come here to talk to the
Parliament, as our public health duty. That’s exactly what we’re doing right
here, right now. We’ve been here before and we presented to a committee,
led by Dr Paul Hutchison, on this very matter about 4 years ago, saying
exactly the same things, and were totally dismissed in the process.

Henare That’s shocking.

Hutchison Look, we do appreciate you coming down. There’s no question about that.
It’s absolutely a humble process to hear you.

Butler It is shocking, actually, Paul. It is shocking. It is, quite frankly, shocking. We
are here. We are senior members of our profession. We’re both highly
respected amongst our colleagues. We’re members of a professional college,
and have been part of an environmental working party, and we’ve taken an
interest in this. Who else are you going to listen to?

Did the committee decide—when asbestos was going to be taken out of
homes, did the committee go to the building profession and say: “Would
you mind if we took asbestos out of homes?” Was that the people you
consulted with, or was it international studies—

Henare So, what’s your answer to my question earlier on about—if it is so—and,
shit, I don’t know—but if it is so poisonous, so toxic, what’s your answer to
my question before? How are we going to get it out of people’s mouths?

Butler One person at a time. One filling at time. One home at a time, as we took
asbestos.

Henare How many people in New Zealand? This is costed out, and then you’ve got
to move on to Australia, America, England—

Butler Is that an argument for doing nothing, because it’s such a big problem?

Henare I just cannot see where this is going to lead.

Butler First of all we stop—

Henare You’re basically blaming that on a whole lot of diseases. That’s what I hear.

Wojcik It’s a contributing factor, Tau, in the sense that patients can have diabetes
and they can have arthritis and they can have mercury as a contributing
factor. You see, it’s not a question of one or the other diagnosis. It’s not a
question of mercury poisoning or arthritis or heart problems. It is a
consideration much rather of a person with degenerative problems, with
ageing problems, with stress problems, which are amplified by the presence
of a significant metallic toxin—like a transistor radio with an amplifier on it.

Goff Just one brief comment, because I think we’re probably needing to move
on. Thank you for coming, because I appreciate that you do this because
you’re working, as you said, in the public good and I think you’re raising
important issues. Our problem as a committee is that we are not focused on the fundamental issues. We’re looking at a wider convention to reduce mercury, and so therefore what you’re saying is relevant and there’s some important things that have come out of it. I hadn’t considered the release, through cremation, of mercury into the air. That’s an important point.

But we’re not the sort of committee that can make a judgment on what you’re putting forward, and that’s why my initial comment to you was about—I accept that you’re looking at the wider health of the patient, not simply the narrower question of oral health, but surely the first step you’ve got to take is working with your colleagues and other experts in this field to try to get a position from general practitioners.

This is not a committee that has an expertise in the health area that can make definitive judgments on your evidence, or indeed the Dental Association that’s making their submission next. So don’t feel, for a moment, that you’ve wasted your time. I’ve found it, personally, valuable, but I can’t make a judgment on what you’re saying and I don’t think this committee as a whole can make a judgment. So if I can just leave you with that thought, but it’s not being dismissive of your concerns, which I accept are very genuine concerns.

Wojcik  I’m very happy to accept a very, very tiny part as a small cog in amongst very large wheels. That’s fine for me.

The hardest talk I ever gave was to the Northland dentists, to share my research. Not a single dentist believed in what I said, bar one, out of 40, and none of the dental nurses. But 10 years later there are nine or 10 dentists who do not place any mercury amalgam fillings at all.

Henare  So the key for you would be to stop now, while you can, fill everybody’s mouths with the best stuff, and worry about all of us—

Wojcik  Basically the baby-boomers, because up until 1976 there was a drill and fill policy. You had a little crevice, it was drilled, undercut, losing good enamel, and filled in with mercury so you wouldn’t get food trapped down the middle. Now they just blow it out with an airgun and an abrasive, put in a bit of fissure sealant, and no fillings at all.

Henare  I could have done that myself.

Hayes  I’m going to have to—it’s been very interesting. Thank you very much.

Butler  I’m very grateful for the time. Thank you.

Hayes  Apologies for messing around with your air bookings. It wasn’t always—because the programme of the House keeps changing, and it’s caused the problem. I regret that that’s happened. I do think that you should write to the Minister of Health with your research findings—

Butler  Yes, I will.

Hayes  —and a copy, maybe, to the Director-General of Health, although he’ll get it, so that you’re feeding into the system in an appropriate place, with
people better placed than us to address your issues. But thank you for the comments you’ve made.

Butler A copy to Annette King.
Hutchison Good to have a copy to the committee.
Hayes It would actually be quite helpful for us to have a copy.
Butler I’d be happy to oblige.

Conclusion of evidence
International treaty examination
of the Arms Trade Treaty

Report of the Foreign Affairs, Defence
and Trade Committee

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International treaty examination of the Arms Trade Treaty

Recommendation

The Foreign Affairs, Defence and Trade committee has conducted an international treaty examination of the Arms Trade Treaty, and recommends that the House take note of its report.

Introduction

The Arms Trade Treaty was adopted by the General Assembly of the United Nations on 2 April 2013. New Zealand signed the treaty on 3 June 2013, and is one of 118 signatories. Of these 118 states, 41 have ratified the treaty. The treaty regulates the international trade in conventional arms.

Ratification in time for first meeting

The first meeting of the countries that have ratified the treaty will be held in Mexico in early 2015. We support ratifying the treaty, in line with our general commitment to security and disarmament goals, and with our reputation in the United Nations. We believe it is important that New Zealand ratifies the treaty urgently, so that it can attend the first meeting of the nations that have done so. Decisions made at the meeting will shape the future of the treaty. New Zealand is regarded as an authoritative voice on the treaty, and we consider it important that it be represented at the meeting to influence these key decisions.

While existing legislation in New Zealand ensures that it complies with most of the requirements the treaty imposes, we understand that further legislation may be required to introduce a framework to regulate comprehensively the brokering of conventional arms. We understand that the passage of this legislation does not have to precede ratification, and an interim voluntary registration scheme for New Zealand brokers will meet the requirements of the treaty for the purposes of ratification. However, legislation should be prepared for introduction to the House as soon as practicable.

We consider that the treaty should be ratified urgently, and any necessary implementing legislation introduced later.

The National Interest Analysis for the treaty is appended to this report.
Appendix A

Committee procedure
The international treaty examination of the Arms Trade Treaty was referred to the committee on 17 June 2014. We met on 26 June and 3 July 2014 to consider the treaty.

Committee members
John Hayes (Chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
Appendix B

National Interest Analysis - Arms Trade Treaty

1 Executive summary

The Arms Trade Treaty is a landmark global instrument that regulates the international trade in conventional arms, seeking to prevent the illicit trade in such arms or their diversion. New Zealand signed the Treaty in June 2013 and it is proposed that New Zealand ratify the Treaty by depositing an instrument of ratification after all necessary domestic processes are completed.

Ratification of the Treaty by New Zealand will contribute to the establishment of an effective international regime governing the trade in conventional arms and will also signal New Zealand’s firm commitment to addressing the devastating impact that illicit arms transfers have on regional and international security and development, particularly in vulnerable areas like the Pacific. Ratification will also enhance New Zealand’s long-standing reputation as a leading voice on international humanitarian and arms control issues.

No new legislation is required for New Zealand to ratify the Treaty. Under existing legislative and regulatory frameworks New Zealand already complies with, or is able to implement, most of the obligations in the Treaty, including the key requirement to establish a national control regime for exports of conventional arms. The exception to this is that New Zealand has no existing legislative framework to comprehensively regulate the brokering of conventional arms. While it is intended that New Zealand introduce more comprehensive controls on arms brokering, an interim voluntary registration scheme for New Zealand-based brokers will meet the requirements of the Treaty for the purposes of ratification.

2 Nature and timing of the proposed treaty action

New Zealand signed the Arms Trade Treaty (ATT) in New York on 3 June 2013. It is proposed that New Zealand ratify the ATT by depositing an instrument of ratification with the Secretary-General of the United Nations (UN) in accordance with Article 21 of the ATT.

The ATT is not yet in force. In accordance with Article 22(1), the ATT will enter into force ninety days after it has been ratified by 50 States. It is expected that this will occur in the second half of 2014. If New Zealand is not among the first 50 States to deposit its instrument of ratification, the ATT will enter into force for New Zealand ninety days after the date of deposit in accordance with Article 22(2).

It is proposed that New Zealand deposit an instrument of ratification after all necessary domestic processes are completed. It is not proposed that New Zealand’s ratification extend to Tokelau at this time.

3 Reasons for New Zealand becoming party to the treaty

The ATT was adopted on 2 April 2013 by the overwhelming majority of States at the 67th session of the UN General Assembly. Its adoption marked a victory for those states,
including New Zealand, who remained committed – throughout years of negotiations – to the introduction of legally binding controls on the international trade in conventional arms.

The ATT represents a significant step forward and will go some way to meeting New Zealand’s goal of mitigating the serious security and humanitarian consequences of the illicit trade in conventional arms. The ATT does not explicitly exclude from its coverage travel by gun owners with their weapons for recreational purposes, but recognises the legitimate trade and lawful ownership of certain conventional arms for recreational and sporting activities. In these respects, it meets New Zealand’s core negotiating objectives as mandated by Cabinet.

New Zealand’s timely ratification of the ATT would be a fitting conclusion to our active engagement in its negotiation and agreement, which included our early signature of the ATT on 3 June 2013 (as mandated by Cabinet in CAB Min (13) 15/4). It would signal New Zealand’s firm commitment to addressing the devastating impact that illicit arms transfers have on regional and international security and development, particularly in vulnerable areas such as the Pacific. It also would be consistent with our broader efforts on humanitarian and arms control issues, including our membership of all the major international export control regimes.

New Zealand’s ratification of the ATT, if one of the first 50, will help advance its entry into force, bringing forward the date at which we would expect concrete benefits to national and regional security. Our ratification would be welcomed by New Zealand’s NGOs and by the international community, and would reinforce New Zealand’s reputation as a leader on global humanitarian and arms control issues.

New Zealand’s ratification of the ATT will also be consistent with the approach of like-minded parties to the Treaty – Australia’s ratification of the Treaty is imminent.

4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

The advantage of the ATT entering in force for New Zealand is that the ATT will assist New Zealand and the international community in the development of a global regime that regulates the international trade in conventional arms and prevents the illicit trade in such arms, or their diversion.

New Zealand has a long-standing reputation as a leading voice on international humanitarian and arms control issues. This profile has been reinforced by our constructive engagement throughout the negotiations on the ATT, our early signature of the text, and our subsequent sponsorship of model implementing legislation for use particularly in the Pacific.

A decision by New Zealand not to ratify the ATT would be inconsistent with this approach and would have a negative impact on our credibility on humanitarian and arms control issues – particularly in light of our existing membership of related export control regimes and our ongoing engagement in relevant arms control initiatives including the UN Programme of Action on Small Arms and Light Weapons.

There are also disadvantages to New Zealand in not ratifying the ATT until after it has entered into force. The first Conference of States Parties to the Treaty is expected to take place in Mexico as early as February 2015, and will be required to decide a number of important procedural and administrative issues including the Rules of Procedure for meetings of States Parties (for example, whether the regime will be best served by enabling
decisions by a vote rather than by consensus). It will also decide on the location and financing of the Treaty Secretariat.

Only those states which have ratified the ATT will be able to take part in decision-making at that meeting. It is in New Zealand’s interests to be able to play a constructive and influential role in shaping the direction of the ATT from its inception and to take part in the very important decision-making, which will take place at the first Conference of States Parties to the Treaty.

5 Legal obligations which would be imposed on New Zealand by the treaty
action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

The object and purpose of the ATT, set out in Article 1, is to establish the highest possible common international standards for regulating the international trade in conventional arms and to prevent and eradicate illicit trade in such arms, or their diversion, for the purposes of contributing to peace and security, reducing human suffering and promoting cooperation, transparency and responsible action by States Parties.

Article 2 articulates the scope of the ATT as the international trade in “conventional arms”. “Conventional arms” are defined in Article 2(1) as comprising: (a) battle tanks; (b) armoured combat vehicles; (c) large-calibre artillery systems; (d) combat aircraft; (e) attack helicopters; (f) warships; (g) missiles and missile launchers; and (h) small arms and light weapons. Some of the obligations in the ATT also extend to ammunition, and to parts and components of conventional arms – so that States Parties cannot circumvent the ATT obligations by exporting or importing a number of separate shipments of unassembled parts and components for a conventional weapon.

Article 2 explicitly excludes from the scope of the ATT any international movement of conventional arms by, or on behalf of, a State Party for that State Party’s use provided that those arms remain under that State Party’s ownership. This provision is intended to exclude from the ATT the supply of arms and equipment to a State Party’s military or police stationed abroad provided that ownership of such arms and equipment is not subsequently transferred to a third party. Should such weapons and equipment be transferred to a third party, the ATT would then apply.

In its Preamble, the ATT also recognises the legitimate trade in, and lawful ownership and use of, certain conventional arms for recreational, cultural, historical and sporting purposes. This reflects an acknowledgment by the States that the ATT does not look to place further restrictions on the international movement of certain conventional arms for these legitimate purposes.

The key obligations in the ATT are focused on export controls as follows:

- Article 6 requires that exports of conventional arms, ammunition and related parts and components be prohibited outright in three situations: where the transfer would breach UN sanctions or other international obligations of the Party; or any export where it is known at the time of authorisation that the items would be used to commit genocide, crimes against humanity or war crimes.
Where an export is not prohibited by Article 6, Article 7 requires that all exports of conventional arms, as well as related ammunition and parts and components, must be authorised pursuant to a national control system, with a risk assessment being conducted before any authorisation is granted. Article 7 sets out a number of criteria that must be taken into account by States Parties as part of the risk assessment, including whether the conventional arms would contribute to or undermine peace and security, could be used to commit or facilitate serious violations of international humanitarian or human rights law or acts contrary to a terrorism Convention or a transnational organised crime Convention to which the State is party.

The ATT also includes some obligations in relation to import controls – although these are less prescriptive: Article 8 requires that imports of conventional arms should be regulated where a State Party considers such regulation to be necessary.

Article 9 of the ATT requires each Party to take appropriate measures to regulate, where necessary and feasible, the transit and trans-shipment of conventional arms through its territory in accordance with international law. While the ATT does not define “transit” or “trans-shipment”, it is generally understood that transit involves goods passing through a third country (other than the country of export or import) without being unloaded; while trans-shipment involves the transfer of goods from one means of transport to another while in the territory of a third country.

Article 11 of the ATT includes various obligations designed to prevent the illegal diversion of conventional arms. It requires that States Parties:

- Assess the risk of diversion before an export authorisation is granted and, if a risk is identified, establish mitigation measures. The ATT describes a range of illustrative measures available to States Parties and encourages cooperation and information sharing in order to prevent diversion.
- Take “appropriate measures, pursuant to national laws” if a diversion is detected.

Article 10 of the ATT requires States Parties to take measures, pursuant to their national laws, to regulate brokering of conventional arms taking place under their jurisdiction. Brokering is not defined in the Treaty but is commonly understood to involve the bringing together of a seller and buyer of conventional arms in relation to a transaction that involves the international movement of those arms. The ATT suggests that measures to address brokering could include requiring brokers to register or obtain written authorisation before engaging in brokering.

Finally, the ATT includes various information sharing, record keeping, and reporting requirements. Importantly, the information sharing provisions explicitly permit State Parties to limit information disclosure in order to comply with domestic laws.

**The position in respect of reservations**

Article 25 of the ATT permits States Parties to make reservations at the time of signature, ratification, acceptance, approval or accession, unless the reservation is incompatible with the object and purpose of the ATT. It is not anticipated that New Zealand will lodge any reservations against the ATT.

However, it is anticipated that New Zealand will submit an interpretative declaration in respect of the ATT at the time of ratification. This will put on record New Zealand’s
intended approach to a number of ambiguities that remain in the final text of the ATT, regarding its scope and application.

**Outline of dispute settlement mechanisms**

Article 19 of the ATT provides that any disputes regarding the interpretation or application of the ATT are to be cooperatively resolved between States Parties through mutually consenting to negotiations, mediation, conciliation, arbitration, judicial settlement or other peaceful means.

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

Under existing legislative and regulatory frameworks New Zealand is already implementing, or is able to implement, most obligations imposed by the ATT, but has no legislative framework to comprehensively regulate the brokering of conventional arms.

It is intended that New Zealand establish a legislative basis to control brokering activities more comprehensively in conformity with the approach of key partners, including Australia. However, this need not be done in advance of ratification of the ATT (see below for further details) and it is accordingly assessed that no new legislation is required for New Zealand to ratify the ATT. However, some modifications to administrative procedures are required. These are set out in detail below.

**Exports**

In relation to exports, New Zealand already complies, through the New Zealand Strategic Goods list, with the key requirement of the ATT to have a national control system for exports, with a risk assessment being conducted before any authorisation is granted. This is implemented pursuant to cl 6 of the Customs Export Prohibition Order 2011 and s 56(2) of the Customs and Excise Act 1996.

The Strategic Goods List regime already prohibits the export of all categories of conventional arms, ammunition and related parts and components within the scope of the ATT, unless an export authorisation has been obtained from the Secretary of Foreign Affairs and Trade. Export authorisations are only granted once a risk assessment has been completed by the Ministry of Foreign Affairs and Trade (MFAT).

Currently, MFAT makes decisions on export permits according to a set of publicly available criteria. In practice, all the considerations required by Article 6 and 7 of the ATT are already part of the frame of reference used by MFAT in the authorisation process. However, not all of those considerations currently appear explicitly in the list of criteria. Accordingly, New Zealand’s export authorisation risk assessment criteria will be updated to explicitly include all considerations required to be taken into account under Articles 6 and 7. The Strategic Goods List would also be updated so that it identifies the ATT as one of the international agreements implemented through the List.

**Imports**

In relation to imports, through the Arms Act 1983 (Arms Act), New Zealand already meets the requirement in Article 8 of the ATT to regulate imports of conventional arms where necessary.

Pursuant to s 16 of the Arms Act, the following categories of conventional arms may not be imported into New Zealand without a permit from Police: small arms and light
weapons, missiles and missile launchers and large-calibre artillery systems. The import of other categories of conventional arms within the scope of the ATT (combat vehicles, attack helicopters, combat aircraft, battle tanks and warships) is regulated when the item is armed (for example, if a combat aircraft includes as an integral part any type of weapon or arm, it will need a permit from Police to import. However, if it is unequipped with arms or weapons, it will not.)

While New Zealand does not regulate the import of all conventional arms within the scope of the ATT, the obligation in Article 8 is to regulate imports “where necessary”. In New Zealand’s circumstances, it is only considered necessary to regulate the import of items that are armed and thus constitute a weapon. Therefore it is considered that this approach meets the requirements of Article 8.

**Transits and trans-shipments**

In relation to transits and trans-shipments, New Zealand already meets the requirement in Article 9 of the ATT to regulate transits and trans-shipments of conventional arms where necessary and feasible through the existing Customs and Excise Act regime.

A specific regime regulating the trans-shipment of goods through New Zealand will come into force on 25 June 2014. It requires that all goods trans-shipped through New Zealand must obtain a specific trans-shipment permit and only allows trans-shipment to occur in certain designated areas. The new trans-shipment regime will apply to all conventional arms, ammunition and parts and components within the scope of the Arms Act.

While there is no specific regulation of the transit of conventional arms through New Zealand territory, existing information seeking, boarding and searching powers under the Customs and Excise Act would be available to Customs (subject to compliance with international law, in particular the UN Convention on the Law of the Sea) if it appeared that a Customs offence was being committed.

**Diversion**

New Zealand already meets the ATT’s requirements in Article 11 to assess the risk of diversion when an export authorisation is granted and, if necessary, establish mitigation measures. The existing Strategic Goods List assessment criteria include an assessment of “the risk that goods could be diverted or on-sold to another user”. Where a risk of diversion is identified, MFAT is able to impose conditions on the export, including “end-user” certification, to mitigate the risk of diversion.

New Zealand also has existing powers under the Customs and Excise Act that would allow it to take appropriate measures should the diversion of conventional arms be detected in New Zealand territory.

Accordingly, no further action is required to implement Article 11, although the Strategic Goods List assessment criteria will be amended so as to exactly mirror the ATT’s requirements in relation to assessing the risk of diversion.

**Brokering**

Article 10 of the ATT requires each State to take measures, pursuant to its national laws, to regulate brokering of conventional arms taking place under its jurisdiction.

While the sale of arms in New Zealand (i.e. arms dealing) is regulated under the Arms Act, there is currently no specific regulation in New Zealand of the brokering of conventional
arms. To enable New Zealand to ratify the ATT expeditiously, consistent with the requirement to “take measures” on brokering, an interim registration system for New Zealand-based brokers will be put in place without legislation. This would be administered by MFAT and initially would need to be voluntary. The system would provide MFAT with some information about the extent of brokering activities taking place in New Zealand, and would be consistent with the ATT’s Article 10 guidance that regulation of brokering “may include requiring brokers to register or obtain written authorisation before engaging in brokering”.

After ratification, it is intended that officials undertake additional work on implementation, notably to more comprehensively address brokering in a way that is consistent with international partners including Australia, with a view to introducing legislation to the House, at the latest, in 2015.

**Information sharing, reporting and recording requirements**

New Zealand already has the ability, through the Strategic Goods List regime, to comply with the ATT’s reporting and recording requirements.

To ensure that any disclosures are made in accordance with the Privacy Act, the application forms for import and export authorisations will be amended to include notice that information provided in the application may be released to the importing, exporting, transit or trans-shipment State, as relevant.

7 Economic, social, cultural and environmental costs and effects of the treaty action

Because New Zealand already complies with the key obligations in the ATT in relation to export and import controls, ratification will not have any significant economic, social, cultural and environmental costs or effects for New Zealand. Because the ATT recognises the legitimate trade in, and lawful ownership and use of, certain conventional arms (i.e. small arms) for recreational, cultural, historical and sporting purposes, ratification of the ATT will not affect the current ability of New Zealand gun owners to travel with their weapons for legitimate purposes.

New Zealand’s ratification will help mitigate the serious security and humanitarian consequences of the illicit trade in conventional arms, and the devastating impact that illicit arms transfers have on regional and international security and development, particularly in vulnerable areas such as the Pacific.

8 The costs to New Zealand of compliance with the treaty

The cost of making the administrative and regulatory changes required for implementation of the ATT, and any ongoing costs due to an increase in administration requirements following ratification, are likely to be minimal and able to be met within existing baselines.

New Zealand’s contribution to the financing of the Treaty Secretariat will be funded out of Vote Foreign Affairs and Trade’s current appropriation, Subscriptions to International Organisations (in the 2013 financial year New Zealand’s assessed contribution to similar bodies ranged from NZ$1,626 to NZ$10,174).
9 Completed or proposed consultation with the community and parties interested in the treaty action

Throughout the negotiations on the ATT – and in the period since its conclusion – the New Zealand Government has maintained close contact with the range of New Zealand NGOs interested in this issue. Consultations have been undertaken with Oxfam New Zealand, Amnesty New Zealand, the New Zealand Red Cross, the Council for Licensed Firearms Owners (COLFO) and the Deerstalkers Association. Further, with the permission of the Minister of Foreign Affairs, civil society representatives were included in the New Zealand delegation to both Diplomatic Conferences where the ATT was negotiated. All NGOs and civil society consulted during the negotiations were supportive of New Zealand signing and ratifying the ATT.

The following agencies were consulted in the drafting of this national interest analysis and support its conclusions: MFAT, New Zealand Police, New Zealand Customs Service, the Treasury, the Ministry of Justice, New Zealand Defence Force, Ministry of Defence, Ministry of Business, Innovation and Employment, and the Office of the Privacy Commissioner.

10 Subsequent protocols and/or amendments to the treaty and their likely effects

There are no provisions in the ATT anticipating subsequent Protocols.

The ATT provides for amendment under Article 20. Pursuant to this Article, amendments may only be first proposed for consideration at the Conference of States Parties six years after the entry into force of the ATT and thereafter every three years. The Conference of State Parties will adopt amendments by consensus wherever possible, or by a three-quarters majority vote. Amendments adopted by the Conference of State Parties will enter into force 90 days after a majority of States Parties (as at the time of adoption) have deposited instruments of acceptance with the Depositary. Amendments would not enter into force automatically: acceptance of any future amendments to the ATT would be subject to New Zealand’s domestic treaty-making process.

Withdrawal or denunciation provision in the treaty

Article 24 allows a State Party to withdraw from the ATT by notifying the Depositary. Withdrawal will take effect 90 days after the receipt of the notification of withdrawal by the Depositary. However, a State Party that withdraws is not discharged from any obligations that arose under the ATT while it was a Party.

Any decision to withdraw from the ATT would be subject to New Zealand’s domestic treaty-making process.
The Foreign Affairs, Defence and Trade Committee has considered Petition 2011/108 of Virginia Woolf and 4,000 others, requesting

that the House of Representatives urge the Government to take decisive and affirmative action to help save the elephant from the very real threat of extinction resulting from the current poaching crisis and subsequent ivory trading.

We support the petitioners in their goal. New Zealand is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. In fulfilment of one of its obligations under the convention, trade in illegal ivory is prohibited by statute within its borders. Evidence from the United Nations indicates there is almost no domestic ivory trade in New Zealand.

The committee recognises, however, that poaching and the illegal trade in ivory is driving the destruction of our largest land mammal as well as funding conflict in Africa. Demand for ivory needs to stop. Achieving this will require pressure from the international community. The committee calls on the Government to push for the full implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. In particular, it should push for the resumption of a full ban on the sale of ivory that was established by the convention in 1989.

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

John Hayes
Chairperson
Petition 2011/111 of Joshua Orion Leenhouwers

Report of the Foreign Affairs, Defence and Trade Committee

The Foreign Affairs, Defence and Trade Committee has considered Petition 2011/111 of Joshua Orion Leenhouwers, requesting

that the House of representatives note that 59 people have signed a petition requesting that the Parliament urge the New Zealand Government to increase its efforts to help secure the release of the Nigerian school girls held hostage.

We sympathise with the intentions of the petitioner, and support appropriate international initiatives to this end.

John Hayes
Chairperson

Report of the Foreign Affairs, Defence and Trade Committee

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Recommendation
The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Instrument amending the Constitution and Convention of the International Telecommunication Union, Final Acts of the Plenipotentiary Conference (Guadalajara, 2010), and recommends that the House take note of its report.

Introduction
New Zealand is a member state of the International Telecommunication Union (ITU). The union held its four-yearly Plenipotentiary Conference in October 2010, at which amendments to its constitution and convention were adopted. These instruments set out the rights and obligations of ITU member states, and provisions for the functioning of the organisation. The amendments as proposed seek to improve the financial position of the ITU.

We support the intent of the amendments, and recommend that the Government ratify them.

A National Interest Analysis is appended to this report.
Appendix A

Committee procedure
The international treaty examination of the Instrument amending the Constitution and Convention of the International Telecommunication Union, Final Acts of the Plenipotentiary Conference (Guadalajara, 2010) was referred to the committee on 20 May 2014. We met on 24 July 2014 to consider it.

Committee members
John Hayes (chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
Appendix B

National Interest Analysis

Instruments amending the Constitution and the Convention of the International Telecommunication Union (Geneva, 1992) (Amendments adopted by the Plenipotentiary Conference (Guadalajara, 2010))

Executive summary

1. New Zealand is a Member State of the International Telecommunication Union (ITU). The ITU is an inter-governmental organisation under the auspices of the United Nations. It seeks to enable economic growth and social development through ongoing advancement of telecommunications and information networks.

2. The ITU held its four-yearly Plenipotentiary Conference in October 2010, at which amendments to the ITU’s Constitution and Convention were adopted (‘the Amendments’). These two treaties set out the rights and obligations of ITU Member States, and provisions for the functioning of the ITU.

3. The Amendments seek to address budgetary pressure faced by the ITU. They alter the rights of Member States in respect to change their financial contribution to the ITU. The Amendments give Member States more flexibility when increasing the level of their voluntary financial contribution, by allowing smaller increments of increase than are currently permitted. The Amendments also limit the amount that Member States can reduce their voluntary contribution by, in the event that they wish to do so.

4. It is important to New Zealand that the ITU remain a well-funded and well-managed organisation because its programmes foster the advancement of telecommunications and information networks. Global development of such networks is beneficial to New Zealand as it better connects us to international markets.

5. The Government agrees that the Amendments will be useful measures in addressing the pressure on the ITU’s budget, and therefore proposes that New Zealand ratify the Amendments.

Nature and timing of the proposed treaty action

6. The International Telecommunication Union was founded in 1865; New Zealand became a member in 1878. The rights and obligations of ITU Member States, and provisions for the functioning of the ITU, are established by two treaties that were concluded at Geneva, Switzerland in 1992: the ITU Constitution and the ITU Convention. The treaties have since been amended four times by subsequent plenipotentiary conferences, which are held every four years in order to set the strategic direction and budget for the organisation.

7. Most recently, the Plenipotentiary Conference held at Guadalajara, Mexico, in October 2010 (PP-10) adopted the Amendments to both the ITU Constitution and the ITU Convention. The changes to the treaties are given effect by entry into force of the

8. The Final Acts of PP-10, which contain the Amendments, were approved at the conclusion of conference and were signed on 22 October 2010 by 153 Member States, including New Zealand. Under Article 55 of the ITU Constitution and Article 42 of the ITU Convention, the Amendments therefore entered into force on 1 January 2012 between Member States that have deposited their instrument of ratification with the ITU Secretary-General, in Geneva, by that date. New Zealand is still to deposit its instrument of ratification.

9. New Zealand was given the right to make appropriate specific reservations and statements prior to ratifying the Amendments when the Final Acts were signed.

10. The Government proposes to ratify the PP-10 Amendments, without making any reservations. This ratification of the Amendments needs to be completed before October 2014 to ensure that New Zealand retains its right to vote at the ITU Plenipotentiary Conference in Korea from 20 October to 7 November 2014 (PP-14).

11. Consultation with the Cook Islands and Niue is not required regarding the Amendments, as both had separate treaty making capacity when New Zealand ratified the ITU Constitution and the ITU Convention concluded at Geneva in 1992. The Amendments have no effect on Tokelau as it does not contribute to the ITU in any way.

**Reasons for New Zealand becoming Party to the treaties**

12. The proposed treaty action is to be bound by the Amendments to the ITU Constitution and Convention adopted by PP-10, by depositing an instrument of ratification.

13. The Amendments emerged as a result of proposals made by two of the ITU’s regional groups: the Asia-Pacific Telecommunity, of which New Zealand is a member, and the Regional Commonwealth in the field of Communications (a grouping of CIS countries). The Amendments seek to address budgetary pressure faced by the ITU.

14. The ITU gains two-thirds of its revenue from voluntary contributions made by Member States, and a further 12 percent of revenue is contributed by non-governmental entities that pay to participate in the ITU’s different work programmes (“Sector Members’). Overall, the total revenue from contributions is forecast to drop by 16m Swiss francs for the 2012-2015 period (of which, the reduction in Member States’ contributions is 7m Swiss francs – a decrease of 1.6 percent). Other revenue, from publication sales and other activities, is forecast to increase by 11.2 percent, but the fall in revenue from contributions has necessitated the use of reserve funds. The total ITU budget for 2012-2015 has therefore decreased by 3.5 percent compared with the previous four-year period.

15. In the face of this situation, the Plenipotentiary Conference held at Guadalajara noted that the challenge to increase revenues in support of increasing programme demands is substantial. The ITU has been grappling with this issue for several years, and it has improved its financial management in order to better target funding to programmes by introducing results-based budgeting and management.

16. The Amendments alter the provisions under which Member States may choose, or reduce, their level of voluntary contribution. The changes brought about by the Amendments are:
a. to allow Member States to increase their ITU contributions by smaller increments and;

b. to reduce the maximum permitted reduction to a Member State’s contribution in any four-year period.

17. It is important to New Zealand that the ITU remain a well-funded and well-managed organisation, because its programmes foster the advancement of telecommunications and information networks – particularly in the developing world. Global development of such networks will be beneficial to New Zealand, by better connecting us with international markets.

18. The Government therefore supports ratification of the Amendments because it agrees that the changes will play a useful part in addressing the pressure on the ITU’s budget.

Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force

Advantages

19. The primary advantage of ratification is that it will allow New Zealand to play a full part as an ITU Member State. If the Amendments do not enter into force for New Zealand due to non-ratification, New Zealand will not be able to vote at the upcoming PP-14 conference. This is set out in Article 52 of the ITU Constitution. Member States that do not ratify amendments retain their other rights. The right to vote is restored upon the deposit of an instrument of ratification.

20. In addition, the amendments provide indirect advantages to New Zealand as they reduce the budgetary pressure on the ITU. The ITU promotes economic growth and social development through ongoing advancement of telecommunications and information networks. New Zealand, being remote from its markets, benefits from the improvement of information and communication technology capabilities and connectivity in our current and potential markets. The ITU plays a fundamental role in this through its work programmes on telecommunications standards, radiocommunications, and capacity-building in developing countries.

21. At New Zealand’s current level of voluntary financial contribution to the ITU, there is no direct advantage to New Zealand by the introduction of the greater range of levels, with smaller increments, from which Member States may choose their contribution. If New Zealand wishes to increase its level of voluntary contribution to the ITU, the smallest increment of increase is already available to it in the current range of levels. A greater range of increments is only available at higher levels of contribution.

Disadvantages

22. If New Zealand were proposing to reduce its contribution significantly there would be a disadvantage to ratifying the Amendments. The Amendments limit the maximum reduction in voluntary contribution that Member States may make in any four-year period. New Zealand currently contributes at the “two unit” class. The Amendments mean New Zealand will be able to reduce its financial contribution by a maximum of half a unit over a four year period. Before the Amendments, New Zealand was permitted to reduce its contribution by up to 1 unit. Relevant unit values are listed in table 1 below. There are currently no proposals for New Zealand to reduce its contribution.
Table 1.

<table>
<thead>
<tr>
<th>Contribution class</th>
<th>Contribution per year, over a four year period</th>
<th>Current value in NZ $</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 unit</td>
<td>318,000 Swiss Franc</td>
<td>$427,214.87</td>
</tr>
<tr>
<td>1.5 units</td>
<td>477,000 Swiss Franc</td>
<td>$640,822.31</td>
</tr>
<tr>
<td>2 units (current NZ contribution)</td>
<td>636,000 Swiss Franc</td>
<td>$854,429.75</td>
</tr>
</tbody>
</table>

**Legal obligations which would be imposed on New Zealand by the treaty action, reservations to the treaty, and dispute settlement mechanisms**

23. Ratifying the Amendments will not impose any legal obligations on New Zealand.

24. New Zealand has the ability to lodge a reservation at the time of ratification, signifying that it does not intend to be bound by the changed financial provisions. However this is contradictory as the financial provisions are the only Amendments. Furthermore, the Government considers that New Zealand’s international reputation would suffer disproportionately if it avoids complete ratification. The Government does not consider that further reservations are warranted.

25. Article 56 of the ITU Constitution and Article 41 of the ITU Convention outline dispute resolution mechanisms should Member States have disputes on questions relating to the interpretation or application of the treaties. Disputes are to be settled through diplomatic channels or by procedures established through other treaties for that purpose, or failing those methods, through arbitration. The Amendments do not affect these Articles.

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

26. No legislation, or any other measure, is necessary in order for New Zealand to implement the Amendments. The Government will simply be obliged to observe the applicable levels for Member States’ voluntary financial contributions, and limits for reducing these, when it determines New Zealand’s contribution to the ITU every four years.

**Economic, social, cultural and environmental costs and effects of the treaty action**

27. Ratifying the Amendments will have no social, cultural or environmental effects, but will indirectly have a small positive effect on New Zealand’s economy, in the long term. This effect is expected to derive from New Zealand’s international trade being facilitated by ongoing improvement in global information and communication technology capabilities and connectivity, which the ITU seeks to promote. The Amendments are expected to contribute to the ITU remaining a well-financed organisation, which is necessary if it is to meet its objectives.

**The costs to New Zealand of compliance with the treaty**

28. There are no direct or indirect costs to New Zealand arising from ratification of the Amendments. However, there are fiscal implications if New Zealand wishes to reduce its voluntary financial contribution to the ITU, as stated in paragraph 22.
29. The Ministry of Foreign Affairs and Trade and the Treasury were consulted on the Amendments after adoption by the Plenipotentiary Conference. No concerns were expressed about the Amendments.

30. Article 55 of the ITU Constitution and Article 42 of the ITU Convention provide that any Member State may propose amendments to the treaties. Proposals are considered by plenipotentiary conferences and, in order to be adopted, must be agreed by, in the case of the Constitution, at least two-thirds of the accredited delegations having the right to vote or, in the case of the Convention, at least half of the delegations.

31. Following the adoption of an amendment to either treaty, amendments enter into force at a date fixed by the conference between Member States that, prior to that date, have deposited their instrument of ratification, acceptance or approval of, or accession to, both the treaty itself and the amendment.

32. It is likely that at PP-14, the conference will consider major revisions to the ITU Constitution and the abrogation of the ITU Convention. The Plenipotentiary Conference held in 2010 noted that numerous amendments have been made to the treaties at each plenipotentiary conference that has been held since the treaties were done at Geneva in 1992. As the amendments are in various stages of ratification by different Member States, the treaties are no longer homogeneous in terms of how they apply to the Parties.

33. The Plenipotentiary Conference therefore agreed that it would be appropriate to review the treaties with a view to developing a ‘stable ITU constitution’, which would not require numerous future amendments. It was considered that provisions not suitable for a treaty-level document could be transferred to another document that would not be subject to ratification, acceptance, approval, or accession.

34. Between 2011 and 2014, an open working group of Member States has examined the provisions of the existing treaties (but without proposing modifications to the provisions themselves) in order to prepare drafts of a new ITU constitution and an associated non-binding document. Any revisions to the treaties that are proposed for adoption by the plenipotentiary conference in 2014 will be subject to the usual processes of approval by the Government, and subsequently to parliamentary examination prior to New Zealand taking binding treaty action. However at this stage it is not clear that the new Constitution will be put forward for consideration at the 2014 Conference.

35. Under Article 57 of the ITU Constitution, New Zealand may denounce the ITU Constitution and the ITU Convention by notification to the Secretary-General of the ITU. Such a denunciation must simultaneously denounce both treaties. Denunciation would take effect one year after the Secretary-General had received the notification.
International treaty examination of the International Telecommunication Union, Provisional Final Acts World Radiocommunication Conference (WRC-12), Geneva, 23 January - 17 February 2012

Report of the Foreign Affairs, Defence and Trade Committee

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Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the International Telecommunication Union, Provisional Final Acts World Radiocommunication Conference (WRC-12), Geneva, 23 January – 17 February 2012, and recommends that the House take note of its report.

Introduction

New Zealand is a member state of the International Telecommunication Union (ITU). The ITU’s Radio Regulations constitute a multilateral treaty of the union. It is incorporated into New Zealand’s domestic legislation by reference in Schedule 1 of the Radiocommunications Act 1989.

At the ITU’s World Radiocommunication Conference in 2012, a number of amendments to the regulations were adopted to make provision for new services and new technologies in various frequency bands. The treaty also includes some non-treaty-level resolutions and recommendations, and a framework for the studies required for the agenda items of the next conference in late 2015.

We support the intent of the treaty and recommend that the Government ratify these amendments.

A National Interest Analysis is appended to this report.
Appendix A

Committee procedure

The international treaty examination of the International Telecommunication Union, Provisional Final Acts World Radiocommunication Conference (WRC-12), Geneva, 23 January – 17 February 2012 was referred to the committee on 20 May 2014. We met on 24 July 2014 to consider it.

Committee members

John Hayes (chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
Appendix B

National Interest Analysis


Executive summary

1. New Zealand is a Member State of the International Telecommunication Union (ITU). The ITU is an inter-governmental organisation under the auspices of the United Nations. It seeks to enable economic growth and social development through ongoing advancement of telecommunications and information networks.

2. The Radio Regulations, commonly known as the International Radio Regulations (IRR) in New Zealand, is a multilateral treaty of the ITU. It is incorporated into New Zealand’s domestic legislation by reference in Schedule 1 of the Radiocommunications Act 1989.

3. The IRR provide a technical and operational basis for world-wide use of the radio frequency spectrum and regular review is required to accommodate technology changes and new radio-based services. The ITU held a World Radiocommunication Conference in 2012 (WRC-12), at which amendments to the IRR (the ‘Amendments’) were adopted by the Final Acts of WRC-12 on Friday 17 February 2012.

4. The Amendments make provisions for new services and new technologies in a number of different frequency bands.

5. In addition to the Amendments, the Final Acts of WRC-12 also include non-treaty level decisions in the form of Resolutions and Recommendations, as well as a framework for the studies required for the agenda items of the next conference in late 2015 (WRC-15).

6. The Government agrees that the Final Acts of WRC-12 are consistent with New Zealand’s national interest to better accommodate radiocommunication technology convergence and is consistent with New Zealand’s telecommunication and broadcasting policies and regulatory regimes. It proposes that New Zealand ratify the Amendments.

Nature and Timing of Proposed Treaty Action

7. New Zealand is a party to the IRR through previous Treaty Ratifications. These Regulations were revised at the four-yearly World Radiocommunication Conference held in Geneva, 2012. The Final Acts of the Conference were signed on 17 February 2012 by 153 Member States, including New Zealand, and contain:

- The Amendments to the IRR;
- Declarations and Reservations made by delegations at the time of signing; and
- Resolutions and Recommendations of the Conference (not treaty level).
8. Under Article 4 of the ITU Constitution and Article 59 of the IRR, the revision of the IRR therefore entered into force on 1 January 2013 between Member States that had deposited their instrument of ratification with the ITU Secretary-General, in Geneva. New Zealand is yet to deposit its instrument of ratification.

9. Being a signatory to the Final Acts of WRC-12 does not bind the Government to the Amendments, but does, create an obligation to refrain from acts which would be inconsistent with the object and purpose of the Amendments.

10. The Government proposes to ratify the Amendments, which are contained in the Radio Regulations Edition of 2012, as soon as possible. This ratification should be completed no later than October 2014, alongside the ratification of amendments to the ITU Constitution and Convention (this latter ratification is required to ensure New Zealand does not lose the right to vote at the Plenipotentiary Conference in October 2014).

11. Consultation with the Cook Islands and Niue is not required regarding the ratification, as both had separate treaty making capacity when New Zealand ratified the ITU Constitution and the ITU Convention concluded at Geneva in 1992. The Amendments have no effect on Tokelau as it does not contribute to the ITU in any way.

Reasons for New Zealand becoming a Party to the Treaty

12. The ITU was founded in 1865; New Zealand became a member in 1878. The rights and obligations of ITU Member States, and provisions for the functioning of the ITU, are established by two treaties that were concluded at Geneva in 1992: the ITU Constitution and the ITU Convention. The provisions of both the ITU Constitution and the ITU Convention are further complemented by the binding of administrative regulations, including the IRR, on all ITU Member States.

13. Radio frequency propagation is a physical phenomenon which does not respect national boundaries and is therefore necessarily managed multilaterally to avoid harmful interference between countries. In New Zealand interference is unlikely in many frequency bands, but satellite services and some lower frequency bands are still likely to receive interference if not appropriately coordinated under procedures in the IRR.

14. Avoidance of harmful interference has been the primary focus of the IRR. However the IRR also provide a technical basis for equipment development and manufacture and, if national usage is consistent with the IRR, there are benefits through economies of scale and interoperability (i.e. cellular roaming in other countries).

Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force

15. The changes to the Radio Regulations are technical in nature and provide the following benefits to New Zealand: the provision of additional allocations of selected frequency bands to radiocommunication services, improved procedures for coordination of radio services, and more appropriate operational parameters for licensing. These are expected to intensify the development of broadband services, facilitate new mobile-satellite services, and provide a more flexible regulatory framework for use of the radio frequency spectrum. As such New Zealand can expect to see new technologies developed in overseas markets that can quickly be deployed within New Zealand.

16. If the Amendments are not ratified, New Zealand may be disadvantaged in the long-run due to other countries not recognising New Zealand when co-ordinating satellite
usage. This could potentially lead to interference to New Zealand’s existing satellite based services.

17. There are no disadvantages to ratifying the Amendments.

Legal obligations which would be imposed on New Zealand by the treaty

18. New Zealand’s ratification of the Amendments does not impose any legal obligations on it.

19. The specific provisions of the Amendments facilitate implementation of new radio based services when they might be required, but do not impose any obligations to implement such services.

20. The New Zealand delegation made two specific reservations when signing the Final Acts which included the ability to make appropriate specific reservations and statements prior to ratifying the Amendments.

21. It is not proposed to make any further reservation upon ratification.

Measures which the Government could or should adopt to implement the treaty

22. No legislation, or any other measure, is necessary in order for New Zealand to implement the amendments to the IRR. However, some changes to the IRR need to be reflected in domestic publications relevant to radio spectrum planning such as Public Information Brochure No. 21 (PIB 21) - Table of Radio Spectrum Usage in New Zealand.

23. MBIE will utilise the new provisions progressively as it brings new frequency bands into use through provision of radio and spectrum licences.

Economic, social, cultural and environmental costs and effects of the treaty action

24. Ratifying the Amendments will have no social, cultural, or environmental effects. However, it will directly have effect on some changes of radio spectrum usage in New Zealand, such as band planning for new generation mobile communication networks and provide a mandate on globally harmonised frequency use for international distress and safety systems. The former may lead to a small positive effect on New Zealand’s economy expected to derive from New Zealand’s international trade being facilitated by ongoing improvement in radiocommunication technology capabilities and connectivity, which the ITU seeks to promote.

The costs to New Zealand of compliance with the treaty

25. There is no foreseeable cost to New Zealand arising from ratification of the Amendments. Future participation in the work of the ITU at the various meetings and Study Groups is a direct cost to those participants.

Completed or proposed consultation with the community and parties interested in the treaty action

26. The New Zealand Defence Force, Civil Aviation Authority, Maritime New Zealand, public safety agencies and other private radio sector industry representatives have been heavily involved in the New Zealand’s preparation for the resolution of WRC-12 agenda items. As the Final Acts of WRC-12 are consistent with the New Zealand’s interests, no concerns were expressed about the Amendments.
**Subsequent protocols and amendments to the treaty and their likely effects**

27. Any Member State may propose amendments to the IRR. These are considered at the World Radiocommunication Conferences. The next Conference is planned for late 2015. New Zealand would consider any future amendments presented to that Conference on a case by case basis and any decision to accept an amendment would be subject to the usual domestic approvals and procedures.

**Withdrawal or denunciation provision in the treaty**

28. Under Article 57 of the ITU Constitution, New Zealand may denounce the ITU Constitution and the ITU Convention by notification to the Secretary-General of the ITU. Such a denunciation must simultaneously denounce both treaties and the IRR. Denunciation would take effect one year after the Secretary-General had received the notification. There is no provision for a separate denunciation of the IRR separately.
International treaty examination
of the UNESCO Asia-Pacific
Regional Convention on the
Recognition of Qualifications in
Higher Education

Report of the Foreign Affairs, Defence
and Trade Committee

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International treaty examination of the UNESCO Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education

Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the UNESCO Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education, and recommends that the House take note of its report.

Introduction

The UNESCO Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education was concluded in Tokyo on 26 November 2011. The 2011 Convention is a revision of the 1983 Convention, to which New Zealand was not a signatory.

The convention gives qualification holders the right to a fair assessment of their qualifications and studies in member countries; benefiting both New Zealanders seeking recognition of their qualifications overseas and foreigners seeking recognition of their qualifications in New Zealand.

Implications for New Zealand

By acceding to the convention, New Zealand would take on an obligation to recognise qualifications and studies conducted in other member states unless substantial differences from New Zealand standards could be proved by the institution charged with recognition. The New Zealand Qualifications Authority would be charged with facilitating the exchange of information relevant to the recognition process.

We understand that this treaty covers recognition of overseas qualifications, and not registration by New Zealand registering bodies. We would like to see more collaboration between NZQA and registering bodies in New Zealand, and ultimately an agreement as to what is required of migrants with professional qualifications to allow them to practice their professions in New Zealand. We hope that agreed standards would be made public, so that new migrants will have a clear understanding in advance of what professional registration in New Zealand would require.

We support the convention as far as it goes; but unless intending migrants are better informed of requirements set by professional bodies in New Zealand, they may continue to get a false impression of their employment chances in New Zealand, which we would like to avoid.

The National Interest Analysis for the treaty is appended to this report.
Appendix A

Committee procedure

The international treaty examination of the UNESCO Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education was referred to the committee on 7 April 2014. We met between 15 May and 24 July 2014 to consider the convention.

Committee members

John Hayes (chairperson)
Hon Phil Goff
Dr Kennedy Graham
Hon Tau Henare
Dr Paul Hutchison
David Shearer
Lindsay Tisch
Appendix B

National Interest Analysis

UNESCO Asia-Pacific Regional Convention on the Recognition of Qualifications in Higher Education

Date and nature of proposed treaty action
1 The United Nations Educational, Scientific and Cultural Organisation (UNESCO) Asia Pacific Regional Convention on the Recognition of Qualifications in Higher Education – (hereafter referred to as “the Convention”) was concluded in Tokyo, on 26 November 2011.

2 New Zealand proposes to accede to the Convention by lodging an instrument of accession with the depositary. The Convention would enter into force for New Zealand on the first day of the month following the expiration of the period of one month after the deposit of the instrument of accession with one of the depositaries.

Reasons for New Zealand becoming party to the treaty
3 The Convention provides a multilateral legal framework for improved recognition of international qualifications and periods of study in the Asia-Pacific region. The central precept of the Convention stipulates that qualifications and periods of study shall be recognised unless substantial differences are determined by the competent recognition authority undertaking the assessment.

4 The 2011 Convention is a revision of the 1983 Convention, of which New Zealand was not a signatory. New Zealand has been involved in the revision of the Convention text and it aligns closely with the Convention on the Recognition of Qualifications Concerning Higher Education in the European Region (“the Lisbon Convention”).

5 The revised Convention fits well with our obligations as a party to the Lisbon Convention, established in 1997. New Zealand acceded to the Lisbon Convention in 2007. The Lisbon Convention set in motion the establishment of a European higher education area where students, academic staff and workers enjoyed greater mobility by, inter alia, fair recognition of their qualifications.

6 Acceding to the Convention will extend the benefits of mutual recognition of qualifications to a much wider group of countries in a region that is of primary interest to New Zealand in terms of export education, trade and foreign policy relationships. As noted the document is based upon the Lisbon Convention, and will effectively expand the benefits already accruing from accession to the Lisbon Convention.

Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand
7 Acceding to the Convention is expected to facilitate the mobility of students and qualification holders between New Zealand and the rest of the Asia-Pacific Region.
Becoming party to the Convention will improve understanding and recognition of New Zealand’s qualifications among Convention members. The Convention provides qualification holders the right to a fair appraisal of their qualifications or period of study in member countries, benefiting New Zealanders seeking recognition of their qualifications overseas and foreigners seeking recognition of their qualifications in New Zealand. Some of the countries that are parties to or seeking to become parties to the Convention have become important sources of skilled migrants for New Zealand. Facilitating their movement by acceding to the Convention could also assist with addressing or reducing skill shortages.

There are no perceived disadvantages to New Zealand arising from accession to the Convention.

Legal obligations which would be imposed on New Zealand by the treaty action, the position for reservations to the treaty, and an outline of any dispute settlement mechanisms

Under the Convention, New Zealand would be obliged to recognise the qualifications and periods of study issued by other parties unless substantial differences could be proved by the institution that is charged with recognition. Alternately, the institution can request the person seeking the recognition to obtain an assessment (a written appraisal) of their qualification or period of study. New Zealand practice already complies with this requirement.

Upon accession, New Zealand would identify a National Information Centre to facilitate access to authoritative and accurate information on the higher education system and qualifications of New Zealand and the other parties to the Convention as well as the provision of advice or information on recognition matters and assessment of qualifications of the other parties. The New Zealand Qualifications Authority is already designated as the National Information Centre for the purposes of the Lisbon Convention, and operates the National Education Information Centre. This would be extended to countries that accede to this Convention as well.

New Zealand would need to continue to promote the use of a Diploma Supplement or equivalent across New Zealand’s higher education institutions. Individual institutions decide whether to adopt their use. The Ministry of Education and the New Zealand Qualifications Authority have promoted the concept and developed guidelines for implementing Tertiary Education Qualification Statements in New Zealand.

Although the provisions of the Convention do permit reservations, it is not proposed that New Zealand would declare any such reservations.

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

New Zealand practice already conforms to the requirements of the Asia Pacific Regional Convention.

No legislation is required to implement this Convention domestically.

Economic, social, cultural and environmental costs and effects of the treaty action

Accession to the Convention could facilitate increased flows of international students and migrants. Limited Costs to New Zealand’s tertiary institutions would be expected if institutions choose to implement the Diploma Supplement, but this is voluntary
and guidelines are supported already by the New Zealand Qualifications Authority and the Ministry of Education.

16 There are no other perceived economic, social, cultural or environmental effects.

Completed or proposed consultation with the community and parties interested in the treaty action

17 The Ministry of Foreign Affairs and Trade, the New Zealand Qualifications Authority, Treasury, Education New Zealand, the Ministry of Business Innovation and Employment (Labour) and TEC have been consulted and support accession to the Convention. Other external organisations including Universities New Zealand, Wānanga, New Zealand Institutes of Technology and Polytechnics (ITPs), Metro ITPs, Independent Tertiary Institutions, New Zealand Association of Private Education Providers, Pacific Islands Tertiary Education Providers, Indian Education Group, Aotearoa Māori Providers of Training, Education and Employment, and English New Zealand were consulted on draft text for the Convention, and were supportive of the Convention. These groups were again consulted in the final text of the Convention and have provided no additional comments.

Subsequent protocols or amendments to the treaty and their likely effects

18 A majority of parties may adopt recommendations, declarations, protocols and models of good practice to guide the implementation of the Convention and in their consideration of applications for the recognition of higher education qualifications. New Zealand will not be bound by such texts but shall use best endeavours to apply them, to bring the texts to the attention of the competent authorities and to encourage their application.

19 Draft amendments to the Convention may be adopted by the Committee of the Convention by a two-thirds majority of the parties. Any draft amendment would be incorporated into a Protocol to the Convention, which New Zealand would have to specifically agree to be bound by, subject to the usual domestic treaty-making procedures.

Withdrawal or denunciation provision in the treaty

20 New Zealand may, at any time, denounce this Convention by writing to one of the depositaries. Such denunciation would take effect on the first day of the month following the expiration of a period of twelve months following the receipt of the notification by one of the depositaries.
The Foreign Affairs, Defence and Trade Committee has considered Petition 2011/123 of Bev Watson on behalf of the National Spiritual Assembly of the Baha’is of New Zealand, requesting

That the House of Representatives demand that the Iranian government immediately release the seven former leaders of the Bahá’í community in Iran who have now served six years of their 20 year sentences, having been wrongfully imprisoned on charges such as “disturbing national security”, “spreading propaganda against the regime” and “engaging in espionage”; and that it formally endorse the call for religious co-existence issued by Ayatollah Masoumi-Tehrani, a senior cleric in Iran, who says the Bahá’ís in his country “have suffered in manifold ways as a result of blind religious prejudice”.

We support the call for the release of the Baha’i leaders and an end to the persecution of people on the basis of their faith.

John Hayes
Chairperson
The Foreign Affairs, Defence and Trade Committee has considered Petition 2011/31 of John Stansfield, requesting

that the House of Representatives note that 8,999 people have supported a petition calling for every government to support the establishment of an arms-trade treaty that effectively prevents arms from fuelling atrocities and abuses.

The Foreign Affairs, Defence and Trade Committee reported to the House on 3 July 2014 supporting the ratification of the Arms Trade Treaty. We believe this should address the concerns raised by the petition.

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

John Hayes
Chairperson
The Foreign Affairs, Defence and Trade Committee has considered the report from the Controller and Auditor-General *New Zealand Defence Force: Progress with the Defence Sustainability Initiative*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

John Hayes  
Chairperson
Special report on a matter relating to the 2012/13 financial review of the Department of Internal Affairs

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Special report on a matter relating to the 2012/13 financial review of the Department of Internal Affairs

Recommendation

The Government Administration Committee recommends that the House take note of its report.

We heard evidence from the Department of Internal Affairs on 11 December 2013 in relation to its 2012/13 financial review. The evidence indicated that the Minister of Internal Affairs was updated regularly about the status of the Government Digital Archive Programme. Since then we have been advised in writing by the department that this was not correct; the Minister was given an initial briefing on the programme but the one update prepared subsequently was not sent to the Minister. A copy of the letter sent by the department is attached as an appendix.
Appendix A

Approach to financial review
We met on 19 February 2014 to consider the special report correcting evidence received at the 2012/13 financial review hearing for the Department of Internal Affairs.

Committee members
Hon Ruth Dyson
Chris Auchinvole
Kanwaljit Singh Bakshi
Mojo Mathers
Hon Trevor Mallard
Eric Roy
Appendix B

Correspondence from the Department of Internal Affairs

7 February 2014

Hon Ruth Dyson
Chair
Government Administration Committee
Parliament Building

Dear Ms Dyson

Department of Internal Affairs 2012/13 Financial Review Hearing – correction to evidence

I am writing to inform you of a correction required to evidence provided by the Department of Internal Affairs at its Financial Review Hearing for the 2012/13 year.

The Department’s response to one of the Committee’s questions indicated that the Minister of Internal Affairs was “regularly” updated about the status of the Government Digital Archive Programme. This is not correct, and the Department can confirm that although the Minister had been briefed initially, the subsequent update prepared was not sent to the Minister.

I apologise to the Committee for any confusion this may have caused.

Yours sincerely

Mervin Singham
Deputy Chief Executive
Strategy and Governance Branch
Parental Leave and Employment Protection (Six Months’ Paid Leave) Amendment Bill

13 —1

Report of the Government Administration Committee

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Parental Leave and Employment Protection (Six Months' Paid Leave) Amendment Bill

Recommendation
The Government Administration Committee has examined the Parental Leave and Employment Protection (Six Months’ Paid Leave) Amendment Bill. The committee is unable to agree on whether the bill should be passed.

Introduction
Although we recognise that the proposals in this bill offer benefits, we also acknowledge that they have financial implications. We have therefore been unable to reach agreement on whether the bill should be passed. This report provides some background information on the bill, a summary of the proposed amendments that we discussed, and a summary of the submissions we received.

Background
The Parental Leave and Employment Protection (Six Months’ Paid Leave) Amendment Bill is a member’s bill in the name of Sue Moroney. It seeks to amend the Parental Leave and Employment Protection Act 1987 by extending the period of paid parental leave from 14 weeks to 26 weeks. The bill proposes a staged increase, adding an additional entitlement of four weeks each year from 2012 to 2014.

Since 1987 the Parental Leave and Employment Protection Act has provided for women and their partners to take employment-protected leave on the birth or adoption of a child. In 2002 the Act was amended to provide for 12 weeks of paid parental leave, and in 2004 this was extended to 14 weeks, and coverage was expanded to include employees with shorter continuous service with the same employer. In 2006 this leave was also made available to the self-employed.

Amendments considered
We considered recommending a number of amendments to the bill. However, we could not agree on whether the bill should proceed, so are unable to recommend them. A summary of the key amendments we considered is below. Should the bill be passed then we would recommend that they be considered.

Purpose
We considered amending the purpose of the bill to extend the duration of maternity leave to 26 weeks, for consistency with the proposed duration of parental leave payments. This would have reflected the intent of the bill more accurately, and paralleled existing arrangements. The Parental Leave and Employment Protection Act currently provides for 14 weeks of maternity leave, and 14 weeks of parental leave payments.

Commencement
We considered recommending a staged progression to an additional 12 weeks of paid parental leave by three sets of amendments to the principal Act, as set out in proposed new
Part 1, Part 2, and Part 3. These new parts would have come into force on three different dates, 1 July 2014, 1 July 2015, and 1 July 2016, making entitlements on any given date clearer. Each part would have amended the sections in the Parental Leave and Employment Protection Act referring to the duration of parental leave payments or maternity leave, to reflect the number of weeks that would apply at the particular time. Additional provisions in each part would have allowed a person to give notice to their employer of their wish to take parental leave, and to apply for parental leave payments, before the date on which the part came into force, if the expected date of delivery of their child was on or after that date.

Submissions

Of the 3,809 submissions received on the bill, 3,795 (99.6 percent) supported it. The submissions were primarily concerned with

- facilitating bonding and attachment between parent and baby
- supporting families and ensuring the stability of their incomes
- closing the shortfall between New Zealand’s paid parental leave provisions and those of other OECD countries
- improving health outcomes for mothers, babies, and children
- the World Health Organisation’s recommendation of exclusive breastfeeding up to six months of age
- allowing choice for women
- creating job opportunities
- the economic implications of the bill
- the positive and negative implications of the bill for employers.

Cost implications of proposed changes

Our consideration of the bill included a detailed examination of the costs of extending the duration of paid parental leave, and any potential savings that might offset them. We sought cost estimates on the assumption of a recommended 1 July 2014 starting date and three-year implementation period, and estimates of any potential savings that might offset them.

Parental leave payments are funded by the Government, up to a current maximum of $488.17 per week before tax (adjusted annually to reflect average ordinary time weekly earnings). Expenditure on paid parental leave for the financial year to June 2012 was $157 million.

The total cost of extending the duration of paid parental leave over the three-year implementation period has been estimated at an additional $276 million, calculated on the assumption of up to 15 percent of recipients returning to work during the proposed additional 12 weeks. The additional per annum cost once the scheme is fully implemented is estimated at $138 million.

The estimated additional cost of implementing the regime in the 2014/15 year is $45.8 million, increasing to $92 million in 2015/16, and $138 million in 2016/17 when it is fully implemented.
The potential short-term savings to offset costs are estimated at about $28.4 million per annum once the increase was fully implemented. This estimate is subject to assumptions about the uptake of paid leave and return-to-work patterns; and it is based on estimates of annual savings from:

- a reduction of about $13 million to the Early Childhood Education Subsidy reflecting a corresponding reduction in childcare needs
- an additional $8 million in tax from recipients of paid parental leave
- an additional $5 million in tax from temporary employees filling in for those on paid parental leave
- benefit payments reduced by $2.4 million per annum as a result of beneficiaries replacing paid parental leave recipients.
Appendix

Committee procedure

The Parental Leave and Employment Protection (Six Months’ Paid Leave) Amendment Bill was referred to the committee on 25 July 2012. The closing date for submissions was 5 October 2012. We received and considered 3,809 submissions from interested groups and individuals. We heard 38 submissions, and held hearings in Auckland and Wellington.

We received advice from the Ministry of Business, Innovation and Employment, the Inland Revenue Department, the Treasury, the Ministry of Health, and the Ministry of Education.

Committee members

Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Mojo Mathers
Hon Trevor Mallard
Eric Roy

Sue Moroney replaced Hon Trevor Mallard and Jan Logie replaced Mojo Mathers for this item of business.
Report from the Chief Ombudsman, Information fault lines, Accessing EQC information in Canterbury, A joint report of the Chief Ombudsman and the Privacy Commissioner into the Earthquake Commission’s handling of information requests in Canterbury

Report of the Government Administration Committee

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Report from the Chief Ombudsman, Information fault lines, Accessing EQC information in Canterbury, A joint report of the Chief Ombudsman and the Privacy Commissioner into the Earthquake Commission’s handling of information requests in Canterbury

Recommendation
The Government Administration Committee has considered the report from the Chief Ombudsman, Information fault lines, Accessing EQC information in Canterbury, A joint report of the Chief Ombudsman and the Privacy Commissioner into the Earthquake Commission’s handling of information requests in Canterbury, and recommends that the House take note of its report.

Background
In the aftermath of the major 2010 and 2011 Canterbury earthquakes, the Earthquake Commission (EQC) received three times as many claims as experts had estimated for a major earthquake in a metropolitan area. From early 2012, the Office of the Ombudsman and the Privacy Commissioner received many complaints about the failure of EQC to respond to Official Information Act 1982 (OIA) and Privacy Act 1993 requests in the statutory timeframe. These Acts make it mandatory for agencies to respond to requests for information within 20 working days.

We are concerned that EQC was unable to process the unprecedented number of claims, and that this left people feeling that they had no option but to use the OIA and the Privacy Act to obtain information. Requests under the OIA and the Privacy Act do not provide for any relaxation of the 20-working-day deadlines in any situation. By July 2012, it was clear that EQC was struggling to comply within the statutory timeframe. It was receiving around 30 requests every week—the number it had previously received in the course of three years. Overdue requests peaked at 1,317 in April 2013.

In their report the Chief Ombudsman and the Privacy Commissioner attributed the failure to comply to “an over-complicated and risk averse approach to responding to information requests; and a tendency to be reactive rather than proactive in the dissemination of claim-related information.”\(^1\) We heard from the Chief Ombudsman that EQC lacked the resources and expertise to handle requests properly.

Action
The Chief Ombudsman and the Privacy Commissioner made 13 recommendations (Appendix B) to EQC on improving processes and reporting, reviewing training material, understanding the statutory requirements, improving the EQC website, and providing regular updates on requests.

\(^1\) Chief Ombudsman and Privacy Commissioner, Information fault lines, p. 5.
We heard from the Chief Ombudsman and the Privacy Commissioner that EQC had accepted the recommendations in the report and was working to implement them. The Chief Ombudsman and the Privacy Commissioner told us that EQC had increased its capacity to deal with requests, and since September 2013 had responded to over 1,200 new OIA requests within the statutory deadline of 20 working days. We were also assured by EQC that it was working on responses to the overdue requests and expected to have most of the overdue responses completed by the end of April 2014. We have subsequently been made aware that EQC resolved the 1,298 overdue customer requests by 30 April 2014. The Chief Ombudsman and the Privacy Commissioner will continue to support EQC in their implementation of the recommendations.

**Conclusion**

We would like to thank the Chief Ombudsman and the Privacy Commissioner for their joint work on this report, and we endorse the report’s recommendations. The issues are of concern to us, and we are pleased that EQC has committed itself to adopting all of the recommendations. We will monitor their implementation closely and ask that the Chief Ombudsman provide us with a briefing in twelve months to update us on what progress has been made.
Appendix A

Committee procedure
We met on 15 March and 7 May 2014 to consider the report from the Chief Ombudsman, *Information fault lines, Accessing EQC information in Canterbury, A joint report of the Chief Ombudsman and the Privacy Commissioner into the Earthquake Commission’s handling of information requests in Canterbury*. We heard from the Chief Ombudsman, the Privacy Commissioner, and the Earthquake Commission.

Committee members
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Mojo Mathers
Hon Trevor Mallard
Eric Roy
Appendix B

Recommendations of the Chief Ombudsman and the Privacy Commissioner and responses of EQC

TSC Team (and, where relevant, the proposed backlog team)

1. Immediately expedite implementation of the software fix that will allow documents to be bulk downloaded to RapidRedact.
   “Agree – implemented.”

2. Review the process for preparing claim files for release (particularly steps 3, 4, 5 and 8) to ensure that all steps can be completed within a reasonable time.
   “Agree – in progress.”

3. Reconsider the design of the peer review process to ensure the process is efficient and proportionate.
   “Agree – in progress.”

4. Report weekly TSC Team statistics to us on an ongoing basis.
   “Agree – implemented.”

5. Note the differences in response times (for backlogged versus new requests) that the business improvement initiative implies, and urgently consider options for minimising the disparities while the backlog is cleared.
   “Agree – in progress.”

Customer Channels Team improvements

6. Review the training and guidance material for Customer Channels Team staff to ensure that it:
   (a) Provides clear, comprehensive and accurate information about the application of the OIA and the Privacy Act; and
   (b) Provides sufficient information on assessing and interpreting claim file material to enable all staff to respond to requests for claim file information with confidence and clarity.
   “Agree – EQC will review.”

7. Review the range of information that the Customer Channels Team is authorised to release to requesters with a view to significantly increasing it.
   “Agree – EQC will review.”

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2 Chief Ombudsman and Privacy Commissioner, Information fault lines, pp. 57–59.
Proactive release of assessment reports

8. Review the possibility of releasing uncosted assessment reports to property owners as a matter of course and without the need for a request.

“Agree – in progress.”

OIA/Privacy Act interpretation and communication

9. In all internal and external guidance material:

a. Clarify that the OIA and/or the Privacy Act apply to every request for information (and remove references that suggest otherwise);

“Agree – EQC will review.”

b. Explain clearly and accurately the application of the OIA and the Privacy Act respectively to claim-related information requests;

“Agree – EQC will review.”

c. Clarify the status of information held off-site (including Fletcher EQR and Tonkin & Taylor information, and any other documents in hub offices), by confirming that it is “held” by EQC and whether a request for a “claim file” is considered to include that material;

“Agree – in progress.”

d. Generally review the terminology used to describe and determine the scope of requests to ensure that ambiguity is removed;

“Agree – EQC will review.”

e. Amend references to charging for information, by:

(i) noting that charges cannot be imposed for access to personal information under the Privacy Act;

“Agree – EQC will review.”

(ii) clarifying that requests for claim-related information will be unlikely to incur any charge; and

“Agree – EQC will review.”

(iii) noting that any charge must be reasonable in the circumstances of the particular case and that a simple time threshold (beyond which charges will be imposed) will not apply;

“Agree – EQC will review.”

f. Amend references to grounds for refusal to:

(i) Clarify the limited circumstances under which costing information will be withheld;

“Agree – EQC will review.”

(ii) Clarify the categories of claim-related information that are usually withheld on the grounds of “that making the information available would require substantial collation or research”.

“Agree – EQC will review.”
Website

10. Review the breadth and depth of content on the EQC website in light of our comments at paragraphs 204-215, with a view to making further improvements and increasing the rate and extent to which it proactively releases information.

“Agree – EQC will review.”

11. Include a mock-up of at least one typical claim file on the website to assist with explanations of the information that EQC holds about any particular claim.

“Agree – in progress.”

Updates and scope checking for delayed requests

12. Devise a system for providing regular updates to requesters for information in the cases where EQC has been unable to respond within the statutory timeframe.

“Agree – in progress.”

13. Consider, for cases where requests have been queued for a considerable period prior to processing, contacting all requesters to clarify the scope of their request.

“Agree – in progress.”
Petition 2011/97 of Kyle Lockwood

Report of the Government Administration Committee

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Petition 2011/97 of Kyle Lockwood

Recommendation

The Government Administration Committee recommends to the Government that it review the validity period of passports.

Background

The Government Administration Committee has considered Petition 2011/97 of Kyle Lockwood requesting that

the House repeal section 5(1) of the Passports Act 1992, as is currently enacted, and substitute it with the original text of the Act as enacted in 1992 (No 92) and repeal without replacement section 8 of the Passport Amendment Act 2005 and by doing so reintroduce ten-year passports for New Zealanders.

The petition proposes that the Government change the validity period of New Zealand passports back to ten years.

In April 2005, the validity period of the adult New Zealand passport was changed from ten years to five years to minimise the risk of counterfeiting and identity fraud. Later that year the Department of Internal Affairs began issuing new biometric passports, which are considered to be more secure and difficult to counterfeit.

However, the production costs of the new passports were high and the cost of the passport more than doubled. New Zealand passport services operate on a cost-recovery principle, but by June 2012, the Passport Memorandum Account had a surplus of $27.37 million. In response the Government directed that the fees be set below production costs to reduce the surplus.

Evidence from the Department of Internal Affairs

The Department of Internal Affairs told us that five-year passports are the international standard. The International Civil Aviation Organisation, an international organisation concerned with international civil aviation policies and standards, recommends that for security purposes passports should ideally be redesigned and replaced every five years, but it considers a ten-year validity period acceptable. Since 2009 the number of fraudulent passports detected has fallen. The department submitted that reintroducing ten-year passports would encourage criminal organisations to invest in counterfeiting the New Zealand passport.

It said that reverting to ten-year passports would also increase their price. People who use their passport only once in ten years would thus get proportionately less value from the ten-year passport. The department said that a reversion would also lead to a revenue problem, as there would be a five-year period when only a small number of passports would be processed.

Evidence from the petitioner

Mr Lockwood told us that most of the members of the OECD and most of our major trading partners issue ten-year passports. These countries include Australia, the United
States of America, the United Kingdom, Germany, Denmark, Italy, France, Ireland, Japan, Norway, Spain, Austria, and Switzerland. The petitioner also submitted that China, Canada, and the Netherlands have moved back from five-year to ten-year passports.

We heard that the new biometric passports reduce the risks of counterfeiting and identity fraud to such a degree that the validity period could safely be extended. Mr Lockwood suggested that if the new biometric passports are secure enough for most of the members of the OECD then they must be sufficiently secure for New Zealand.

We understand that the cost of transferring a visa from one passport to another is also a valid reason for ten-year passports, and might partially offset the increased cost of the passport itself.

**Conclusion**

On the evidence received, we are not convinced that the reduction in detected fraudulent passports is a result of the shorter validity period. It seems more likely to us that the introduction of biometric passports has lessened fraud and counterfeiting. The international standard among countries such as Australia, France, Germany, the United Kingdom, and the United States of America, who use similar biometric passports, is ten years. The biometric security features have led countries such as China, Canada and the Netherlands to reintroduce ten-year passports. We support the intent of the petition.
Appendix

Committee procedure
The petition was referred to the committee on 4 December 2013. The committee met between 12 February and 28 May 2014 to hear evidence and consider the petition.

Committee members
Hon Ruth Dyson (Chairperson)
Chris Auchinvole
Kanwaljit Singh Bakshi
Mojo Mathers
Hon Trevor Mallard
Eric Roy


**Statutes Amendment Bill (No 4)**

**Government Bill**

As reported from the Government Administration Committee

**Commentary**

**Recommendation**

The Government Administration Committee has examined the Statutes Amendment Bill (No 4) 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 non-controversial amendments to existing legislation.

We recommend the amendments to the bill set out below.

**Local Government Official Information and Meetings Act 1987 and Official Information Act 1982**

**Legal professional privilege**

We recommend removing clauses 49(1) and 51 in Part 17, which would amend the Local Government Official Information and Meetings Act 1987, and clauses 70 and 71 in Part 23, which would amend the Official Information Act 1982. After careful consideration, we
consider that the proposed amendments are not appropriate for inclusion in a Statutes Amendment bill.

Clauses 49(1) and 70 seek to amend the primary Acts to include a definition of “legal professional privilege” from the Evidence Act 2006. We consider that this definition could be interpreted to restrict legal professional privilege only to circumstances where proceedings were in train or contemplated. This was not the intent of the amendments.

Clauses 51 and 71 would amend the primary Acts by changing the grounds for providing a good reason for withholding legal professional privilege—from a need to “maintain” legal professional privilege, to a need to “avoid a breach of” legal professional privilege. The proposed wording could be interpreted to offer less protection than is already afforded under the original Acts.

**Official information requests**

We recommend amendments to clauses 52(2) and 54 in Part 17, which would amend the Local Government Official Information and Meetings Act 1987, and clauses 72(2) and 74 in Part 23, which would amend the Official Information Act 1982.

Clauses 52(2) and 72(2) as introduced confirm that an official information request can be made orally, but that local authorities or agencies may request that oral requests be put in writing. We are concerned that this unconditional provision, subject to the discretion of a local authority or an agency, could be open to abuse. Our proposed amendments would make this ability conditional, allowing local authorities or agencies to request that an oral request be put in writing only if it were reasonably necessary for the purpose of clarifying the request.

In the bill as introduced, it is also unclear what status the original request would have after it had been clarified or amended. We recommend amending clauses 54 and 74 to make clear that the amended or clarified request would replace the original request in certain circumstances, for purposes such as computation of the timeframe for dealing with requests for information.
Local Electoral Act 2001 and Local Government Act 2002

We recommend inserting new Part 13A, and new clause 45A to Part 15, which seek to amend the Local Electoral Act 2001 and Local Government Act 2002, respectively. These amendments would make consequential technical amendments that were unintentionally omitted from the Local Electoral Amendment Act 2013. The Local Electoral Amendment Act extended the timeframe for completing pre-election processes by seven days for general elections; the intention was to do so for all elections and polls, not just general elections. As a result of this omission the Local Electoral Act and Local Government Act now contain conflicting provisions. Our proposed amendments would rectify this oversight.
Appendix

Committee process
The Statutes Amendment Bill (No 4) was referred to the committee on 16 April 2014. The closing date for submissions was 6 June 2014. We received and considered four submissions from interested groups. We received advice from the Ministry of Justice.

Committee membership
Hon Ruth Dyson
Chris Auchinvoile
Kanwaljit Singh Bakshi
Hon Trevor Mallard
Mojo Mathers
Eric Roy
Briefing on matters relating to the Inquiry into improving child health outcomes and preventing child abuse with a focus from preconception until three years of age

Report of the Health Committee

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Briefing on matters relating to the Inquiry into improving child health outcomes and preventing child abuse with a focus from preconception until three years of age

Recommendation

The Health Committee has considered the Briefing on matters relating to the Inquiry into improving child health outcomes and preventing child abuse with a focus from preconception until three years of age, and recommends that the House take note of its report.

Introduction

The Health Committee tabled its report Inquiry into improving child health outcomes and preventing child abuse with a focus from preconception until three years of age in November 2013. The report had cross-party consensus and was widely acclaimed both nationally and internationally. It took a proactive, health promotion, disease prevention, investment approach, based on evidence. The report is wide-ranging and advocates investing an equitable share of health funding in the very early years of life where there is clear evidence it is most effective, according to Heckman, a Nobel Laureate economist.\(^1\) The Government responded in March 2014, stating that “overall the Government supports the report and notes that it generally aligns with Government priorities”.\(^2\) On 9 April 2014 we initiated a Briefing on matters relating to the Inquiry into improving child health outcomes and preventing child abuse with a focus from preconception until three years of age.

Committee response

We are pleased that 55 of our recommendations were “accepted” and 54 “accepted in part”. We exhort the Government to progress them, and hope that the 14 recommendations “noted” or “not accepted” will be reconsidered in due course. We were particularly pleased that our first major recommendation was accepted, but note that the non-acceptance of subsequent, overlapping recommendations has led to some ambiguity regarding the extent of this acceptance.

The first major recommendation read:

We strongly recommend that the Ministry of Health work with all relevant parties and other key ministries to establish a programme with timelines for implementing our recommendations, especially our key recommendations. We understand that the recommendations involving investment in the very early lives of children may take time, but we wish to see the Government commit itself to optimal and equitable investment in this area in the medium to long term.


We understand that the response “accept” is made in good faith, and that our report will be taken seriously as a package and progressed. Given that the Government has “accepted” our first key overarching recommendation, we assume that the 54 recommendations “accepted” or “accepted in part” will involve putting the bulk of our report into action within, or close to, the timeframes we recommended.

While the majority of New Zealand children do well, the committee initiated the inquiry because of increasing concerns that a significant proportion of our children do not have the chance to achieve their full potential. Instead they experience preventable child abuse, neglect, poor achievement, morbidity, and mortality.

The committee fully supports the Government’s efforts under the Better Public Services Programme, the white paper for vulnerable children, the Children’s Action Plan, and the wide range of initiatives in the health, education, and social sectors for children and their parents set out in the Government’s response. This includes initiatives in early childhood education, and efforts to ensure that as many young people as possible will be fully equipped to enter the workforce and gain a meaningful job.

**Inquiry report**

Our report employed a proactive approach from preconception onward because we consider that, if New Zealand is going to succeed in “breaking cycles of disadvantage”, we must do everything possible to ensure that parents are as healthy as possible before conceiving so that the next cohort of children are given the best possible start. This means best-practice evidence-based policies and services:

- prior to conception, in reproductive health, education, and nutrition
- in maternity and post-natal care, with rigorous ongoing follow-up to allow the early detection of problems in the preschool and school years
- in early childhood education, health, housing, and social services.

We note a spectrum of political comments on the Government’s response to our report. They ranged from positive remarks, from people including the Children’s Commissioner, to concern that many of the recommendations have been ignored.

We wish to emphasise that our recommendations constitute a package, which particularly asks that the Government

- Establish a New Zealand and international evidence base for the economic value and cost-effectiveness of very early intervention programmes; (Recommendation 1) and ensure that New Zealand children are invested in, in an equitable way.
- Develop a co-ordinated cross-sectoral action plan with the objective of giving New Zealand world-leading, evidence-based sexuality and reproductive health education, contraception, sterilisation, termination, and sexual health services, distributed to cover the whole country. (Recommendation 6) We consider that successive Governments have not tackled this area successfully to date, despite its being a key area to improve New Zealand’s high rate of teenage pregnancy, sexually transmitted infections, and unplanned pregnancy.
• Develop a comprehensive, coordinated action plan, based on the best evidence available, involving Government departments, nongovernmental organisations, and the private sector (food and lifestyle industries), with a whole-of-life approach to improving nutrition, and reducing obesity and related non-communicable diseases, with a special emphasis on working with Māori and Pacific communities. **(Recommendation 30)** We are very supportive of the Government’s Healthy Families New Zealand initiative, but consider the rates of obesity and non-communicable diseases in New Zealand are so high, and the future projected burden of disease so worrying, that a very strong Government response is required—including a comprehensive action plan.

• That the key recommendations of the *External Review of Maternity Care in the Counties Manukau District* be funded and adopted in the Counties Manukau District Health Board and relevant places elsewhere in New Zealand. **(Recommendation 65)** We were very concerned to learn that only 16.8 percent of all women living in the Counties Manukau region accessed care before 10 weeks gestation, but that 86 percent of pregnant Pacific women were overweight or obese. There were high rates of preventable gestational diabetes especially in Māori, Pacific, and Indian women. Many vulnerable families and children also live in this area. Given the increasing incidence of obesity, diabetes and other non-communicable diseases, the case for early booking, best-practice testing, and appropriate follow-up care and intervention is overwhelming.

• That the Ministry of Health require DHBs to set a key performance indicator for the majority of women to be booked in for antenatal assessment by 10 weeks gestation. Best-practice clinical, social, and laboratory assessment should take place, and an ongoing plan formulated for each pregnancy. This should be introduced as a national health target. **(Recommendation 67)** We hope relevant Government departments will continually look for best-practice evidence around the world to inform New Zealand policies.

**Recommendations not accepted or noted**

We consider that the recommendations in our report that were “not accepted” or “noted” need to be monitored. This is especially so in areas such as children’s nutrition, marketing food to children, sugar content of food products, folic acid, and on our recommendation that “the Government work with Local Government New Zealand and the Ministry of Health to make district health boards responsible for setting standards around water quality monitoring to meet World Health Organisation standards, including the optimal level of fluoridation of water supplies”. **(Recommendation 103)** The High Court has now judged in favour of the Taranaki Local Authority. Many local authorities around New Zealand told us they would like to work with ministry and district health boards on the issue of fluoridation. The fact that district health boards are majority elected retains a democratic say in decision-making.

**Conclusion**

We thank the Government for its response. We request that it progress all 104 accepted and partially accepted recommendations according to their time-lines, and monitor and reconsider the remainder. Given the unique cross-party consensus on our report, and the great challenge for New Zealand to do everything possible to ensure all children have the
chance to achieve their full potential, we ask the Government to put its full weight behind the recommendations of our report.
Appendix

Committee procedure
On 9 April 2014 we initiated the Briefing on matters relating to the Inquiry into improving child health outcomes and preventing child abuse with a focus from preconception until three years of age.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
Petition 2011/41 of William Joseph Rea

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Petition 2011/41 of William Joseph Rea

Recommendation
The Health Committee has considered Petition 2011/41 of William Joseph Rea and recommends that the House take note of its report.

Introduction
We have considered Petition 2011/41 of William Joseph Rea, requesting

that the House give urgent attention to the Law Commission’s recommendations regarding medical cannabis use and legislate to decriminalise cannabis use for pain relief or managing symptoms of chronic illness; allow doctors to prescribe cannabis; and allow clinical trials, and note that 2,765 people have signed a petition supporting this request.

Submission from petitioner
In 2011 the New Zealand Law Commission released the report *Controlling and regulating drugs: A review of the Misuse of Drugs Act 1975*. It made a number of recommendations including Recommendation 134 that “the Government should consider undertaking or supporting clinical trials into the efficacy of raw cannabis by comparison to synthetic cannabis-based products as a treatment for pain relief”. The petitioner supports this recommendation. He also considers it undesirable to criminalise genuine medicinal users of cannabis, and noted that cannabis has a long history of medicinal use, and its use as a medicine is legalised, or essentially legalised, in many countries including Canada, Germany, the Netherlands, Spain, and a number of states in the United States.

We heard that, unlike opioids, cannabis does not need to be taken in increased dosages to maintain pain relief. It was argued that this, combined with a culture of over-prescribing—particularly of opioids—makes cannabis a good pain relief alternative. The petitioner submitted that harm from smoking cannabis is “far from proven”, and suggested that any potential harm could be minimised by using vaporisation as the delivery mechanism.

Two currently approved medicines, Sativex and Marinol, mimic the effects of traditional medicinal cannabis. We therefore questioned the need to legalise the use of cannabis for medicinal purposes. We heard that Marinol, a synthetic product taken in pill form, has pharmacological shortcomings and could cost over US $5,000 per year. While slightly less expensive, Sativex is not subsidized by Pharmac and many patients find the process of obtaining it on prescription from a GP proscriptive and unaffordable. It was argued that as Sativex is a cannabis extract, medicinal cannabis has in essence become available in New Zealand.

Response to petition
The Ministry of Health is reluctant to treat raw cannabis differently from other controlled drugs that may have medicinal properties. It also has concerns about the use of raw cannabis as a medicine. It noted that raw cannabis varies greatly in chemical composition and strength, and that no credible assurance could be given at present that medicinal cannabis would be free of chemical contaminants or mould.
The ministry submitted that chronic cannabis use has been associated with chronic bronchitis and impaired immune systems. It also noted a recent study which suggested that smoking a joint of cannabis per day has risks similar to that of smoking a pack of cigarettes per day. We note that tobacco use has adversely affected studies on cannabis-use and cancer.

The Misuse of Drugs Act 1985 contains provisions for the use of controlled drugs and medicines to be approved. Sativex has gone through this process and, as at June 2013, there were 10 active approvals, including two for “off-label” use. Pharmac has not received any applications for Marinol to become an approved medicine. Nor has Pharmac received an application for Sativex to be subsidised. We note that anyone—including patients—may submit a funding application, and that this is an avenue the petitioner might wish to consider.

The ministry submitted that it is not averse to clinical trials of cannabis, and said that there is no absolute legal barrier to their taking place. It noted, however, that the approval of the Director-General of Health would be required, and that any trial would need to comply with the Misuse of Drugs Act.

**Conclusion**

We recommend that the Ministry of Health continue to review world literature on the use of cannabis and its derivatives as a medicine.

We also recommend that Pharmac continue to assess whether there is positive evidence from countries that subsidise medicinal cannabis as to whether it provides a useful option for managing chronic pain, particularly with terminally ill patients.

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

**Green Party minority view**

Green Party members welcome Mr Rea’s petition, and the Law Commission’s report on which it was based. We believe that a much more positive and proactive stance should have been taken by the committee.

Several of the “concerns” expressed by the Ministry of Health were essentially spurious, and should have been disregarded by the committee. For example, the ministry gave us evidence of health risks associated with smoking cannabis, while, in fact, the petitioner gave us significant evidence of alternative methods for consuming cannabis that did not involve smoking. The ministry told us that it had concerns about achieving a consistent chemical composition and about quality control (for example, mould). As the petitioner and his representative Dr Noller told us, many other jurisdictions have introduced legal medicinal cannabis schemes, and some of these have developed very sophisticated systems for ensuring a supply of very high-quality and consistent product. If they can do it there seems to be no reason why New Zealand, a country that prides itself on high-quality primary production, cannot.

Furthermore, there seems to be no doubt that most people who believe they will benefit from access to medicinal cannabis will acquire this illegally if it is not available legally. An illegal supply is uncontrolled, will have variable quality and consistency, and will most likely be smoked. In other words the ministry’s advice to the committee is likely to lead to more of the harms to health that concern them than a legal supply.
We absolutely accept that there are harms associated with the consumption of cannabis, but as the Law Commission, the Ministry of Health, and others all agree, there are also benefits. There seems to be, as the Law Commission and the petitioner recommended, a public interest to be served by New Zealand-based research into the balance of these benefits and harms. We believe that the committee ought to more actively promote such research, rather than take the neutral stance in this report.

We believe that the committee ought also to have advocated more strongly for a Pharmac subsidy on Sativex. More so than any other medicine, cannabis is available on the “black market”. If Sativex is priced beyond the means of patients for whom it is prescribed, it is inevitable that they will continue to source cannabis through illicit means, with the health problems that concern the ministry and other risks described by the petitioner. The public interest would not be served by this.

Finally, as we were told by the petitioner, raw cannabis is of two different species and contains a large number of chemical constituents which are likely to achieve some of their therapeutic effects through interaction with each other. It is, therefore, likely that products such as Sativex or Marinol will not have the full therapeutic effects of raw cannabis. Pending the outcome of suitable clinical trials we will not know what the balance of benefits and harms of raw cannabis is. However, many of those people who report medicinal benefit from cannabis use are people with very serious and often terminal conditions. For patients in such circumstances it is generally accepted that it is ethically acceptable to make a beneficial product available, even though it may also cause harms that we do not fully know. Another step, therefore, that the committee should have taken was to encourage Police to take no action to enforce the current law around cultivation and possession of cannabis, and possession of cannabis-use paraphernalia, for genuine users of medicinal cannabis.
Appendix

Committee procedure

The petition was received on 27 November 2012. We received written submissions from William Joseph Rea, the Ministry of Health, and the New Zealand Law Commission. We heard evidence from the petitioner and the Ministry of Health.

Committee members

Dr Paul Hutchison (Chairperson)
Shane Adern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Moana Mackey
Scott Simpson
Barbara Stewart
Dr Jian Yang
2012/13 financial review of the Southern District Health Board

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Southern District Health Board

Recommendation
The Health Committee has conducted the financial review of the 2012/13 performance and current operations of the Southern District Health Board and recommends that the House take note of its report.

Introduction
The Southern District Health Board was formed in 2010 by merging the Otago and Southland DHBs and is the sixth-largest DHB by population and funding. Southern DHB has the largest catchment area of all the DHBs. It serves a population of 308,410 people, 60 percent of whom live in Dunedin.

Financial management
In 2012/13 the DHB had a total income of $849.705 million and its total expenditure was $861.339 million, resulting in a deficit of $11.889 million. The DHB’s budgeted income and expenditure for 2012/13 were $849.208 million and $860.186 million respectively, with a budgeted deficit of $10.978 million.

The DHB reduced its reported deficit from $15.289 million to $11.889 million by reducing its depreciation expense. This adjustment is not in accordance with New Zealand accounting standards, although it is permitted overseas. The DHB acknowledged it was an error, pointing to its American business software, Oracle, as the source of the problem. The DHB decided not to fix the mistake as it would be too time-consuming. It said that the adjustment was a one-off, relating solely to the 2012/13 financial year, that the software had been adjusted so that the error would not recur, and that the money would be recovered through depreciation. The Office of the Auditor-General did not tag the account or require a reversal.

Some of us are not entirely convinced by these arguments, and note that most district health boards use Oracle but had the forethought to switch off its features that do not meet New Zealand accounting standards. We are also concerned by the DHB’s decision not to fix the error once alerted to it by the Office of the Auditor-General.

We are aware of the financial difficulties Southern DHB has had to contend with since its formation in 2010 through the merger of the Otago and Southland DHBs. These DHBs had a 10- to 15-year history of deficits, which the Southern DHB inherited. The DHB is forecasting diminishing deficits for the next two financial years, and is due to achieve a surplus in 2015/16. We remain concerned about the deficit and how it might be reduced in the future.

Service performance management
The Office of the Auditor-General issued the DHB and all the other DHBs with a modified audit report, which included a qualified opinion on the performance information of the DHB. The sector-wide issue concerns DHBs’ limited control over third-party performance information. There is an additional concern specific to Southern DHB, regarding South Link Health, which we discuss below.
The Office of the Auditor-General gave a “good” rating to its financial information system and controls, up from “needs improvement”. It found that the DHB’s service performance information and associated systems and controls still needed improvement, and downgraded its rating for management control environment from “good” to “needs improvement”.

We are pleased that the DHB’s financial information system and controls rating has improved. We are less pleased that other aspects of its performance received the lowest possible rating, and urge the Southern DHB to remedy the defects as swiftly as possible.

**South Link Health**

The adverse audit results are partly due to a long-running contractual dispute with South Link Health, a Dunedin-based GP organisation, which Southern DHB inherited from the Otago District Health Board. From the mid-1990s until 2002 South Link Health held a notional budget for referred services and pharmaceuticals. There was also an agreement that South Link could receive payments as a percentage of savings achieved. The dispute concerns whether or not $5.3 million of savings from contracts (with interest now possibly worth as much as $15 million) were spent appropriately after the agreement with the Southern Regional Health Authority (and subsequently district health boards) and South Link Health. Other issues include whether South Link Health has spent the money and, if it has been spent, whether the areas of expenditure were jointly agreed.

We heard that in 2010 the DHB sought professional advice from a Christchurch legal firm as to whether fraud might have occurred and received advice that there was a possibility that fraud might have occurred. The matter was then referred to the Ministry of Health. The DHB said that it would have to “establish” that fraud had occurred before going to the Police or the Serious Fraud Office.

We make no judgement as to whether fraud was committed. Our primary concern at this juncture is the protracted nature of the dispute. This dispute covers a 20-year timespan and one of the original parties no longer exists. We consider that a mechanism should be established to satisfactorily clear up this impasse. We further consider that, if there is reasonable cause to suspect fraud, it should be referred to the appropriate authorities. We were told that an option would be to negotiate an agreed settlement through mediation. Some mediation took place in 2009 and 2010, but with little success. We were told that the Ministry of Health has assisted the DHB in negotiating with South Link. For reasons of commercial sensitivity, the DHB declined to say anything further as it could hinder negotiations.

We would like to see a renewed effort from all parties to resolve this matter quickly.

**Breast-screening services**

During our hearing of evidence the DHB reported the loss of breast examination images of more than 3,000 women as a result of an IT failure. While the loss is unfortunate, we note that all the images had been reported on by a senior doctor and the results attached to the patients’ case notes. We were told that all the patients concerned and their GPs would be informed by letter that day of the server failure, and that an 0800 number was available for

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1 The contract and subsequent dispute was originally between South Link Health and the Otago District Health Board. The Southern DHB inherited it when it was formed in 2010.
queries. We appreciate the Southern DHB being frank about the failure. We hope that the incident remains an isolated one.

**Other services**

In the 2012/13 financial year the DHB introduced mobile technology for its district nurses in the form of tablets and specialised software to manage scheduling and workflows, and provide real-time patient information. We heard that the technology has been particularly useful since the DHB’s catchment area is exceptionally large. The DHB will be evaluating the programme, and we look forward to the results.

Accessing medical services in such a large DHB can be a challenge, particularly for older people living in remote areas. We heard that the DHB takes a restorative approach to home care, maximizing older people’s level of functioning and independence, and that a strong relationship between older people and their GPs is important. If older people arrive alone at the emergency department, we heard that staff will make arrangements for their transport home—for example, calling a taxi or a friend or family member to collect them.

We asked about the DHB’s waiting times, particularly for colonoscopies, and heard that for the past 18 months it has been undertaking a programme of work based around treating patients in the right place at the right time. We note that the DHB has also appointed a new colonoscopy clinical leader. All waiting lists are coming down.

We were pleased to hear that the DHB keeps a close eye on staffing levels and is not prepared to compromise patient safety in this area.

**Green Party minority view**

The Green Party is deeply concerned about the ongoing dispute with South Link Health over a sum of up to perhaps $15 million, which the South Island DHBs maintain has been improperly retained (and at least in part spent) by South Link Health, and is frustrated that the answers from Southern DHB (which has been representing the other DHBs in the dispute) to questions about it have still failed to elicit a clear picture of what has occurred.

Although the former DHB chief executive and the Minister of Health (in answer to questions in the House) have shown that the Minister made his view clear to the DHB that he did not want the matter pursued through legal action, the persistence of a strategy to attempt to resolve the matter through negotiation, in the face of extremely protracted and repeated unsuccessful efforts to do so, defies all common sense. It is a cause of extreme concern that the protracted nature of these failed attempts has meant that the DHBs are now too late to pursue the matter through the court as a civil matter. That this remedy is no longer available renders the likelihood of some eventual satisfactory negotiated solution even less likely.

It is also a matter of great concern that the referral of the dispute to the Ministry of Health for investigation and recommendation as to action does not appear to have resulted in any investigation at all. Finally it remains both mysterious and entirely unsatisfactory that, despite having legal advice since at least 2010 that raised the possibility of fraud in the dispute, the DHB has never referred it to the Police or any other authority competent to investigate the matter, and prosecute if appropriate.
Approach to this financial review
We met on 19 February, 19 March, and 28 May 2014 to consider the financial review of the Southern District Health Board. We heard evidence from the Southern District Health Board and received advice from the Office of the Auditor-General.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang

Evidence and advice received
Southern District Health Board, Responses to written questions, received 14 February, 14 March, and 11 April 2014.

Office of the Auditor-General, Briefing on the Southern District Health Board, dated 19 February 2014.

Organisation briefing paper, prepared by committee staff, dated 28 January 2014.
On 21 May 2014, the Health Committee received a visit from His Excellency U Khin Aung Myint, Speaker of Amyotha Hluttaw (House of Nationalities). His Excellency was accompanied by chairs and other members of committees of Amyotha Hluttaw, staff from the Amyotha Hluttaw Office, Myanmar’s Ambassador, and representatives of Myanmar companies. Their visit to the Health Committee was part of the delegation’s official programme.

We discussed the tobacco control legislation currently before the committee, and heard about His Excellency’s involvement with similar measures in the Myanmar legislature. His Excellency was interested in New Zealand’s select committee system, particularly the range of committees and how the membership of each committee was determined, and how the committee’s consideration of a bill fitted into the progress of the bill through the House. He was interested to hear that the committee stage could be omitted for urgent matters requiring legislation.

We hope that the Speaker of Amyotha Hluttaw and his delegation found our discussions informative and found the opportunity to compare our Parliamentary system with that of Myanmar useful.

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

Dr Jian Yang
Deputy Chairperson
The Health Committee has considered Petition 2011/79 of Rae Reynolds and 276 others, requesting
that the House support a total ban on the sale of synthetic drugs as defined in the
Psychoactive Substances Act such as “party pills” and “legal highs”.

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

Dr Jian Yang
Deputy Chairperson
The Health Committee has considered Petition 2011/85 of Cynthia Bowers and 1,035 others, requesting

that the House of Representatives totally bans the sale of synthetic drugs in New Zealand.

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

Dr Jian Yang
Deputy Chairperson
Petition 2011/89 of Neil Pluck on behalf of the Rakaia Community Association

Report of the Health Committee

The Health Committee has considered Petition 2011/89 of Neil Pluck on behalf of the Rakaia Community Association, requesting

that the House note that 970 people have supported a petition asking the Government to take urgent action to make the sale of synthetic cannabis illegal within New Zealand and ask the House to support the aim of the petition.

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

Dr Jian Yang
Deputy Chairperson
The Health Committee has considered Petition 2011/99 of Shayne Jeffares on behalf of Together Napier, requesting

that the House note that 652 people have signed a petition to totally ban the sale of psychoactive substances in New Zealand and that the House support the aim of that petition.

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

Dr Jian Yang
Deputy Chairperson
Petition 2011/88 of Sym Gardiner

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Petition 2011/88 of Sym Gardiner

Recommendation
The Health Committee has considered Petition 2011/88 of Sym Gardiner, and recommends that the House take note of its report.

Introduction
We have considered Petition 2011/88 of Sym Gardiner, requesting that the House of Representatives fund bilateral cochlear implants for children who are clinically assessed as needing them, and note that 743 people have signed an online petition and 595 people have signed a petition urging the Government to support this request.

Submission from petitioner
The petitioner submitted on 13 January 2014 that there were five reasons that the Government should fund two cochlear implants for children who meet the clinical criteria for receiving one, as follows.

Better hearing
What is heard by two ears is louder, which means that softer sounds can be perceived; the brain can calculate the direction a sound is coming from; it is easier to focus on important sounds against background noise; and with two versions of the sound to refer to, the brain can decode the sound more accurately.

Cheaper
It is less expensive to install two implants in a single operation than separately, and a child with two implants is unlikely to require continuing support once they reach school age, while a child with only one is likely to.

Safer
Children with two implants are much safer around motor vehicles because they can judge the direction from which sounds originate. Having two implants also provides backup in case of the failure of one device.

Other countries
All other countries with similar economies to New Zealand’s now fund bilateral cochlear implants for children.

Clinical best practice
Clinicians in New Zealand and international professional bodies recommend bilateral cochlear implants for children as clinical best practice.
Response to petition

Ministry of Health

The Ministry of Health responded on 11 March 2014 by outlining their current cochlear implant policy and funding. The ministry’s position has been that one implant is highly effective in achieving the goal of ensuring a person can hear effectively and for most children to develop language skills at the crucial early stage. The ministry has preferred unilateral over bilateral implants in order to treat the maximum number of people (both children and adults) within available funding. People whose hearing loss is caused by meningitis may have the surgical portion of a second implant funded along with the first, as the progression of the condition will often prevent the insertion of a second implant at a later date.

The ministry stressed that there is no waiting list for young children, unlike adults; surgery is performed as soon as possible after diagnosis. Funding for follow-up services such as replacement sound processors, repairs, batteries, or spare parts is available only for implants that were funded and received in New Zealand.

The ministry said that it had undertaken a literature review regarding the effectiveness of bilateral cochlear implantation, and acknowledged that the evidence was now more compelling. The ministry is also undertaking an economic analysis of funding bilateral cochlear implants for infants and children. The ministry expected to make a decision on funding bilateral implants later in the year.

Budget announcement

On 28 April 2014 the Minister of Health announced that Budget 2014 would include funding for children currently eligible to receive one implant to receive two, and for children under six who already have a single implant to receive a second. There would also be one-off funding to reduce the waiting list for cochlear implants for adults. The decision to offer a second implant only to children under six was for clinical reasons; international evidence suggests a second implant is less effective and less tolerated by older children who have used a single implant for a long time.

We note that this announcement more than satisfies the request of the petition.
Appendix

Committee procedure
Petition 2011/88 of Sym Gardiner was referred to the committee on 19 November 2013. We received written evidence from the petitioner and from the Ministry of Health.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
Petition 2011/98 of Carrie Hetherington

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Petition 2011/98 of Carrie Hetherington

Recommendation
The Health Committee has considered Petition 2011/98 of Carrie Hetherington, and recommends that the House take note of its report.

Introduction
We have considered Petition 2011/98 of Carrie Hetherington, requesting

that the House note that 5,124 people have signed an online petition calling on the
Government to provide accurate glucose meters for New Zealand diabetics and that
the House support the aim of that petition.

Submission from petitioners
From 1 March 2013, the CareSens range of blood glucose meters and testing strips has
been the sole brand subsidised in New Zealand. In a covering letter, the petitioner set out
her experience of the effect of this change on New Zealand diabetics.

The petitioner stated that, at meetings Pharmac held across the country when introducing
the change, none of the representatives of Pharmac who spoke at the meetings understood
the difference between type one diabetes, type two diabetes, and insulin-dependent
diabetes; and they believed that no diabetics needed to test more than a few times a week.

The petitioner said that the new meters and test strips were giving faulty readings, and that
the sole supply agreement meant that newer technology such as constant glucose monitors
or monitors combined with pumps would not become available in New Zealand, even
unsubsidised.

Response to petition
Pharmaceutical Management Agency
Pharmac responded to the covering letter by pointing out that, while the funding change is
indeed the result of a sole supply agreement, there are three different meters in the
CareSens range and patients and clinicians can choose the most suitable. Pharmac also
noted that CareSens meters had been subsidised for 19 months at the time of their
submission, that the agency continues to monitor the effects of the change, and that it has
commissioned an independent evaluation of its clinical impacts.

Pharmac responded further under these headings.

Operating temperatures
All meters of all brands have a defined operating temperature range. That of the current
range of CareSens meters is slightly narrower than those of the two meters previously used
by a majority of people. The sole supply agreement, however, allows for the managed
introduction of “refined” meters in response to changes in technology and consumer
feedback. New CareSens meters with operating temperature ranges of 5°C–50°C, wider than
those of any previously funded, were due to be introduced from 1 April 2014.
**Accuracy**

At the time of the decision to fund CareSens meters, the international standard for the accuracy of blood glucose meters was plus or minus 20 percent of a laboratory test reading, 95 percent of the time. So, if the result of a full laboratory test was 8 mmoI/L, two meters could give readings of 6.4 mmoI/L and 9.6 mmoI/L respectively, and both be considered clinically accurate. All meters funded by Pharmac, including all the CareSens meters funded, have met this standard.

Since Pharmac’s introduction of CareSens, the international standard has been raised to now require meters to read within 15 percent of a laboratory test reading, 95 percent of the time; the CareSens meters also meet the new standard.

**Comparing blood glucose meters**

Given the inherent variability of blood glucose meters within the allowed variance from a laboratory test, comparing the readings of different brands of meter is not a valid way to assess the accuracy of either brand. Pharmac recommends that people use one meter at a time, switching to a different meter only when necessary, and base their treatment on their experience of the readings given by the meter they use.

**Sole supply**

The previously funded brands of meters and their test strips are still available and remain funded for patients who meet certain criteria. There has been no indication these other brands will be withdrawn from the New Zealand market as a result of the sole supply agreement. Pharmac’s experience is that often, in a market the size of New Zealand’s, entering a sole supply agreement with one company can make other companies more interested in competing in the market to take over as the sole provider, rather than for some fraction of a small market.

**Limiting numbers of test strips**

Pharmac understands that people with type one and type two diabetes have different needs and manage their diabetes differently. The number of test strips available on prescription is limited to 50 per prescription only for people who are managing their diabetes with diet and/or metformin. All people who manage their diabetes with any other agents, including sulphonylurea and insulin, are entitled to as many test strips as their prescriber considers necessary.
Appendix

Committee procedure
Petition 2011/98 of Carrie Hetherington was referred to the committee on 5 December 2013. We received written evidence from the Pharmaceutical Management Agency.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
The Health Committee has considered a briefing on English language proficiency tests with reference to non-English-speaking health professionals seeking registration in New Zealand. In 2012, we received and heard evidence from the Ministry of Health, the Medical Council of New Zealand, and the Nursing Council of New Zealand. We heard that two main sets of English language proficiency tests are used by professional bodies in New Zealand in making registration decisions, and that professional bodies differ as to the test to be used and the level to be achieved. We also heard that neither of the tests was tailored to medical vocabulary or to the way English is used when interacting with patients or colleagues. The ministry supplied us with a copy of an Australian Parliamentary report on the issue.

Also in 2012, the Nursing Council undertook a national consultation to review the prescribed qualifications for nurses qualified overseas, including English language competency requirements. The council deferred making a decision on the English Language Assessment requirements as it wished to wait for the report of research being undertaken in Australia. We received a supplementary submission from the council in June 2014 along with a copy of the report, which had been published in November 2013.

The council’s assessment of the report was that the current research is at best ambiguous; the council intends to maintain a watching brief on the issue. We thank the council for the update. We would have liked to see a more definitive outcome, and encourage all stakeholders to continue to seek a satisfactory methodology. We intend to monitor progress in this area. We are very mindful that good communication is fundamental to patients and their outcomes in the health sector.

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

Dr Paul Hutchison
Chairperson
The Health Committee has considered matters raised in the report from the Controller and Auditor-General \textit{Regional services planning in the health sector}, published in November 2013. We heard that key messages from the report include

- that the Ministry of Health is working on changes to regional services planning more slowly than might be expected given the report of the 2009 Ministerial Review Group
- that there was no nationally consistent approach to realising the Minister’s intention that vulnerable services be strengthened
- that the sole example of cost savings arising from a regional services planning initiative, the Northern region’s First Do No Harm programme, should be used as an example of what could be achieved in other regions.

The report makes seven recommendations, which the Controller and Auditor-General considers will help address problems identified in the report. We were pleased to hear that the Ministry of Health had accepted, and had devised action plans to implement, six of the recommendations, and had begun to make changes even before the report was published.

We are concerned, however, that the ministry has rejected the seventh recommendation: that the Ministry of Health and district health boards work together to prepare and apply an evaluation framework to determine whether regional services planning is having the intended effects. We consider it especially important that there is rigorous evaluation of the effectiveness of the processes followed by Health Benefits Ltd.

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


Dr Paul Hutchison
Chairperson
Briefing on prostate cancer

Report of the Health Committee

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Briefing on prostate cancer

**Recommendation**

The Health Committee recommends that the House take note of its report.

**National Prostate Cancer Taskforce**

The Health Committee received a briefing from the Ministry of Health in October 2012 on its progress towards implementing the committee’s recommendations from its *Inquiry into early detection and treatment of prostate cancer*. In response to the inquiry, the ministry established a National Prostate Cancer Taskforce to develop an equity-focused quality improvement plan. We heard that the plan would be based on enabling men and their families to make informed decisions about best-practice investigation and management of prostate cancer. Each year in New Zealand about 3,000 new cases are diagnosed and 600 men die from the disease.

An important aim was to remove uncertainty and confusion which had arisen over many years because of mixed messages, especially about whether or not men should have a PSA (Prostate-Specific Antigen) blood test. A national screening programme using PSA testing was not recommended, but the taskforce did wish to ensure that men and their families are equipped by their health professionals and the media to decide whether and when to be investigated, on the basis of the most up-to-date scientific evidence. Timely access, issues of equity, and the distribution of excellent services around New Zealand were taken into account.

The plan also includes the development of information resources for men and their families, and for health professionals. Another major component of the plan is issuing guidelines for the pathway of care: primary care, diagnostics, pathology, active surveillance, curative treatments, and palliative care. We heard that the taskforce represented diverse components of the health sector including academics, clinicians, and consumer groups such as Māori and the Prostate Cancer Foundation. The broader public health expertise of three members of the taskforce included expertise in epidemiology. The taskforce was able to reach consensus on the main issues.

**National Prostate Cancer Working Group**

The completed plan was published in May 2013. In June 2014, we received an update on the work of the National Prostate Cancer Working Group, which was established to guide the implementation of the plan. We heard that there are changing trends in the management of prostate cancer; where in the past men might have undergone radical surgery they now undergo “active surveillance” for less aggressive cancers. This reduces significantly the side effects of unnecessary surgery.

We also heard that the PSA is a useful test, but has limitations for screening purposes. A high reading could be an indication of prostate cancer or could have other causes, and an informed decision to proceed from a positive screening test to a biopsy should take this into account. There are risks associated with biopsies and any subsequent surgery, and “low grade” prostate cancers may, in some circumstances, safely be left untreated for many years.
We thank the group for all their work, and have no other matters to bring to the attention of the House.
Appendix

Committee procedure
We heard evidence from the Ministry of Health on 15 August 2012 and 18 June 2014, and met on 2 and 23 July 2014 to consider this briefing.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
Petition 2011/66 of Ann Chapman and 1,053 others

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Petition 2011/66 of Ann Chapman and 1,053 others

Recommendation
The Health Committee has considered Petition 2011/66 of Ann Chapman and 1,053 others, and recommends that the House take note of its report.

Introduction
Petition 2011/66 of Ann Chapman and 1,053 others was referred to us on 12 June 2013 and respectfully requests that the House mandate district health boards to provide a greater choice of mental health treatment methods and options to reduce dependence on psychiatric medication; and urge the Government to initiate an independent inquiry into the negative short and long-term outcomes of current mental health treatment on those diagnosed with mental illnesses.

Submission from petitioner
While acknowledging that the judicious use of medication can help people with a mental illness, the petitioner is concerned at the increasing use of, and preference for, medication as the principal treatment for mental illness, and desires a greater choice of treatment options.

She submits that medication has serious side-effects; and the medication-only approach to mental health treatment casts a wider diagnostic net, which in turn results in an increasing burden on the health and welfare systems, and poorer outcomes for consumers in terms of the quality and length of life. She maintains that there is a strong evidence base for other approaches to mental health, such as those based on psychosocial models, which move away from medication towards a more holistic approach, and have proved effective in reducing long-term mental health costs in the community and improving mental health outcomes.

Compulsory treatment
The Mental Health (Compulsory Assessment and Treatment) Act 1992 covers any situation where a person needs treatment for a mental illness but does not agree to undergo treatment. The petitioner submitted that the proportion of people undergoing compulsory treatment has reached its highest-ever level at 87 per 100,000, and that once a person has been subject to a compulsory order under the Act it is very difficult to change this status.

Response to petition
Submission from the Ministry of Health
We heard from the Ministry of Health that funding for primary mental health services ($23.762 million for the current year) has increased access to psychological therapies for mild to moderate mental health and addiction issues. Primary health organisations and other primary care providers deliver a range of services including “packages” of care
including medical and other treatments, and various existing measures support the delivery of effective mental health and addiction services. The ministry acknowledged that this is a complex area, where service users have a right to make their own decisions about treatment or procedures and to be given adequate information on which to base their decisions, although most treatments are decided by clinicians in consultation with users and whānau. In some cases, the requirement for informed consent to treatment can be overridden under the Mental Health (Compulsory Assessment and Treatment) Act, but the Act provides checks and safeguards to ensure the right to review, and access to district inspectors and the right to seek independent psychiatric advice about treatment. Clinicians are required to discuss treatment options on a regular basis and to consult with family and whānau and make regular efforts to gain a patient’s consent to treatment. A robust complaints mechanism exists where standards fail to match expectations.

The aim of the petition is consistent with the vision articulated in Rising to the Challenge: The Mental Health and Addiction Service Development Plan 2012–2017, approved by Cabinet in 2012. The plan provides a clear vision for the mental health and addiction sector, and clear direction to planners, funders, and providers of mental health and addiction services regarding Government priorities for service development over the next five years. The plan focuses on four areas:

- making better use of resources
- improving integration between primary and secondary services
- cementing and building on gains for people with high needs
- delivering better access for all age groups (with a focus on infants, children and youth, older people and adults with common mental health and addiction disorders, such as anxiety and depression).

This plan for improvements in the delivery of mental health and addiction services includes support for the use of evidence-based therapies. The ministry also supports patients having a choice of mental health and addiction treatments, and treatment plans based on individual needs. It recognises the risks of certain medications, which are highly regulated.

Submission from the Health and Disability Commissioner

We heard from the office of the Health and Disability Commissioner that it shares some of the concerns raised by the petition, while recognising that the petition aligns in some ways with Rising to the Challenge. Some treatment models used overseas have been proven to deliver better outcomes, such as the “Open Dialogue Model”, developed and evaluated for over 12 years in Finland and now being adapted for use in Australia, Canada, and the USA. Such models seek to respect the decision-making of the patient and support their network of family and friends. They have been shown to deliver significant savings by reducing the prevalence of illness, and thus the associated health and social costs. Te Pou, a New Zealand charitable company, partly funded by the Ministry of Health, has carried out extensive research in this field; its evidence review “The physical health of people with a serious mental illness and/or addiction” has provided much-needed guidance on the subject from a New Zealand perspective. The organisation is working to support and develop the mental health, addiction, and disability workforces and has developed a number of practice guides to assist mental health practitioners.
Comment

We sympathise with the petitioner’s view that more use could be made of alternative therapies in the treatment of mental illness and addiction, and we acknowledge the work of the Ministry of Health and other organisations to overcome the many difficulties associated with this complex subject. We feel that approaches to mental health such as those based on psychosocial models may provide a beneficial alternative to medication-only regimes, as long as the treatments offered are based on sound, clinically proven evidence. We are pleased to note that both the Health and Disability Commissioner, and the Ministry of Health lean towards this view and that the petition aligns in many ways with the government’s vision already set out in “Rising to the Challenge: The Mental Health and Addiction Service Development Plan 2012–2017.”
Appendix

Committee procedure
Petition 2011/66 of Ann Chapman and 1,053 others was referred to us on 12 June 2013. We received written evidence and heard oral evidence from the petitioner, the Ministry of Health, the Health and Disability Commissioner, and the Platform Trust.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
Petition 2011/81 of Patricia Maich-Armstrong and 1,241 others

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Petition 2011/81 of Patricia Maich-Armstrong and 1,241 others

Recommendation

The Health Committee has considered Petition 2011/81 of Patricia Maich-Armstrong and 1,241 others, and recommends that the House take note of its report.

Introduction

We have considered Petition 2011/81 of Patricia Maich-Armstrong and 1,241 others, requesting

that the House of Representatives legislate to enable paid study up to level four qualifications and psychiatric training for residential carers, increase the minimum number of staff in hospitals and rest homes, and set higher minimum pay for staff with qualifications in hospitals and rest homes.

Submission from petitioner

In December 2011, the petitioner’s daughter was a special needs patient in residential care in a private hospital in Christchurch that provides various kinds of care including dementia, palliative, disability, and respite care. The daughter died in the hospital on 25 December 2011, following a period during which the standard of care she received was found to be suboptimal, although this was not found to have contributed to the cause of death.

The petitioner believes that if the measures sought in her petition had been in place at the time, her daughter’s death could have been avoided, and that she would certainly have received a higher standard of care in the preceding weeks. We heard that staff were too busy for effective communication and record-keeping, and that cover was not arranged for absences over the holiday period. We extend our sympathies to the petitioner for the death of her daughter and for the circumstances in which it occurred.

Response to petition

Ministry of Health

The Ministry of Health responded to the petition as follows.

Provision of paid study: Providers of aged residential care are required, under both the Health and Disability Sector Standards and the Age Related Residential Care services agreement, to provide sufficient staff, of appropriate skill mix, in an aged-care facility at all times to ensure that the assessed needs of the residents are safely met. The ARRC agreement requires that all newly-engaged staff receive a planned orientation programme, and requires facilities to carry out a planned, documented programme of staff development or in-service education. There are specific requirements for different occupational groups, and areas of work. Careerforce, Health Workforce New Zealand, and district health boards are developing a five-year Health, Disability, and Social Services workforce development strategy.
Staffing levels: Providers are expected to have a process for assessing the overall level of residents’ need and adjusting staffing accordingly. The ARRC agreement also specifies minimum staffing requirements for different levels of care. The Health and Disability Services Standards (NZS 8134.1.2:2008) require providers to document and implement a process to ensure that staffing levels are sufficient to deliver timely, appropriate, and safe services.

Higher pay: Pay and conditions for aged-care workers are a matter for negotiation between employers and employees. We heard that while funding for the sector had been increased in line with demographic changes, it was not at a level from which employers could meet all wage demands in the sector.

The ministry told us that responding to particular cases of inadequate care was also a matter for employers, and that the ministry’s role was limited to commissioning audits of compliance with standards by providers. The ministry noted that it has worked with DHBs over the last four years to improve the auditing of rest homes’ compliance with the Health and Disability Services Standards. The hospital which gave rise to this petition was subject to an unannounced spot audit a few months before the events giving rise to the petition, and a certification audit the following year. Neither audit raised any significant issues, and both were generally positive about the training level of those managing the service and the way the quality of care was maintained.

Since the result of these audits is at odds with the evidence we heard from the petitioner, we are pleased to hear that audits should now be more rigorous and reliable. We recommend that the standards against which providers are audited should be continuously monitored and required to meet evidence-based best practice.
Committee procedure

Petition 2011/81 of Patricia Maich-Armstrong and 1,241 others was referred to the committee on 16 October 2013. We received written evidence from the petitioner and from the Ministry of Health. We heard evidence from the petitioner and from the Ministry of Health.

Committee members

Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
Petition 2011/102 of Carmel Berry and Charlotte Korte

Interim report of the Health Committee

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Petition 2011/102 of Carmel Berry and Charlotte Korte

Recommendation

The Health Committee has considered Petition 2011/102 of Carmel Berry and Charlotte Korte, and recommends the House take note of its interim report.

We have considered Petition 2011/102 of Carmel Berry and Charlotte Korte, requesting that the House of Representatives inquire into the use of surgical mesh in New Zealand. We have held two hearings of evidence, but will not have time in this Parliament to hear all the relevant evidence or to complete our consideration of this item of business.

The petitioners provided us with a great deal of evidence concerning adverse effects from the use of surgical mesh, and made specific recommendations for the coverage of a suggested inquiry into the use of surgical mesh in New Zealand, and for action they believe should be taken before an inquiry commences. Their recommendations include regulating more closely and monitoring the safety of surgical mesh medical devices used in New Zealand; introducing mandatory reporting of mesh-related adverse events by all parties in a position to do so; collecting more detailed information on the mesh devices used in New Zealand, and how they are used; creating a register of all mesh implant procedures carried out; conducting an audit of the standard of informed consent to undergo mesh procedures in New Zealand; and creating a register of surgeons properly trained and qualified to use mesh products, with an emphasis on mesh removal skills.

We heard from the MedSafe business unit of the Ministry of Health that surgical mesh should usually be used only where other treatments are not available or effective, so there should be an overall benefit to its use despite the comparatively high failure rate for some procedures. We heard it argued that an effective register can be difficult to implement, and that retrospective audits can be unreliable. We were told that a study directly comparing the results for two years following surgery of mesh and biological grafts in prolapse surgery is due to report in late 2014. We were also told that due to the small population of New Zealand it was necessary to use evidence from agencies in Europe and the FDA in the USA.

We heard from the Accident Compensation Corporation that it has agreed to meet regularly with Medsafe to discuss issues with medical devices used in New Zealand; that it would comply with any mandatory reporting requirement; that it will undertake a retrospective audit of claims with a surgical mesh component; and that its legislation requires it to assess such claims in the same way as any other treatment injury.

Gynaecologist Hanifa Koya and the Women’s Health Action Trust each spoke in support of the petitioners. Emeritus Professor Don Wilson made the following more detailed recommendations in his written submission.

- That all surgeons using mesh be credentialled, as regards their training and ongoing experience, along lines proposed by the Urogynaecological Society of Australasia.
• That all “mesh” surgeons use the Urogynaecological Society of Australasia Pelvic Floor Database, which records all surgery and any complications, and also complete the proposed register.

• That any mesh complications be recorded using the International Urogynaecological Association’s classification, to allow comparison between surgeons worldwide.

We heard oral evidence from the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. Members of the college told us that for many conditions, traditional surgical approaches have had significant failure rates. When surgical mesh was used according to best practice for specifically indicated procedures, it was likely to lead to a better outcome than any available alternative. However, complication rates had to be taken into account. They agreed that such procedures should only be carried out by appropriately trained and experienced surgeons, and that a register of procedures and complications would be useful, if expensive.

We were particularly interested in their views on informed consent. We heard that the information given should be comprehensive (and ideally include feedback from other patients, if privacy issues can be avoided), but should not be delivered all at once, so the patient can take in the information at their own pace and have every opportunity to ask questions. Information should include full discussion of the severity and frequency of possible complications. Consent should be sought in writing, and include a summary of information already given.

We believe that this petition needs further consideration of all the evidence received so far, and that evidence should be sought from the Royal Australasian College of Surgeons. We ask that the Government take note of the recommendations reported above, and recommend that this item of business be reinstated in the new Parliament. A view should be reached on whether a final report on the petition would suffice, or whether a separate inquiry should be initiated or recommended.
Appendix

Committee procedure
Petition 2011/102 of Carmel Berry and Charlotte Korte was referred to the committee on 20 March 2014. We received written evidence from the petitioner and from the Accident Compensation Corporation, Hanifa Koya (gynaecologist), the Ministry of Health, Emeritus Professor Don Wilson, the Women’s Health Action Trust, and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. We heard oral evidence from the petitioner and from the Ministry of Health, the Accident Compensation Corporation, Hanifa Koya (gynaecologist), the Women's Health Action Trust, and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
Petition 2011/71 of Dr Lynley Hood and Associate Professor Gordon Sanderson on behalf of the Visual Impairment Charitable Trust

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Petition 2011/71 of Dr Lynley Hood and Associate Professor Gordon Sanderson on behalf of the Visual Impairment Charitable Trust

Recommendation

The Health Committee has considered Petition 2011/71 of Dr Lynley Hood and Associate Professor Gordon Sanderson on behalf of the Visual Impairment Charitable Trust, and recommends that the House take note of its report.

Introduction

Petition 2011/71 of Dr Lynley Hood and Associate Professor Gordon Sanderson was referred to the Health Committee on 8 August 2013. On behalf of the Visual Impairment Charitable Trust Aotearoa (NZ) and 1,321 others, it respectfully requests that the House of Representatives inquire into the need for accessible, comprehensive low vision rehabilitation services for the growing number of New Zealanders disabled by irreversible vision loss who do not qualify for membership of the Royal New Zealand Foundation of the Blind.

Submission from petitioners

Low vision is reduced ability to carry out activities because of an impairment that cannot be corrected by medical or surgical treatments, or with ordinary glasses or contact lenses. The petitioners submitted that over 93,000 New Zealanders are disabled by vision loss—but less than 12 percent of these are considered “blind enough” to qualify for help from the Royal New Zealand Foundation of the Blind—and noted that the foundation’s threshold is twice that for being ineligible for a driver licence.1

The petitioners drew a distinction between the Blind Foundation helping people to adjust to living without vision (habilitation), and the growing need for services to help people with low vision to make the most of what vision they have (rehabilitation). We heard that recent advances in the treatment of wet macular degeneration meant that many people who would formerly have progressed rapidly to full blindness could now be stabilised with a level of low vision, and that the increasing number of people with low vision would exacerbate the gaps in services for people who did not meet the foundation’s criteria.

We heard that high-quality magnifiers, large-print documents, and spoken versions of print information are inexpensive and cost-effective rehabilitation tools, and that low vision clinics provide comprehensive assessments, advice, reassurance, equipment, and a community of interest. But we heard that if such services are not readily available, low vision can lead to depression, illiteracy, loss of independence and isolation, social, cultural, or educational exclusion, and unemployment or underemployment, with associated high health costs.

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1 Sections 38(2)(a) and (b) of the Land Transport (Driver Licensing) Rule 1999 stipulate that an applicant who applies to obtain a Class 1 or 6 driver licence must have a visual acuity of at least 6/12. The Blind Foundation’s threshold is 6/24.
PETITION 2011/71 OF DR LYNLEY HOOD AND ASSOCIATE PROFESSOR GORDON SANDERSON

The petitioners told us that at one time ten of the district health boards had low vision clinics, but only four remain, with only two still providing a high level of service. One of the two receives dedicated disability support services funding, but the other DHBs which still provide low vision clinics fund them from personal health funding, which is vulnerable to being reprioritised to fund other services. We heard that the petitioners support the recommendations on low-vision service delivery set out in the report of a workshop conducted in Oslo in 2004. They particularly endorse the recommendation that tertiary low vision services be available in large hospitals, providing a wide range of eye-health care providers, high-quality clinical care, and a teaching and research environment. They also support the recommendation that low vision service delivery be coordinated with extensive public education and outreach activities.

The petitioners told us about the Glasgow charity Visibility, a pioneer in the UK in the field of low vision rehabilitation. In 2001, the NHS commissioned Visibility to review the services for visually impaired people in its area. Visibility mapped the often difficult patient pathway through the system, which led to the establishment of a patient support service in the eye department of a hospital to complement the medical services and to provide a bridge to social and functional support. The successful service has been adopted nationally.

Response to petition

Royal New Zealand Foundation of the Blind

The Royal New Zealand Foundation of the Blind is the main provider of services to people who are blind or have low vision. It delivers a full range of services to people with sight-loss worse than 6/24 with corrective lenses. Part of its funding comes from the Ministry of Health, which contracts the Blind Foundation to deliver services to people with moderate to severe vision-related needs. The foundation noted that children and young people enrolled in the Blind and Low Vision Education Network of New Zealand are eligible for its services even if they do not meet its registration criteria.

The foundation told us that it has the capability and range of expertise to deliver both habilitation for the blind and rehabilitation for those with low vision, but not the funding. The board of the foundation has set 6/24 as its threshold for providing services because it does not have sufficient funding to provide services to everyone with visual impairment. The foundation’s Whangarei Community Committee is collaborating with the Northland DHB, an ophthalmologist, and a registered nurse to pilot a new community-based low vision service.

Ministry of Health

The Ministry of Health acknowledges both the growing number of people with low vision in the ageing population, and the value of rehabilitation services, especially when public and community services are well coordinated. We heard that the four DHBs that provide some form of low vision service are not directly funded to do so. The low vision clinics in DHBs are mainly staffed by optometrists and occupational therapists.

The ministry, through Disability Support Services, has begun a project to examine current low vision services for adults. This will determine what current resources are available and

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3 That is, if a person were to stand six metres from an eye chart, they would see what a person with normal vision would see when standing 24 metres from the chart.
where the service gaps are. At the time of the hearing, the ministry was in the process of commissioning the review. It expected to receive the results of the review by the end of July 2014, and to make decisions in response by the end of August.

The ministry is seeking a single-service best-practice delivery model for the whole country. There are several contenders, including the “recognise and respond” model favoured by Sight Loss Services, and the Oslo proposal favoured by the petitioners.

**Conclusion**

We are pleased to hear that the ministry is addressing the issue of low vision service provision, as we consider this to be an area in need of urgent attention. We look forward to a positive response from the ministry to the report of the project it has commissioned. We would like to be assured that the project will make full use of the evidence we have received for this petition, and will not duplicate unnecessarily the work that has gone into providing this evidence to us.

We note that the Patient Support Service aspect of the Glasgow model seems worthy of particular consideration. We consider that people in New Zealand with low vision would benefit from having a “navigator” to guide them through the system. We consider that the pilot programme in Whangarei has useful similarities to the Glasgow model.

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4 A charitable trust which provides information, equipment, and support to people with low vision and their families, and others associated with their rehabilitation.
Appendix

Committee procedure
Petition 2011/71 of Dr Lynley Hood and Associate Professor Gordon Sanderson on behalf of the Visual Impairment Charitable Trust was referred to the committee on 8 August 2013. We received written evidence from the Visual Impairment Charitable Trust Aotearoa (NZ), the Royal New Zealand Foundation of the Blind, the Ministry of Health, and a number of individuals and organisations supporting the petition. We heard evidence from the Visual Impairment Charitable Trust Aotearoa (NZ), the Royal New Zealand Foundation of the Blind, and the Ministry of Health.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
The Health Committee has considered the report from the Controller and Auditor-General, Health sector: Results of the 2012/13 audits.

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

Dr Paul Hutchison
Chairperson
Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation
The Health Committee has examined the Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Smoke-free Environments Act 1990, so as to give effect to the Government’s decision of 18 February 2013 to introduce a plain packaging regime for tobacco products in New Zealand. The principal objectives of introducing such a regime are to reduce the appeal of tobacco products and smoking, particularly for young people; to reduce the wider social acceptance and approval of smoking and tobacco products; to increase the noticeability and effectiveness of mandated health warning messages and images; and to reduce the likelihood of consumers acquiring false perceptions of the harms caused by tobacco products.
Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill

Commentary

The bill would ensure that tobacco products were not manufactured, distributed, or sold unless they complied with the requirements set out in the legislation and regulations made pursuant to it. It would allow regulations to be made setting out the detailed requirements for the design and physical appearance of any packaging used or intended for use with tobacco products, and of the tobacco products themselves. It would amend existing regulation-making powers regarding health warnings on tobacco products to broaden their scope to include warnings of wider adverse social and economic effects, and also to allow positive health promotion messages.

The bill would create new offences with substantial penalties to deter effectively and punish any non-compliance (and would increase the penalties for existing offences regarding the advertising, promoting, or labelling of tobacco products to bring them into alignment with the penalties for the new offences).

The bill would not have any effect on intellectual property rights to register, own, and enforce trademarks and copyright in designs; it is only the use of trademarks and copyrighted designs as promotional devices on tobacco products and packaging that would be controlled.

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

Additional information

Subsequent to concluding our hearings of evidence on the bill, we visited Australia as part of a committee exchange programme. Late in our visit, key findings on tobacco smoking in Australia from the National Drug Strategy Household Survey 2013 were released, including that daily smoking rates among people aged 14 and older have declined from 15.1 percent in 2010 to 12.8 percent in 2013, the lowest rate recorded to date. While this information is not directly relevant to any of the amendments we recommend, we consider it worth noting as it is at odds with earlier evidence received on smoking rates since the introduction of plain packaging in Australia. The Commonwealth Treasury has further advised that tobacco clearances (including excise and customs duty) fell by 3.4 percent in 2013 relative to 2012 when tobacco plain packaging was introduced. This information establishes a significant argument to support the legislation and negates many of the claims made by the tobacco industry.
Title of the bill
We recommend amending clauses 1 and 19, and clause 1 of the schedule, by replacing “(Tobacco Plain Packaging)” with “(Tobacco Standardised Packaging)” in the title of the legislation. While we acknowledge that the term “plain packaging” has been consistently used in the development of the policy and subsequent public consultation, we consider that the term “standardised packaging” would reflect more accurately the intended consequences of the bill.
We recommend amending clauses 6, 10, 14, 15, and 17 to ensure that “standardised” rather than “plain” would be used consistently in the enduring statutory language.

Purposes of the Act
We recommend amending clause 5 by replacing “to give up smoking” with “to quit smoking” and “have stopped smoking” with “have quit smoking”. This would bring the language used in the legislation in line with that in popular use, and by smoking cessation services such as Quitline.

Purpose of Part 2 of the Act
We recommend amending clause 6 to include the reduction of cultural, as well as social, acceptance and approval of smoking among the aims of introducing standardised packaging. An example of cultural approval of tobacco that could usefully be discouraged is its use in traditional gifting or trading.
We recommend amending clauses 11 and 12 to include cultural effects of smoking among the harmful effects to which health messages would be allowed to refer.

Restrictions on sale of small quantities
We recommend amending clauses 9 and 17 to retain in the principal Act the prescription of minimum quantities in which tobacco products may be sold. The bill as introduced would allow minimum quantities, of no less than the existing minimums, to be set by regulation, but would not require the making of regulations to implement the existing minimums.
We recommend amending clauses 13 and 15 to reflect in the offences provisions the changes to clauses 9 and 17.

**Transitional provisions**
We recommend amending clauses 3 and 4 of the schedule to ensure that, during the transitional periods of 6 weeks for distributors and of 12 weeks for other relevant persons, the provisions of either the current legislation or the amended legislation could be followed without risk of committing an offence under the other.

**New Zealand First Party minority view**
New Zealand First opposes the change that this bill makes.
We believe that there is insufficient data to show that standardised (plain) packaging is an effective measure by itself to reduce the incidence of smoking.
Data from across the industry in Australia shows that legal cigarette sales increased by 59 million cigarettes in the 12 months after standardised (plain) packaging was rolled out in December 2012. This apparent increase in consumption after the introduction of this legislation in 2012 is the first increase in the three years prior to this measure being introduced.
New Zealand First believes other measures to be more effective.
Appendix

Committee process
The Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill was referred to the committee on 11 February 2014. The closing date for submissions was 28 March 2014. We received and considered 15,682 submissions from interested groups and individuals. Of the total number of submissions received, 15,491 were in the nature of form submissions, with substantially replicated content. We heard oral evidence from 33 submitters, at hearings in Auckland and Wellington.

We received advice from the Ministry of Health. The Regulations Review Committee reported to the committee on the powers contained in clause 2.

Committee membership
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Poto Williams
Dr Jian Yang
Register of Pecuniary Interests of Judges Bill

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Report of the Justice and Electoral Committee

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Register of Pecuniary Interests of Judges Bill

Recommendation
The Justice and Electoral Committee has examined the Register of Pecuniary Interests of Judges Bill and recommends that it not be passed.

Introduction
The Register of Pecuniary Interests of Judges Bill, a member’s bill in the name of Dr Kennedy Graham, proposes a standalone Act that would require judges to make returns of pecuniary interests to achieve transparency in the judicial system, and avoid conflicts of interest in the judicial role.

Members of the Executive have been required to provide statements of pecuniary interests since 1990, as have members of Parliament since 2006. The bill proposes that a similar requirement be extended to judges, relieving them of the responsibility of making discretionary judgements about the need to disclose their personal affairs as each case arises.

Background
The Register of Pecuniary Interests of Judges Bill was introduced by Dr Graham following the Judicial Conduct Commissioner’s initial, preliminary examination of complaints that Justice Bill Wilson had failed to recuse himself from a Court of Appeal case, the *Wool Board Disestablishment Company Ltd v Saxmere Company Ltd* [2007] NZCA 349, despite his business relationship with counsel in the case. The judge resigned before the commissioner could conduct a further preliminary examination and revise his report.

In terms of the law on when a judge should not sit on a case due to apparent bias, the Supreme Court confirmed, in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* (No 2) [2010] 1 NZLR 76, that a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not be able to bring an impartial mind to the resolution of the question the judge is required to decide. Because of the state of the financial arrangements in the business venture between the judge and the counsel, the Supreme Court found that the case on apparent bias was made.

In March 2011, the Law Commission released an issues paper which examined the possibility of a register of judges’ pecuniary interests. The paper set out the present law in New Zealand, and England and Wales, and described key features of financial registers in the United States of America, India, and South Africa. The Law Commission recommended in its final report *Review of the Judicature Act 1908: Towards a New Courts Act* that a register of judges’ pecuniary interests not be established by statute in New Zealand, because it did not consider this to be the best solution for managing judicial conflicts of interest.

The bill’s main provisions
The two key components of the bill would require returns of pecuniary interests from judges, and establish a register of these returns. Pecuniary interest in this context is defined
as anything that reasonably gives rise to an expectation of a gain or loss of money for a
judge, their spouse or partner, or child, step-child, foster child or grandchild.

Clause 4 provides that nothing in the bill should be interpreted as compromising the
constitutional principle of judicial independence guaranteed by the Constitution Act 1986
and respected by constitutional convention. The bill would apply to all judges of all courts
of New Zealand, including coroners, and acting or temporary judges, but not retired or
former judges. A complaint that a judge had failed to make a return is a matter that would
have a bearing on judicial functions or judicial duties for the purposes of the Judicial
Conduct Commissioner, and the Judicial Conduct Panel Act 2004. The bill proposes that
the Judicial Conduct Commissioner be the Registrar, and sets out the functions of this role,
and the requirement to publish the name of any judge who fails to file a return.

Submissions

While the submissions received generally did not support the bill, there was support for
debate on the key issues, and acknowledgement of the need for better public understanding
of the role of the judiciary. It was noted that there is no evidence of a lack of public
confidence in the judiciary, or of judicial corruption or bribery in New Zealand, in contrast
to some countries where financial disclosure requirements are imposed to address these
matters.

There was some concern that the proposed requirement for automatic disclosure might
result in delays to hearings while investigations are undertaken, and might also limit the
ability to recruit and retain judges of a high calibre. Adverse effects could also potentially
include the abuse of information disclosed by a judge. There were suggestions that a
register would be an unwanted intrusion into the personal affairs of judges and their
families, and would create opportunities for harassment by disgruntled litigants.

The three submitters who supported the bill suggested extending the list of disclosed
conflicts to include membership of a wider range of organisations, and requiring all private
financial interests to be relinquished before being sworn into judicial office. There was also
support from the majority of submitters for reform of recusal processes.

Recusal processes

We agree that the public must be satisfied that judges are deciding cases in a way that is fair
and impartial. We heard that if a judge has a pecuniary interest in the outcome of a case, he
or she is automatically disqualified from hearing it. Where there is doubt, the judge has a
duty to disclose this to counsel and the parties to the proceedings, to invite comments, and
then to make a judicial decision. Failure to disclose a conflict may amount to misconduct
and complaint to the Judicial Conduct Commissioner. The Court of Appeal has an internal
protocol for managing potential conflicts.

It was submitted that the existing law, with the appeal processes, the Guidelines for Judicial
Conduct, the judicial complaints process, and bench protocols, is sufficient to address any
conflicts that may arise. We understand that these provisions are consistent with those in
other Commonwealth jurisdictions. Judges are also obliged to uphold their judicial oath,
and to explain their decisions, which may be appealed or reviewed.

The Saxmere cases

It has been suggested that the situation examined in the Saxmere cases could have been
avoided if New Zealand had had a register of the financial interests of members of the
judiciary. However, we consider that this is not correct. First, before participating in the hearing of the Saxmere appeal, Justice Wilson informed counsel that he had a business relationship with opposing counsel, although the adequacy of this disclosure was later criticised by the Supreme Court (the Supreme Court would have expected Justice Wilson to have made a greater disclosure than might have been required under this bill). Secondly, had the bill been enacted prior to the appointment of Mr Wilson QC as a judge of the High Court and the Court of Appeal, a return of his pecuniary interests would not have been prepared before he heard the Saxmere case. This timing issue occurs because clause 7(1) and 7(2) of the bill provide that a judge must make an initial return of pecuniary interests 90 days after their appointment, and present it to the registrar within a further 30 days. The hearing of the Saxmere case began 60 days after Justice Wilson’s appointment.

**Review of Judicature Act 1908**

Above all, we consider it important that there be clear rules and processes on judicial recusal. On 27 November 2012 the Law Commission’s *Review of the Judicature Act 1908: Towards a new Courts Act* was tabled in Parliament. In it the Law Commission concluded there is no need for the establishment of a register of judges’ pecuniary interests by statute in New Zealand.

On 17 April 2013 the Government responded to the recommendations in the Law Commission’s report, indicating it would not pursue a register of pecuniary interests. It gave as reasons the risks to judges’ privacy, lack of focus on important non-pecuniary interests, and the administrative burden of operating such a register outweighing any potential benefits. The Government agreed with the Law Commission’s recommendation that the Heads of Bench for each court publish clear guidelines as to when recusal from hearing a case is appropriate. The Government has introduced the Judicature Modernisation Bill, which includes a requirement for recusal guidelines.

**Conclusion**

We are pleased that this bill has brought about discussion of openness and transparency, conflict of interest, and the public’s confidence in the judiciary. However, having considered the submissions made and the advice we have received, we do not think there is a need for a register of judges’ pecuniary interests in New Zealand. We consider it most important that there be good judicial recusal processes, and we support the idea of each court developing clear processes and procedures that are publicly available and based on a common set of principles. After consultation with the sponsoring member we understand it is his intention to withdraw the bill.
Appendix

**Committee procedure**

The Register of Pecuniary Interests of Judges Bill was referred to the committee on 27 June 2012. The closing date for submissions was 31 August 2012. The committee received 10 written submissions from organisations and individuals, and heard five oral submissions. Advice was received from the Ministry of Justice and the Law Commission.

**Committee members**

Scott Simpson, (Chairperson)
Paul Foster-Bell
Jo Hayes
Raymond Huo
Alfred Ngaro
Denis O’Rourke
Hon Maryan Street
Holly Walker
Hon Kate Wilkinson
Public Safety (Public Protection Orders) Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Public Safety (Public Protection Orders) Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The Public Safety (Public Protection Orders) Bill seeks to protect the public from almost certain harm by a very small number of serious sexual or violent offenders. It would do this by creating a new legislative regime allowing the High Court to make public protection orders (PPOs) that would allow detention of a subject in a secure facility.

The bill sets out four principles that courts and other people exercising power under its provisions would need to have regard to: that a PPO is not imposed as punishment; that it should be imposed only if the magnitude of the risk justifies it; that it should not be imposed if the offender is eligible to be held under mental health or intellec-
tual disability legislation; and that people thus detained should have as much autonomy as possible.

Under the bill, applications for PPOs would be made by the chief executive of the Department of Corrections (the applicant) to the High Court in its civil jurisdiction. The applicant would need to prove that the offender (the respondent) met the threshold and test set out in the bill on the balance of probabilities. To meet the threshold a person would have to be 18 or older and fall within one of the following categories:

- Being within six months of being released from prison for a serious sexual or violent offence.
- Being subject to the most intensive form of extended supervision order.
- Being subject to a protective supervision order.
- Having arrived in New Zealand within six months of ceasing to be subject to any sentence for serious sexual or violent offending from an overseas court.

Once the threshold was met a High Court judge could make a PPO if satisfied that the respondent presented a very high risk of imminent serious sexual or violent offending and exhibited severe behavioural disturbance, evidenced by four characteristics exhibited to a high level. They are an intense drive or urge to commit a particular form of offending; limited self-regulatory capacity; absence of understanding and concern for the impact of offending on victims; and poor interpersonal relationships or social isolation. Clinical reports from health assessors would address whether a respondent exhibited these characteristics.

Where persons subject to PPOs posed an unacceptably high risk to themselves or others, the High Court could grant a prison detention order. If the High Court found on reviewing a PPO that there was no longer a very high risk of imminent serious sexual or violent offending, the PPO would be cancelled, and a protective supervision order imposed to support the resident in making a safe transition back into the community.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.
Commencement
We recommend amending clause 2 of the bill as introduced so that its provisions would come into force on a date appointed by the Governor-General by Order in Council; and so that multiple Orders in Council could be made bringing different provisions into force on different dates. To allow time for consent processes we also recommend amending clause 2 to provide for clause 99, which deals with the establishment of residences, to come into force the day after the Royal assent is granted. Any provision not brought into force earlier would come into force one year after the bill receives the Royal assent.

Standard of proof
We recommend amending clause 13(1) of the bill to require that the court be satisfied “on the balance of probabilities” that the criteria are met before making a PPO. This would make it clear that the required standard of proof is the civil standard—the balance of probabilities. This is appropriate since the regime proposed by the bill would involve non-punitive civil detention, and applications for PPOs would be made to the High Court in its civil jurisdiction.

Suspension of PPO
We recommend inserting new clause 96A to provide for the suspension of proceedings until the person is no longer detained in a hospital, facility, or prison; and new clause 123A, providing for the suspension of a PPO, prison detention order, or protective supervision order. We also recommend the consequential deletion of sub-clauses 12(5) and (6) regarding the discontinuation and resumption of PPO proceedings.

We consider that PPO applications and orders should be suspended, rather than discontinued, if a respondent is subsequently detained in a prison or under mental health or intellectual disability legislation. This would address our concern that a person could be released from the hospital, facility, or prison while still posing harm. We recognise that a person’s very high risk of imminent serious harm to the public may not flow from their mental disorder or intellectual disability. Also, we want to avoid creating a perverse incentive to break the law
in a moderate way to try to avoid being subject to a PPO, prison detention order, or a protective supervision order.

**Review and oversight provisions**
For consistency with similar legislation, we recommend inserting new subclause 109(6), to allow the Minister of Justice to remove a review panel member for “just cause” without compensation. “Just cause” could include absence.

We also recommend inserting subclause 94(2) to make evidence in proceedings under the bill subject to subpart 8 of Part 2 of the Evidence Act 2006, and to any legislative provision governing legal professional privilege; this important principle would thus be upheld.

**Review of PPOs, and making of protective supervision orders**
We recommend prescribing more detail about review of a PPO. We recommend adding clauses 17(2) and (2A) to require a court reviewing a PPO to consider whether the subject still poses a very high risk of imminent serious sexual or violent offending, taking into account the reports provided to the court.

We also recommend inserting subclause 17(2B) to provide that if the court finds the person no longer poses a very high risk it must make a finding to that effect. To clarify the process that would then apply, we recommend amending subclause 80(1) to require the court to cancel the PPO and impose a protective supervision order on the person. Our new subclause 80(1B) would require the person to be released from detention as soon as practicable after a protective supervision order was imposed.

**Victim notification and participation**
We recommend amending the definition of victim in clause 3 (Interpretation) to include reference to their request for notice or advice and copies under section 31 of the Victims’ Rights Act 2002.

We consider it important that notification of victims be consistent with the victim notification register system provided for under the Victims’ Rights Act. This Act allows certain victims to register to remain informed about the person who offended against them. We
also consider that victims need to be informed at more stages in the process. Therefore, we recommend the addition of subclause 8(2) to provide for the chief executive to notify every victim as soon as practicable when an application is made for a PPO; new clause 13A providing for victims to be notified of the outcome after a PPO application is determined or suspended; new subclause 15(4) providing for victims to be notified when the chief executive has made an application for a review of a PPO; and new subclause 16(2) to provide for notification when the person subject to the PPO has applied for it to be reviewed. Similarly, we recommend inserting subclause 86(3) and subclause 87(2), imposing similar notification requirements regarding applications for review of a protective supervision order.

Legal aid
We recommend inserting new clause 124B to insert subsection 4(1)(ca) into the Legal Services Act 2011, to make any proceedings under the act a “specified application”. This would treat these applications in a similar way to those relating to compulsory mental health and intellectual disability proceedings, making it easier to access legal aid than it is for standard civil proceedings.

Rights and management of residents
We recommend amending clause 28 to give residents the right to participate in educational activities, and inserting subclause 38(2)(ca) to include educational needs in the needs assessment conducted of a resident. We consider there is value in explicitly providing for education as a right, and ensuring a person’s educational needs are determined.

We also recommend amending clause 30(1) to replace “access to newspapers” with “access to news media”. For the sake of clarity the amendment refers to a resident receiving a news media item and does not include by reference media representatives.

Visitors, deliveries and communications
Provisions in the bill as introduced concerning people and items entering a residence were drafted in the expectation that residences would be located only inside the secure perimeters of prisons, and
people and items would enter through the main prison gatehouse and be subject to the requirements of the Corrections Act 2004. We understand there would be significant operational benefit in locating residences on prison land outside the prison wire but within their own secure perimeter fences. However, this would mean that the security provisions under the Corrections Act could no longer be relied upon, necessitating the following amendments to the bill as introduced.

Visits
We recommend amending clause 31 to allow a resident to receive visits from permitted persons, subject to any conditions or restrictions imposed by the residence manager. New subclause (1A) would permit a visit to be unsupervised if the residence manager considered it would meet the resident’s rehabilitative needs. New subclause (1B) would also exempt visits by inspectors, office-holders, or a resident’s lawyer.
We also recommend including new subclause 56(1A) to require a residence manager not to allow a person under the age of 18 to visit a resident unless the visit is likely to meet the resident’s rehabilitative needs.

Inspection of items
We recommend inserting new clause 43A, which would allow the residence manager to inspect items delivered to the resident or intended to be sent by the resident, to determine whether they were prohibited, contravened the resident’s management plan, or would be otherwise detrimental, and to deal with them accordingly.

Monitoring, seclusion, and restraint
We recommend removing subclause 62(2), which would require physical restraint to be used before mechanical restraint. Removing this priority would allow the most appropriate means of restraint to be applied where necessary. We consider it would be safer not to assume the use of physical restraint as the first resort, as it is more likely to cause harm than the use of mechanical restraints.
Searches and prohibited items
In order to allow the locating of residences on prison land outside the prison wire (rather than within as intended by the bill as introduced) the security provisions under the Corrections Act could no longer be relied upon in respect of residences, necessitating the following amendments to the bill.

Residents and residences
Clause 57 provides for searches of residents and residences. For completeness we recommend inserting new subclauses 57(1)(ab) and (ba) to include searches of any items the resident has in the residence, or that are delivered to it.

We recommend amending clause 57(3) to provide that a resident “may”, rather than “must”, be strip-searched on entering or leaving the residence or the prison within which the residence is located. This would be consistent with the Corrections Act 2004, which provides some flexibility regarding the strip-searching of prisoners entering or leaving a prison.

We also recommend defining “rub-down search”, “scanner search”, “strip-search”, and “x-ray search” in clause 3 (Interpretation) of the bill as having the same meanings as they do in the Corrections Act 2004. We recommend that these searches be listed in clause 57(2), which concerns the form searches may take.

Search of persons other than residents
We recommend inserting new clause 57A to provide for searches of people other than residents; new clause 57A(2) would allow a rub-down search with the person’s consent if there were reasonable grounds to suspect the person had a prohibited item; under new clause 57A(3) failure to consent to a scanner search or a rub-down search would result in entry being denied to the residence or the person being required to leave if they were already inside.

Search of property, use of dogs, and inspecting of prohibited items
We recommend inserting new clause 57B which provides for the authority to search any items the respondent has, new clause 57C which
allows for a search dog to be used, and new clause 57D which allows a residence manager to take possession of an item, by force if necessary, and describes how items are to be dealt with.

We recommend inserting new clause 20A(1) to forbid residents from possessing prohibited items; and 20A(2) and (3) providing for the residence manager to take possession of a prohibited item and deal with it as they consider appropriate, including giving it to the Police or another person, or destroying it. This would clarify the powers of staff concerning prohibited items.

We recommend that the reference to drugs in the “prohibited item” list in clause 3 (Interpretation) be replaced by reference to any medicines, controlled drugs, or precursor substances except those prescribed for the resident, and psychoactive substances. This would be consistent with the Medicines Act 1981, which does not refer to “drugs”; and it would make the intent of the clause clearer by explicitly listing certain types of substances. We also recommend amending subclause 58(1), which provides for drug and alcohol testing, to reflect the revised wording.

We further recommend adding tobacco and equipment used for smoking substances as prohibited items (clause 3 (Interpretation)), which would reduce the risk of fire and promote a healthier environment; adding “any electronic or non-electronic material that the residence manager reasonably considers to be pornographic”, any electronic or non-electronic representation of inappropriate images of under-18-year-olds, any computer or other electronic device on which a prohibited item is stored; and adding “any live animal” to the list of prohibited items in clause 3. We consider this would remove any potential ambiguity as to the status of these items.

**Inspectors and specified office holders**

To improve accountability and transparency we recommend inserting subclause 106(2) to require the Department of Corrections’ annual report to include a report on the activities of inspectors.

We recommend amending subclauses 68(2) and (3), and 70(2) to require inspectors to investigate, conduct an inquiry, and report on a matter “as soon as is reasonable in the circumstances” after receipt of a complaint or a direction to conduct an inquiry. This is consistent
with the timeframe allowed for prison inspectors to conduct investigations.

**Regulations, guidelines and instructions**

Consistent with advice we received from the Regulations Review Committee, we recommend including a definition of “coercive power” in clause 3 (Interpretation) of the bill, to clarify that it means a power that authorises a residence manager or staff member, or a corrections officer, to use force, and that it includes the powers conferred by clauses 57 to 58 and 61 to 64. We also recommend inserting new subclause 122(2) to make it explicit that only the coercive powers conferred by the bill could be regulated, and no new coercive powers could be provided for by regulations.

We recommend inserting new subclause 104(6) specifying that rules made by the residence manager under clause 104(1) for the management of the residence are not disallowable instruments for the purposes of the Legislation Act 2012, and do not have to be presented to the House of Representatives under section 41 of that Act. New subclause 104(7) would provide that these rules could not confer any coercive powers.

We further recommend inserting subclause 105(1)(b)(ia) to provide for the chief executive to issue instructions and guidelines regarding the safe custody of residents, and amending clause 105(3) to specify that guidelines and instructions are also disallowable instruments for the purposes of the Legislation Act 2012.

**Deducting amounts to cover the cost of care**

We recommend amending clause 37(2) so that money would be deducted from a resident’s employment earnings, rather than from their trust account. This would clarify an existing provision for a resident to be required to pay a contribution to their care while working in paid employment.

**Including murder in the definition of “serious sexual or violent offence”**

We recommend including “murder” in the definition of “serious sexual or violent offence” by inserting a reference to sections 172 to 177
of the Crimes Act 1961 in clause 3 (Interpretation). This is necessary because PPOs would also apply to those returning to New Zealand after serving a sentence for a “serious sexual or violent offence” in an overseas jurisdiction. A person convicted of murder in New Zealand will be detained if they pose a continuing risk to the community.

**Escape from lawful custody**

We recommend inserting new clause 124A to add new subsection 120(1)(bb) to the Crimes Act 1961, making it an offence for a person subject to a PPO to escape from a residence. This would authorise police to apprehend and arrest anyone who escaped from a residence.

**Emergencies**

**Civil defence emergencies**

The bill as introduced contains no provisions relating to civil defence emergencies, such as earthquake or fire. For the safety of residents, staff, and the general public we recommending inserting new clause 64A, giving the prison manager authority in a civil defence emergency. Although the management of a residence and the prison where it is situated would be kept separate under the bill, in a civil defence emergency it would be safer and more effective for a single line of command to coordinate the response for both the residence and the prison.

We also recommend inserting new clause 64B, to provide for the re-location of residents to prison if a residence is rendered uninhabitable. If the residents’ detention in prison exceeded 72 hours, new subclause 64B(2) would require the chief executive to apply for a transitional detention warrant authorising their continued detention. New clause 64C sets out the details that would be required for the issuing of such a warrant.

**Security emergencies**

We recommend inserting clause 64(4A) to allow the court to make an interim prison detention order while an application for a prison detention order is pending, so that the resident could be detained in prison in the meantime. This would clarify the status of an individual detained in an emergency under clause 64, ensuring their safe man-
agreement and the safety and security of the prison. Should the court decline to grant an interim order, the resident would be returned immediately to a residence.

**Court procedure**

We recommend inserting new clause 90A to require an application for a PPO, or a prison detention order, and an application for a review of those orders or a review of a protective supervision order, to be made by originating application. Originating applications are appropriate where evidence would normally be by affidavit and the normal High Court Rules regarding settlement are not relevant.

**Green Party Minority View**

The Public Safety (Public Protection Orders) Bill is intended to protect the public from harm that may be posed by the release from prison of what all parties agree is a very small number of individuals (possibly as few as five, no more than twelve) who have completed their sentences. It is the Green Party’s view that many of the provisions in the bill are disproportionate and excessive in relation to the level of threat to public safety that actually exists.

The bill purports to be based on four principles, one of which is that orders “are not imposed to punish persons”. It is nevertheless difficult to construe the application of orders as being anything other than a punitive regime, when it denies individuals subject to them their liberty and freedom of association; limits their rights to information, visitors, correspondence; makes them subject to strip searches, and much else. The form of detention is a continuation of an imprisonment regime in all but name, even though the subjects of orders have served the full term of a sentence handed down by the courts.

The regulatory impact statement, and a number of informed submitters, indicated that the legislation is likely to be found inconsistent with the Bill of Rights Act, in particular section 22 and section 26, in respect of arbitrary detention and double jeopardy.

The United Nations Working Group on Arbitrary Detention, who visited New Zealand in March to April this year (2014) stated unequivocally that this bill is not in compliance with international law.

The Law Society has questioned the need for the bill, pointing out that there are existing sentencing options for criminal offenders, in-
cluding the wider availability of preventive detention since 2002, extended supervision orders under the Parole Act 2002, and options for intellectually disabled offenders in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. The Law Society also noted that even prior to these options being available the Law Commission concluded that a civil detention regime of the kind that would be established by this bill was not necessary in the public interest. The Green Party continues to oppose this bill, and recommends that it not proceed.
Appendix

Committee process
The Public Safety (Public Protection Orders) Bill was referred to the committee on 18 September 2013. The closing date for submissions was 1 November 2013. We received 13 submissions from interested groups and individuals, and heard eight submissions. We received advice from the Ministry of Justice and the Department of Corrections. We also considered a report from the Regulations Review Committee on the regulation-making powers in the bill.

Committee membership
Scott Simpson (Chairperson)
Paul Foster-Bell
Joanne Hayes
Raymond Huo
Alfred Ngaro
Denis O’Rourke
Hon Maryan Street
Holly Walker
Hon Kate Wilkinson
David Clendon replaced Holly Walker for this item of business.
Objectionable Publications and Indecency Legislation Bill

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Report of the Justice and Electoral Committee

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Recommendation

The Justice and Electoral Committee has examined the Objectionable Publications and Indecency Legislation Bill and recommends that it be passed without amendment.

Introduction

The Objectionable Publications and Indecency Legislation Bill seeks to modernise the law regarding objectionable publications to keep pace with technology, and to ensure that penalties for objectionable publication offences regarding children reflect the seriousness of the offending.

The bill proposes to achieve these aims by the following means:

- increasing the maximum penalties for the possession, importing and exporting, supply, distribution, and making of objectionable material (including child exploitation material)
- clarifying that a person could have possession of an objectionable electronic publication without saving it (or a copy of it)
- providing for a presumption of imprisonment for repeat child exploitation material offenders
- removing the requirement for the Attorney-General’s consent for public prosecutions of objectionable publications and indecency offences
- creating a new offence of indecent communication with a young person (under 16 years).

Issues raised in submissions

The main areas focussed on by submitters are discussed below.

Increased penalties

The bill would increase the maximum penalties for possession, importing and exporting of an objectionable publication from 5 to 10 years; and the maximum penalty for the supply, distribution or making of an objectionable publication from 10 to 14 years. Some submitters suggested that the increase in maximum sentences should be restricted to child exploitation material, and that increasing penalties for objectionable publication offences in general might distort relativity with physical offending.

New Zealand does not have a specific child exploitation material offence; child exploitation material is a subset of publications that are “objectionable” under the Films, Videos, and Publications Classification Act 1993. The Office of Film and Literature Classification is responsible for determining what is objectionable, ensuring that all publications are dealt with consistently.
Our majority view was that restricting the increased penalties to child exploitation material could raise issues regarding other types of objectionable publication. For example, it could be argued that material depicting sexual violence against women also warrants higher penalties. Most of us consider it is preferable to maintain the current regime, which relies on judges exercising their discretion to determine a sentence that is proportionate to the offence committed. We note that section 132A(2) of the Films, Videos, and Publications Classification Act 1993 requires the sentencing court to take into account as an aggravating factor the extent to which a publication exploits children.

**Presumption of imprisonment for repeat offenders**

The bill provides for a presumption of imprisonment for persons convicted of any objectionable publication offence involving child exploitation material for a second or further time, unless the court considers that particular circumstances indicate otherwise. Concern was expressed about a “growing appetite” for sentencing presumptions in legislation, and an argument was made for limiting them. We agree, but consider that, like the various offences for which presumptions already exist (including supply of a class A controlled drug, and sexual violation), repeated child exploitation material offending is serious enough to warrant a presumption of imprisonment. In the view of the majority of us, providing judges with a sentencing regime to reflect the seriousness of reoffending in this area would also send a strong message that Parliament will not tolerate the exploitation and abuse of children.

**Possession of electronic publications**

Clause 5 of the bill would amend the Films, Videos, and Publications Classification Act to provide that possession of objectionable material includes intentionally viewing such material without knowingly downloading or saving it. The amendment is for the avoidance of doubt, and does not limit the possession offence. Telecommunications network operators need not be concerned about being caught by the new provision; having no knowledge of the content they are carrying, they would not meet the four essential elements of possession, as set out in *Meyrick v Police*.

**Attorney-General’s consent for prosecutions**

Clauses 8 and 12 would remove the requirement for law enforcement agencies to obtain the Attorney-General’s consent to prosecute objectionable publications and indecency offences; not all submitters were aware that consent would still be required for private prosecutions.

**Indecent communication with a young person**

Clause 13 would create a new offence under the Crimes Act 1961 of indecent communication with a young person (anyone under the age of 16). This would also apply to indecent communication with a police constable where the constable is believed to be a young person. The proposed offence seeks to close a gap between objectionable publications offences (where an offender records a communication with a young person) and the sexual grooming offence (where an offender takes steps to meet a young person). Clause 13 would insert new section 124A(3) into the Crimes Act providing a defence that before making the indecent communication, the person charged took reasonable steps to find out whether the young person was 16 years or older, and believed on reasonable grounds that they were at the time of the communication.
Some submitters expressed concern about entrapment, where a person charged communicated indecently with a police constable, believing the constable to be a young person. This provision is necessary to enable law enforcement officials to prosecute. We are satisfied that law enforcement agencies are fully aware of and experienced with the issues concerning entrapment, and note that judges have the discretion to exclude evidence if they believe it has been improperly or unfairly obtained.

Submitters also expressed concern that the proposed new offence was too broad, and that naïve rather than criminally motivated conduct might be unintentionally captured by the provision, leaving a young person with a criminal record. We consider this risk is mitigated by the requirement for the communication to be “indecent”, which the courts have held must be judged in light of time, place, and circumstances as warranting the sanction of the law; and we are confident that law enforcement agencies would use their discretion wisely. There would also be the defence of not knowing the material was indecent, provided the person charged had no reasonable opportunity of knowing this, and that in the circumstances their ignorance was excusable.

The absence of a definition of “indecent” in the Crimes Act 1961 also raised concern. We are aware that “indecent” is used throughout the Crimes Act, and in other statutes including the Summary Offences Act 1981, and the Telecommunications Act 2001. Although the term is used in a slightly different context in this bill, the courts can draw on a well-established body of case law on the definition of “indecent”.


Appendix

Committee procedure
The Objectionable Publications and Indecency Legislation Bill was referred to the committee on 19 November 2013. The closing date for submissions was 7 February 2014. We received eight submissions from interested groups and individuals, and heard three submissions. We received advice from the Ministry of Justice.

Committee members
Scott Simpson (Chairperson)
Paul Foster-Bell
Joanne Hayes
Raymond Huo
Alfred Ngaro
Denis O’Rourke
Hon Maryan Street
Holly Walker
Hon Kate Wilkinson

David Clendon replaced Holly Walker for this item of business.
Human Rights Amendment Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Human Rights Amendment Bill, and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to make changes to the structure and functions of the Human Rights Commission to give it more flexibility to respond to emerging human rights issues, including those pertaining to disability rights.

A 2010 Ministry of Justice review of the structure and functions of the commission found the provisions relating to the specialised commissioners to be inflexible, and the description of the commission’s functions to be unclear. The bill seeks to address these issues by replacing the commission’s three full-time and up to five part-time commissioners with four to five commissioners in total. It would remove the direct statutory appointments of Race Relations Commissioner and Equal Employment Opportunities Commissioner, instead requiring commissioners to lead work in these areas, on disability
issues, and in other areas after consultation with the Minister of Justice and the other commissioners. Submissions addressed these issues in particular and were taken into consideration by the committee. The other functions of the commission would be amended to include expressing an opinion on any situation in which human rights may be infringed; reporting legislation, policies and administrative provisions affecting human rights matters; promoting the development of new international human rights instruments; and promoting and monitoring New Zealand’s compliance with its international human rights obligations.

Commencement and transitional provisions
After considering a letter from the Regulations Review Committee regarding commencement of the bill by Order in Council, we recommend amending clause 2 to provide for the bill to come into force on the day after it receives the Royal assent. To make this possible we recommend amending clause 17 to insert new Schedule 1AA providing for transitional provisions to allow the number of commissioners appointed under new section 8(1A) of the Human Rights Act 1993, introduced by clause 6, to exceed five until the terms of the existing part-time commissioners expire. This would ensure that the three priority areas listed in section 8(1A) were always covered, even if the number of commissioners temporarily exceeded five.

Chief commissioner’s responsibilities
We recommend amending clause 6 to insert section 8(1B) into the Human Rights Act to allow the chief commissioner to designate new priority areas only in accordance with the strategic direction and the general nature of activities as determined by the commission under section 7(1) of the Act. Section 7(1) makes setting its strategic priorities the joint responsibility of the members of the commission. This change would make it clear that the commissioner would be bound by the strategic direction decisions made collectively by the commission when designating new priority areas.
We also recommend amending clause 11 to insert new section 15(e) into the Act to specify that the functions of the chief commissioner would include allocating spheres of responsibility for priority areas under new section 8(1B) of the Act.
Functions of the commission
We recommend amending clause 5 to insert section 5(2)(ka) into the Human Rights Act, to allow the commission to report to either the Prime Minister or the responsible Minister, or both, on legislation, administrative provisions, or policy affecting human rights. This would give the commission the discretion and flexibility to report to the person it considered appropriate in the circumstances.

Labour Party minority view
Labour completely supports the establishment, in this legislation, of a Disabilities Commissioner, as did 22 out of the 42 submitters on this bill. We support the establishment of a Disabilities Commissioner for exactly the same reasons that we support the retention of the other two designated roles of Equal Employment Opportunities and Race Relations Commissioners. People with disabilities suffer discrimination in housing, employment, civic participation and social inclusion, and we are pleased that there will be a commissioner with specific responsibility for receiving and addressing complaints on behalf of those New Zealanders.

However, we do not believe that the price of a Disabilities Commissioner should be the loss of the Equal Employment Opportunities and Race Relations Commissioners. In fact, we cannot see the logic in disestablishing two specific commissioners in one breath and establishing another in the next.

Labour opposes the Human Rights Amendment Bill for two reasons: we consider that the disestablishment of the discrete positions of Equal Employment Opportunities Commissioner and Race Relations Commissioner is a retrograde step (clause 4(2)); and we do not believe that the Human Rights Commission should be determining its work priorities “only after consultation with the Minister to whom they report” (clause 15(e)).

The discrete designated positions of the Equal Employment Opportunities Commissioner and the Race Relations Commissioner are, or have become, symbols of the significance of discrimination on the basis of gender and ethnicity as grounds specified in our human rights legislation in New Zealand. Having designated commissioners sends a strong signal to those otherwise inclined, that all people in New Zealand shall be treated equally, regardless of gender or ethnicity.
Twenty-three out of 42 submitters told the committee that they thought it represented a downgrading of the importance of these criteria to do away with specially designated positions. While reference to the work of such commissioners is still retained in the bill, one of its purposes is to do away with these discrete positions.

In addition, we are deeply disturbed by the provision in clause 15(e) that says that the Human Rights Commission may establish its priorities for its work programme “only after consultation with the Minister” (emphasis added). We accept that the Minister should be advised of the commission’s decisions with respect to the priorities it wishes to pursue, but utterly reject the notion that the government of the day might approve the commission’s work programme. Twenty-three submitters expressed concern at this provision.

The independence of the Human Rights Commission is critical. Its priorities should not be dictated by the Government for its own purposes or in its own interests. Given the Prime Minister’s scarcely veiled threat regarding the Commission’s funding when the Commission exercised its perogative and reported directly to the Prime Minister on the controversial Government Communications Security Bureau Amendment Bill, it is difficult to avoid the conclusion that this clause arose out of the frustration the Government demonstrated at that time.

This episode is enough to ensure that the reach of Ministers into the work of the commission remains strictly limited to the more distant role of accountability provided for in the Crown Entities Act 2004. The commission is an independent body. Its reports and its work must remain independent of government. It will be in breach of the Paris Principles on which such human rights bodies are founded internationally otherwise.

Labour, while supporting the establishment of a discrete Disabilities Commissioner, opposes this bill for these reasons.

**Green Party minority view**

The Green Party opposes this bill. In particular we oppose the restructuring of the Human Rights Commission including the disestablishment of the key roles of Equal Employment Opportunities and Race Relations Commissioners, and we also oppose the new require-
ment to consult with the Minister around work priorities of the commission.

We are also disappointed that it fails to establish a designated Disability Commissioner in a similar manner to the existing positions of Equal Employment Opportunities and Race Relations Commissioners, and in particular that it fails to explicitly reference the Convention on the Rights of Persons with Disabilities, to which New Zealand is a signatory.

While the bill provides for the areas of equal employment opportunities and race relations to continue as priority areas for the commission alongside the new area of disability and provides for commissioners to lead work in each of these areas, the Green Party regards the disestablishment of designated commissioners in Equal Employment Opportunities and Race Relations as premature given the importance of these issues in New Zealand.

A number of submitters, including organisations representing sectors most impacted by the work of the Human Rights Commission, expressed significant concerns that the restructuring will undermine the autonomy and independence of commissioners in these areas, something that is highly valued by these groups.

The Green Party also opposes the new clause that requires the Human Rights Commission to establish priorities for its work programme only after consultation with the Minister. A number of submitters raised the importance of the commission’s work being completely independent of the Government in order for it to be free to investigate and report on breaches of human rights without political interference. There is a deep concern that this clause is in breach of the Paris principles and that the current high rating of the Human Rights Commission could be downgraded as a result.
Appendix

Committee process
The Human Rights Amendment Bill was referred to the committee on 5 November 2013. The closing date for submissions was 19 December 2013. We received and considered 42 submissions, and heard 19. We received advice from the Ministry of Justice. We also considered a letter from the Regulations Review Committee regarding commencement of the bill by Order in Council.

Committee membership
Scott Simpson (Chairperson)
Paul Foster-Bell
Joanne Hayes
Raymond Huo
Alfred Ngaro
Denis O’Rourke
Hon Maryan Street
Holly Walker
Hon Kate Wilkinson
Mojo Mathers replaced Holly Walker for this item of business.
Harmful Digital Communications Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Harmful Digital Communications Bill and recommends that it be passed with the amendments shown.

Introduction
The Harmful Digital Communications Bill seeks to mitigate the harm caused to individuals by electronic communications and to provide victims of harmful digital communications with a quick and effective means of redress. We recognise that technology has made possible the rapid, anonymous distribution to a potentially huge audience, and the bill aims to strike a careful balance between preserving freedom of expression and preventing and reducing harm.

The bill would create a new civil enforcement regime and new criminal offences to deal with the most seriously harmful digital communications, and would make small amendments to legislation to clar-
ify its application to digital communications and to cover potential technological advances.

Complaints about harmful digital communications would be submitted to the Approved Agency, a body which would be appointed by the Governor-General by Order in Council as the first step in the civil enforcement regime. The agency would assess complaints, where appropriate investigating and using negotiation, mediation, or persuasion to resolve matters. The agency’s primary functions would include education.

The bill sets out ten communication principles to guide the court and the Approved Agency in assessing whether a digital communication has caused or is likely to cause someone harm. “Harm” is defined as “serious emotional distress”. We consider that the principles would provide a useful reference to help infer a common set of values when assessing whether behaviour was acceptable.

The bill would also include a safe harbour provision setting out a process for online content hosts to follow to limit their liability for content authored by others.

The bill would implement the Government’s decisions on addressing harmful digital communications, which are based on the Law Commission’s 2012 ministerial briefing paper *Harmful Digital Communications: The adequacy of the current sanctions and remedies*.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

**Purpose**

We recommend amending the purpose of the bill (clause 3) to include the deterrence and prevention of harm. This would reflect the intent of the bill and the Approved Agency’s role of providing education and advice for safe online conduct.

**Internet Protocol Address Provider**

We recommend inserting into clause 4 (Interpretation) a definition of Internet Protocol Address Provider (IPAP) giving the term the same meaning it has in section 122A(1) of the Copyright Act 1993. An IPAP is an entity that provides users with internet access and allocates internet protocol (IP) addresses to users; for example Telecom and
Vodafone are IPAPs in their capacity as network providers. Adding the Copyright Act definition would mean IPAPs would be explicitly included in the bill. We also recommend inserting subclause 17(2A) to allow the District Court, on application, to make an order against an IPAP to release the identity of an anonymous communicator to the court. This would mean the identity of an otherwise anonymous person’s account could be revealed using IP address matching by the IPAP.

Professional leader
We recommend including in clause 4 (interpretation) of the bill a definition of “professional leader” consistent with section 120 of the Education Act 1989. Professional leaders would include principals, and supervising teachers of registered schools. Under subclause 10(1)(c) a professional leader could apply to a District Court for an order mitigating harm, by means including the taking-down or disabling of material, concerning a student at their institution. This would give schools and other educational institutions another tool, in addition to their own policies and procedures, to protect their students from cyberbullying.

Approved Agency
We recommend inserting new subclause 7(5) to make the Approved Agency subject to the Ombudsmen Act 1975, the Official Information Act 1982, and the Public Records Act 2005, in respect of the functions it would perform under the bill. We recommend inserting new subclause 8(4) to require the Approved Agency if it took no further action on a complaint to notify the complainant of their right to apply to the District Court for an order under this legislation. This would be consistent with the approach taken by the Human Rights Commission under the Human Rights Act 1993. We recommend inserting new clause 8A allowing the Approved Agency, subject to the Minister’s approval, to delegate any of its functions or powers to any person or organisation with the appropriate knowledge, skills, and experience. Subclause 8A(6) would provide for any action or decision of a delegate to be treated as an action or decision of the Approved Agency. Subclause 8A(7) would require a delegate to comply with all reasonable requests or require-
ments of the agency regarding its compliance with the Ombudsmen Act, the Official Information Act, or the Public Records Act. Documents held by a delegate would therefore have to be accessible to the Approved Agency for the purposes of requests made under the Acts listed. It is common practice for statutory bodies to use external agencies to assist them, and the amendments would ensure that the Approved Agency could access the expertise necessary to perform its statutory functions.

**Threshold for proceedings**

We consider that threats to cause harm should be included as grounds for making an order, reflecting the likelihood of harm occurring if the threat were to be carried out. Therefore, we recommend amending clause 11(2)(a) to reflect this.

**Varying or discharging an order**

We recommend inserting new clause 17A to allow the District Court, upon application by one or more parties, to vary the duration or any conditions of an order, or discharge an order.

**Penalty levels**

We recommend adjusting the maximum penalties for the new offences of non-compliance with a court order (clause 18), and causing harm by posting a digital communication (clause 19) to make them consistent with the penalties for similar offences in the Harassment Act 1997. We consider it important that harassment in the physical world and online be dealt with consistently. Therefore, we recommend amending subclause 18(2) to provide for a maximum penalty for an individual of six months’ imprisonment or a $5,000 fine, and $20,000 for a body corporate; and amending subclause 19(3) to increase the maximum penalty for an individual to two years’ imprisonment.

In respect of the clause 19 penalty, we are aware that under section 39(1) of the Sentencing Act 2002, where an enactment only allows a sentence of imprisonment the court many sentence an offender to pay a fine instead. We would like to emphasise that the penalties we
propose are maximum penalties; a Judge would impose a sentence proportionate to the nature of the offending in each case.

Safe harbour
We have considered carefully the submissions on the safe harbour provisions of the bill, and recommend amending clause 20 to provide for a timely “notice-notice-takedown” approach (a regime of notices followed by enforced takedown) suitable for the wide range of online content hosts. In particular, we consider hours to be the best measure of time in an online environment.

We recommend inserting subclause 20(3) to require an online content host who had received a notice of complaint about specific content to notify the author of the content as soon as practicable but no later than 48 hours.

New subclause 20(3)(a)(ii) would allow the author to respond to the online content host within 48 hours with a counter-notice. If the author agreed with the complaint or did not respond, the content would have to be removed or public access to it disabled. If the author responded within 48 hours and did not agree with the complaint, the online content host would have to leave the content in place. New subclause 20(3)(d)(i) would require an online content host to notify the complainant of the action that had been taken as soon as reasonably practicable and bring to their attention other remedies. New provisions would require the complainant and the author to indicate in their notices whether they consented to their identity details being passed to the other person.

While we have struggled to find a perfect solution, we consider this proposal strikes a balance between ensuring the quick removal of harmful or illegal content; ensuring unpopular content which was nevertheless not illegal or harmful was not unilaterally removed; preventing frivolous, groundless or trivial complaints; clarifying the liability and obligations of online content hosts; and providing a practical and affordable procedure for everyone involved.

Regulations
In accordance with advice from the Regulations Review Committee we recommend reversing the order of subclauses 21(1) and (2) so that the standard form of regulation-making power used in legis-
Harmful Digital Communications Bill

Labour Party minority view

Labour supports the intent of this bill which is to mitigate the harm caused to individuals by electronic communications and to provide victims of harmful digital communications with a quick and effective means of redress.

This bill creates a precedent, not only in New Zealand, but internationally, for establishing criminal offences which only apply to the digital environment. For that reason alone it is important to take time and to consider carefully the impact of a stand-alone law which applies to the online environment.

We support the communication principles to guide the court and the Approved Agency in assessing whether a digital communication has caused or is likely to cause someone harm.

We support the inclusion of a safe harbour provision setting out a process for online content hosts to follow to limit their liability for content authored by others. We believe however that more consultation is required to get this provision right.

We remain concerned at the unnecessarily fast passage of this bill through the select committee; the lack of wider views sought when faced with issues of fundamental importance such as the definition of harm; the impact of the new criminal sanctions on young people; the lack of detail about the role of the Approved Agency and how those functions might be delegated to another authority; and the lack of awareness of and representation by younger people on the impact of a new online cyber-abuse law.
Appendix

Committee process
The Harmful Digital Communications Bill was referred to the committee on 3 December 2013. The closing date for submissions was 21 February 2014. We received 39 submissions from interested groups and individuals, and heard 13 submissions. We received advice from the Ministry of Justice. We also considered a report from the Regulations Review Committee on the regulation-making powers in the bill.

Committee membership
Scott Simpson (Chairperson)
Paul Foster-Bell
Joanne Hayes
Raymond Huo
Andrew Little
Alfred Ngaro
Holly Walker
Hon Kate Wilkinson
Clare Curran was a substitute for this item of business.
David Clendon replaced Holly Walker for this item of business.
Judicature Modernisation Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Judicature Modernisation and recommends that it be passed with the amendments shown.

Introduction
The Judicature Modernisation Bill is an omnibus bill that seeks to make courts more transparent and to provide for more modern, efficient court processes. The bill is intended to help make the justice system more people-centred, modern, and accessible by reforming the composition, jurisdiction, powers, and procedure of New Zealand’s courts.

The bill seeks to implement the Government’s response to the Law Commission’s report Review of the Judicature Act 1908: Towards a New Courts Act, which recommended the reorganisation, consolidation, and updating of courts legislation. The bill includes related changes to the courts systems, including enabling electronic processes for courts and tribunals.
The bill is in six parts. Part 1 would create a new act, the Senior Courts Act, to provide a single statute for the High Court, the Court of Appeal, and the Supreme Court. Part 2 of the bill would repeal the District Courts Act 1947, replacing it with a new District Court Act establishing a single District Court in New Zealand. Part 3 would create a new Judicial Review Procedure Act, repealing the Judicature Amendment Act 1972 but continuing the substance of it redrafted in contemporary language. Part 4 of the bill would cover the courts’ award of interest on money, creating an Interest on Money Claims Act. Part 5 would mirror in part the Electronic Transactions Act 2002 in creating an Electronic Courts and Tribunals Act, and Part 6 of the bill would amend 17 other enactments.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

**Panels**

Clause 18 of the bill provides for the establishment of a panel of High Court judges to hear commercial cases, and of other panels to hear other proceedings. We recommend inserting new subclause 18(6) so that any party to a case could request that their case be heard by a panel judge, subject to the Chief High Court Judge’s power to determine otherwise.

We recommend the removal of subclause 18(6) in the bill as drafted regarding matters of practice or procedure. We consider that the High Court Rules provisions in the bill would allow rules to be made for any other matters of practice and procedure concerning panels without this additional provision.

**Orders limiting commencement or continuation of civil proceedings**

Clause 162 provides for the High Court to make limited orders, extended orders, and general orders restricting, to varying degrees, a person from commencing or continuing civil proceedings. We recommend inserting new subclause 162(6) to clarify that powers limiting civil proceedings would not derogate from a court’s inherent powers to control its own proceedings. This would make it clear that the court could still control its processes as it saw fit for proceedings “without merit” in situations where clauses 162 to 165 do not apply.
We also recommend the addition of subclause 162(7) to make it clear that an appeal is part of a substantive proceeding, rather than a separate proceeding. This would allow a litigant’s overall behaviour to be considered when making an order restricting the commencing or continuing of civil proceedings.

We recommend amending subclause 163(1) so that the test for the number of proceedings considered by a Judge before making an order under clause 162 would be “at least 2 proceedings” rather than “more than one”. This would clarify the minimum number of proceedings required, while recognising that a small number of substantive proceedings can lead to a substantial amount of related litigation that is totally without merit. We also recommend defining “proceedings” further in subclause 163(5), as proceedings “instituted or conducted by the person to be restrained, whether against the same person or different persons.”

We recommend amending subclause 164(2) to provide for an order to be made “for up to three years”. This would provide more flexibility than specifying a three-year period.

Clause 165 includes a number of procedural provisions concerning limited orders, extended orders, and general orders, including appeals against orders made by the High Court. We recommend inserting new subclause 165(2A) to allow the court, of its own volition, to make any of the three types of order restricting a person from continuing or initiating a civil proceeding. We are aware that comparable overseas jurisdictions allow the court to initiate proceedings, and consider this would be consistent with a court’s inherent powers to control its own proceedings.

We also recommend amending subclause 165(3A) to prevent a person with an order against them from appealing a decision refusing leave to file a new proceeding. We consider that such a person would have had appeal opportunities to test the validity of the order itself; and in deciding whether an application to file the proceedings was appropriate, the court would be well apprised of the person’s background and the merits of the application. Our amendments to this subclause would also require applications for leave to file proceedings to be determined by written submission, while allowing the court to conduct an oral hearing if it considered there were exceptional circumstances and it was appropriate to do so in the interests of just-
ice. Finally, we recommend consequential amendments to provisions concerning orders restricting civil proceedings in other courts.

**Publishing of final written judgments on internet**

Clause 167 of the bill as introduced would require every final written judgment of a senior court to be published online unless there was good reason not to do so. We consider that while the presumption in favour of publication is warranted, some amendments to the clause are needed.

Specifically, we recommend inserting new subclause 167(4) defining a “final written judgment” as either a written reserved judgment or an oral judgment transcribed by an official transcription service, which determines or substantially determines the outcome of a case. This would include sentencing decisions in criminal cases.

We also recommend inserting subclause 167(3) to include as good reasons not to publish part or all of a judgment, the existence of a pertinent suppression order or statutory requirement; judgments of limited public value (for example, default judgments issued in the civil jurisdiction of the District Court); and the judge having determined against publication in the interests of justice, having considered the general presumption in favour of publication. These amendments would reduce uncertainty about what might constitute good reason not to publish.

We also recommend inserting new subclause 167(1) to require the publication of final written judgments as soon as practicable. We recognise that this would not guarantee that every case was published quickly (for example appeal processes may delay some judgments for a considerable time), but it would encourage the timely publication of judgments in general.

**Information sharing**

We recommend inserting new clause 171A into Part 1 of the bill (and related clauses elsewhere) to allow the Ministry of Justice to disclose information held on its databases to other agencies in response to bulk requests for permitted information. Permitted information would be defined in the bill as a sub-category of court records that could be shared with other agencies which had entered into Approved Information Sharing Agreements with the Ministry of Justice. Such agree-
ments would not require the Ministry of Justice to disclose any matters suppressed by court order or statute.

**Obligations on Registrars**
A number of pieces of legislation require court registrars to disclose information to registration authorities about people with certain convictions. For example, a registrar must notify the Veterinary Council if he or she knows that a person convicted of offences against the Animal Welfare Act 1999 is a vet. However, most legislative provisions requiring disclosure of information are silent about the effect of a suppression order, and some create additional uncertainty. To address this we recommend inserting new clauses 171B and 419B to exempt a requirement for a registrar to notify a registration authority of certain information from the effects of any suppression order; and to provide that where the registrar’s obligation to disclose information to the registration authority is subject to the Court expressly ordering otherwise, the disclosure requirement is not affected by any suppression order that does not specifically address disclosure to a registration authority.

**Maximum number of District Court judges**
We do not recommend any change to clause 193, which sets the maximum permitted number of permanent District Court judges and sets out how full- and part-time judges count towards this cap. We consider that the existing mechanisms for assessing and delivering judicial resources, including the judicial cap, appointment of acting judges, semi-regular review of judicial capacity, and examination of the likely judicial resource required for new legislation, work well. However, some of us would like provision for a regular review of judicial capacity and expectations to be included in the bill, considering that this would provide more transparency.

**Equity and good conscience**
Clause 291 of the bill would allow the court, in proceedings where the amount claimed or the value of property is $3,000 or less, to receive any evidence and make a decision based on the principles of equity and good conscience. We recommend amending clause 291 to increase the amount to $5,000 to reflect inflation since the amount
was last adjusted in 1989. We decided not to recommend aligning the monetary amount with the threshold of the Disputes Tribunal, as the mandates of the District Court and the tribunal differ fundamentally to the extent that the two amounts seem not to be comparable.

**Warrant to seize property**

Clause 349 sets out the effect of a warrant to seize property, the powers it would confer on a bailiff or constable, and the types of property that would be protected from seizure under such a warrant. We recommend adjusting the value of the tools of trade and necessary household furniture and effects which may not be seized, to make them consistent with the equivalent provision (rule 17.62) in the High Court Rules. This would mean amending subclauses 349(2)(a)(i) and (ii) to raise the value of personal property of the judgment debtor that would be exempt from seizure to $5,000 for their necessary tools of trade, and $10,000 for their necessary household furniture and effects. We consider that the value of property deemed necessary to ensure a person’s basic livelihood should be treated consistently in the District and High Courts.

**Interest on money claims**

Part 4 of the bill would provide for interest to be paid as compensation for delay in the payment of debts, damages and other money claims in respect of which civil proceedings had been commenced. We recommend amending clause 452 and inserting a worked example to clarify the calculation of interest to be awarded under clause 450. We also recommend the insertion of new subclauses 453(4) to (6) concerning the rights of parties to a proceeding if the court is satisfied that there is an error in the internet site interest rate calculations.

In the bill as drafted the award of interest was only to apply to judgment amounts exceeding $5,000. As the internet site interest rate calculator can calculate interest on smaller judgment sums, we recommend the removal of subclauses 460(3) and 464(1)(b) so that when a money judgment is given for an amount of $5,000 or less the court must award interest on the same basis as applies for higher judgment amounts. We also recommend the insertion of new subclause 465(4) so that the court is not precluded from awarding interest if a party claiming interest fails to specify that claim in accordance with sub-
clause 465(1), provided the claim (or counterclaim) is later remedied according to the rules of the court.

**Regulations**

Clause 502 sets out the regulation-making powers under Part 5 of the bill (electronic courts and tribunals) including the power to set conditions on the use of permitted documents. To allow the flexible implementation of electronic technology in courts and tribunals, we recommend inserting new subclause 502(ea) providing for regulations to mandate electronic dealing for classes of court or tribunal users. We recognise that certain classes of court users, such as lawyers, tend to be better equipped technologically than members of the public. Therefore, we consider it desirable to include the ability to compel certain classes of court users to deal electronically.

**Labour Party minority view**

Although Labour supports this bill we are, nevertheless, concerned about two aspects. The first is the omission from the purposes clause (clause 3) of any reference to a commitment to parliamentary sovereignty, the rule of law, judicial independence and the Treaty of Waitangi. These concepts comprise fundamental values in the New Zealand justice system, and it is surprising they have not been drafted into this very important re-write of the statute governing our judicial system. The terms appear in the present Supreme Court Act 2003, and they should be in this bill.

The second aspect that is a cause for concern is the age of retirement of judges. Under the existing Human Rights Act discrimination on the grounds of age is declared to be unlawful and employers may not contract for, or otherwise insist upon, a fixed age of retirement. We see no good reason to allow such discrimination in the case of judges.
Appendix

Committee process
The Judicature Modernisation Bill was referred to the committee on 5 December 2013. The closing date for submissions was 21 February 2014. We received and considered 25 submissions from interested groups and individuals, and heard 13 submissions. We received advice from the Ministry of Justice. We also considered a report from the Regulations Review Committee on the regulation-making powers in the bill.

Committee membership
Scott Simpson (Chairperson)
Paul Foster-Bell
Joanne Hayes
Raymond Huo
Andrew Little
Alfred Ngaro
Denis O’Rourke
Holly Walker
Hon Kate Wilkinson
Inquiry into the 2013 local authority elections
Report of the Justice and Electoral Committee

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Inquiry into the 2013 local authority elections

Summary of recommendations

The Justice and Electoral Committee makes the following recommendations to the Government:

- That it provide local authorities with good-practice guidance on placing information online, and on preparing plain English records of decisions made (p. 4).

- That it review the available teaching material in civics education and investigate the commissioning of research into the impact of civics education in New Zealand on voter turnout and voter behaviour (p. 5).

- That it consider providing local authorities with guidelines on promoting local authority elections (including the voting period, how to vote, and the importance of voting—linking this to key local issues); and examples of good practice (p. 6).

- That it investigate the feasibility and desirability of a national campaign to inform the public about, and encourage participation in, local elections (p. 6).

- That it encourage the New Zealand Society of Local Government Managers to amend its Code of Good Practice to provide guidance on the format and design of candidate profile statements and pre-election reports, and the use of these reports to inform candidate profile statements (p. 7).

- That local electoral officers develop more accessible documents for electors with vision impairments (p. 7).

- That it consider amending the Local Electoral Act 2001 to provide a clear mandate to improve the facilitation of participation (p. 8).

- That the order of candidate names on all ballot papers in local authority elections be completely randomised (p. 8).

- That it encourage the use of alternative methods for casting votes and the collection of ballot papers (such as postal and booth voting, and placing ballot boxes at various locations) (p. 9).

- That trials of any online voting systems be conducted successfully before any system is introduced nationwide (p. 10).

- That any implementation of online voting be supported by public information explaining how to vote online, and addressing security and transparency concerns (p. 10).

- That it shorten the voting period to two weeks, provide alternatives to postal voting, and publicise the changes (p. 10).

- That the polling date be moved to early September to avoid the school holiday period coinciding with the voting period (p. 11).
That candidates standing in local elections not be required to state on their candidate profile statement whether or not they live in the area for which they are seeking election (p. 11).

That it provide for the electronic transmission of special voting documents for local authority elections for electors overseas (p. 12).

That it give local authorities access to the supplementary roll and the deletions file held by the Electoral Commission (p. 12).

That staff who are contracted to process voting documents be treated as electoral officials, subject to the same legal sanction as council staff and required to make the same declaration (p. 12).

That it investigate providing electoral officers with access to the unpublished roll (p. 12).

That enrolment on the ratepayer electoral roll be made continuous, unless a ratepayer no longer wishes to remain enrolled, or is no longer eligible (p. 12).

Introduction

By convention, the Justice and Electoral Committee inquires into the conduct of local authority elections. On 17 October 2013 we initiated an inquiry into the 2013 local authority elections. The terms of reference for the inquiry were to examine the law and administrative procedures surrounding the conduct of the 2013 local authority elections, with specific focus upon

- the factors behind the low voter turnout
- voting methods and processes
- matters in regulations (including voting documents and informal votes)
- methods of increasing voter participation in local authority elections
- the appropriateness of the three-week voting timeframe
- the potential for confusion when voters are presented with two voting systems on the same ballot paper
- the security of, and potential for increased participation as a result of, the introduction of electronic voting
- other initiatives that would lift voter turnout
- the conduct and performance of the electoral institutions including the Electoral Commission.

Local authority elections include elections to territorial and unitary authorities, regional councils, local boards (currently only Auckland Council), community boards, district health boards (for elected members rather than appointed members), and district licensing trusts. The 2013 local elections were the fifth conducted under the Local Electoral Act 2001. The Act sets out the desired outcomes, the principles and the expectations of the local electoral system, while the Local Electoral Regulations 2001 deal with detailed matters including procedures for enrolment, vote counting, and voting methods. The Code of Good Practice
for the Management of Local Authority Elections and Polls prepared by the Society of Local Government Managers also forms part of the local electoral framework.

**Voter turnout**

The total turnout at the 2013 local elections was 41.4 percent, 8 percent less than that in 2010. We noted this result. However we received no evidence that the decline had any negative impact on the quality of local representation and governance.

We are aware that the participation rate of Asian voters is low, and note the need for local authorities, such as Auckland city, to encourage participation by Asian voters.

We understand that voting appears to be habit-forming, meaning an elector who did not vote in 2013 is more likely than others not to vote in the future. The high incidence of non-voting among younger electors may also predict a further declining trend in turnout.

In our inquiry we investigated three possible causes of low turnout:

- the low salience (perceived relevance) to electors of local government and local elections
- variation in the availability of information about candidates and issues
- aspects of the electoral process that may inhibit registration and voting.

**Salience**

We were advised that some non-voters considered their vote would make no difference to the way their local authority was run and that local government had no relevance for them. Research also shows that as the size of an electorate increases, turnout decreases.

The declining salience of local elections and local governance may be related to how engaged citizens feel with their local authority. Local Government New Zealand is investigating community governance, including the use of local and community boards, as a means of promoting community engagement. Encouraging local authorities to explore and trial a wider range of community engagement processes may help to increase relevance.

Although local authority affairs are not always well understood by the general public, information technology provides an inexpensive way of making a wide variety of information accessible. We are aware that the Association of Local Government Information Management audits websites annually, but consider it may be useful to provide local authorities with good practice guidance on what information should be on a website for how long, and on effective website design. Plain English summaries of important decisions made at council or committee meetings would also improve understanding of local authority decision-making.

**Recommendation**

We recommend to the Government that it provide local authorities with good-practice guidance on placing information online, and on preparing plain English records of decisions made.

**Civics education**

A number of submitters considered there was a need for more civics education: education on what democracy is, how governments operate, an individual’s rights to participate in a democratic society, and their means of doing so. In particular they saw a need for
education on what local authorities do and how local government affects our daily lives, to
increase the salience of the election for individuals. In a 2009 Australian study, Saha and
Print found students who had taken a course in civics or government were 10 percent
more likely to vote in federal elections. Bachner (2010) found that American students with
a year’s coursework in civics and government were 3 to 6 percent more likely to vote than
those who had not completed such a course. We did not receive any New Zealand-specific
evidence about the impact of civics on turnout and voting behaviour.

In New Zealand civics is not taught as a specific subject but it is embedded in the
principles, values, and key competencies of the New Zealand curriculum, particularly in
social studies. This approach is not uncommon; of 38 countries that participated in an
International Civic and Citizenship Education Study in 2008, 21 taught civics as a separate
subject and 17 incorporated elements of civics into other subject areas. In this study New
Zealand students were found to have above-average civics knowledge.

The Electoral Commission informed us that providing public information and education
resources that increase participation is part of its voter participation strategy. Local
Government New Zealand and local authorities have also developed civics teaching
resources. Evidence shows programmes that are experiential, for example simulations and
field trips, are generally more effective. Some of us would like to see a central government
agency with overall responsibility for civics education.

**Recommendation**

We recommend to the Government that it review the available teaching material in civics
education and investigate the commissioning of research into the impact of civics
education in New Zealand on voter turnout and voter behaviour.

**Promotion of elections**

A number of submitters suggested information and promotional activity concerning local
authority elections is not well coordinated. We agree; there has never been a
comprehensive national campaign to inform people about and encourage voting in local
elections. The Electoral Commission conducts a campaign encouraging people to register
as residential electors, the Society of Local Government Managers (SOLGM) coordinates a
similar campaign for ratepayer electors, and the Ministry of Health runs a campaign
encouraging people to stand for election to district health boards. In 2013, Local
Government New Zealand provided councils with media articles on the importance of
voting, and sample press releases to remind electors of the election period.

A SOLGM survey found that in 2013 approximately 30 percent of local authorities
undertook their own elector information and awareness campaigns. In our view many local
authorities could do more to publicise matters such as the voting period, the importance of
voting, and how to vote. We would like to see examples of good practice in the local
promotion of elections (including from overseas) recognised and shared around the sector.

We consider that coordinated promotion of consistent messages around local elections is
likely to improve turnout. Centralised promotion of local elections would be more effective
if supported by complementary programmes at the local level focussing on particular issues
of local significance.

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1 Bachner, *From classroom to voting booth: the effect of high school civic education on turnout*, 2010. Bachner found civics coursework
increased turnout by 7 to 11 percentage points among students who reported not discussing politics with their parents.
Recommendations

We recommend to the Government that it consider providing local authorities with guidelines on promoting local authority elections (including the voting period, how to vote, and the importance of voting—linking this to key local issues); and examples of good practice.

We recommend to the Government that it investigate the feasibility and desirability of a national campaign to inform the public about, and encourage participation in, local elections.

Information about candidates and issues

Another reason cited for lower turnout was a lack of information about the candidates or the issues, and the quality and format of the information available. We heard that common reasons for not voting were not knowing the candidates, a lack of information about candidates, and a lack of information about their policies.

The Local Electoral Act limits a candidate profile to 150 words. It must contain a statement on the positions the candidate is standing for, and whether or not the candidate lives in the area for which they are seeking election, and be limited to providing information about themselves and their intentions if elected. The SOLGM Code of Good Practice gives no guidance on the format or design of candidate profile statement booklets. We consider that the small size of the booklets and the small typeface used mean people cannot easily read the booklets and may be deterred from doing so. We appreciate that the booklets have needed to fit in a standard envelope for posting, but we consider that to increase readability larger booklets and larger envelopes may be needed. We would like to see alternative methods of communication used, such as local authority websites. Candidate profiles could then be presented in audio or audio-visual formats, increasing their accessibility.

A Department of Internal Affairs review of profile statements from 24 local authorities found that mayoral candidates generally used theirs to discuss policies and issues, but this was less common among candidates for other offices who tended to make broad statements like “I will work to contain rates”.

The 2013 elections were the first where local authorities were required to produce pre-election reports. The reports were introduced to facilitate an informed debate about the issues facing each local authority; they discuss the financial stewardship of the outgoing council, and set out their major financial and non-financial issues for the next triennium. They are also intended to encourage candidacy, and to help electors to make a more informed choice. The Department of Internal Affairs reviewed 24 reports and found that many local authorities took a compliance approach to the production and circulation of their reports, producing a collection of information rather than a report. However, the review cited four examples of good practice, and Internal Affairs is working with the local government sector to disseminate them and integrate them into guidance for the sector on pre-election reports.

We consider that using the candidate profile statements to comment on issues raised in pre-election reports would help electors to understand a candidate’s views on local issues.
Recommendation

We recommend to the Government that it encourage the New Zealand Society of Local Government Managers to amend its Code of Good Practice to provide guidance on the format and design of candidate profile statements and pre-election reports, and the use of these reports to inform candidate profile statements.

Accessibility of information

We discussed with submitters the accessibility of information to people who are blind, deaf-blind, or have low vision. They said that the existing electoral systems and processes do not enable the 11,000 electors who are blind or have low vision to stand for office or to vote independently and confidentially, despite New Zealand having signed the United Nations Convention on the Rights of People with Disabilities. Particular issues raised included the Electoral Commission’s use of CAPTCHA (the distorted writing test used to tell computers and humans apart) which most adaptive technology cannot read; candidate information in small fonts in printed or electronic versions that are also not readable by adaptive technology; and voting documents that cannot be completed independently.

We understand that the Electoral Commission has amended its systems for detecting spam so that CAPTCHA is used as a filter only if there are multiple attempts to re-enrol or search electoral databases from the same source. This means that an individual attempting to enrol online is unlikely to face a CAPTCHA test.

The New Zealand Government Web Standards contain useful information on making documents accessible for vision-impaired people. SOLGM supplies guidance to local authorities on producing accessible plans and reports. We would like to see this advice enhanced to reflect established standards, and promoted more effectively. We are aware that SOLGM’s Electoral Working Party is seeking to improve the accessibility of documents, including voting documents, for electors with vision impairments.

Recommendation

We recommend to the Government that local electoral officers develop more accessible documents for electors with vision impairments.

Electoral processes

In addition to a lack of salience, and of information about candidates and issues, submitters told us that aspects of the electoral process itself discourage participation. We have examined whether the Local Electoral Act provides sufficient mandate to improve participation, and investigated the use of multiple voting systems, voting methods, online voting, the voting period, special voting, access to the unpublished roll, residential disclosure, and the ratepayer vote.

Legislative mandate to improve participation

The Local Electoral Act sets out the rules concerning participation in elections. It does not directly recognise that participation is desirable. This means that a local authority that undertakes some action to improve participation may leave itself open to claims of bias and a subsequent electoral inquiry. By contrast, section 4C(a) of the Electoral Act 1993 places the Electoral Commission under a duty to facilitate participation in our parliamentary democracy. We consider that the facilitation of participation in local authority elections is also desirable and would like to see a parallel provision added to the Local Electoral Act.
Recommendation

We recommend to the Government that it consider amending the Local Electoral Act 2001 to provide a clear mandate to improve the facilitation of participation.

Order of candidates’ names on ballot papers

In its 2010 local authority elections inquiry report the Justice and Electoral Committee of the day recommended that the order of candidate names on all ballot papers be completely randomised. Cabinet agreed to defer work on this until after the 2013 elections.

Candidate order is one of the few electoral decisions that must be made by the sitting elected members. If the elected members make no decision, the Local Electoral Act presumes names on ballot papers should be in alphabetical order. The number of local authorities using alphabetical order is declining, however. In 2013, 21 local authorities ordered ballot papers randomly, and 11 used pseudo-random order (determined by lot, with the same order applied to all ballot papers), slightly more in each category than in 2010. The main argument against random order has traditionally been cost. However, New Zealand Post, as the main printer of electoral documents, expects there will be little or no difference in 2016 between the cost of printing lists in alphabetical order and random order. We would like to see candidate names listed randomly. We consider that documents other than ballot papers need not be randomised.

Recommendation

We recommend to the Government that the order of candidate names on all ballot papers in local authority elections be completely randomised.

Multiple voting systems

The existence and effect of multiple voting systems in local elections attracted a large number of submissions, referring particularly to the potential for confusion on the part of voters. All district health board elections are conducted under the single transferable vote (STV) method, where voters rank the candidates in order of preference. Local authorities can choose between the first past the post (FPP) voting system or STV. In 2013, 90 percent of local authorities used FPP in their own elections. Therefore, voting in most local elections involved a combination of FPP and STV. We understand that generally the STV councils have a higher turnout, but the incidence of invalid voting is usually far higher in DHB elections, because people tick their preferred candidates rather than ranking them.

In 2008, the Local Government Commission conducted a post-election survey of voters; 52 percent of the respondents said that having two systems was confusing, while 46 percent said it was not. A large majority of respondents (82 percent) said they would prefer a single system.

We consider that there is potential for confusion where multiple systems are operating.

Voting methods

Some submitters were keen for at least two methods for casting votes (such as postal and booth voting) to be made available, and largely supported the introduction of online voting. There is no statutory restriction on local authorities using a combination of postal and booth voting. Nor is there any prohibition on local authorities placing collection boxes in locations other than voting booths, provided they can guarantee their security. However,
judgment is needed to avoid perceptions of bias; in 2013, Wellington and Dunedin City Councils had to withdraw boxes placed on tertiary campuses after complaints from candidates.

Local authorities make little use of additional ways to collect votes, such as mobile stations at supermarkets and libraries. Publicising the location of postshops and postboxes would also be a useful proactive step.

**Recommendation**

We recommend to the Government that it encourage the use of alternative methods for casting votes and the collection of ballot papers (such as postal and booth voting, and placing ballot boxes at various locations).

**Online voting**

The introduction of online voting was supported by a large majority of the submitters to our inquiry, who were generally optimistic about its likely impact on turnout. They argued that it would also provide other benefits: worldwide access to the system, an efficient and effective alternative to postal and booth voting (particularly considering NZ Post’s proposal to deliver mail only three days per week), better accessibility and opportunities for people with disabilities to vote independently and in secret, and potentially a shorter voting period. It was suggested that online voting should be in place for the 2016 elections, if not sooner. Reservations about online voting centred on the availability of and people’s ability to use the necessary technology, and the security of online voting.

We are aware of 11 countries that have trialled or used online voting in one or more elections. However, online voting is still a new technology, and there is no conclusive evidence that it increases turnout. It does not address the many institutional, socioeconomic, demographic, and election-specific contextual factors that influence an individual’s decision to vote; it is a device for making the act of voting more convenient.

Data from the 2013 Census showed that only 77 percent of households have access to the internet, meaning a supplementary method of voting would be needed alongside online voting. Statistics New Zealand’s report on online completion of the 2013 Census indicates that young people would not be the only candidates for online voting; online usage rates were at or above average in the younger than 14 and 25 to 54 age groups, and markedly declined only in the over-65 age groups.

Although online voting has much in its favour, we are concerned about the need to maintain data security. This is not easy because the internet is globally accessible and difficult for election officials to monitor. As a medium for any transaction, the internet can never be 100 percent secure—only secure enough to be trusted.

We consider that two of the key factors in successfully implementing online voting are the establishment of trust, and demonstrable transparency in the system. The principal risks to trust are personation (voting on behalf of another voter who has proper authorisation), and unauthorised access to or compromising of the systems. Ways of preventing personation include requiring voters to pre-register, and providing them with access codes. For robust security, best-practice software development involves considering security needs in the design of the necessary systems, rather than at the end of the process. This means developing a system with an acceptable level of security is slow and difficult, and because
INQUIRY INTO THE 2013 LOCAL AUTHORITY ELECTIONS

security threats are constantly evolving, scanning for potential threats and redeveloping of systems in response must be continual.

**Implementation of online voting**

Successful implementation of online voting relies on addressing technical aspects of security, and public perception issues. Overseas experience suggests that public information initiatives are needed to explain how to vote online and to address concern about security and transparency. It also indicates that substantial trials of a system are necessary to familiarise voters with the technology and to ensure that the system works as intended; a failure of online voting technology in a “live” election would severely damage public confidence in local democracy.

We consider that online voting should first be tested in small trials with non-binding results, to test user interfaces and build credibility before its implementation in a real election. However, testing that replicates the full scale and complexity of local elections is also necessary to test the full capacity and capability of any online voting system.

**Recommendations**

We recommend to the Government that trials of any online voting systems be conducted successfully before any system is introduced nationwide.

We recommend to the Government that any implementation of online voting be supported by public information explaining how to vote online, and addressing security and transparency concerns.

**Reducing the voting period**

New Zealand’s three-week voting period is longer than those in some other jurisdictions; the Australian jurisdictions that offer postal voting as an option generally have a voting period of only two weeks. It has been suggested that shortening the voting period to two weeks would create more incentive to vote upon receiving the papers, and reduce the risk of fraud.

We are aware that research shows shortening the response time on a task appears to bring about a greater sense of urgency. A shorter voting period would also allow more concentrated publicity efforts and media coverage of the election campaign. However, the implications of less frequent delivery by New Zealand Post together with delivery to remote areas of the country must be taken into consideration. It is important that all eligible voters are able to vote regardless of their location. Therefore, we consider that reducing the voting period is likely to be effective only if alternatives to postal voting are offered, and the process and timeframes are extensively publicised.

**Recommendation**

We recommend to the Government that it shorten the voting period to two weeks, provide alternatives to postal voting, and publicise the changes.

**Polling date**

The school holiday period now coincides with the voting period, which may restrict the time people have available for voting. We have considered moving polling day; a move to the end of October would conflict with Labour weekend, while moving the day into November would mean some local authorities might not hold their first meeting until early
December, and might not resume a normal meeting cycle before Christmas. Moving the date to mid-September would mean local authorities would not have adopted annual reports before the election. This would require the incoming council to adopt a report on the achievements of the outgoing council. A move to the beginning of September, or earlier, would mean the election process would overlap with the final stages of the annual plan process, but discussions with the sector suggest this difficulty would not be insurmountable.

**Recommendation**

We recommend to the Government that the polling date be moved to early September to avoid the school holiday period coinciding with the voting period.

**Residential disclosure**

One of the amendments made to the Local Electoral Act in 2013 requires candidates to disclose in their candidate profile statement whether or not they live in the area for which they are seeking election. We are aware that candidates standing in general elections are not required to state whether they live or do not live in the area to which they are seeking election. Therefore, we do not consider that candidates standing in local elections should be required to provide this information.

**Recommendation**

We recommend to the Government that candidates standing in local elections not be required to state on their candidate profile statement whether or not they live in the area for which they are seeking election.

**Special voting**

In 2013 approximately 13,000 special votes were cast in the 65 contested mayoral and council elections. Approximately 88 percent of them were allowed, with considerable variation in the proportion between local authorities. For example only 54 percent of special votes cast in the Whangarei District were allowed. We heard suggestions that the process for casting and verifying special votes could usefully be simplified.

The main difference between special voting requirements in local elections and general elections is that special voting documents for local elections may only be sent and returned by post or picked up in person; in practice most special votes in local elections are returned by post. This means that if an elector completes the declaration incorrectly there is little opportunity to correct the error, particularly if the person registers late in the voting period or is overseas. Amendments made in February 2014 to the Electoral Regulations 1996 now permit electronic transmission of special voting documents for parliamentary elections to electors who are overseas, provided a secure means of transmission is available. We would like to see this extended to local elections.

Electoral officers are legally required to send special votes to the Electoral Commission for them to check whether the potential elector is on the roll, or is eligible to be on it. This process could be simplified if local authorities had access to the supplementary roll and the deletions file, and could thus check who had become eligible or ineligible to vote in their area.

We consider that it may also be possible to make voting from the unpublished roll easier. The personal circumstances of electors on the unpublished roll are such that publication of
their names and addresses on the electoral roll might compromise their personal safety. Details on this roll cannot be disclosed to any person outside the Electoral Commission, including local authority electoral officers. Therefore, the Commission notifies electors on the unpublished roll that they are eligible to vote as residential electors, and it is then up to them to contact the local electoral officer to make special votes. We understand there were approximately 15,600 electors on the unpublished roll as of 26 November 2011.

Electoral officers make a declaration undertaking not to disclose any fact coming to their knowledge during the electoral process unless authorised by the Act, so it is not clear why their access to the unpublished roll is prohibited. We recommend reconsidering this prohibition. We are aware that local authorities contract mailhouses to dispatch, receive and process voting documents; we suggest mailhouse staff could be treated as electoral officials, being required to make the same declaration as council staff.

Electors who are usually resident in one local authority but are also ratepayers elsewhere may enrol in a second local authority through the ratepayer franchise. The number of enrolled ratepayer electors has steadily declined over the past 20 years, from 22,620 in 1992 (2.1 percent of the roll) to 6,901 in 2013 (0.2 percent of the roll). The process for enrolling as a ratepayer is different from that for a resident. Once on the electoral roll, a residential ratepayer stays on the roll for that district until they cease to be qualified. However, a ratepayer elector must apply afresh each election. Local authorities are required to write to all non-resident ratepayers in the year before local elections advising them of their right to vote as a ratepayer elector and attaching an enrolment form. Turnout of ratepayer electors is in the 70 to 80 percent range, far higher than for the residential franchise. We consider that enrolment on the ratepayer electoral roll could be made continuous up to the point where the ratepayer no longer wished to remain enrolled, or was no longer eligible.

**Recommendations**

We recommend to the Government that it provide for the electronic transmission of special voting documents for local authority elections for electors overseas.

We recommend to the Government that it give local authorities access to the supplementary roll and the deletions file held by the Electoral Commission.

We recommend to the Government that staff who are contracted to process voting documents be treated as electoral officials, subject to the same legal sanction as council staff and required to make the same declaration.

We recommend to the Government that it investigate providing electoral officers with access to the unpublished roll.

We recommend to the Government that enrolment on the ratepayer electoral roll be made continuous, unless a ratepayer no longer wished to remain enrolled, or was no longer eligible.

**Other matters**

In the course of our inquiry we have considered a number of matters that do not relate directly to options for increasing turnout, and for which we are not recommending change. However, we would like to take this opportunity to present our thinking in these areas.
Electoral Commission oversight of local elections

In its report on the Inquiry into the 2010 Local Authority Elections, the Justice and Electoral Committee of the time recommended that the Government explore the option of making the Electoral Commission responsible for the oversight of local authority elections. We are aware that this has not been taken any further. We consider that to have the Electoral Commission conduct the local authority elections would be a fundamental change to the local electoral framework, in terms of resourcing implications for central government, and the degree of change to the local electoral process. After the 2013 local elections the Department of Internal Affairs concluded that the local electoral legislative framework is working well; the small number of issues that arose, including errors in candidate profile booklets and duplicate voting papers being issued, did not have a material impact on election outcomes; and all but the non-delivery of a mailbag containing 40 voting packs were resolved during the election period.

When the last review of local electoral legislation in New Zealand took place in 2001, a key policy decision was that local authorities should have the flexibility to determine their electoral arrangements and voting systems, and appoint their own electoral officers. Local authorities are best placed, we think, to deal with issues that have a local dimension, and centralising the administration of local elections would mean the Commission would need to employ more staff, greatly reducing any savings.

Mandatory voting

We are aware that while mandatory voting would increase turnout, it might impinge on democratic freedoms; New Zealand’s model of democracy has always recognised the right to abstain from voting as a legitimate form of democratic expression. Submitters who opposed mandatory voting suggested that coercing people into voting would lead to lower-quality votes, and that the health of a democracy should be measured by more than numbers of votes. Evidence from Australia and other democracies suggests that mandatory voting is generally as effective as the degree of sanction applied.

Separation of district health board elections

Some submitters suggested that the voting system in DHB elections was complex and had resulted in decreased turnout. This is something we would prefer to see addressed by redesigning voting papers and educating electors more effectively. We are aware that international evidence slightly favours concurrent rather than separate elections, suggesting that they increase turnout. Concurrent elections are also usually less costly to administer; in the local elections local authorities and DHBs share some of the costs.
Appendix A

Committee procedure

We called for public submissions on the inquiry. The closing date for submissions was 20 December 2013. We received 45 submissions from the organisations and individuals listed in Appendix B and the committee heard 20 of the submissions orally. The committee heard evidence at Wellington and Auckland. The committee met between 17 October 2013 and 24 July 2014 to consider the inquiry.

Committee members

Scott Simpson (Chairperson)
Paul Foster-Bell
Joanne Hayes
Raymond Huo
Andrew Little
Alfred Ngaro
Denis O’Rourke
Holly Walker
Hon Kate Wilkinson
Appendix B

List of submitters

Alastair Bell
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Ashburton District Council
Association of Blind Citizens of New Zealand
Auckland Council
Auckland District Council of Social Services
Bill Capamagian
Blind Foundation
Christchurch City Council
Christine Cheyne
City Vision
David Farrar
David Maclure
Disabled Persons Assembly New Zealand
Dr Grant Gillon
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Grey Power (Matamata)
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John Lawson
Kirstyn Barnett
Law for Change Dunedin and Dunedin Community Law Centre
Local Government New Zealand
Martine Abel
Mary Schnackenberg
National Council of Women of New Zealand
New Zealand Society of Local Government Managers
Nicholas Wiseman
Orakei Local Board
Palmerson North City Council
Roger Guimer
Rural Women New Zealand
Shirin Brown
Steve Wrathall
Trevor Helson
Verdon Chettleburgh
Waikato District Council
Waitemata District Health Board
INQUIRY INTO THE 2013 LOCAL AUTHORITY ELECTIONS

Waitomo District Council
Wellington City Council
Wellington Employers’ Chamber of Commerce
Victims’ Orders Against Violent Offenders Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation
The Law and Order Committee has examined the Victims’ Orders Against Violent Offenders Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to recognise the ongoing effects of serious violent offending on victims by giving them the power to apply for a non-contact order against the offender, which prohibits the offender from having any form of contact with the victim. The orders can be temporary or final, and aim to limit the chances of a victim coming into contact with the person who offended against them. There are other types of orders currently existing to protect victims, but they have limitations. The bill incorporates the definition of “victim” from the Victims’ Rights Act 2002.

This commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments.
Current legislation
There are a range of measures currently in place aimed at preventing offenders from coming into contact with their victims. The Domestic Violence Act 1995 provides for protection orders, aimed at victims of domestic violence, and the Harassment Act 1997 for restraining orders, which protect from harassment. Parole conditions can also be used to restrict the access to a victim of a serious crime on release of an offender, and an offender can be bound over to keep the peace. These orders are generally time-limited, with only a protection order able to exist indefinitely. Bonds can last up to one year, as can restraining orders unless the imposing judge specifies otherwise. Parole conditions cannot extend more than six months after the offender’s statutory release date, unless the offender has an indeterminate sentence. There is currently no long-term mechanism in place by which the Police or the courts can prevent an offender from coming into contact with a victim in the absence of a domestic relationship or evidence of deliberate harassment.
A victim may not apply for a non-contact order if another form of order is currently in place, but they can apply to have the existing order discharged and a non-contact order imposed.

Purpose
We recommend amending clause 3 to explicitly acknowledge the ongoing effects of serious violent offending for victims.

Meaning of violent offender
Clause 5 of the bill as drafted defines a violent offender as being a person convicted of a violent offence for which they have been sentenced to a term of imprisonment of five years or more. We recommend that this be changed to imprisonment of more than two years, to make it consistent with the definition of “long-term sentence” in the Parole Act 2002, and because an offence can have a serious impact on the victim, and yet not attract a sentence that reached the proposed threshold.
In coming to our decision to recommend the reduction in qualifying sentence we were careful to balance the rights of the victim to avoid contact with the offender with those of the offender to resume a normal life after having paid their debt to society. Submitters agreed
with us that there are human rights issues involved in making decisions about the imposition of orders, and we received advice that orders must be viewed as protective not punitive. The courts will have discretion in making orders to ensure they are made only in appropriate cases.

The number of released prisoners who meet the sentencing criteria over the last five years has shown a slight upwards trend, but has remained under 1000 every year. The number of victims seeking a non-contact order is likely to be low; however this is difficult to estimate. Some victims will be covered by protection or restraining orders.

**Final non-contact orders to apply to others**

We recommend that the bill provide, under our recommended new clause 11B, for final non-contact orders to extend to associates of the offender under certain circumstances. To meet the criteria under new clause 11B, the offender would have to have encouraged the associate to behave in proscribed ways set out in the bill, and the associate would have to have engaged in that behaviour, and that behaviour is harming the victim’s recovery from the initial offence. In these circumstances a final contact order can be made against both the offender and the associate and they would each be liable for their actions under the bill.

The definition of associate has been inserted into clause 4.

**Applying for an order**

Under clause 7 of the bill as drafted a victim can apply to a District Court for a non-contact order at any time after the offender has been released from prison. We recommend this be amended so that applications can be made any time after sentencing. This would protect victims from any attempt by an offender to contact the victim from within prison, or any attempts by associates of the offender to do so. It would also cover any gap in protection for a victim between the release of an offender and a non-contact order being made.

We also recommend amending clause 7 to allow an application for a non-contact order to be made without notice if the court is satisfied

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1 Regulatory Impact Statement prepared by the Ministry of Justice.
that the delay resulting from proceeding on notice could entail undue hardship for the victim.

We recommend clause 11 be amended and new clause 11A be inserted to provide for two types of non-contact orders, temporary and final. A temporary non-contact order is made on application without notice; it prohibits the offender from making any form of contact with the victim but does not include any specific restrictions on the offender. A final non-contact order is made on application with notice and can include prohibitions on the offender entering, residing in, or undertaking employment in a specified area. We recommend new clause 15B be inserted so that an offender can apply to the court to be heard on whether a temporary non-contact order will become final. When the offender does not exercise that right, unless the temporary order is discharged, and subject to prescribed methods of ensuring the offender is fully informed of the process and his or her rights, the temporary non-contact order should automatically become a final order three months after it is made.

It is expected that there will be only minor costs involved for victims who choose to apply for a non-contact order, and applicants will not require legal representation in most cases.

**Duration, variation, and discharge of non-contact orders**

A non-contact order starts on the day on which it is served on either the offender or an associate.

A final non-contact order remains in force for the period the court specifies when it imposes it. If the court does not specify a period, the order expires two years from the date on which it starts. We recommend clause 15 be amended so that associates may apply to the court to have a non-contact order discharged so far as it relates to them.

We also recommend amending clause 15 so that a non-contact order discharged by the court on the application of a victim or offender would also cease to apply to any associate. We recommend that new clause 15A be inserted so that a non-contact order made against an offender would be discharged if the offender’s conviction or sentence were quashed or otherwise set aside or substituted so that the offender no longer meets the definition of violent offender under this bill.
We recommend that new clause 13A be inserted so that both victims and offenders can apply for a variation of any conditions or directions imposed in respect of a temporary non-contact order. We recommend amending clause 14 of the bill to apply only to final non-contact orders. For final orders, the victim or offender may apply, and the court may grant, variations on the restrictions relating to the offender entering, residing, or working within a specified area, imposed by the order, or on the duration of the order.

Breach of a non-contact order
We recommend amending clause 18 of the bill, so that an associate as well as an offender would commit an offence if they do anything prohibited in the order without reasonable excuse. If an offender or associate is convicted of an offence they should be liable for a custodial sentence of two years or less or a fine of $5000 or less.
Appendix

Committee process
The Victims’ Orders Against Violent Offenders Bill was referred to the committee on 29 August 2013. The closing date for submissions was 10 October 2013. We received and considered ten submissions from interested groups and individuals, and we heard three submissions. We received advice from the Ministry of Justice.

Committee membership
Jacqui Dean (Chairperson)
Jacinda Ardern
David Clendon
Hon Phil Goff
Hon Todd McClay
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch
Sentencing (Protection of Children from Criminal Offending) Amendment Bill

94—1

Report of the Law and Order Committee

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Sentencing (Protection of Children from Criminal Offending) Amendment Bill

Recommendation
The Law and Order Committee has examined the Sentencing (Protection of Children from Criminal Offending) Amendment Bill and recommends that it not be passed.

Introduction
This bill seeks to amend the Sentencing Act 2002, to make the commission of an offence in the presence of a child an aggravating factor when sentencing. We support the intent of the bill and consider the safety of children to be paramount. However, the application of the bill as introduced would be difficult; and the definition of “in the presence of a minor” is too broad, encompassing many possible situations. We are confident that judges already consider the presence of and potential harm to children when sentencing, and requiring them to comply with a rigid framework might hinder the use of judicial discretion.

Definitions
We discussed the phrase “in the presence of” and the term “a minor”, which are central to the bill.

Being “in the presence of” a minor is defined as being

(a) in a place or building where a minor is present or could reasonably be expected to be present; or

(b) in close proximity to a place or building where a minor is present or could reasonably be expected to be present

This definition could potentially encompass public areas such as shopping malls or roads. It would be difficult to apply in practice, and challenging as regards giving effect to the bill’s intent, so should be clarified.

A minor is defined as “a person under the age of 17 years”. This is consistent with the Children, Young Persons And Their Families Act 1989, which is the primary related legislation.

Existing application
Case law demonstrates that the Police and the courts already take the presence of a minor into account when prosecuting and sentencing offenders in the situations the bill is intended to address. Existing legislation, in the form of the Sentencing Act 2002 and the Crimes Act 1961, provides options for doing so. Therefore we consider the intent of the bill to already be in operation, making it unnecessary.

Should the bill be passed, it might adversely restrict the use of judicial discretion. We believe that examination of the case law shows that the presence of minors is already taken sufficiently into account as an aggravating factor when it comes to sentencing.
The examples raised during our hearings of public submissions on this bill included the production of methamphetamine in the presence of a minor. Some of us question whether addressing this issue as an aggravating factor, rather than a crime in itself, is the best way to proceed, and encourage the Government to consider this question further.
Appendix

Committee process
The Sentencing (Protection of Children from Criminal Offending) Amendment Bill was referred to the committee on 25 September 2013. The closing date for submissions was 7 October 2013. We received and considered eleven submissions from interested groups and individuals. We heard two submissions. We received advice from the Ministry of Justice.

Committee membership
Jacqui Dean (Chairperson)
Jacinda Ardern
David Clendon
Hon Phil Goff
Hon Todd McClay
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch

Le-Aufa'amulia Asenati Lole-Taylor was a non-voting member for this item of business.
Parole Amendment Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation
The Law and Order Committee has examined the Parole Amendment Bill and recommends, by majority, that it be passed with the amendments shown.

Introduction
The Bill seeks to amend the Parole Act 2002. It aims to reduce the number of New Zealand Parole Board hearings where the offender has no realistic prospect of release, by allowing the Board to increase the permissible amount of time between hearings. This should reduce re-victimisation of victims of offences and provide incentives for offenders to address their offending.

The commentary covers the main amendments we recommend to the Bill. It does not cover minor or technical amendments.

Terminology
We recommend replacing the term “risk milestone” throughout the Bill with “relevant activity”. The term “risk milestone” implies that
the risk of the offender reoffending has been demonstrably reduced or eliminated. However, only one aspect of the offender’s behaviour may have been addressed, and the risk to the public may remain. The term “relevant activity” is more neutral, and does not imply a measure of potential risk.

**Standard release conditions**

Standard release conditions require the offender to report to a probation officer and comply with directions made by the officer. Clause 14 of the Bill would amend section 29 of the Act, so that where the Board did not set the term of the standard release conditions, a default term of six months from the offender’s statutory release date would apply. To avoid dispute about the status of these conditions, we recommend inserting clause 5A, so that standard release conditions applied automatically would be treated as if they were imposed by the Board.

**Manager of prison’s function in parole decisions**

We recommend changing references to the Department of Corrections in clauses 10, 11, and 12 to “the manager of the prison in which the offender is detained”. It is unclear in the Bill as introduced who in the Department of Corrections would be responsible for judging whether an offender had completed the relevant activities, and the proposed change would remove the uncertainty.

**Dates of future parole hearings**

Clause 10 would insert new section 21A, which would require the Board to set a date for the next parole hearing when declining parole. It would also allow the next hearing to be brought forward if the offender completed specified relevant activities.

To ensure that the purpose of the Bill—to reduce the number of hearings and to prevent re-victimisation—is effected, we suggest amending section 21A(b) so that when declining parole the Board could specify completion of a relevant activity as a factor in bringing a parole hearing forward only when the next parole hearing was more than 12 months away.
Information sharing between civil courts and Parole Board

In our consideration of the Bill, it became clear that information on civil protection orders was not automatically available to the Parole Board. We see value in the Board having access to information on civil protection orders, which may be relevant to their decision making. We have raised this issue with the Minister of Justice for her consideration.

Green Party minority view

The Green Party is not persuaded of the necessity for this legislation, or that it will be an effective solution to issues around parole. We understand the preference for extending the period between reviews for inmates whose chances of being released on parole are slim. We note that there are mechanisms in the Bill for the review period to be reduced in the event that inmates complete “milestone events” but have real concerns about the ability of the Department of Corrections to make relevant programmes and resources available to inmates in a timely fashion.

The Department of Corrections acknowledges that already there is significant difficulty with scheduling, and that it will be exacerbated as more programmes are made available. It would seem inevitable that given the lack of confidence that the department can improve its scheduling practice any time soon, inmates who might otherwise become eligible for consideration will find their progress blocked.

We are not of the view that the reduced cost and efficiencies that may result from longer review periods are sufficient to offset the cost in terms of fairness and justice.

The committee has heard of the stress imposed on some victims of crime, and families of victims, who may feel obliged to engage with the parole hearings. While we respect the very real concern of those individuals, we note that only 7 percent of eligible victims make submissions, and about 3 percent choose to address the Board in person. We have heard that at no time are victims obliged to engage with offenders, and have observed that the Board manages the needs and sensitivities of victims with care and sympathy.
We note the comments of one submitter which capture some of the flavour of our concerns about the Bill:

We urge the justice sector to resist from engaging in argument which pits the rights of victims against the needs of offenders, or to use legislative processes to this end. We do not consider that the removal of offenders’ rights inherently enhances the rights of victims. Recent British research evaluated the discursive status of victims and people convicted of criminal offences…The analysis detailed how victims’ rights are sometimes advocated for at the expense of “offenders” rights in public discourse. An examination of parliamentary debates confirmed the differentiation between “victims” and “offenders” The impact of this approach did not benefit victims, but instead served to suppress consideration of meaningful support for victims, worsen opportunities for prisoner reintegration, and construct a false dichotomy between citizens who do not fall into mutually-exclusive categories.

The Parole Board does have existing tools and mechanisms available to it to limit the number of hearings, and these arguably could be used more extensively.
Appendix

Committee process
The Parole Amendment Bill was referred to the committee on 19 November 2013. The closing date for submissions was 17 January 2014. We received and considered 29 submissions from interested groups and individuals. We heard 11 submissions, and held hearings in Auckland and Wellington.

We received advice from the Ministry of Justice and the Department of Corrections.

Committee membership
Jacqui Dean (Chairperson)
Jacinda Ardern
Hon Phil Goff
David Clendon
Hon Todd McClay
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch
# Briefing on policing and prisons in Auckland

Report of the Law and Order Committee

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Briefing on policing and prisons in Auckland

Recommendation

The Law and Order Committee received a briefing from the New Zealand Police and the Department of Corrections on policing and prisons in Auckland, and recommends that the House take note of its report.

Policing

Crime Reporting Line

We visited the New Zealand Police Crime Reporting Line in Otahuhu, Auckland. We were shown how calls are managed and coordinated throughout the Auckland District, and how the demand for Police services is managed. The purpose of the Crime Reporting Line is to service historic crime reporting in New Zealand, and it also acts as a back-up for 111 calls. It covers a wide range of crimes from lost property to burglary. Calls are triggered at a district level and diverted to the reporting line. Calls are answered by trained staff who take details and arrange for a forensic examination. It takes approximately 14 minutes to process a complaint. Notes can be sent directly to Police attending a crime scene for remote access.

The Crime Reporting Line takes approximately 1.9 million calls a year and its use is growing rapidly. We noted that this does not indicate a comparable change in the crime rate; as many as 50 calls can be received about a single event. Police consider that the increase in demand, despite a decrease in reported crime, indicates higher trust and confidence, and demonstrates that the Prevention First policy is working. A rise in reporting also corresponds with rates of mobile phone use.

The line also receives about 2,000 calls a week asking for advice, and referrals are made to Child Youth and Family Services when necessary. The Police expect it to be practically and financially challenging to keep pace with changes in technology, including increasing use of video footage and social media on multiple platforms. The reporting line gets good feedback, and has freed up staff to focus on service to victims.

Mount Roskill Community Policing Centre

We visited the Mount Roskill Community Policing Centre. We were particularly interested in community policing since some of us had expressed concern at the closure of a number of police stations. This visit was an opportunity to observe how local requests for service are managed. We were briefed on police and community initiatives and collaboration in the Mount Roskill area and on local implementation of Prevention First.

The community policing initiative receives some funding from the New Zealand Police, but seeks additional funding from community and philanthropic groups to meet costs.

Staff take a multi-agency approach. The centre has contracts with community organisations, and takes referrals from courts, judges, youth aid and the Ministry of Social Development. It works with young, sometimes high-risk or recidivist offenders and their families, providing personal support.
The centre also works with the Ministry of Social Development, in an effort to steer at-risk young people away from involvement in gangs. Activities such as camping and tramping are used to encourage social and leadership skills. The centre also works with community mentoring initiatives, such as the Brothers in Arms programme.

Community policing officers voiced support for the Prevention First focus on heading off problems rather than treating them reactively. We were told that the community policing initiative is making a difference, and claims an 80 percent success rate. While no robust data quantifying outcomes is available yet, reporting tools are being developed and data on outcomes is now being collected.

We commend the sworn and non-sworn personnel at the Mt Roskill police station for their work and commitment.

**Avondale Police Station**

We visited the Avondale Police station and observed how a police station operates under the new policing model. We noted the implementation of Service First principles and Policing Excellence initiatives.

We were told that the use of mobile communication devices by the Police was benefiting their work. Better information was now more readily available to police while they are out in the community, and the need for time behind a desk is much reduced. Police can now remotely access material such as emails, information on vehicles of interest, community hotspots, and crime data through iPads. Intelligence can be sent directly to officers who are on patrol. A police-specific intelligence application that allows police to verify identity and other information on the spot has resulted in more bail checking.

Neighbourhood Policing Teams aim to reduce crime, prevent victimisation, and improve perceptions of safety and confidence in the Police in specific priority neighbourhoods. There are two Neighbourhood Policing teams in Auckland; in Avondale and Glen Innes. We heard that the team works with community social workers in schools, supporting activities such as counselling classes to empower young women. The team also organises physical activities with young people to help build a positive image of the Police.

The team also operate a driver licensing programme through Avondale College, with New Zealand Transport Association driving instructors. Each term 10 to 12 students take part. This initiative allows the Police to work at “the front end”, promoting good driving rather than just penalising traffic offences.

**Prisons**

**Auckland Region Women’s Corrections Facility**

Auckland Region Women’s Corrections Facility, established in 2006, has a capacity of 456 prisoners, covering the spectrum from minimum to maximum security. It provides motivational rehabilitation and reintegration programmes, education, and employment.

We were given a tour of the prison with a focus on prisoner employment programmes, observing the prison kitchen, the commissary, the lighting workshop, and a horticulture study group. Prisoners were positive about the opportunity to work and study, and the better options it gave them upon release.
We were told about an initiative where prisoners working in the kitchen prepared food and sold it to workers at the adjacent site of the new Wiri prison. The initiative brought positive feedback from the prisoners, prison management, and the worksite.

**Wiri Men’s Prison**

The committee visited the site of the new prison at Wiri, next door to the Auckland Region Women’s Correctional Facility. The prison is due to be ready to take prisoners in 2015.

We were taken on a tour of the building site, and heard that its structure would reflect the “journey” of each prisoner. Factors deciding their location on the site include the seriousness of offending, the length of sentence, the level of risk they present, and their behaviour.

We were told that the new prison will provide capacity in line with forecast population growth; and the new facilities are better equipped than older prisons to rehabilitate prisoners.

The Department of Corrections has partnered with SecureFuture to design, build and maintain the 960-bed prison; Serco will operate the facility.

**Conclusion**

We thank the staff of the New Zealand Police and the Department of Corrections for the opportunity to observe the facilities and programmes we saw on our visit. We appreciated the availability of the staff in each location and their willingness to speak to us, and would particularly like to thank those who guided us around the facilities, delivered presentations, and facilitated our visit.
Appendix

Committee procedure
The committee received a briefing on policing and prisons in Auckland between 18 February 2014 and 28 May 2014. We heard evidence from the New Zealand Police and the Department of Corrections, and visited the New Zealand Police Crime Reporting Line, the Mount Roskill Community Policing Centre, the Avondale Police Station, Auckland Region Women’s Corrections Facility and the site of the new Wiri Men’s Prison on 28 February 2014.

Committee members
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Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch
The Law and Order Committee has considered the report from the Controller and Auditor-General, New Zealand Police: Enforcing drink-driving laws, and recommends that the House take note of this report.

Between 2001 and 2010 there was a significant decrease in road deaths caused by speeding, but no similar reduction in those caused by alcohol, which is the other leading cause of road deaths in New Zealand. To investigate why, the Office of the Controller and Auditor-General audited the effectiveness and efficiency of the various agencies with responsibility for dealing with this issue. The resulting report focussed on the work of the New Zealand Police in enforcing drink-driving laws with breath-testing, although it acknowledges that the Police are not the only agency involved in work aimed at reducing offending. The report was presented to the House on 13 February 2013, and subsequently referred to us.

The report found that the Police are doing a good job of enforcing drink-driving laws, but it made some recommendations, which we support. They suggest the development of a set of national indicators to measure the effectiveness and efficiency of enforcement. The report also recommends that the indicators be monitored consistently, and that the findings be publicly reported and used to improve enforcement.

Jacqui Dean
Chairperson
Petition 2011/90 of Jessie Hume
Interim report of the Law and Order Committee

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Petition of Jessie Hume

Recommendation

The Law and Order Committee has considered Petition 2011/90 of Jessie Hume, and recommends the House take note of its interim report.

We have considered Petition 2011/90 of Jessie Hume requesting that the House take urgent action to remedy the crisis facing those who have been sexually assaulted in New Zealand, represented by the 111,225 people who have signed a change.org petition online calling for justice for sexual violence survivors.

That the House accepts this petition, and takes urgent action to remedy the crisis facing those who have been sexually assaulted in New Zealand. This should include, but is not limited to:

- A budgeted long-term solution for specialist sexual violence services: A commitment to find a long term and sustainable approach by government to the lack of funding of specialist sexual violence services in Aotearoa - a service sector which has been underfunded for decades. This includes a commitment to significant increases in government funding to the sector in the next budget, including a substantial increase in current per capita levels of funding for such services.

- Maintaining existing specialist sexual violence services: Urgent commitment to maintain the existing level of all specialist sexual violence services available in Aotearoa and to avoid losing more specialist services due to this lack of sustained funding.

- Restoring lost specialist sexual violence services: Urgent commitment to restoring all specialist sexual violence intervention and prevention services that have been lost in recent years due to a lack of funding, and reinstating the Law Commission’s investigation into pre-trial and trial process for those who have been sexually assaulted.

- Taking urgent steps to ensure access for all: Commitment that every person be able to access to prevention, intervention, and long term specialist services, no matter where they live. This includes ensuring that every school has specialist sexual violence prevention programmes and information, and that those reporting sexual violence to the police always have access to professionally trained specialist counsellors (not volunteers) to provide support during police procedures and that this support is available 24 hours, 7 days a week.

- Ensuring appropriate services are available: Commitment that funding be allocated for more services appropriate to the specific needs of different communities and groups, including Kaupapa Māori services, and services for men, women, children and youth, Pacific and migrant communities, people with disabilities, and queer communities.
• A commitment that proper consultation with the specialist sexual violence sector will be undertaken to determine the services that are needed.

• Providing an urgent report into police handling of sexual violence complaints in New Zealand, separate to the Independent Police Review of the ‘Roast Busters’ case which is currently underway.

We consider the petition to raise issues that are worthy of investigation. The Social Services Committee is undertaking an inquiry into the funding of specialist sexual violence social services, and we referred the petitioner to that inquiry, as it is addressing most of the points raised in the petition. We address the final point.

Initially we wrote to the petitioner indicating that we could not consider her petition whilst the matter was being investigated by the Independent Police Conduct Authority, and charges were potentially going to be laid. We told her that we would investigate her complaint once the Independent Police Conduct Authority had reported publicly on its findings, and we were assured that no criminal trials were pending.

The Independent Police Conduct Authority decided to investigate two aspects of the Police’s actions: the adequacy of the Police criminal investigation and the handling of any complaints or reports received by Police from members of the public; and the information provided by Police to media concerning Police involvement. Although the authority has reported on the second aspect, it intends to release a report on the other separately. We recommend that the select committee of the 51st Parliament with responsibility for policing consider reinstating this item of business when the Independent Police Conduct Authority releases its final report.
Appendix

Committee procedure
The petition was referred to the committee on 21 November 2013, and we met between 4 December 2013 and 25 June 2014 to consider the petition.

Committee members
Jacqui Dean (Chairperson)
Jacinda Ardern
David Clendon
Hon Phil Goff
Todd McClay
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch
Report from the Controller and Auditor-General, Department of Corrections: Managing offenders to reduce reoffending

Report of the Law and Order Committee

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Recommendation
The Law and Order Committee has considered the report from the Controller and Auditor-General, Department of Corrections: Managing offenders to reduce reoffending, and recommends that the House take note of this report.

Introduction
One of the goals of the Department of Corrections is to reduce reoffending. The Controller and Auditor-General’s report found that the department is working well to reduce reoffending, using an approach that is based on international research. The report recommended that the department examine ways to improve the scheduling of rehabilitation programmes to ensure offenders complete them. It also suggested strengthening the alignment between case managers and probation officers. Finally it suggested the department conduct surveys for consistency of approach, and for assessing public priorities regarding public services; take an offender-centric approach; and make provision for benchmarking against other areas of the justice sector.

Programmes for offenders
Rehabilitation programmes are given priority over other initiatives, such as work programmes, although the importance of employment in rehabilitation is recognised. The department’s current scheduling system is reactive, and does not forecast needs for programmes. Scheduling offender’s programmes poses challenges, for example, scheduling programmes in time for completion before release.

The information technology systems used to track completion are considered to be inadequate. However they are being upgraded to a “university-style” system, to allow scheduling of offenders on multiple programmes and to allow forecasting of demand. We will continue to take an interest in the development of this system capacity.

The number of programmes delivered is planned to increase from 19,257 in 2012/13 to 103,415 in 2016/17. The report predicts that this will compound scheduling problems, and we asked the department if it also reflects a decrease in quality. The department said that it sets high standards, evaluating and publishing its results.

Mental health, drugs, and alcohol
All male prisoners over 18 receive a mental health assessment, and all prisoners are screened for alcohol and drugs. We heard that the department takes a multi-disciplinary approach to assessment which, depending on the particular prisoner and the information available, can take up to four hours. The department explained that it assesses a prisoner’s willingness to accept help, and does not refer any prisoners to drug or alcohol programmes unless they indicate such willingness.
Accommodation

A difficult aspect of preparing prisoners for release back into the community is finding them accommodation. Available accommodation may be unsuitable in itself or perhaps because of the presence of an abusive partner, and a community may be unwilling to accept a released prisoner. We asked if the department secured housing for released offenders, and heard that it does up to a point, but finds that community organisations are usually better placed to find accommodation. It acknowledges the problem, and considers the search for solutions a work in progress.

Relationships with other bodies

We note that the report demonstrates the value of the department’s relationships with the public sector and other bodies. We heard that it has a good working relationship with the Ministry of Justice and the Police, as demonstrated by the success of a project in Christchurch, where all three are working on the same premises. It enjoys a good and improving relationship with the Ministry of Health, especially concerning mental health. The department works with Housing New Zealand, building houses in Rolleston prison for the Christchurch rebuild, and seeking its help with accommodating released prisoners.

Conclusion

We were pleased with the positive results in the report, and we encourage the department to continue its efforts in the areas recognised as needing further action.
Appendix

The committee heard evidence from the Office of the Auditor-General and the Department of Corrections. The committee met between 12 March 2014 and 25 June 2014 to consider the report.

Committee members

Jacqui Dean (Chairperson)
Jacinda Ardern
David Clendon
Hon Phil Goff
Todd McClay
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch
Petition 2011/48 of Kate Hoyle and 20 others

Report of the Local Government and Environment Committee

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Petition 2011/48 of Kate Hoyle and 20 others

**Recommendation**

The Local Government and Environment Committee has considered Petition 2011/48 of Kate Hoyle and 20 others, and recommends that the House take note of its report.

**Introduction**

We have considered Petition 2011/48 of Kate Hoyle and 20 others, requesting

that the House inquire into the feasibility of a New Zealand-wide ban on single use plastic bags and the sale of drinking water in single-serving PET bottles of less than one litre.

**Submission from petitioner**

The submitter expressed concern that, every year, New Zealanders use around one billion shopping or check-out bags and that plastic bag litter kills at least 100,000 birds, whales, seals, and turtles every year. She went on to say that plastics photodegrade rather than biodegrade—meaning that they break down into fragments, which absorb toxins that contaminate soil and waterways and can thus make their way into the food chain. The submitter also noted that every year approximately 78 percent of plastic bottles in New Zealand are not recycled, and that along with plastic bags plastic bottles are the most prevalent source of pollution found on our beaches.

The submitter proposes that non-degradable plastic bags and single-serve PET (polyethylene terephthalate) water bottles of less than one litre be declared priority products under the Waste Minimisation Act 2008. The effect of this would be to require the development and accreditation of a product stewardship scheme for non-degradable plastic bags and single-serve PET water bottles. The submitter also proposes that such a product stewardship scheme include guidelines to reduce, and ultimately eliminate, these products within a set time.

**Response to petition**

We received a number of submissions in response to the petition, and heard evidence from the Ministry for the Environment, the Glass Packaging Forum, and the Packaging Council of New Zealand.

The Glass Packaging Forum disputed some of the petitioner’s figures—such as 78 percent of plastic bottles not being recycled. It believed that the figure did not relate to the recycling of plastic bottles, but to all resins. It went on to say that at least 64 percent of PET drink bottles are recycled. The forum submitted that plastic bottles are not in fact the most prevalent source of pollution, and that plastic bags are extensively put to secondary use. It noted that plastic bags are a part of the Public Place Recycling Scheme.

The Packaging Council submitted that outright bans are blunt instruments which often lead to unintended consequences. It used the example of banning supermarket shopping bags. Supermarket bags are often reused as, for example, rubbish bags. It argued that banning
lightweight-gauge supermarket bags, which are recyclable, pushes people to (re)use plastic bags of a heavier gauge, which are not.

We were encouraged to hear that the council is in discussions with the ministry about accreditation for its Packaging Product Stewardship Scheme, which was launched in 2010. It aims to improve packaging design and systems to reduce packaging waste, increase the reused and recycled content of packaging, and enhance consumers’ awareness and understanding of sustainable packaging.

The ministry manages the Waste Minimisation Act, and is confident that it aligns with the intent of the petition. We heard that the ministry is looking at mandatory approaches and note that they could be implemented through statutory regulations.

**Conclusion**

While we appreciate the intent of the petition, we consider that a New Zealand-wide ban on single-use plastic bags and single-serving PET bottles would not achieve the petitioner’s aims. Indeed, an outright ban could have a number of unintended consequences running directly counter to the intent of such a ban. Several established product stewardship schemes are intended to reduce and recycle packaging products including plastic bags. We support these schemes.

We have no other matters to bring to the attention of the House.
Appendix

Committee procedure
The petition was received on 13 December 2012. We received written submissions from the Association of New Zealand Advertisers, the Glass Packaging Forum, Kate Hoyle, the Ministry for the Environment, the New Zealand Food and Grocery Council, the New Zealand Juice and Beverage Association, the New Zealand Retailers Association, and the Packaging Council of New Zealand. We heard evidence from Kate Hoyle, the Ministry for the Environment, the Glass Packaging Forum, and the Packaging Council of New Zealand.

Committee members
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Moana Mackey
Eugenie Sage
Su’a William Sio
Phil Twyford
Andrew Williams
The Local Government and Environment Committee has considered Petition 2011/36 of Gayleen Mackereth on behalf of the Howick Ratepayers and Residents Association, requesting that the House note that 244 people have signed a petition calling for legislation to limit local government spending to core projects and to introduce an alternative system of local funding.

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

Eugenie Sage
Deputy Chairperson
Report from the Controller and Auditor-General, Inquiry into the Mangawhai community wastewater scheme, Report from the Controller and Auditor-General, Summary: Inquiry into the Mangawhai community wastewater scheme, and Briefing on the Mangawhai community wastewater scheme and other related matters

Report of the Local Government and Environment Committee

The Local Government and Environment Committee has considered two reports from the Controller and Auditor-General, Inquiry into the Mangawhai community wastewater scheme, and Summary: Inquiry into the Mangawhai community wastewater scheme. We have also considered the Briefing on the Mangawhai community wastewater scheme and other related matters.

On 21 November 2013 we initiated the item of business Briefing on the Mangawhai community wastewater scheme and other related matters, and on 5 December 2013 we heard evidence from the Controller and Auditor-General. The two reports by the Controller and Auditor-General were referred to us on 12 December 2013.

We also examined the matter of the scheme during our consideration of the Kaipara District Council (Validation of Rates and Other Matters) Bill, and our thoughts on it are discussed in our report on the bill.

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

Eugenie Sage
Deputy Chairperson
## Petition 2011/74 of Christine Toms

Report of the Local Government and Environment Committee

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Petition 2011/74 of Christine Toms

Recommendation

The Local Government and Environment Committee has considered Petition 2011/74 of Christine Toms and recommends that the House take note of its report.

Introduction

We have considered Petition 2011/74 of Christine Toms, requesting

that the House note that 56 people have signed a petition asking that every avenue possible be explored immediately to remedy Tokomaru Village residents’ potentially dangerous drinking water supply.

Submission from petitioner

The petitioner submitted that the Shannon/Tokomaru Village water supply was scheduled for upgrading in 2013/14, but that the Horowhenua District Council “abandoned” the Tokomaru portion after a funding request for Tokomaru’s drinking-water subsidy scheme was declined. The petitioner further submitted that the council had decided to delay upgrading the water supply at Tokomaru Village, and has issued a permanent “boil water” notice.

Under the Health Act 1956 (section 69ZZP) a medical officer of health may issue a notice to a local authority if they believe that drinking-water has become contaminated. The authority is required to assess the drinking-water and, if necessary, issue a warning. This has become known as a “boil water notice”. Boil water notices may be temporary or permanent.

The petitioner takes issue with the delay and asks that a way be found to address the risk to human life associated with poor-quality drinking water. She also requests that any upgrade of the supply be independently implemented and managed.

Tokomaru Village’s drinking water regularly receives water quality grades of D (unsatisfactory level of risk) or E (unacceptable level of risk). While the water supply is treated for bacteria, it is not treated for protozoa, such as giardia and cryptosporidium, which can cause intestinal troubles. We heard that most houses in Tokomaru have installed under-bench water filters, but it is uncertain whether they can filter out protozoa. The petitioner also suggested that they gave a false sense of security.

Response to petition

The Horowhenua District Council broadly supports the intent of the petition, but noted that the district has a limited rating base, which imposes financial constraints on the council, and upgrading infrastructure is very expensive. The anticipated cost of upgrading Tokomaru’s drinking water is $1.5 million, which the council submitted it cannot afford without funding. It noted that there is an opportunity for all water projects to be reviewed in the 2015–2025 long-term planning process. We encourage the council to consider

1 For a description of the grading system, see: http://www.drinkingwater.esr.cri.nz/general/grading.asp.
following this course of action, as it would allow it to consult further with its ratepayers and, hopefully, reach a better consensus.

We heard that use of the existing bore presents quality issues, and extending the water network used by the Linton Army Camp is not possible. The Horowhenua District Council said that the Palmerston North City Council is investigating the cost of extending its network of pipes to include Tokomaru. The cost is, as yet, unknown, but it could be millions of dollars.

The council acknowledges that water at Tokomaru Village is not treated for protozoa, but submitted that it complies with bacterial drinking-water standards—the most important aspect of the standard. It pointed out that all water supplies in Horowhenua either have an E grading or are ungraded, and said that the water supply risk at Tokomaru is lower than those of Shannon, Foxton Beach, Foxton Town, and Levin.

The council submitted that Tokomaru’s water quality is not as bad as has been claimed. It noted that, from 2006 to 2013, it failed *E.coli* testing only once. It considered a permanent boil water notice to be unnecessary, and was working towards having it removed.

We note that the council issues what it terms “precautionary” boil water notices. The Ministry of Health does not use this term; it told us that either a warning notice is issued, or it is not. We agree with the ministry that there should not be any room for confusion when it comes to the need to boil water for safety.

**Drinking-water subsidy scheme**

The purpose of the drinking-water subsidy scheme is to help small, disadvantaged communities establish or improve their drinking-water supplies. It is available to communities with a permanent population of between 25 and 5,000 with a deprivation index of 7 or more (out of a scale of 1 to 10, with 10 being the most deprived). On the basis of the 2006 census Tokomaru Village has a deprivation index of 6.5, and is thus ineligible for the subsidy.

We encourage Tokomaru Village to use information from the 2013 census to re-calculate its deprivation index, but acknowledge that this may not improve its eligibility.

Some of us consider that Tokomaru Village is an example of smaller, disadvantaged communities which have been impacted by the more restrictive funding criteria introduced recently by the Government for the drinking-water subsidy scheme. Some of us seek that the criteria be reviewed so that communities with a lower deprivation index and a larger population are able to access funding to upgrade their drinking-water supplies.
Appendix

Committee procedure
The petition was received on 22 August 2013. We received written submissions from Christine Toms, the Horowhenua District Council, and the Ministry of Health. We heard evidence from Christine Toms and the Horowhenua District Council.

Committee members
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Moana Mackey
Eugenie Sage
Su’a William Sio
Phil Twyford
Andrew Williams
Local Government Act 2002
Amendment Bill (No 3)

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 (No 3), and recommends that it be passed with the amendments shown.

Introduction
The Local Government Act 2002 Amendment Bill (No 3) seeks to amend the Local Government Act 2002 to allow effective processes and governance arrangements, fair and efficient decision-making and charging practices, and sound asset management planning by local authorities.

The bill would

- allow the Auckland local boards governance model to be copied in certain circumstances
- encourage reconsideration of the scale on which local authorities plan, fund, and deliver services and facilities
- introduce new consultation requirements
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 clause 53 (in relation to new sections 199C to 199E and 199L to 199N) and clause 73 would come into effect on 1 July 2014 rather than 12 months after the Royal assent or by Order in Council. The Regulations Review Committee reported to us on the powers contained in clause 2, with particular reference to provisions being brought into force by Order in Council. The amendments we propose accommodate the committee’s concerns.

We also recommend amending clause 2(1) so that clause 55 would come into effect one month after the Royal assent was obtained. All remaining provisions would come into effect the following day.

**Core services**

The majority of us recommend amending clause 6 to refer to “recreational facilities and community amenities” rather than “recreational and community facilities”. The purpose of the proposed amendment is to prevent the core services listed in section 11A(e) from being unintentionally narrowed by changes to the definition of “community infrastructure” in clause 49 of the bill as introduced. The amendment we propose would achieve this without resorting to a repetition of terms.

**Reviewing service delivery**

We recommend a number of amendments to clause 11. As introduced, it could impose inappropriate and unjustified demands and costs on local authorities to review the cost-effectiveness of their delivery of services. We propose to ameliorate this burden by means of amendments with the following effects:

- Requiring a local authority to review the cost-effectiveness of its service delivery arrangements in conjunction with consideration of any significant change to service levels, and within
the 2 years before the expiry of any relevant contract or other binding agreement.

- Allow a local authority to determine, in certain circumstances, when to review the cost-effectiveness of its services, but require that it be done no more than 6 years after the last review.

- Exempt a local authority from undertaking a review if delivery of any infrastructure, service, or regulatory function is governed by legislation, contract, or other binding agreement that could not be reasonably altered within 2 years. A local authority would also not be required to undertake a review if it was satisfied that the potential benefits of a review did not justify incurring the associated costs.

- Make it clear that additional transparency requirements specified in new section 17A(3) (inserted by clause 11) would not apply if the matters in question were governed by an enactment, or specified in the constitution or statement of intent of a council-controlled organisation.

**Local board agreements**

We recommend amending clause 15 by inserting new section 48OA so that, in its consultation on an annual or long-term plan, a unitary authority must consult on the proposed content of each local board agreement to be included in a plan. We think that the legislation should recognise the need for consultation on the proposed content of local board agreements, and for tailored consultation in each local board area.

**Principles of consultation**

We recommend amending clause 21 so that people who present views to a local authority would have access to explanatory material, including reports considered before a decision was made. This proposed amendment is similar to provisions in the Local Government Official Information and Meetings Act 1987.

**Information requirements for consultation**

We recommend amending section 82A(2) (inserted by clause 22) so that information required for consultation would have to be made
available during consultation rather than at the beginning of it. We consider that this would avoid the implication of an official start to a formal process—that is, beginning consultation by releasing information—when the intention is that information should be made available, at appropriate times, throughout the consultation period.

We recommend inserting new section 82A(2A) to require that, in the case of an annual plan, consultation must include preparation and adoption of a consultation document that complies with new section 95A (inserted by clause 32); but only if there were material or significant differences from the relevant long-term plan.

We also recommend amending clause 22 by making the clause and section titles more specific. This should make it clear that the provision would apply only when consultation was required under the principal Act.

**Special consultative procedure**

We recommend amending section 83(1)(d) (inserted by clause 23) to require interaction between those who are to be consulted and representatives of a local authority. Interaction would mean communication in person, orally or using New Zealand sign language. Section 83(1)(h)(ii) of the Act requires that submitters be given a reasonable opportunity “to be heard”. The bill seeks to replace this concept with “interaction”, which is intended to be wider. We would not want the proposed amendment to be interpreted loosely to mean “presentations”, which tend to be one-way affairs rather than discussions between the parties.

**Consultation document for the adoption of long-term plans**

We recommend amending section 93C (inserted by clause 29), to specify in more detail what should not be included in or attached to a consultation document, such as a full draft of a financial or infrastructure strategy report.

We recommend amending section 93C(2)(e) and inserting new paragraph (ea) to provide flexibility on the use of graphs or charts to show changes to levels of service. The requirement in the bill as introduced to show such changes graphically could be difficult to fulfil in some
cases; the amendment we propose recognises that it may not always be appropriate or practicable to provide graphs or charts.

We consider it important for information to be made available as widely as possible. Therefore, the proposed amendments to subsection 3(c) would allow documents held on local authority websites to be referenced in consultation documents. For the sake of consistency, we recommend similar amendments to clauses 4 and 32 and Schedule 5.

We also recommend amending section 93C to allow local authorities to choose their own document titles—providing it remained clear that they were consultation documents for a proposed long-term plan. We note that authorities would not be expected to provide polished, glossy documents.

**Annual plans**

The majority of us recommend amending clause 31 to insert new section 95(2A). This would make it clear that the usual requirement to consult would not apply where a proposed annual plan did not include significant or material differences from the long-term plan for the year to which the annual plan related.

We also recommend amending clause 31 by inserting new section 95(6A), to apply the provision more widely to subsection 95(6) of the Act so that a local authority would have to utilise cross-references to its long-term plan rather than duplicating information, wherever possible.

We also recommend amending section 95A in clause 32 by

- specifying that, under section 95A, a difference or variation is material if it could influence the decisions or assessments of those reading, or responding to, a consultation document
- specifying that information relied on by a consultation document should be adopted before the consultation document
- further specifying what must not be included in, or attached to, a consultation document.

For the sake of consistency, we recommend amendments to section 95A(3) to allow documents held on local authority websites to be referenced in consultation documents; and to allow local authorities to choose their own document titles—providing it is clear that the document is a consultation document for the proposed annual plan.
Infrastructure strategies
We recommend amending clause 34 to explain that the purpose of an infrastructure strategy is to suggest the most likely scenario and not to provide detailed predictions of projected capital and operating expenditure regarding a local authority’s infrastructure assets. We recommend that infrastructure strategies specify any matters on which significant capital expenditure decisions would be needed, and the principal options a local authority would have to consider at the time decisions were to be made; and that the approximate costings for those decisions show projected expenditure for each of the first 10 years covered by the strategy, and in five-yearly periods thereafter.

Development contributions
We recommend amending clause 36 to make it clear that local authorities could adjust development contributions only in line with the Producers Price Index Outputs for Construction (provided by Statistics New Zealand) since the contribution was last set or increased. This would reflect the actual practices of local authorities. We also recommend clarifying that Producers Price Index adjustments are not to be made on the interest component of the total cost of capital expenditure; and that territorial authorities must make certain information about proposed increases publicly available in advance.

Purpose
We recommend amending section 197AA in clause 48 to recognise the importance of the total cost of capital expenditure regarding development contributions, and to make it clear that the purpose of such contributions is to service growth in the long term. Development contributions are generally required for infrastructure that can be long-lived (50 to 60 years). Adding the descriptor “over the long term” would convey this; while “total costs” rather than merely “costs” are important to the calculation of development contributions, and can include, for example, interest accrued on loans.
Principles
We recommend amending the principles that must be taken into account when preparing a development contributions policy (section 197AB in clause 48) to

- stipulate that contributions should be required only if the immediate or cumulative effect of a development would require a territorial authority to provide new or additional assets (principle (a))
- clarify that contributions should be determined in a way that is “generally consistent” with the capacity life of an asset (principle (b))
- clarify that those who would benefit from any infrastructure may include the community as a whole (principle (c))
- require that districts, or parts of districts, be specified in a development contributions policy for which contributions were required (principle (d)).

We recommend inserting a new principle (section 197AB(g)) to allow territorial authorities, when calculating and requiring development contributions, to group together specific developments by geographic area or category of land use—as long as the grouping balances administrative efficiency with considerations of fairness and equity. The new principle would acknowledge the practice of averaging, whereby authorities spread the cost of new infrastructure over multiple developments in a given area. Although district-wide groupings can sometimes be justified, the new principle is intended to make it clear that this should be avoided where practicable.

Power to require contributions
We recommend amending clause 50 to make it clear which development contributions policy would apply when a territorial authority was transitioning to a new policy. For example, if a resource consent application had been lodged, the provisions of the development contributions policy in force at the time would apply.

We also recommend amending clause 50 to make it clear that the term “resource consent” should be interpreted to also include any variation to a consent issued under section 127 of the Resource Management Act 1991. This amendment is intended to settle disputes as to whether a variation to a consent could be treated as a new applica-
tion and a development contribution required, and reflect in legislation the general approach in the 2008 High Court decision *Ballintay Investments v Tauranga City Council*.

**Reconsideration of the requirement for contributions**

We recommend amending clause 53 by inserting new section 199IA to give direction to development contributions commissioners when determining a development contribution objection. Commissioners would be required to give due consideration to

- the grounds on which the objection was made
- the purpose and principles of development contributions under sections 197AA and 197AB
- the provisions of the development contributions policy under which the contribution was required
- the cumulative effects of an objector’s development in combination with other developments for which the authority is required to provide infrastructure
- any other relevant factor in the relationship between an objector’s development and the development contributions to which the objection relates.

We also recommend inserting new section 199LA to make it clear that a person making an objection would have a right to seek judicial review of the decision of a development contributions commissioner.

Regarding limitations on the requirement for contributions, we recommend amending clause 54 so that the use of other funding sources, such as rates, fees, and borrowings, to fund a particular asset would not prevent a territorial authority from requiring contributions.

We also recommend amending clause 60 as it relates to sections 207D and 207E. Amending section 207D would make it clear that in the case of conflict, a development agreement would outweigh a development contributions policy. Amending section 207E is intended to make it clear that in a development agreement a territorial authority could not require a developer to provide infrastructure of a higher standard that would have been provided under a development contribution.
Savings and transitional provisions

We recommend amending Schedule 1 by amending clause 5, and inserting new clauses 5A and 5B.

These amendments would allow territorial authorities to retain development contributions made to them before the enactment of this legislation. Under the bill as introduced, they could be excluded, creating a disincentive for developers to pay outstanding invoices.

New clause 5B would allow authorities to require and collect contributions for community infrastructure projects that fell outside the proposed new definition, if they were completed or under construction at the time of enactment. This grandparenting provision would continue to apply to such projects until the relevant proportion of the capital expenditure had been recovered. New clause 5B would also require such projects to be specified separately in the schedule of assets that must accompany a territorial authority’s development contributions policy, along with the outstanding value of the capital expenditure still to be recovered and the period over which an authority expect it to be paid off.

As introduced, the bill does not say whether authorities that have built, or are in the process of building, community infrastructure projects could continue to collect development contributions for them. The effect of this silence is that contributions could not be collected, resulting in a revenue loss to the local government sector of at least $172 million. We believe it would be unfair to penalise local authorities that have, in good faith, incurred or committed to expenditure in anticipation of development contribution revenue. The loss of such revenue could in turn have unforeseeable consequences for ratepayers.

New clause 6 would ensure that development contributions policies in force at the time of enactment would not be invalidated solely because of an inconsistency with the amended Act. The clause would allow key changes to have immediate effect, without requiring territorial authorities to amend their policies within an unrealistic time. New clause 6 would also require territorial authorities to amend development contribution policies to reflect legislative changes no later than 30 June 2015, and to prepare and make publicly available information required for consultation (section 82A(2)) no later than 1 December 2014. Under the bill as introduced, the one-month deadline for amending development contribution policies would
have been difficult for local authorities—and particularly difficult for the Christchurch City Council.

Objections
We recommend amending Schedule 7 by inserting new clause 1A to allow objections to be withdrawn. Withdrawing an objection would not affect the right of a territorial authority to recover actual and reasonable administrative costs, nor affect the right of people to lodge other objections within the specified timeframe.

We recommend amending Schedule 7 (clause 3) to require the exchange of any additional or amended evidence as well as briefs of evidence.

We also recommend inserting new clause 12A in Schedule 7 to add service of notices provisions similar to section 352 of the Resource Management Act. This is intended to avoid disputes as to when a notice was served and what constitutes serving a notice.

Schedules
Schedule 2
We recommend amending clauses 4 and 21 of Schedule 3 of the Act by inserting new provisions. The new clauses would allow the Local Government Commission to specify in a reorganisation proposal periods within which applications for certain types of reorganisation could not be made. Clause 13 of the bill adds new matters that may be dealt with in an application to reorganise local boards; the proposed amendments to Schedule 3 of the Act (Schedule 2 of the bill) are related.

Meeting attendance by audio or audio-visual link
We recommend amendments to Schedule 4 of the bill (Schedule 7, new clause 25A of the Act), to allow people to attend meetings remotely by audio link or audio-visual link, if this is permitted by an authority’s standing orders. We also recommend, however, that a quorum be required to be physically present at a meeting; those attending remotely would not count as present for quorum purposes. We consider this an important safeguard to minimise the risk of problems
arising, for example, from technology failure, and to provide assurance to the public.

We also recommend further amendment of Schedule 4 (Schedule 7, clause 27 of the Act), to clarify that remote attendance provisions would apply only if a local authority wished to permit the use of audio or audio-visual links at its meetings explicitly in its standing orders, and specified that anyone wishing to attend a meeting remotely must make arrangements before the meeting.

**Significance and engagement policies**

We recommend amending Schedule 5 to replace clause 11 of Schedule 10 of the Act, so that a long-term plan must contain a summary or other description of an authority’s significance and engagement policy, and a reference or link to the full policy. Our amendments would align clause 11 with changes proposed by the bill.

**Green Party minority view**

The Green Party supports effective democratic processes and governance arrangements, fair and efficient decision making and service delivery, and sound asset management planning.

Many of the changes made by the select committee in response to submissions are technical amendments, such as clarifying the requirements around summary consultation documents for long-term plans; and clarifying the purpose and content of 30-year infrastructure strategies. These changes improve the bill by making the law clearer and easier to comply with and the Green Party supports them.

The Green Party opposes the policy basis for the bill which has not changed in response to submissions. Our reasons for opposition include:

- The bill will undermine local democracy by encouraging the replacement of competent councils with local boards with much weaker powers.
- The changes around the use of the special consultative procedure create uncertainty about the extent of public consultation on important council decisions.
- The changes to development contributions will reduce council revenue and benefit property developers and subdividers at the
expense of ratepayers. They will compound the Christchurch City Council’s financial challenges.

- The requirements to review service delivery arrangements and the narrow focus on their cost-effectiveness risk encouraging contracting out and potentially promote the privatisation of council services and community infrastructure.

Local boards
The bill undermines democratic decision-making by encouraging large unitary councils and centralised decision-making. It expands the powers of the Local Government Commission in any proposed re-organisation to replace independent and competent city and district councils with weak local boards. Local boards have no power to employ staff, undertake legal action, hold property, levy rates, or make bylaws or other regulations.
Several submitters sought changes to the bill to enable local boards to be established as part of the governance arrangements of existing councils, rather than to replace them in a council re-organisation, and to strengthen the powers of local boards in the development of long-term and annual plans. The Green Party is disappointed these changes were not made.

Special consultative procedure
The bill removes the mandatory requirement for councils to use the special consultative procedure on significant decisions such as the establishment of council controlled organisations or the disposal of regional parks. The bill includes little guidance on what decisions are “significant” and when the special consultative procedure should be used. While some local authorities may be more innovative in their public consultation, the bill removes the certainty that councils will consult widely and well on significant decisions, particularly as “good practice guidance” has yet to be developed by the Government.

Development contributions
Around half of the $3.6 billion of capital expenditure by local authorities in 2013 was estimated to be on new infrastructure such as wastewater treatment and roading. Development contributions help councils recover a fair, equitable, and proportionate portion of the
capital costs of infrastructure. They help reduce the pressure on other sources of council revenue such as rates.

The Green Party supports the strong opposition by many submitters to the bill’s narrow definition of “community infrastructure”. This will limit the community facilities which can be funded by development contributions to community halls, play equipment on neighbourhood reserves, and public toilets. The bill will prevent councils from using development contributions to help fund swimming pools, aquatic centres, libraries, and similar facilities.

The Green Party agrees with submitters that this definition is too restrictive and disadvantages local communities, threatens their social and economic vibrancy, and will force councils to increase rates or council debt if such facilities are to be built. Officials estimated that the bill’s changes to the definition of community infrastructure will have a $510- to $900-million impact on council revenue over the next 10 years. This creates a major funding shortfall for councils.

Christchurch City Council indicated that the changes to development contributions will leave the council with a revenue shortfall of $32.2 million over 10 years. That will increase the council’s already severe financial challenges.
Appendix

Committee process
The Local Government Act 2002 Amendment Bill (No 3) was referred to the committee on 3 December 2013. The closing date for submissions was 14 February 2014. We received and considered 120 submissions from interested groups and individuals. We heard 69 submissions, holding hearings in Auckland and Wellington. The Regulations Review Committee reported to the committee on the powers contained in clause 2.
We received advice from the Department of Internal Affairs.

Committee membership
Maggie Barry (Chairperson)
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Moana Mackey
Eugenie Sage
Su’a William Sio
Phil Twyford
Andrew Williams
Hon Maurice Williamson
The Local Government and Environment Committee has examined the Report from the Parliamentary Commissioner for the Environment, *Hydroelectricity or Wild Rivers: Climate Change versus Natural Heritage*. We look forward to the Government’s response.

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

Nicky Wagner
Chairperson
Kaikōura (Te Tai-o-Marokura) Marine Management Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Kaikōura (Te Tai-o-Marokura) Marine Management Bill and recommends that it be passed with the amendments shown.

Introduction
The Kaikōura (Te Tai-o-Marokura) Marine Management Bill seeks to establish the following measures for the coast and sea around Kaikōura (Te Tai o Marokura):
• a marine reserve
• a New Zealand fur seal sanctuary
• a whale sanctuary
• five customary fisheries areas
• fishing regulations specific to the area
• an advisory committee.

The bill seeks to implement key components of the Kaikōura Marine Strategy developed by Te Korowai o Te Tai o Marokura/the Kaikōura
Coastal Marine Guardians—a group consisting of iwi, environmental groups, and local marine industries and tourism operators. This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Place names
We recommend a number of changes throughout the bill so that place names reflect Ngāi Tahu usage. Although the names in the bill as introduced are correct according to guidance from Te Taura Whiri i te Reo/the Māori Language Commission they do not accord with Ngāi Tahu practice. After consultation, agencies including Te Taura Whiri agree that Ngāi Tahu usage should be used.

Reserve and sanctuary boundaries
We recommend replacing Schedules 1 and 2 to make the GPS co-ordinates that determine the reserve and sanctuary boundaries more specific. The standard applied in the bill is the accepted convention and is used by the Ministry for Primary Industries in relation to the Fisheries Act 1996. The standard uses co-ordinates calculated to two decimal places, providing accuracy to within 10 to 20 metres. For the purposes of marine reserves and sanctuaries, we believe that a definition to within one metre, requiring calculation to three decimal places, is more appropriate.

We also recommend amendments to allow the continuation of existing access by vessel. The amendments we propose would exclude two existing slipways from the marine reserve. If the slipways fell within the boundaries proposed by the bill as introduced, maintaining them would be an offence under the Marine Reserves Act 1971.

Ministerial powers
We recommend amending clause 12 to remove from the Minister of Conservation the power to abolish a sanctuary by Gazette notice and to limit their ability to vary a sanctuary to minor or technical variations. Under the bill as introduced, the responsible Minister could abolish or vary a sanctuary without recourse to Parliament—thereby overriding primary legislation. The amendment we propose would remedy this anomaly.
Advisory committee

We recommend moving subpart four to the front of the bill. Clauses 25 and 26 would thus become new clauses 5A and 5B. This would emphasise that the role and function of the committee is integral to the implementation of the strategy.

We also recommend the following changes to the advisory committee provisions:

- making the name of the committee the Kaikōura Marine Guardians
- clarifying that Ministers could appoint a body corporate as a member of the committee, as well as individuals
- replacing the requirement for iwi interests to be represented on the committee with Te Rūnanga o Ngāi Tahu interests
- adding biosecurity, conservation, education, and marine science to the list of interests and expertise which Ministers must be satisfied would be represented on the advisory committee
- providing for the committee’s advisory functions to apply in respect of the marine aspects of biosecurity in the Kaikōura marine area
- requiring all those exercising biosecurity, conservation, or fisheries powers or functions in the Kaikōura marine area to take into account the advice of the advisory committee.

Ministerial review

We recommend inserting new clause 5C and deleting clause 8. Clause 8 would require the responsible Minister to initiate a review of the proposed marine reserve after 25 years. New clause 5C would expand this provision to require a review to include the other measures created by this legislation, as well as the operation and effectiveness of the advisory committee. The Kaikōura marine strategy recommended a generational review of all the proposed measures, and our amendment would bring the bill in line with this recommendation.

We also recommend that the responsible Minister must consult with the advisory committee on the terms of reference, that the review include reasonable opportunity for public consultation, and that the
responsible Minister be required to present a report on the review to the House.

Other matters
McGee notes that a preamble cannot be inserted into a bill by way of amendment.¹ A preamble sets out the reasons for the provisions proposed in a bill. While some bills, such as private bills and Treaty of Waitangi settlement bills, still include a preamble, its inclusion in legislation is no longer usual practice; this function is served by the explanatory note attached to the bill as introduced (the “bar one”). While we cannot recommend the insertion of a preamble, we recognise the important background provided by the explanatory note of this bill—specifically, that the marine strategy underpinning the proposed legislation is the result of many years of effort by Te Korowai to bring together diverse people and interest groups and negotiate a “gifts and gains” strategy that we hope will stand the test of time.

Green Party minority view
The Green Party members support the creation of more Marine Protected Areas around New Zealand, and the protections contained in this bill, however note concerns relating to the proposed management tools and outcomes provided in this bill.

The Green Party members acknowledge the efforts by Te Korowai over seven years and their use of what they described as a “gifts and gains” collaborative approach. We support more Marine Protected Areas around New Zealand but lament the fact that only 0.41 percent of New Zealand’s waters (territorial sea plus exclusive economic zone) are protected in marine reserves, including the new Hikurangi Trench, and recently created Subantarctic Islands marine reserves.

This bill is a step in the right direction. However we have some concerns that the national marine protected areas (MPA) policy and marine protected areas classification, protection standard and implementation guidelines were not applied to the forum process. These were developed by the Ministry of Fisheries and Department of Conservation after public consultation and approval by Ministers. The object-

ives of the MPA policy have not been met in this bill and the Marine Protected Areas are not as effective as they could be in protecting Kaikōura’s treasured marine environment.

Hikurangi Marine Reserve
The Green Party supports the general area of the marine reserve, as the Kaikōura Canyon is nationally and internationally recognised as a hotspot of biodiversity. We note however the small area touching the coast (1.97 kms), irregular shape with twelve sides and the very limited protection of the canyon walls, which are the area with greatest biodiversity in the canyon. These shortcomings limit the conservation efficacy and may make enforcement more difficult. Other submitters such as the Royal Forest and Bird Protection Society noted that the reserve boundaries did not reflect best-practice design principles, the goals of the MPA policy, or international guidelines on protecting marine biodiversity. It is disappointing that the statutory agencies involved in the forum process did not help the forum to implement these.

The committee heard advice from the Department of Conservation that the “…boundaries of the marine reserve may not entirely align with the guidelines for reserve design from the MPA (e.g. low boundary to areas ratios and inadequate size to fully protect the full range of near-shore biodiversity)” and while we acknowledge the “gifts and gains” process that led to these decisions, we feel MPA guidelines and objectives should be adhered to.

The committee also heard from Dr Nick Shears, Senior Lecturer at the University of Auckland, on behalf of the Marine Sciences Society. The society noted that the proposed reserve only covers a small inshore area, and has an extremely complex boundary that increases the “edge-effects”.

These edge effects decrease the effective protected area, meaning the reserve has little benefit for species that move more than a few hundred metres, due to the small coastal area protected; and the complex boundary compromises the overall value of the marine reserve. The Green Party would have preferred a larger and less complex marine reserve shape, as proposed by Dr Shears, which would have been more effective at providing protection and would have complied with MPA guidelines. We note the forum process that led to this shape.
Whale sanctuary
The Green Party supports the proposed whale sanctuary, however would have preferred to see a broader marine mammal sanctuary encompassing more species, including whales, created under the Marine Mammal Protection Act 1978. The broader powers available under that Act would have allowed more effective protection of marine mammals. We note submissions relating to the threatened Hector’s dolphin and concern that lethal commercial and recreational set nets would still be allowed in the sanctuary. We feel ignoring other marine mammal species from the sanctuary, particularly threatened species, is short-sighted. The Green members support all type 1 and type 2 seismic surveying being prohibited in the sanctuary.

Summary
The Green members thank the members of Te Korowai and submitters to the select committee, and support this bill. We are concerned, however, that MPA policy objectives have not been met and would support a larger, better shaped reserve, with fewer edge effects, that protected a wider range of habitats and a larger area of coastline. We additionally support stronger marine mammal protections in the whale sanctuary with these applying to other species such as Hector’s dolphins.
Appendix

Committee process
The Kaikōura (Te Tai-o-Marokura) Marine Management Bill was referred to the committee on 20 March 2014. The closing date for submissions was 17 April 2014. We received and considered 22 submissions and heard 14 submissions, holding hearings in Kaikōura and Wellington.

We received advice from the Department of Conservation and the Ministry for Primary Industries. The Regulations Review Committee reported to the committee on the powers contained in clause 12.

Committee membership
Maggie Barry (Chairperson)
Kelvin Davis
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Moana Mackey
Eugenie Sage
Su’a William Sio
Andrew Williams
Hon Maurice Williamson
Petition 2011/67 of Margi Martin, Amanda Austrin, and 31 others

Interim report of the Local Government and Environment Committee

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Petition 2011/67 of Margi Martin, Amanda Austrin, and 31 others

Recommendation

The Local Government and Environment Committee has considered Petition 2011/67 of Margi Martin, Amanda Austrin, and 31 others, and recommends that the House take note of its interim report.

We have considered Petition 2011/67 of Margi Martin, Amanda Austrin, and 31 others, which requests that

the House inquire into and prevent the dredging, transporting, storing and bioremediation of dioxin and PDB contaminated sediment from Kope Canal in Whakatane.

The petitioners’ concern was aroused by an application made by the Bay of Plenty Regional Council in March 2013 for resource consent to remove and store contaminated sediment from the Kopeopeo Canal. The petitioners strongly oppose any interference with the canal on the grounds that the dangers of working with, and shifting, contaminated sediment are “unknown”.

In order to consider the issue raised by the petitioners comprehensively, we sought evidence from the petitioners, the Bay of Plenty Regional Council, and the Ministry for the Environment. We received written evidence from all three parties.

The petitioners’ evidence set out in detail the potential environmental effects if the canal were disturbed, and considers that the proposed process is flawed. Of particular concern to the petitioners is the potential release of polychlorinated biphenyl toxins and dioxins into the air, soil, and water, adversely affecting surrounding areas and wildlife.

The Ministry for the Environment said it had approved funding for the remedial work, and contributed financially to the project from the Contaminated Sites Remediation Fund. This fund exists specifically for the investigation and remediation of sites that may pose dangers to human health and the environment. The ministry emphasised that it could not influence the resource consent process.

The Bay of Plenty Regional Council sent us the February 2014 decision that granted the resource consent for the Kopeopeo Canal remediation project. One of the reasons the hearing panel gave for their decision was that the potential adverse environmental affects had been “or will be either avoided, remedied, or mitigated”.

The Bay of Plenty Regional Council noted that the decision was appealed by one party, and that the council is working with all parties involved to resolve issues and come to an amicable solution.

We believe that the petitioners’ concerns regarding the potential consequences of shifting contaminated material raise larger issues about the management of contaminated sites in general. We encourage the Local Government and Environment Committee of the 51st Parliament to consider these issues further.
Appendix

Committee procedure

Petition 2011/67 of Margi Martin, Amanda Austrin, and 31 others was referred to the committee on 12 June 2013. The committee met between 17 October 2013 and 31 July 2014 to consider the petition. We received written evidence from the petitioner, the Bay of Plenty Regional Council, and the Ministry for the Environment.

Committee members

Maggie Barry (Chairperson)
Kelvin Davis
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Moana Mackey
Eugenie Sage
Su’a William Sio
Andrew Williams
Hon Maurice Williamson
The Local Government and Environment Committee has considered Petition 2011/105 of Daphne Taylor on behalf of Save Fiordland Incorporated and 18,128 others, requesting that the House ensure the protection of Te Wahipounamu, the South West New Zealand World Heritage area, by preventing construction of the Riverstone Holdings Ltd monorail project in the Snowdon Forest and Fiordland National Park.

In the light of the Minister of Conservation’s decision to decline Riverstone Holdings Limited’s application to build and operate a monorail in Fiordland, we are satisfied that the petitioner’s concerns have been addressed.

We have no matters to bring to the attention of the House and recommend that the House take note of our report.

Maggie Barry
Chairperson
Petitions 2011/15 and 2011/16 of Christine Rose

Report of the Local Government and Environment Committee

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Petitions 2011/15 and 2011/16 of Christine Rose

Recommendation
The Local Government and Environment Committee has considered Petitions 2011/15 and 2011/16 of Christine Rose, and recommends that the House take note of its report.

Introduction
Petition 2011/15 and Petition 2011/16 of Christine Rose were referred to the Local Government and Environment Committee on 2 May 2012. Because they concern a similar matter, we considered them together.

Petition 2011/15 of Christine Rose requests
That the House of Representatives avoid, remedy, or mitigate the currently unsustainable effects of fishing on Hector’s dolphins as a matter of urgency by:

• centering management decisions and policies on the best available independent scientific information
• developing objective, science-based, measurable, and testable management targets for the recovery of Hector’s and Māui’s dolphin
• developing a science-based Recovery Plan with the input of all stakeholders
• fast-tracking full protection measures for Hector’s dolphins against fisheries by-catch off Kaikoura, Timaru, and Taranaki to avoid further avoidable deaths
• eliminating the use of commercial and recreational set nets and trawling across the species’ range along a 100 metre depth contour without exception
• implementing a comprehensive, scientifically sound fisheries observer programme that includes all four Hector’s dolphin populations to inform management of fishing impacts on Hector’s and Māui’s dolphins by identifying and quantifying interactions and to assess the effectiveness of mitigation measures
• changing the reporting of unresolved Hector’s and Māui’s dolphin deaths as “natural death” in the Department of Conservation’s incidence database.

And to note that 18,033 people have signed an online petition supporting this request.

Petition 2011/16 of Christine Rose requests
That the House of Representatives use their emergency powers to immediately ban net fishing and mining activities in the Māui’s dolphins’ home and note that 49,436 people have signed an online petition supporting this request. The time to act is now before any more of the 55 remaining dolphins are killed. Losing this unique creature would do untold damage to New Zealand’s image and be a tragedy for the world.
Hector’s and Māui’s dolphins

Hector’s and Māui’s dolphins are small inshore dolphins found only in New Zealand. Hector’s dolphins are found mainly around the South Island, while Māui’s dolphins, a subspecies, are found on the west coast of the North Island. Their average life span is 20 years. Female Hector’s and Māui’s dolphins do not become sexually mature until seven to nine years of age, and produce only one calf every two to four years; any population increase is therefore slow. The current Hector’s dolphin population is around 12,000 to 19,000, and it is estimated that there are only about 55 Māui’s dolphins aged one year or older. Hector’s dolphins are classified as “endangered”, and Māui’s dolphins are classified as “critically endangered” by the International Union for Conservation of Nature.

Threat Management Plan

A draft Hector’s and Māui’s Dolphin Threat Management Plan was published online by the Department of Conservation and the Ministry of Fisheries (now part of the Ministry for Primary Industries) for public consultation in 2007. Its purpose was to describe the nature and extent of threats to Hector’s and Māui’s dolphins, and outline proposals to manage human-induced threats. These threats are mostly related to fishing, but also include possible dangers from deep-sea mining, seismic surveying, and tidal turbines.

In March 2012—before we received the petitions—it was announced that the Department of Conservation and the Ministry for Primary Industries would review the Māui’s dolphin portion of the plan, and apply interim measures in the Taranaki area from Pariokariwa Point to Hawera. The interim measures included extending a recreational and commercial set-net ban to an offshore boundary of two nautical miles, and, in the absence of an independent onboard observer, prohibiting commercial set-nets between two and seven nautical miles from shore. We deferred consideration of the petitions until the review was complete.

The review of the plan involved a specially convened panel of scientists. It also took into account new information on recent dolphin mortalities and estimates of the Māui’s dolphin population. In September 2012, the review of the plan was published by the Department of Conservation and the Ministry for Primary Industries. It was opened to public consultation, and received over 70,000 submissions, which were analysed.

In November 2013, the Minister of Conservation along with the Minister for Primary Industries jointly announced a set of protection measures. We note that the following decisions were announced and have subsequently been implemented:

- The previous interim measures were to remain, and will be reviewed in 2015–2016.
- Existing set-net restrictions in harbours were to remain.
- Harbour ring-netting, a lower-risk activity, would be permitted under certain conditions in the Manukau Harbour.
- The existing management of trawl netting would continue, and extensive monitoring is to be initiated between two and seven nautical miles offshore from Maunganui Bluff to Pariokariwa Point.
- Seismic surveying would be regulated by the 2012 Seismic Surveying Code of Conduct.
A code of conduct was to be developed for inshore boat racing off the west coast of the North Island.

A Māui’s dolphin multi-stakeholder advisory group was to be established.

**Reasoning behind the Ministers’ decisions**

We heard from the Department of Conservation and the Ministry for Primary Industries, who told us that much of the risk to Māui’s dolphins from fishing-related activities is managed through existing set-net and trawling restrictions. In the area where Māui’s dolphins are most prevalent, between Port Waikato and Pariokariwa Point, trawling is not permitted. The joint announcement from the Ministers in November 2013 established additional measures for areas where the Māui’s dolphin was considered to be less frequently present. We heard that research was lacking on dolphin numbers south of Port Waikato, which makes it difficult to decide the most appropriate measures.

The ministry stressed the value of good research, and emphasised that they have already spent more than $1.2 million on research on Māui’s and Hector’s dolphins over the past five years. They noted that research into Māui’s dolphins has been hampered by the difficulty of tracking and analysing such a small population, but that conclusions have been drawn from a wide range of sources such as public sightings, research, and historical records. We were told that the measures of the dangers to Hector’s and Māui’s dolphins have a “degree of uncertainty”. The ministry said that further research is important and necessary, and assured us that research methods will be improved. This intention was behind the initiation of a multi-stakeholder advisory group.

We asked the reasons for the unique protection measures on the west coast of the North Island, where Māui’s dolphins are dominant. In particular, we asked why set-netting—which we were told is more dangerous to the dolphins than trawling—is restricted only as far as seven nautical miles from shore between Maunganui Bluff and Pariokariwa Point, and two nautical miles south to Hawera. We were told that this was based on the best available information regarding the density and movement of the dolphins, from sources such as aerial observation. We were told that there is no strong evidence at present that dolphins go outside the set-net protection areas, although the ministry and department remain open to such evidence.

We were curious as to why the petitioner supports using a 100-metre depth contour to determine the restricted area, rather than the distance-from-shore measurement used by the department and ministry. We heard that on the east coast of the South Island, where the sea floor is shallower, dolphins are likely to roam further offshore, which the petitioner’s recommendation takes into account. The ministry and department consider distance from shore a more useful measure, as it is North Island-specific. We were also told that whilst the sightings cannot be absolutely confirmed, Māui’s dolphins have been reported beyond a 100-metre depth contour from shore.

We asked how seismic surveying and oil and gas drilling impact on the Māui’s dolphins. We heard about the measures taken to reduce the impact of these activities, and that a large proportion of their habitat is a marine mammal sanctuary. In this proportion of their habitat, seismic surveying is regulated, and certain conditions are imposed on fishing boats, such as requirements for onboard observers and soft starts. This mitigates the risk to the dolphins. Outside of the sanctuary (beyond 12 nautical miles) the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 takes effect, and a code of
conduct governs seismic surveying. We were told that whilst seismic surveying has been incorporated in the dolphin risk analysis, it is considered a much lower risk than other activities such as fishing. There are however, plans to review the code of conduct.

In terms of drilling for mining, we were told that out to two nautical miles there is a restriction on sea-bed mining, and where the dolphins are most prevalent there is a restriction out to four nautical miles.

We inquired about the recording of dolphin by-catch (those caught unintentionally). We were told that fishers are legally required to report by-catch; and mandatory onboard observers are intended to ensure compliance.

We asked whether cross-breeding of Māui’s dolphins with Hector’s dolphins would help stabilise their population and heard that examining this possibility was one of the reasons for establishing the multi-stakeholder advisory group. However, we heard that taking dolphins into captivity is not an optimal solution, with many risks, and a poor record for successful re-introduction to the wild.

We were eager to know whether the extinction of the Māui’s dolphins was considered inevitable. We were told that some species, such as the southern right whale, have recovered from near-extinction, and that this is possible in the case of the Māui’s dolphin. The ministry and department said they, along with many other national and international stakeholders, are determined that this will happen. They emphasised that a comprehensive framework has been set up to protect these dolphins, but it requires a long-term investment from New Zealand. In addition to current protection measures, we note that the Minister for Primary Industries can enact emergency measures under section 16 of the 1996 Fisheries Act in the event of future Māui’s dolphin deaths.

Response from the petitioner

The petitioner maintains that more should be done to protect the declining populations of Hector’s and Māui’s dolphins. She believes that these dolphins should have complete habitat protection, and to prevent their imminent extinction, human-induced deaths must be reduced to virtually zero.

The petitioner supports an extension of the protected coastline and a ban of gillnets and trawling in water less than 100 metres deep from Maunganui Bluff to Whanganui, including the harbours. The petitioner told us that the Threat Management Plan review made no attempt to estimate the effectiveness of the set-net prohibition that she advocates, and that the review contains an incorrect assessment of the risk from trawling. She maintains that, where the cause of dolphin death is known, 60 percent of fatalities are caused by net entrapment.

The petitioner requests a comprehensive assessment of fisher actions and by-catch monitoring, because she believes accurate records are almost non-existent and could provide valuable information. The petitioner notes that she is not asking people to stop fishing, but to stop using unsustainable methods. She provided evidence that economic objections to the further extension of dolphin protections are not solidly based, as the potential catch loss would be of relatively low economic value.

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The petitioner asserted that Hector’s and Māui’s dolphins travel further than protection extends, and that they spend time breeding and feeding in harbours which have limited protection, especially in the North Island. The petitioner said that claims that there is no proof of dolphins being in unprotected areas are not credible, and she urged that decisions be based on the “best available independent scientific information”. The petitioner also argues that further research is unnecessary because current information is sufficient to indicate that immediate and more comprehensive action is required to prevent the extinction of the dolphins.

The petitioner recommends that further, and more immediate, action be taken to protect the Hector’s and Māui’s dolphins. She believes that a better plan of action is required, and that under the current circumstances the dolphins remain at risk of extinction. Labour, Green and New Zealand First members agree.

**Conclusion**

We consider that the protection of Hector’s and Māui’s dolphins is important as they are a New Zealand taonga. While we note the petitioner’s concerns, the Labour, Green and New Zealand First members believe that the existing measures in place to protect the dolphins and stabilise the Māui’s dolphin population in particular are inadequate. Government members are pleased to hear that the Minister for Primary Industries can exercise emergency powers to further protect the Hector’s and Māui’s dolphins if there are any more reported deaths of Māui’s dolphins. We urge the appropriate committee of the 51st Parliament to continue to monitor future developments on this topic.
Appendix

Committee procedure
The petitions were referred to the committee on 2 May 2012. We received written evidence from the petitioner, the Department of Conservation, and the Ministry for Primary Industries. We also heard evidence from the petitioner, the Department of Conservation, and the Ministry for Primary Industries.

Committee members
Maggie Barry (Chairperson)
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Moana Mackey
Eugenie Sage
Su’a William Sio
Phil Twyford
Andrew Williams
Hon Maurice Williamson
The Local Government and Environment Committee has considered the Report from the Controller and Auditor-General, Inquiry into property investments by Delta Utility Services Limited at Luggate and Jacks Point, and has no matters to bring to the attention of the House. We recommend that the House take note of our report.

Maggie Barry
Chairperson
The Local Government and Environment Committee has considered the Report from the Controller and Auditor-General *Local government: Results of the 2012/13 audits*, and has no matters to bring to the attention of the House. We recommend that the House take note of our report.

Maggie Barry
Chairperson
The Local Government and Environment Committee has considered the Report from the Parliamentary Commissioner for the Environment, *Hydroelectricity or wild rivers: Climate change versus natural heritage, update report*, and has no matters to bring to the attention of the House. We recommend that the House take note of our report.

Maggie Barry  
Chairperson
The Local Government and Environment Committee has considered the Report from the Parliamentary Commissioner for the Environment, *Making difficult decisions: Mining the conservation estate, update report*, and has no matters to bring to the attention of the House. We recommend that the House take note of our report.

Maggie Barry
Chairperson
Report from the Parliamentary Commissioner for the Environment, Water quality in New Zealand: Land use and nutrient pollution

Report of the Local Government and Environment Committee

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Report from the Parliamentary Commissioner for the Environment, Water quality in New Zealand: Land use and nutrient pollution

Recommendation

The Local Government and Environment Committee has considered the report from the Parliamentary Commissioner for the Environment Water quality in New Zealand: Land use and nutrient pollution, and recommends that the House take note of its report.

Introduction

The Local Government and Environment Committee has considered the report of the Parliamentary Commissioner for the Environment Water quality in New Zealand: Land use and nutrient pollution. The report examines the relationship between nitrogen, phosphorus, and land use, and the resulting effects on water quality. It follows on from the commissioner’s report Water quality in New Zealand: understanding the science, which we previously considered.

The commissioner’s report emphasises that nitrogen and phosphorus levels in water are affected by changes in land use. This includes both conversion of land to a different purpose, and the intensification of existing activities such as dairy farming.

The report asserts that activities which increase nitrogen and phosphorus levels in fresh water harm the quality of the water. Although nitrogen and phosphorus are valuable nutrients on land, the commissioner’s report stresses that excessive nitrogen and phosphorus pollute water by accelerating the growth of plants, slime, and algae. This adversely affects populations of insects, fish, and water birds, as well as people’s recreational use of fresh water.

The commissioner’s report expresses concern about the recent increase of nitrogen in fresh water across the country, and the increase of phosphorus concentrations in some regions of New Zealand. It warns that without efforts to reduce nitrogen and phosphorus levels in fresh water, water quality in New Zealand will deteriorate.

Because of high interest in the commissioner’s report, we heard from DairyNZ and Fish and Game New Zealand, as well as the Parliamentary Commissioner for the Environment.

Causes of water quality loss

The commissioner informed us that nitrogen in fresh water sources is principally derived from the urine of farm animals, particularly from cows, which washes into the water. Phosphorus in water originates from a number of sources. Mostly, it is naturally found in soil, but migrates into water through erosion, and human alteration of landscapes such as the conversion of forest to farm land. According to the commissioner, it is easier to prevent phosphorus from polluting fresh water than nitrogen.
We were told that the accumulation of nitrogen and phosphorus in water also depends on features of the water body. Stagnant water, for example, attracts a greater build-up of these chemicals than flowing water.

Fish and Game agreed with the commissioner’s conclusions about the causes of loss of water clarity. They told us that it depends on a combination of variables, including land conversion to dairy, and algal growth. They were particularly concerned about the effect of farming practices on water quality.

Fish and Game emphasised their concerns about the intensification of dairy farming. They said that in recent years the dairy industry has moved away from the optimum high-profit, low-risk “sweet zone” of production. They believe dairy farming is moving towards more environmental degradation and water pollution as a result of intensification practices encouraged by the Government’s goal of doubling agricultural output. We were concerned about this, and would be interested in statistics to illustrate this trend.

Fish and Game emphasised that farms can be both profitable and environmentally friendly, if they are well managed. We were pleased to hear that some farms which do not practise higher-intensity farming are successful.

**Nitrogen and phosphorus levels as a test of water quality**

DairyNZ offers an alternative perspective on the commissioner’s report. They argue that whilst nitrogen excreted on land may be a good measure of land use pressure, it is not necessarily predictive of water quality outcomes. They argue that not all excreted nitrogen makes its way into water, and the nitrogen and phosphorus that do are not necessarily problematic for water quality. They cited the example of the upper Waikato River, and argued that in this case, despite rising nitrogen levels in the water, algae have decreased. Therefore, DairyNZ argues that nitrogen levels may not be directly correlated to deterioration in water quality.

We asked what water quality meant to DairyNZ. They told us that they prefer a flexible definition of water quality which reflects the local community’s interpretation and objectives. They said they support the 2011 National Policy Statement as it provides a useful guide to direct local decision-making on water quality. DairyNZ believe that water quality is a subjective issue, as communities interpret water quality differently. For example, some communities may rank certain water characteristics, such as clarity or safety for swimming, above the presence of algae. Communities may also vary in their interpretation of suitable nitrogen and phosphorous levels in water.

We asked DairyNZ what they thought of a board of inquiry’s recent decision, regarding the Ruataniwha Water Storage Scheme, to set stricter limits on nitrogen in waterways. DairyNZ expressed their disappointment over what they believe to be a decision based on a “correlation” rather than scientific facts.

**Dairy farming and water quality**

DairyNZ voiced their concern about dairy farmers attracting excessive blame for water pollution, and argued that some of New Zealand’s most polluted streams are in urban areas. They recognise the impact of dairy farming on water quality, but emphasise that many farmers are working to reduce it through practices such as the fencing of streams. We were told that DairyNZ is hoping to survey every farm in New Zealand on their contribution to water quality.
We asked whether DairyNZ believes that conversion to dairy farming on vulnerable soils should be permitted. They told us that if there is evidence that negative environmental effects upon water quality are likely in a particular case, they would support councils’ acting to prevent the conversion of the land in question.

Despite DairyNZ’s reservations about the correlation between water quality and nitrogen and phosphorus levels, they stressed that some dairy farmers have been working to mitigate the impacts of these chemicals on fresh water. They gave the example of the Manawatu region, and how the regional council has financially invested in reducing the concentrations of these chemicals in water, with positive results. We were pleased to hear about efforts to improve nitrogen and phosphorus trends in some areas of New Zealand.

We were curious as to whether nutrient budgeting, a practice that was prevalent about 15 years ago, has been effective and become standard practice for farmers in managing the nitrogen and phosphorus runoff on their properties. DairyNZ said they believed that many farmers would now be benefitting from, and practicing, nutrient budgeting.

We heard from DairyNZ that farmers were on target to meet the 2014 goals of the Sustainable Dairying Water Accord, an initiative led by the Dairy Environment Leadership Group, which comprises farmers, dairy companies, central government, regional councils, and the Federation of Māori Authorities. We commend the positive steps that dairy farmers and others have made to reduce negative environmental impacts and improve water quality.

**Combating the effects of nitrogen and phosphorus**

We understand that many factors influence the concentrations of nitrogen and phosphorus in water, and some activities harm water quality more than others. To help analyse whether there is a positive correlation between particular land use practices and water quality, we believe solid statistical data would be helpful.

We understand that this report did not provide recommendations, taking a scientific rather than a policy approach; however we believe it would be helpful for further consideration of water quality in New Zealand if recommendations were presented. We recognise that some regional councils and other entities have already implemented proactive measures to improve water quality, and we hope that ways to mitigate the impacts of various land uses will continue to be sought.

**Overseer as a nutrient management tool**

We heard that DairyNZ supports the use of the nutrient management system Overseer as a tool to help analyse nitrogen and phosphorus loss into water. DairyNZ acknowledges that improvements are needed to its accuracy, and to incorporate variables such as soil type, but insists that it is currently the best available model.

Fish and Game raised concerns about the accuracy of Overseer, including its unreliability, and told us that it is also inadequate at analysing the most “risky” stony and sandy soils. We are concerned about this, as we believe an analysis of vulnerable soil is an important component of any evaluation of water quality.

We agree that reliable tools to help measure nitrogen and phosphorus levels are important.
The National Policy Statement and National Objectives Framework

The Parliamentary Commissioner for the Environment highlighted various shortcomings of the 2011 National Policy Statement and the 2013 National Objectives Framework, which guide action on water quality in New Zealand. In particular, the commissioner stressed that resources could be better allocated for mitigating the impacts of nitrogen in water.

We are interested in how iwi are involved with water quality plans under the National Policy Statement. The commissioner said that iwi are heavily involved in water catchment monitoring, but that this information does not feature prominently in the statement. We note that iwi values and involvement are recognised in the 2014 National Policy Statement\(^1\), but believe that specific references to iwi contributions should be included in future documents.

Public inquiry proposal

Fish and Game voiced their concern about water quality issues being confined to the political arena. They suggested that a formal Royal commission of inquiry should be initiated into water quality. Fish and Game believe a formal inquiry is necessary because the issues around water quality are “too important” to be left in the political realm. They argued that an independent assessment involving all stakeholders would be a valuable, fair approach, which could help to provide farmers with a clear and timely environmental framework. The majority of us note these concerns.

Conclusion

We understand that water quality in New Zealand is an important issue that affects New Zealanders socially, culturally, and economically. We note that water quality concerns are already prevalent around New Zealand.

The economic cost of removing nitrogen and phosphorus from fresh water is large, and we agree with the commissioner that mitigation is preferable to remediation. Some of us therefore feel encouraged by the recently released 2014 National Policy Statement, which we believe is a useful framework, and a step in the right direction, towards the better management of New Zealand’s fresh water.

We would like to thank the commissioner for her report, and both DairyNZ and Fish and Game for their perspectives. We are keen to see progress in the area of water quality in New Zealand, and encourage the relevant committee of the 51st Parliament to closely observe future developments on this topic.

Green Party minority view

The Green Party supports the call by Fish and Game New Zealand that there be a commission of inquiry to examine and report on the future of agriculture in New Zealand. Fish and Game made this request when it and DairyNZ briefed the select committee following a briefing by the Parliamentary Commissioner for the Environment on her report.

The Parliamentary Commissioner’s 2013 report shows a strong link between land use change to intensive agriculture, and water pollution. It models nutrient pollution from land uses such as dryland farming, forestry, and dairying and matches this with changes in land use to predict the amount of nutrient pollution entering our waterways.

The report predicts that even if farmers adopt best management practices such as riparian planting and fencing of streams, the large-scale of land use change to more intensive uses such as dairying will result in ongoing deterioration of water quality in many catchments across New Zealand, especially in Canterbury and Southland.

The Green Party believes that further decline in water quality in our rivers, lakes and streams is not acceptable. We need to give integrity to our 100 % Pure New Zealand image. Major change is required in the way we use land and water to improve the health of our waterways.

The evidence presented by Dr Alison Dewes for Fish and Game highlighted that the expansion of dairying as a land use had led to intensification in more marginal landscapes, including on steeper land which is more vulnerable to erosion and nutrient leaching. She said dairying’s growth had been encouraged by low-cost flexible production systems where land and water have been seen as abundant. She said changes to farming systems and “tomorrow’s farming today” could reduce nutrient loss and environmental effects while improving profitability.

Dr Dewes noted,

The current growth agenda for agriculture will inevitably result in increased environmental costs to the public and the regions, and increased economic vulnerability at farm level. Therefore the growth being proposed needs to be reviewed in the face of resource limitations to ensure the strategy is resilient, future-proofed, and strategic for New Zealand as a whole.

The Green Party believes that an inquiry would help promote a more sustainable and viable future for agriculture by examining the environmental, economic, and social costs and benefits of the current growth agenda, and investigating and helping promote farming models, regulatory and other changes that better recognise environmental constraints and help increase farm profitability.
Appendix

Committee procedure
The report from the Parliamentary Commissioner for the Environment, *Water quality in New Zealand: Land use and nutrient pollution* was referred to the committee on 3 December 2013.

We heard evidence from the Parliamentary Commissioner for the Environment on 13 February 2014, and we heard from DairyNZ and Fish and Game on 17 April 2014. The committee received written evidence from the Parliamentary Commissioner for the Environment, DairyNZ, and Fish and Game New Zealand.

Committee members
Maggie Barry (Chairperson)
Kelvin Davis
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Moana Mackey
Eugenie Sage
Su’a William Sio
Andrew Williams
Hon Maurice Williamson
Petition 2011/82 of Edward Penetito on behalf of Ngāti Kauwhata

Report of the Māori Affairs Committee

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Petition 2011/82 of Edward Penetito on behalf of Ngāti Kauwhata

Recommendation

The Māori Affairs Committee has considered Petition 2011/82 of Edward Penetito and recommends that the House take note of its report.

Introduction

We have considered Petition 2011/82 of Edward Penetito on behalf of Ngāti Kauwhata requesting

That the House take steps to ensure the Crown leaves sufficient redress remaining in the Ngāti Kauwhata areas of interest in the Waikato for a future Treaty settlement with Ngāti Kauwhata.

Background

The petitioner represents claimants for Wai 972. He submits that the Crown, through the Office of Treaty Settlements, has acted in a way that has breached Ngāti Kauwhata’s Treaty rights and will prejudice their claim. His argument centres on the Crown’s practice of operating two Treaty settlement processes concurrently—direct negotiations and Waitangi Tribunal inquiries. Wai 972 claimants submitted a tribunal application to land-bank the Maungatautari School site, which was accepted, but at the same time the Office of Treaty Settlements offered the site as potential redress to a neighbouring iwi in direct negotiations. The petitioner believes this practice of the Crown is divisive, and leads to disagreements between iwi and hapū.

The petitioner also believes the Crown has wilfully ignored clear evidence of Ngāti Kauwhata’s status as an independent iwi, and has included it in a large natural group with Ngāti Raukawa ki te Tonga in opposition to its wishes.

Response from Office of Treaty Settlements

The Office of Treaty Settlements has not entered into direct negotiations with Ngāti Kauwhata because it regards the group as part of the Ngāti Raukawa ki te Tonga community. It submits that among Ngāti Kauwhata there are differing opinions as to whether it is indeed a separate group, and also as to the interest, if any, that Ngāti Kauwhata has in the Waikato region. However as the Crown is in the very early stages of engagement with Ngāti Kauwhata, it has not undertaken detailed research to establish Ngāti Kauwhata’s area of interest.

We asked the Office how it had engaged with Ngāti Kauwhata regarding the Ngāti Koroki Kahukura settlement, whose area of interest overlaps with that claimed by Ngāti Kauwhata. We heard that office staff met twice with Ngāti Kauwhata, including the petitioner, and corresponded regularly with Ngāti Kauwhata and their legal counsel. The Crown believes that there is still sufficient redress available in the area to offer to Ngāti Kauwhata if the parties do enter into direct negotiations.
Conclusion

We heard from the petitioner and accepted an additional written submission following the hearing of evidence. We also heard and received supplementary written submissions from the Office of Treaty Settlements. We believe there are still opportunities available to Mr Penetito and Ngāti Kauwhata to enter into negotiations with the office. We are also satisfied that there is sufficient redress land available in the Waikato for a potential settlement with Ngāti Kauwhata.

We have no other matters to bring to the attention of the House.
Appendix

Committee procedure
The petition was referred to us on 5 November 2013. We heard evidence from the petitioner and the Office of Treaty Settlements.

Committee members
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hon Nanaia Mahuta
Rino Tirikatene
Metiria Turei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Te Petihana 2011/82 a Edward Penetito mō Ngāti Kauwhata

Te pūrongo a Te Komiti Whiriwhiri Take Māori

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Te petihana 2011/82 a Edward Penetito mō Ngāti Kauwhata

Tūtohutanga
Kua whakaaroarohia e Te Komiti Whiriwhiri Take Māori Affairs Te Petihana 2011/82 a Edward Penetito, ā, ka tūtohu kia arongia e te Whare tana pūrongo.

Kupu Whakataki
Kua whakaaroarohia e mātou Te Petihana 2011/82 a Edward Penetito mō Ngāti Kauwhata e tono ana

Kia whakatokoto huarahi te Whare kia pūmāu ai te waiho mai a te Karauna i ngā whakatika hapā kei te toe mai i ngā wāhi pāngā o Ngāti Kauwhata i Waikato mō tētahi whakataunga take Tiriti kei mua i te aroaro i te taha o Ngāti Kauwhata.

Ngā kōrero whakamārama
Ko te kaituku petihana te māngai mō ngā kaikerēme e pā ana ki Wai 972. Ko tāna ka whakatokoto, kua whātai i te Karauna ngā tika Tiriti o Ngāti Kauwhata nā tētahi mahi a Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi, ā, nā runga i tērā kua raru tā rātou kerēme. Hāngai ana tana tautohenga ki te mahi whakahaere i ngā hātepe whakataunga Tiriti e rua i te wā kotahi a te Karauna – ngā whiriwhiringa hāngai pū, ā, me ngā uiui a Te Rōpū Whakamanaha i Te Tiriti o Waitangi. I tukua e ngā kaikerēme o Wai 972 tētahi tono kite taraiipunara kia whenua-pēkenga te wāhi mō te Kura o Maungatautari School. Ka whakaaeti tērā ēngari, i taua wā tonu ka tukuna e Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi te wāhi he i pūmanawa nohopuku whakatika hapā ki tētahi iwī noho tata i roto whiriwhiringa hāngai pū. Ki te whakapono o te kaitukupetihana, he mahi whakawehewehe tēnei a te Karauna, ā, ko te mutunga mai o tēra mai, ko te puta o te wenewene i waenganui i te iwi me te hapū.

Ki te whakapono anō o te kaitukupetihana, i tino kore aro atu te Karauna ki te mārama o te taunakitanga, he iwī weheke te tūrangā o Ngāti Kauwhata, ā, kua whakaurua atu tēnei ki roto i ngā kohinga tāngata i te taha o Ngāi Raukawa-ki-Te Tonga e whakahē ana i te iwi hiahia.

Urupare a Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi
Kua kore rawa atu Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi i uru atu ki ngā whiriwhiringa hāngai pū i te taha o Ngāti Kauwhata na te mea, ki a ia nei he kohinga rātou nō te hapori o Ngāti Raukawa ki Te Tonga. Ko tāna anō, he rerekē anō ngā whakaaaro e mea ana he kohinga wehe kē a Ngāti Kauwhata, ā, me mehe mea anō rā tā Ngāti Raukawa i te rohe o Waikato. Heoi, nā te mea kei ngā wāhanganga tino tōmua tonu o te whakawarenga a te Karauna me Ngāti Kauwhata tēnei, kihai anō tētahi rangahau āmiki kia whakahere a Te Karaunahe i whakapūmāu i ngā pānga wāhi a Ngāti Kauwhata.

I tono mātou ki te Tari, i pēhea tana whakawarenga me Ngāti Kauwhata mō te whakataunga a Koroki Kahukura i te mea, inaki ai tā Koroki Kahukura wāhi pāngā ki tērā e kerēmehe rā e Ngāti Kauwhata. I rongo mātou, e rua ngā wā i tūtaki ai ngā kaimahi me Ngāti Kauwhata,
tae atu hoki ki te kaitukupetihana, ā, i rite anō hoki te wā i tuhituhi atu ai ki a Kauwhata me tā rātou ture rōia. Kite whakapono o Te Karauna, he nui tonu te rahi po hapa whakatika kei te wātea i te wāhi e tukua rā ki a Ngāti Kauwhata ki te uru hāngai pū atu ngā taha ki ngā whiriwhiringa.

Kupu Whakaotinga

I rongo mātou i ngā kōrero a te kaitukupetihana me te whakaee atu ki tētahi tāpaetanga ā-tuhituhī i tua atu whai atu ana i te whakawātanga taunakitanga. I rongo anō hoki mātou i ētahi kōrero i tua atu me te whiwhi tāpaetanga i atu nō mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi. Ki a mātou nei, kei te wātea tonu ngā wā ki a Matua Penetito me Ngāti Kauwhata ki te uru atu ki ngā whiriwhiringa i te taha o te tari. Kei te ngata hoki mātou ki te rawaka o te whenua whakatika hara i Waikato mō tētahi whakatanga pūmanawa nohopuku mā Ngāti Kauwhata.

Kāore ā matou take i tua atu hei mau mai ki te aroaro o te Whare kia aronga e ia.
PETIHANA 2011/82 A EDWARD PENETITO MŌ NGĀTI KAUWHATA

Tāpiritanga

Huarahi o te Komiti
I tonoa mai te petihana ki a mātou i te 5 o Whiringa-ā-rangi i te tau, 2013. I rongo taunakitanga mātou nō mai i te kaitukupetihana me 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
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hōnore Nanaia Mahuta
Rino Tirikatene
Mētīria Tūrei
Nicky Wagner
Meka Whaitiri
Jonathan Young
New Zealand Mission Trust Board
(Otamataha) Empowering Bill

Private Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the New Zealand Mission Trust Board (Otamataha) Empowering Bill and recommends that it be passed with the amendments shown.

Introduction
The New Zealand Mission Trust Board (Otamataha) Empowering Bill will transfer land in the Tauranga area from the New Zealand Mission Trust to the newly created Otamataha Trust. The property in question has been held by the New Zealand Mission Trust Board as a charitable trust since 1896, for the purpose of spiritually benefiting and instructing local Māori.

The board was originally composed of Anglican Church appointees, but since 1998 the trustees have been appointed by the hapū of Ngāti Tapu and Ngaitamarawaho. The trustees believe the 1896 trust and its deed are no longer appropriate, and have created the new Ota-
mataha Trust, the beneficiaries of which are the hapū of Ngāti Tapu and Ngaitamarawaho.

The bill seeks to vest the trust property in the new trust in line with the Otamataha Trust Deed. The bill would also extinguish the New Zealand Mission Trust Board and discharge its trustees.

Legislation is required to effect the change in trust and beneficiaries. We note that the new trust, unlike its predecessor, is not a charitable trust.

**Ngāi Tukairangi**

We considered whether the bill should be amended to include Ngāi Tukairangi as beneficiaries of the trust. We understand that when membership of the New Zealand Mission Trust Board was given to hapū in the 1990s, Ngāi Tukairangi chose to withdraw from involvement in the trust. The Waitangi Tribunal has found that Ngāi Tukairangi hold interest in the land in question, but the strength of this customary interest has not been determined.

We considered the inclusion of Ngai Tukairangi as a third hapū beneficiary of the new Otamataha Trust, but believe that their interests must be balanced against the wishes of the existing trustees and the deed of the new trust. The Otamataha Trust Deed was amended by the New Zealand Mission Trust in March 2014 to allow Ngai Tukairangi members to benefit from the Otamataha Trust through their whakapapa links to the historical hapū of Te Materawaho, whose connections to the land are now recognised in the trust deed. The definition of Ngāti Tapu has now been expanded to include any person with the above whakapapa. We therefore recommend amending the bill to align it with the changes to the trust deed.

**Public Bodies Leases Act 1969**

We considered whether clause 6, in declaring Otamataha Trust a leasing authority for the purposes of the Public Bodies Leases Act, might have unintended consequences or extend the application of the act to a private, non-charitable body. We believe that this risk can be avoided by limiting the application of the act to the lease on the land being transferred to the trust (Lease 7018938.4), and not the trust itself. We therefore recommend amending clause 6 to apply the act only to Lease 7018938.4 and any renewal of it.
Commentary

New Zealand Mission Trust Board
(Otamataha) Empowering Bill

Compliance with Standing Orders
Pursuant to Standing Order 287(2) we have considered the preamble to the bill, and consider that the statements in it have been proved to our satisfaction.
Appendix

Committee process
The New Zealand Mission Trust Board (Otamataha) Empowering Bill was referred to the committee on 25 September 2013. The closing date for submissions was 7 November 2013. We received and considered 14 submissions from interested groups and individuals. We heard 8 submissions, holding hearings in Tauranga. We received advice from the Department of Internal Affairs.

Committee membership
Hon Tau Henare (chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hon Nanaia Mahuta
Rino Tirikatene
Metiria Turei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Te Pire Whakamana i Te New Zealand Mission Trust Board (o Ōtamataha)

Pire Tūmataiti

Ko tā Te Komiti Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e Te Komiti Whririwhiri Take Māori Te Pire Whakamana i Te New Zealand Mission Trust Board (o Ōtamataha), ā, ka tūtohu kia whakaaetia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Mā Te Pire Whakamana i Te New Zealand Mission Trust Board (o Ōtamataha) e whakawhiti he whenua i te takiwā o Tauranga Moana mai i Te New Zealand Mission Trust Board i te takiwā o Tauranga Moana ki Te Pou Tiaki o Ōtamataha nō nā noa nei i hangaia ai. Nō mai anō i te tau, 1896, te pito whenua kua whakahuatia ake nei, e puritia ana e Te New Zealand Mission Trust Board mō te take e pā ana ki te whai painga ā-wairua me te tohutohu Māori o te hau kāinga. Ko te poari ō-mua, he tāngata nā te Hāhi Mihingare i whakaingoa ēn-gari, nō mai i te tau, 1998, kua whakaingoaia ngā kaitiaki e te hapū o Ngāti Tapu me te hapū o Ngāi-tamarawaho. Ki te whakapono o ngā kaitiaki, kua kore kē te poutiaki o te tau 1896 me tana whakaaetangae
e hāngai i nāianei, ā, nā runga i tērā, kua hangaia Te Poutiaki Ōtamataha hou. Ko te hapū o Ngāti Tapu me te hapū o Ngāitamarawaho ngā uri whai pānga. Ko tā te pire ka rapu, kia whakarēia te pito whenua o te poutiaki ki roto i te poutiaki hou kia hāngai ai ki Te Whakaetanga a Te Poutiaki Ōtamataha. Mā te pire hoki e tīneia Te New Zealand Mission Trust Board, e whakawātea āna kaitiaki. Ka hiahiatia he hanganga ture ki te whakamana i te whakarerekētanga i te poutiaki me ngā uri whai pānga. Ko tā mātou ka arotia, kāore rawa te poutiaki hou i rite ki te poutiaki ō-mua. Ėhara i tētahi poutiaki aroha.

Ngāi Tūkairangi

Ka whakaaroaro mātou mehe me whakarerekēngia te pire kia uru atu ai a Ngāi Tūkairangi hei uri whai pānga o te poutiaki. Ki tō mātou mōhio, i te wā i hoatu he mematanga mō Te New Zealand Mission Trust Board kīte hapū i ngā rau tau e 1990, ka kōwhiri a Ngāi Tūkairangi kia kore rātou e whai wāhi ki te poutiaki. Kua kītea e Te Taraipiu nara o Waitangi, e pupuri pānga ana a Ngāi Tūkairangi i roto i te whenua e kōrerohia ake nei ēngari, kāore te kaha o tēnei pānga tuku iho kia whakataungia. Ka whakaaroaro mātou kia whakaurua a Ngāi Tūkairangi hei hapū uri whai pānga tuatoru o Te Poutiaki Ōtamataha hou ēngari me tē whakapono kia tautika ā rātou pānga ki ngā hiahia o ngā kaitiaki o te wā nei, ā, ki te whakaetanga o te poutiaki hou. Ka whakatikaina Te Whakaetanga o te Ōtamataha Poutiaki e Te New Zealand Mission Trust i te marama o Poutū-te-rangi i te tau, 2014, kia whai painga ai ngā mema o Ngāi Tūkairangi mai i Te Poutiaki Ōtamataha mā ā rātou hononga whakapapa ki te hapū hītori o Te Materawaho. Kua mōhio-tia ā rātou hononga ki te whenua i nāianei. i roto i te whakaetanga o te poutiaki. Kua whakawhānuitia te whakaahuatanga o Ngāti Tapu i nāianei kia uru atu ai tētahi tangata kei a rātou te whakapapa i runga ake nei. Nā reira, nā runga i tērā, ka tūtohu mātou kia whakatikaina te pire kia hāngai ai ki ngā whakahounga ki te whakaetanga o te poutiaki.
Ture Public Bodies Leases o te tau 1969

Ka whakakaaroaro mātou mehemea i te whakapuakitanga a rara 6 he mana rihi Te Poutiaki o Ōtamataha mō ngā take Ture Public Bodies Leases, ka ara noa ake pea ātahi raruraru, ka whakaroanga atu rānei te whakamahi i te ture ki tētahi rangatōpū tūmataiti, rangatōpū aroha-kore. Ki a mātou nei, ka taea tēnei morea te karo mā te whakawhāiti i te whakamahinga o te ture ki te rihi kei runga i te whenua, e whakawhitia ana ki te poutiaki (arā, te Rīhi 7018938.4), ēhara te poutiake ake. Nā runga i tērā, ka tūtohu mātou kia whakatikaina a rara 6 kia pā noa ai ki te Rīhi 7018938.4 me tētahi whakahounga hoki o taua rihi.

Tautukunga me ngā Whakataunga Tūroa

E ai ki Whakataunga Tūroa e 287(2) kua whakairoarohia e mātou te whakatakina ki te pīrē, ā, e ngata ana mātou he pono ngā tauākī o roto.
Tāpiritanga

Hātepe komiti
I tonoa Te Pire Whakamana i Te New Zealand Mission Trust Board (o Ōtamataha) ki te komiti i te 25 o Mahuru i te tau, 2013. Ko te 7 o Whiringa-ā-rangi i te tau, 2013, te rā katinga mō ngā tāpaetanga. I whiwhi, i whakarorohia e mātou ngā tāpaetanga e 14 nō mai i ngā kohinga me te hunga takitahi. E 8 ngā tāpaetanga i rongohia e mātou i ngā whakawātanga i whakatūria i Tauranga Moana.
I whiwhi whakamaherehere mātou mai i Te Tari Taiwhenua.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hōnore Nanaia Mahuta
Rino Tirikâtene
Mētīria Tūrei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Ngāti Hauā Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Ngāti Hauā Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Crown and Ngāti Hauā signed a deed of settlement on 18 July 2013 agreeing to the final settlement of the historical non-raupatu Treaty of Waitangi claims of Ngāti Hauā. The Ngāti Hauā Claims Settlement Bill will give effect to the parts of the deed that require legislative enactment.

Ngāti Hauā’s raupatu claims were settled in 1995 by the Waikato Raupatu Claims Settlement Act 1995, while its raupatu claims to the Waikato River were settled by the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

The settlement provides redress, in both cultural and financial form, to the trustees of the Ngāti Hauā Iwi Trust, the mandated post-settlement governance entity.
Ngāti Hauā descend from Hauā, a direct descendant of Hoturoa, the captain of the Tainui waka. The hapū of Ngāti Hauā are Ngāti Te Oro, Ngāti Werewere, Ngāti Waenganui, Ngāti Te Rangitaupi and Ngāti Rangi Tawhaki.

The customary rohe of Ngāti Hauā is located in the Waikato region, from Te Aroha and Te Rapa in the north, south to Te Weraiti and Maungatautari.

Financial redress

We considered whether this settlement would allow financial redress to be paid to individuals. We are satisfied that there is no provision in the bill that would allow this to happen.

However, the deed of settlement allows the post-settlement governance entity to use financial redress to benefit particular members of Ngāti Hauā if this accords with the constitutional procedures of the entity.

The deed includes payments earmarked for supporting the role of the Tumuaki; however this money will not go to an individual, but to the institution that supports the Tumuaki. We note that the beneficiaries of the settlement entity were informed of these payments and arrangements when voting to ratify the settlement.

Waikato River interests

We considered the claims that clause 150 of the bill is not aligned with the deed of settlement or similar clauses in the Ngāti Koroki Kahukura and Raukawa settlements relating to non-derogation from the statements of significance over the Waikato River. Generic non-derogation clauses were agreed to by Ngāti Hauā in order to protect the interests of all iwi with interests in the Waikato River. We do not believe that the differences will prejudice Ngāti Hauā’s interests in river co-management arrangements.

RFR land

We recommend amending the bill so that RFR (right of first refusal) land could cease to be subject to the RFR in circumstances where the governance entity had waived or varied their rights in relation to the land, and for the land in question to be transferred in accordance with
the waiver or variation. We also propose amending the bill to enable notices to be sent by electronic means.

**Property descriptions and definitions**
We recommend an amendment to the legal description of a property in Schedule 3. We also recommend an amendment to the legal description of a property in clause 86 as a result of the affected land being surveyed.
Appendix

Committee process

The Ngāti Hauā Claims Settlement Bill was referred to the committee on 22 October 2013. The closing date for submissions was 5 December 2013. We received and considered four submissions from interested groups and individuals. We heard three submissions, and held hearings in Karapiro.

Committee membership

Hon Tau Henare (chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hon Nanaia Mahuta
Rino Tirikatene
Metiria Turei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Te Pire Whakataunga i ngā Kerēme a Ngāti Hauā

Pire Kāwanatanga

Ko tā Te Komiti Whiriwhiri Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e Te Komiti Whiriwhiri Take Māori Te Pire Whakataunga i ngā Kerēme a Ngāti Hauā, ā, ka tūtōhu kia whakaaetia tia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
I hainatia tētahi whakaaetanga whakataunga e Te Karauna me Ngāti Hauā i te 18 o Hōngongoi i te tau, 2013, e whakaae ana ki te whakataunga oti atu o ngā kerēme Tiriti Waitangi raupatu-kore hītori a Ngāti Hauā. Mā Te Pire Whakataunga i ngā Kerēme a Ngāti Hauā e whakamana ngā wāhanga o te whakaaetanga, tērā ka hiahiatia he whakamanatanga ā-ture.
Nō te tau 1995 ngā kerēme raupatu a Ngāti Hauā i whakatatūngia e Te Ture Whakataunga i ngā Kerēme Raupatu a Waikato o te tau 1995, ā, nā Te Ture Whakataunga i ngā Kerēme Raupatu a Waikato-Tainui (mō Te Awa o Waikato) o te tau 2010 āna kerēme raupatu ki Te Awa o Waikato i whakatatūngia.
Hoatu wāhi whakatika hapa ā-ahurea, ā-pūtea ai te whakataunga ki ngā kaitiaki o Te Pou Tiaki o te Iwi o Ngāti Hauā, tērā hīnonga tiaki kaupapa whakataunga-whai muri kua whakamanatia.

I heke tika iho mai a Ngāti Hauā i a Hauā, tētahi uri o Hoturoa te kāpene o Tainui Wāka. Ko ngā hapū o Ngāti Hauā, ko Ngāti Te Oro, ko Ngāti Werewere, ko Ngāti Waenganui, ko Ngāti Te Rangitaupī, ā, ko Ngāti Rangi Tāwhaki.

Kei te takiwā o Waikato, atu i Te Aroha me Te Rapa i te raki, ki Te Weraiti me Maungatāutari ki te tonga, te rohe tuku iho a Ngāti Hauā.

**Whakatika hapa ā-pūtea**

I whakaaroaro mātou mehemea ka tukua e tēnei whakataunga he utunga whakatika hapa ā-pūtea ki te hunga takitahi. Kei te ngata mā-tou kāore he wāhanga i roto i te pire e tuku ana kia tūpono tēnei.

Heoi, tukua ai te hīnonga tiaka kaupapa e te whakaaetanga whakataunga, ki te whakamahi i te whakatika hapa ā-pūtea hei painga mā ētahi ake mema o Ngāti Hauā, mehemea ka hāngai ana tēnei ki ngā huarahi ā-ture o te hīnonga.

Kei roto i te whakaaetanga ētahi utunga kua āta tohunui hei tautoko i te tūranga o te Tumuaki; heoi kīhai rawa tēnei moni e haere ki tētahi ake tangata takitahi ēngari, ka haere kē ki te pūtahitanga tautoko i te Tumuaki. Ko tērā ka ārongia e mātou, i whakamāramatia ngā utunga me ngā whakaretenga nei ki ngā uri whai pānga i te wā e pōtī ana kia whakatūiturungia te whakataunga.

**Ngā pānga o Te Awahou Waitaki**

I whakaaroaroahe e mātou ngā kerēme, kāore a rara e 150 o te pire i hāngai ki te whakaaetanga whakataunga, ētahi atu rara pērā rānei i roto i ngā whakataunga a Ngāti Korokī Kahukura me Raukawa e pā ana ki te whakahahani-kore, nō mai i ngā tauāki hiringa ka whiuia ki runga i Te Awahou Waitaki. Ka whakaaetia e Ngāti Hauā ngā rara kano whakahahani-kore kia tikaina ai ngā pānga a ngā iwi katoa, he pānga ō rātou i roto i Te Awahou Waitaki. Ki tō mātou whakapono, kāore ngā pānga o Ngāti Hauā i ngā whakaretenga a te whakaherenga-tahi i roto i te awa e raru i ngā whakarerekētanga.
Whenua TKT

Ka tūtohu mātou kia whakatikaina te pire kia mutu ai te TKT (tika ki te kapenga tuatahi) e ai ki ngā āhuatanga kua whakakorea, kua whakarerekēngia rānei e te hinonga tiaki kaupapa ōna tika e pā ana ki te whenua, ā, kia whakawhitia rānei te whenua e kōreretia ake nei e ai ki te whakakorenga, ki te whakarerekētanga rānei. Ka tūtohu hoki mātou kia whakatikaina te pire kia taea ai te tuku pānui mā tētahi āhuatanga ā-hiko.

Ngā whakaahuatanga me ngā whakamāramatanga pito whenua

Ka tūtohu mātou i tētahi whakatikatika ki te whakaahuatanga ā-ture o tētahi pito whenua i Kupu Āpiti e 3. Ka tūtohu whakatikatika hoki mātou ki te whakaahuatanga ā-ture o tētahi pito whenua i rara e 86 i hua mai i te whenua i pāngia nā te rūritanga.
Tāpiritanga

Hātepe komiti
I tonoa Te Pire Whakataunga i ngā Kerēme a Ngāti Hauā ki te komiti i te 22 o Whiringa-ā-nuku i te tau, 2013. Ko te 5 o Hakihea i te tau, 2013, te rā katinga mō ngā tāpaetanga. I whiwhi, i whakaaroarohia e mātou ngā tāpaetanga e whā nō mai i ngā kohinga me te hunga takitahi whai pānga. E toru ngā tāpaetanga ā-waha i rongohia e mātou i ngā whakawātanga i whakatūria i Karāpiro.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hōnore Nanaia Mahuta
Rino Tirikatene
Mētīria Tūrei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Ngāti Koroki Kahukura Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Ngāti Koroki Kahukura Claims Settlement Bill, and recommends that it be passed with the amendments shown.

Introduction
The Crown and Ngāti Koroki Kahukura signed a deed of settlement on 20 December 2012 agreeing to the final settlement of the non-raupatu Treaty of Waitangi claims of Ngāti Koroki Kahukura. The Ngāti Koroki Kahukura Claims Settlement Bill would give effect to those parts of the deed that require legislative enactment.

Ngāti Koroki Kahukura is an iwi with an estimated 4,000 members. Its area of interest is around Maungatautari in the Waikato. The Ngāti Koroki Kahukura rohe overlaps with those of other Waikato groups, including Ngāti Hauā, Ngāti Kauwhata, Raukawa, and Maniapoto.

The raupatu claims of Ngāti Koroki Kahukura within the raupatu boundaries were settled in 1995 by the Waikato-Tainui Raupatu
settlement. Their historical claims relating to the Waikato River were settled by the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. As a member of Waikato-Tainui, Ngāti Koroki Kahukura benefit from both those settlements. Any claims relating to raupatu outside of the boundary are settled by this settlement.

Co-management of the Waikato River
We considered carefully the issues relating to Ngāti Koroki Kahukura’s ability to exercise its rights as kaitiaki for the Waikato River in their rohe. They were concerned to safeguard the iwi’s participation in co-management arrangements and their right to input into clean-up projects. There was also concern that the Raukawa settlement might impinge on Ngāti Koroki Kahukura’s interests.

We believe the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 provide sufficient safeguards for Ngāti Koroki Kahukura’s participation in clean-up activities, particularly in their rohe in the Karāpiro to Lake Arapuni sub-catchment. We note that Ngāti Koroki Kahukura is represented by Waikato-Tainui as a member of the Waikato River Clean-Up Trust on the Waikato River Authority.

The bill also provides for the existing mana whakahaere arrangement north of Karapiro to be extended south to the Karapiro to Lake Arapuni sub-catchment. We note that the bill includes statements of significance and acknowledgements by the Crown recognising Ngāti Koroki Kahukura’s dominant mana whenua over the river within their rohe.

Landbanked properties at Arapuni
We considered whether a mechanism is needed to preserve future interests of any iwi in two landbanked properties at Arapuni. We were told that in the early stages of negotiations between the Crown and Ngāti Koroki Kahukura, the two landbanked properties at Arapuni were proposed as potential commercial redress for Ngāti Koroki Kahukura. The inclusion of these sites was however opposed by Raukawa, and the properties were withdrawn from the Crown’s offer. Ngāti Koroki Kahukura proposed that the two iwi enter into a dispute resolution process to resolve their disagreement over the properties,
but could not agree upon a structure for the process. When it came to the time to sign the deed of settlement, the Crown felt that the positions were irreconcilable and there was no available mechanism for the parties to find a resolution. We note that this did not reduce the financial value of the offer. The final offer, without the Arapuni properties, was ratified by Ngāti Koroki Kahukura.

We are advised that when the Raukawa and Ngāti Koroki Kahukura settlements are completed, these properties will be sold on the open market, and both iwi will have the opportunity to purchase them if they wish.

**Maungatautari**

We considered whether the bill should include a mechanism providing for a review of the Te Hapori o Maungatautari title in the event that parallel or subsequent Treaty of Waitangi settlements provide a new Treaty-compliant approach to both the title and the co-management of Maungatautari. The conditions that led to the establishment of Te Hapori were complex, and we do not believe that any future Treaty settlements are likely to encounter similar circumstances. We also believe that any allowance for future renegotiation of aspects of the settlement package would go against the principle of full and final Treaty settlements.

We are advised that Ngāti Koroki Kahukura entered negotiations wishing to have the Crown-owned portion of the Maungatautari reserve returned to them. The Crown was willing to consider vesting the reserve in the iwi, but this was strongly opposed by divergent members of the community. Stakeholders entered into mediation arranged by the Crown, but the vesting of the land in Ngāti Koroki Kahukura proved too controversial and the parties were unable to reach an agreement. Negotiators for Ngāti Koroki Kahukura accepted an alternative proposal to confer ownership of the reserve on Te Hapori o Maungatautari, a body comprising iwi with customary interests in Maungatautari and members of the wider community connected with Maungatautari.

**RFR land**

We recommend amending the bill (clauses 106, 107, and 126) so that RFR (right of first refusal) land could cease to be subject to the RFR
in circumstances where the governance entity had waived or varied their rights in relation to the land, and for the land in question to be transferred in accordance with the waiver or variation. We also propose amending the bill to enable notices to be sent by electronic means.

**Property descriptions**

We also recommend amending the descriptions of some properties in Schedule 2 of the bill to reflect the results of the affected land being surveyed.
Appendix

Committee process
The Ngāti Koroki Kahukura Claims Settlement Bill was referred to the committee on 22 October 2013. The closing date for submissions was 5 December 2013. We received and considered 12 submissions from interested groups and individuals. We heard 9 submissions, including holding hearings in Karapiro.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanna Hayes
Brendan Horan
Hon Nanaia Mahuta
Rino Tirikatene
Metiria Turei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Denise Roche replaced Metiria Turei for this item of business.
Te Pire Whakataunga i ngā Kerēme a Ngāti Korokī Kahukura

Pire Kāwanatanga

Ko tā 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 Korokī Kahukura, ā, ka tūtohu kia whakaaetia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
I hainatia tētahi whakaaetanga whakataunga e Te Karauna me Ngāti Korokī Kahukura i te 20 o Hakihea i te tau, 2012, e whakaae ana ki te whakataunga oti atu o ngā kerēme Tītiriti Waitangi raupatukore a Ngāti Korokī Kahukura. Ma Te Pire Whakataunga i ngā Kerēme a Ngāti Korokī Kahukura e whakamana aua wāhanga o te whakaaetanga, tērā ka hiahiatia e whakamanatanga ā-ture.

He iwi a Ngāti Korokī Kahukura. E 4,000 pea ōna mema. Huri haere i Maungatautari i Waikato tāna pānga wāhi. Inaki ai te rohe o Ngāti Korokī Kahukura i aua rohe o ētahi atu kohinga i Waikato, tae atu ki a Ngāti Hauā, Ngāti Kauwhata, Raukawa, me Maniapoto.
Nā, mō ngā kerēme raupatu a Ngāti Korokī Kahukura i roto iho i ngā rohe raupatu, i whakatatūhia ērā i te tau, 1995, e Te Whakataunga Raupatu a Waikato-Tainui. Nā, mō ā rātou kerēme hītori e pā ana ki Te Awa o Waikato, i whakatatūngia ērā e Te Ture Whakataunga i ngā Kerēme Raupatu a Waikato-Tainui (mō Te Awa o Waikato) o te tau 2010. Nā te mea he mema a Ngāti Korokī Kahukura o Waikato-Tainui, ka whai painga a ia mai i aua whakataunga e rua. Nā, mō ētahi atu kerēme e pā ana kīte raupatu, kei waho o te rohe e noho mai ana, mā tēnei whakataunga ērā e whakatatū.

Whakahaerenga-tahi o Te Awa o Waikato
I āta whakaaaroarohia e mātou ngā take e pā ana ki te kaha o Ngāti Korokī Kahukura kīte whakahaere i ōna tika hei kaitiaki mō Te Awa o Waikato i tō rātou ake rohe. Ko tō rātou āwangawanga, kia maru te whai wāhitanga o te īwi i ngā whakaritenga mā te whakahaerenga-tahi, ā, me tō rātou tīka ki te whakatakoto whakaaro mō ngā pūtere whakapaipai. I reira anō hoki tētahi māharahara, kei raru ngā pānga a Ngāti Korokī Kahukura e te whakataunga a Raukawa.

Ki tō mātou whakapono, he rawaka rawa atu ngā maru kei roto i Te Ture Whakataunga i ngā Kerēme Raupatu a Waikato-Tainui (mō Te Awa o Waikato) o te tau 2010, ā, i Te Ture mō te Te Awa Iwi Ngāti Tuwharetoa, Raukawa me Te Arawa mō Te Awa o Waikato o te tau, 2010, mā Ngāti Korokī Kahukura kia whai wāhi ai rātou i roto i ngā tūmahi whakapaipai i tō rātou ake rohe atu i te rohenga wai tuarua i Karāpiro ki te Roto o Arapuni. Ko tērā ka arongia e mātou, ko Waikato-Tainui te māngai o Ngāti Korokī nā te mea, he mema a ia o Te Poutiaki Whakapaipai i Te Awa o Waikato i runga i Te Mana Whakahaere o Te Awa o Waikato.

Hoatu wāhi ai hoki te pire mō te whakatoronga o te whakaritenga o te mana whakahaere e tū nei ki te raki o Karāpiro, atu i te tonga o Karāpiro ki te rohenga wai-tuarua o Te Roto Arapuni. Ko tā mātou ka arongia, ko te whakaurunga ki roto i te pire o ngā tauākī hiringa me ngā whākinga a Te Karauna, e whakaae ana, nō Ngāti Korokī Kahukura te tino mana whenua nui kei runga i te awa, i roto iho i tō rātou rohe.
Ngā pito whenua ki Arapuni kua pēkenga whenuatia
Ka whakaaroaro mātou mehemea ka hiahiahi he huarahi he i rāhui i ngā pānga ki mua i te araro o tētahi iwi ki roto pito whenua e rua kua pēke whenuatia ki Arapuni. Ko te kōrero ki a mātou, i ngā wāhanga tōmua o ngā whirihiringa i waenganui i Te Karauna me Ngāti Korokī Kahukura, i whakatakotoria ngā pito whenua e rua ki Arapiro kua pēkenga whenuatia he whakatika hapa ā-arumoni pūmanawa nohopuku mā Ngāti Korokī Kahukura. Heoi, ka whakahēngia te whakaurunga o ngā wāhi nei e Raukawa, ā, nā runga i tērā, ka tangohia atu ngā pito whenua i te tuku a Te Karauna. Ko tā Ngāti Korokī Kahukura i whakatakoto, kia rua ngā iwi me uru atu ki tētahi hātepe kimi oranga he i whakatau i tā rātou whakahētanga mō ngā pito whenua. Ėngari, kore rawa rātou i whakaaei kī tētahianga mō te hātepe. I te taenga ki te wā kia hainatia te whakaaetanga whakataunga, ka whakaaro Te Karauna, e kore rawa atu ngā taha e rua e whakaae, ā, kāore hoki he huarahi i te wātea ki ngā taha kia kītea ai he oranga. Ko tā mātou i aronga, kihai te uara ā-monoi o te tuku i heke nā tēnei whakahēnga. Nā Ngāti Korokī Kahukura te tuku whakamutunga i whakatūturu, kāore he pito whenua ki Arapuni i roto.

Ko tērā ka whakamahereheretia mai ki a mātou, ka oti ana ngā whakataunga a Raukawa me Ngāti Korokī Kahukura, ka hokonatia ngā pito whenua nei i te wāhi hoko e tuwhera ana ki ngā tāngata katoa, ā, nā runga i tērā, ka whiwhi wā ngā iwi e rua ki te hoko mai i aua pito whenua ki te hiahia rāua.

Maungatautari
Ka whakaaroaro mātou mehemea me whakaurua e te pire he huarahi e hoatu wāhi ana mō tētahi arotakenga o te taitara o Te Hapori o Maungatautari, ka tūpono whakarara, whai atu rānce i tētahi whakataunga Tiriti Waitangi e hōmai ana i tētahi aronga tau-tukunga-Tiriti hou mō te taitara me te whakaherenga-tahi o Maungatautari. He whāwhi ngā āhuatanga i whakatūria ai Te Hapori, ā, ki tō mātou whakapono, ka pērā anō pea te pā o ngā uuateanga ki ngā whakataunga kei mua i te araro. Ki tō mātou whakapono anō hoki, ki te tukua ētahi whakaae pērā mō ngā whirihiringa āhuatanga anō e pā ana ki tētahi mōkahi whakataunga kei mua i te araro, he rauraru kei te haeke ki te mātāpono mō ngā whakataunga Tiriti oti katoa atu.
Ko te whakamaherehere ki a mātou, i uru atu a Ngāti Korokī Kahukura ki ngā whiriwhiringa i runga i te hiahia, kia whakahokia atu ki a rātou te wāhanga o te whenua rāhui o Maungatautari, ko Te Karauna-te-rangatira. I te hiahia Te Karauna ki te tuku i te rāhui whenua ki roto i ngā ringaringa o te iwi ēngari, i tino kaha te whakahē a te huhua o ngā mema o te hapori. Ka uru mai ngā kaipupuri pānga ki roto i ngā takawaenga nā Te Karauna i whakarite, ēngari nā te kaha rawa o te wenerau mō te tuku i te whenua ki roto i ngā ringaringa o Ngāti Korokī Kahukura, ā, kore rawa he whakaaetanga i tutuki e ngā taha. Ka whakaae ngā kaiwhiriwhiringa mō Ngāti Korokī Kahukura ki tētahi whakatatakoranga kē atu kia whakamaua te rangatiratanga o te whenua rāhui ki runga i Te Hapori o Maungatautari, ā, me ngā mema o te hapori whānui he hononga o rātou ki Maungatautari.

**Whenua TKT**

Ka tūtohu mātou kia whakatikaina te pire (ngā rara 106, 107, 126) kia mutu ai te whenua TKT (tika ki te kapenga tuatahi) e ai ki ngā āhuatanga ki te TKT, kua whakakorea, kua whakarerekeāngia rānei e te hinonga āna tika e pā ana ki te whenua, ā, kia whakawhitia te whenua e kōrerotia ake nei e ai ki te whakakorenga, ki te whakarerekeāngia rānei. Ka tūtohu hoki mātou kia whakatikaina te pire kia taea ai te tuku pānui mā tētahi āhuatanga ā-hiko.

**Ngā whakaahuatanga pito whenua**

Ka tūtohu mātou kia whakatikaina ngā whakaahuatanga o ētahi pito whenua i Kupu Āpiti e 2 o te pire, kia whakaata i ngā hua mai i te whenua i pāngia nā te rūritanga.
Tāpiritanga

Hātepe komiti

I tonoa Te Pire Whakataunga i ngā Kerēme a Ngāti Korokī Kahukura ki te komiti i te 22 o Whiringa-ā-nuku i te tau, 2013. Ko Ko te 5 o Hakíhea i te tau, 2013, te rā katinga mō ngā tāpaetanga. I whiwhi, i whakaaroarohia e mātou ngā tāpaetanga e 12 nō mai i ngā kohinga me te hunga whai pānga. E 9 ngā tāpaetanga ā-waha i rongohia e mātou, tae atu ki ngā whakawātanga i whakatūria ki Karāpiro.

Ko ngā mema o te komiti, ko

Hōnore Tau Hēnare (Heamana)  
Te Ururoa Flavell  
Hone Harawira  
Claudette Hautiti  
Joanna Hayes  
Brendan Horan  
Hōnore Nanaia Mahuta  
Rino Tirikātene  
Mētīria Tūrei  
Nicky Wagner  
Meka Whaitiri  
Jonathan Young  
Nā Denise Roche a Mētīria Tūrei i whakakapi mō tēnei tuemi take.
Te Urewera–Tūhoe Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Te Urewera–Tūhoe Bill and recommends that it be passed with the amendments shown.

Introduction
The Crown and Tūhoe signed a deed of settlement on 4 June 2013 agreeing to the final settlement of the historical Treaty of Waitangi claims of Tūhoe. This bill will give effect to those parts of the deed that require legislative enactment.

The bill is an omnibus bill, which is intended to be split at a later stage of the legislative process into the Tūhoe Claims Settlement Bill and the Te Urewera Bill. The arrangements for Te Urewera, though essential to the Tūhoe settlement, require detailed provisions that make a separate Te Urewera Act necessary.

The settlement includes the Crown’s acknowledgements of and apology for its breaches of the Treaty of Waitangi. It also provides commercial and cultural redress for Tūhoe and facilitates the establishment of the iwi’s new governance structure.
The parts of the bill that will become the Te Urewera Bill lay out new arrangements for the governance and management of Te Urewera. They include the creation of an independent legal identity for Te Urewera.

**Waikaremoana lakebed**

As part of the settlement, the bill will provide for the dissolution of the Tūhoe Waikaremoana Māori Trust Board and the vesting of its assets. The Board’s charitable assets will be amalgamated with two other existing Tūhoe entities to form a single charitable trust. Any other assets will be transferred to the Tūhoe governance entity, Te Uru Taumatau. Among the Board’s charitable assets are 72 percent of the shares in the bed of Lake Waikaremoana. These shares were vested in the Board by the Lake Waikaremoana Act 1971. The previous individual owners became beneficiaries of the Trust Board, and do not hold direct ownership rights in the lake-bed.

The amalgamation of the three charitable entities was voted on as part of the ratification of the Tūhoe deed of settlement. We note that the resolutions to dissolve the Trust Board and amalgamate the charitable entities were supported by approximately 86 percent of voters.

Lake Waikaremoana will not become part of Te Urewera, but remain separate, with a continuing obligation for the Crown, under the lease, to manage it in accordance with the National Parks Act 1980.

**Wairoa Waikaremoana Māori Trust Board**

We considered whether this change to the lake-bed ownership would infringe the rights of the Wairoa Waikaremoana Māori Trust Board, which owns the remaining 28 percent of shares in the lake-bed. The board represents the Ngāti Kahungunu interests in Lake Waikaremoana. We are satisfied that the change in the ownership arrangement for the Tūhoe shares of the lake-bed will not change the Wairoa Waikaremoana Māori Trust Board’s ownership of its shares in the lake-bed. We also note that the new governance structure for Te Urewera does not extend to the bed of Lake Waikaremoana, which will remain private land. We are advised that this arrangement preserves the Crown’s ability to provide redress to Ngāti Kahungunu groups with interests in the Lake Waikaremoana area, including Te Tira Whakaemi o Te Wairoa, in the future as part of their Treaty settle-
ments. We note that part of that solution was to seek representation on the Te Urewera Board for the purposes of expressing their interests in the management of Te Urewera.

Ngāti Ruapani
We acknowledge that Ngāti Ruapani ki Waikaremoana’s interests overlap with those of Tūhoe. We are advised that members of Ngāti Ruapani ki Waikaremoana were consulted in the overlapping claims process. We acknowledge that Ngāti Ruapani expressed concern about the extent of the consultation. The bill requires Te Urewera Board to consider and provide appropriately for the relationship and the culture and traditions of iwi and hapū who have interests in Te Urewera. This includes requiring under clause 243 that the board and Ngāti Ruapani ki Waikaremoana reach a memorandum of understanding setting out how they will work together on matters relating to the Waikaremoana area. The arrangements of the memorandum of understanding can be superseded by a future Ngāti Ruapani ki Waikaremoana Treaty claims settlement.

The bill also provides for national park land within the former Onepoto Military Reserve to become a conservation area. The land will not be transferred to the Te Urewera legal entity, so that re-dress in relation to the land can be considered in Ngāti Ruapani ki Waikaremoana’s future Treaty settlement negotiations.

Lake Waikaremoana reserves
We considered how the bill will affect the ownership of the 13 private Māori reserves around Lake Waikaremoana. In March 2014 the Māori Land Court granted an application to establish a new ahu whenua trust covering the reserves, and appointed new trustees. Trusteeship will be transferred from the Tūhoe Waikaremoana Māori Trust Board to the new ahu whenua trust. We are satisfied that the bill will not affect this arrangement or infringe the owners’ rights to the reserves, which will remain privately owned and not under the trusteeship of Te Uru Taumatua.

We acknowledge the concerns of submitters who expressed their individual ownership interests. We received evidence which made clear that the decision to apportion owners’ interests in the boards was made by a committee nominated by the owners and chaired by
Sir Turi Carroll in 1971. This evidence was substantiated by Sir Rodney Gallen in 2005. The legal position is clear from the Lake Waikaremoana Act, and this was confirmed by a Maori Land Court case in 2000.

**Overlapping claims**

We considered the other iwi and hapū whose lands and interests overlap with those of Tūhoe. We understand that the Crown undertook consultation with these groups, and the bill provides protection and consideration of these interests in the Tūhoe settlement.

**Te Urewera**

A number of iwi and hapū have association with and customary interests in parts of Te Urewera. The bill recognises the special interests of these groups, and the new Te Urewera Board will be required to consider and provide appropriately for these interests in decision-making. The board will need to enter into relationships with Ngāti Manawa, Ngāti Whare and Ngāti Ruapani, which would involve consultation and cooperation on management of the relevant land.

The deed contains provisions for the Crown to provide redress over Te Urewera in future Treaty settlements with other iwi and hapū. We are satisfied that none of these groups have had their interests in Te Urewera infringed by this settlement.

**Central North Island forests**

This settlement includes cultural redress in the Central North Island Forests. Tūhoe will receive two sites (Kōhanga Tāheke and Ngā Ti Whakaawae) in this area under the settlement, but two additional sites (Waitehouhi and Korokoro o Te Huatahi) were opposed by Te Runanga o Ngāti Manawa. We are advised that the Central North Island Iwi Collective initially unanimously approved the transfer of all four sites, but Ngāti Manawa later withdrew their support. We are aware that discussions between the two parties are ongoing.

**Ngāti Manawa**

We considered how this bill will affect the redress received by Ngāti Manawa through their settlement in 2012. The new arrangement for
Te Urewera will affect the arrangements for the vesting and gifting back of Tāwhiuau, a maunga in Te Urewera. We acknowledge that the Ngāti Manawa settlement did not achieve the iwi’s goal of the absolute return of the maunga to them. Moving Tāwhiuau out of Crown ownership, as this bill seeks to do, would make the arrangements in their settlement impossible. We understand that the Crown worked with both iwi to ensure this bill provided for Ngāti Manawa’s interests in Tāwhiuau by vesting the peak in the Ngāti Manawa ancestor, and Te Runanga o Ngāti Manawa has approved the resulting amendments to their settlement.

**Mandate issues**

We considered the process that led to Te Kotahi ā Tūhoe receiving the mandate to negotiate on behalf of Tūhoe, and heard that some parties object to being identified as beneficiaries of the settlement. Te Ūpokorehe Treaty Claims Trust believes it would be prejudiced if included in the Tūhoe settlement. The Waitangi Tribunal declined the Trust’s request for an urgent hearing on this issue, finding that the trust had failed to demonstrate significant and irreversible prejudice. We note that members of Te Ūpokorehe who are affiliated to Tūhoe will benefit from the settlement, and they will still be able to pursue claims as part of Te Ūpokorehe. We also note that the area of interest map in the Tūhoe deed of settlement does not represent an exclusive claim area, nor does it represent tribal boundaries. We are satisfied that the Tūhoe settlement will not prevent Te Ūpokorehe progressing their own settlement negotiations.

Members of Ngāti Haka Patuheuheu submitted that they withdrew their mandate for Te Kotahi ā Tūhoe to negotiate on their behalf in 2008. We were advised that Ngāti Haka Patuheuheu were informed of the process to follow for withdrawal of mandate. We note that an application to the Waitangi Tribunal by Ngāti Haka Patuheuheu was declined on the grounds that no such process had been undertaken. We acknowledge that the former mandated representative of Ngāti Haka Patuheuheu led the efforts to remove their mandate from Te Kotahi ā Tūhoe, but we also acknowledge that members of Ngāti Haka Patuheuheu wished to remain within the mandate. There are provisions within the bill for Ngāti Haka Patuheuheu to benefit from the Tūhoe settlement.
We are satisfied that Te Kotahi ā Tūhoe undertook comprehensive engagement with the Tūhoe claimant community in establishing their mandate and negotiating the settlement.

**Exemptions for sport fishing**

We recommend an amendment to clause 165(b) to exclude sport fishing from the activities requiring a permit from the Te Urewera Board. This would align the permit system with that of national parks, and sports fishermen would not need to apply for another permit in addition to their licence from the New Zealand Fish and Game Council. However, to ensure that the council and Te Urewera Board work together regarding sports fishing, we also recommend inserting a requirement for collaboration between the board and the council. We also recommend that sports fishing management plans be included in the requirements of clause 154(2).

**Public participation**

We considered whether the bill as introduced would reduce public access to Te Urewera or restrict public activities in the park. We believe that the public would still be able to enjoy Te Urewera in a way comparable to national parks. The bill would allow public access and enjoyment while also recognising the unique value of Te Urewera.
Appendix

Committee process
The Te Urewera–Tūhoe Bill was referred to the committee on 22 October 2013. The closing date for submissions was 5 December 2013. We received and considered 69 submissions from interested groups and individuals. We heard 26 submissions, which included holding hearings in Whakatane. We received advice from the Office of Treaty Settlements and the Department of Conservation.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hon Nanaia Mahuta
Rino Tirikatene
Metiria Turei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Briefing from the Commissioner of Police regarding Police Operation Eight

Report of the Māori Affairs Committee

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**Briefing from the Commissioner of Police regarding Police Operation Eight**

**Recommendation**

The Māori Affairs Committee received a briefing from the Commissioner of Police regarding Police Operation Eight, and recommends that the House take note of its report.

**Introduction**

In December 2013 we invited the then Police Commissioner, Peter Marshall, to speak to us about the New Zealand Police’s Operation Eight, a series of armed raids carried out in October 2007 following investigation into suspected terrorist training activities in Te Urewera. Forty-one search warrants were carried out across New Zealand on 15 October 2007, and road blocks were also established at Ruatoki and Taneatua. Vehicles and homes were searched and a number of people were photographed or detained by Police. We were particularly interested to hear about the aftermath of the raids, the resulting Independent Police Conduct Authority investigation, and what the Police had learned from the incident.

**Relations with Tūhoe**

Many of the people affected by the raids were Tūhoe. Among those caught up in the event were adults and young children living in houses that were searched during the raids. The searches were carried out by members of the Armed Offenders Squad, and we are concerned about the effects of this experience. We asked what the New Zealand Police were doing to rebuild their relationship with the Tūhoe community, and heard that the commissioner was liaising with Tūhoe community leader Tamati Kruger. The commissioner has not yet travelled to the area to formally apologise in person to the community affected, as he has deferred to Mr Kruger’s judgment on how best to resolve the ill feeling resulting from the raids.

The two parties have been discussing the matter since the day after the raids in 2007. Police have also worked with social-sector agencies to ensure that those affected by the raids, particularly children, are given support. The commissioner said his discussions with Mr Kruger have been very constructive, and he hopes they will result in an opportunity to visit the area in early 2014. The commissioner told us that relations between local police and the community are now positive and allow “business as usual” to proceed.

**Independent Police Conduct Authority report**

The Independent Police Conduct Authority (IPCA) investigated the execution of Operation Eight, and found that the Police had acted unlawfully in establishing road blocks and detaining people during the operation. The IPCA concluded that the decision by the Commissioner of Police at the time to undertake the operation was reasonable and justified, but mistakes were made in its execution. The IPCA report said that the Police acted in good faith on the basis of legal advice they received at the time, but the commissioner acknowledged that in undertaking the operation, officers had “pushed the law too far”.

The IPCA has made a number of recommendations to the Police following its investigation. They include changes to the use of road blocks and to Armed Offenders Squad policy, the use of community impact assessments before searches in extensive operations, and better planning to manage the effect of operations on children and vulnerable people. The Police Commissioner told us that the majority of the recommendations have been implemented, and the Police have learnt a lot from the event, particularly regarding the treatment of innocent people caught up in the execution of Police actions.

**Māori liaison officers**

We asked why the Police did not involve local Māori liaison officers in the operation. Their rationale was that the targets were from various backgrounds, not only Māori, and there was also concern that any involvement of the liaison officers might damage their relationships with the community. As a result of the IPCA report, Police policy has changed regarding the participation of Māori liaison officers in complex operations. Māori liaison officers will be consulted and have an advisory role in the increased use of community impact assessments. The commissioner values their contribution and hopes they will have a greater presence in the New Zealand Police in future.
Appendix

Committee procedure
We heard evidence from the Commissioner of Police on 4 December 2013 and considered it on 29 January and 7 May 2014.

Committee members
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hon Nanaia Mahuta
Rino Tirikatene
Metiria Turei
Meka Whaitiri
Nicky Wagner
Jonathan Young
Whakatakotoranga tohutohu a Te Kaikōmihana Pirihimana mō Te Kōkiringa e Waru a ngā Pirihimana

Tērā nā Te Komiti i whakatakoto

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Whakatakotoranga tohutohu nō mai i Te Kaikōmihana Pirihimana mō Te Kōkiringa e Waru a ngā Pirihimana

Tūtohutanga
I whiwhi whakatakotoranga tohutohu Te Komiti Whirihirini Take Māori nō mai i te Komihana Pirihimana mō Te Kōkiringa e Waru a ngā Pirihimana, ā, ka tūtohu kia arongia tana pūrongo e Te Whare.

Kupu Whakataki
I te marama o Hakihea i te tau 2013, ka tono mātou ki Te Kōmihana Pirihimana i taua wā, a Peter Marshall, kia haere mai ki te kōrero ki a mātou mō Te Kōkiringa e Waru a ngā Pirihimana, tērā raupapa huakina mau pū i kawea i te marama o Whiringa-ā-nuku i te tau 2007, whai muri i tētahi whakatewhetanga mō ētahi hohenga i maharatia he whakangungunga kaiwhakatuma i Te Urewera. E whā tekau mā tahi ngā whakamana haurapa i kawea huri noa i Aotearoa i te 15 o Whiringa-ā-nuku i te tau, 2007, ā, i aukatia hoki ngā roki i Rūātoki me Tāneatua. I haurapatia ngā waka me ngā kāinga i whakaahutia, i puritia rānei e ngā Pirihimana. I tino hiahia mātou ki te rongo he aha ngā āhuatanga i puta ake whai muri i ngā huakina, tērā i hua mai i te whakatewhetanga a Te Mana Whanonga Pirihimana Tū Motuhake, ā, he aha tērā i ākonatia e ngā Pirihimana.

Ngā hononga me Tūhoe
He Tūhoe te maha o ngā tāngata i papāngia e ngā huakina. I roto i taua hunga i mau ake i roto i ngā kāinga i haurapahia i te wā o ngā huakina, he pākeke, he tamariki nohinohi. I kawea ngā mahi haurapa e ngā mema o Te Ope Hunga Hara Mau Pū, ā, e māharahara mātou mō ngā pāanga o te wheako nei. Ko tā mātou i pātaitia, e aha ana ngā Pirihimana o Aotearoa ki te whakatū ake anō i ő rātou hononga me te haperi o Tūhoe, ā, ko tā ō mātou i rongo, e takawenga ana te kaikōmihana i te taha o Tāmati Kruger, ā, kia aha rōpū haperi o Tūhoe. Kāore anō te kaikōmihana kia taki haere ā-tinana ki te rohe ki te whakapāhā ā-ōkawa atu ki te haperi i papāngia nā te mea, e tautuku atu ana ki te whakataunga a Tāmati, ko tēhea te huarahi pai hei whai kia tatū ai te whakaaro kino i hua mai nā ngā huakina. Nō mai anō i te rā whai atu ana i ngā huakina i te tau 2007, ngā taha e rua e matapaki ana i te take. Kua mahi hoki ngā Pirihimana me ngā pokapū o te rāngai-pāpori ki te whakatūturu, e whiwhi tautoko ana taua hunga i papāngia e ngā huakina, oitā, ngā tamariki. Ko tā te kaikōmihana ki a mātou, he tino tau rawa atu ōna matapakinga te taha o Tāmati Kruger, ā, ko tōna wawata, ka hua mai i au matapakinga he wā mōna ki te taki toro i te rohe, hei te timatanga o te tau 2014. Ko tāna anō ki a mātou mō te hononga i waenganui i ngā Pirihimana o te hau kāinga me te haperi, kua tauake ināianei, ā, nā runga i tērā, kua haere whakamua anō “ngā take pērā anō i ngā wā o mua”.
Te pūrongo a Te Mana Whanonga Pirihimana Tū Motuhake

Ka whakatewhatwhiatia e Te Mana Whanonga Pirihimana Tū Motuhake (TMWPTM), te whakamaunga o Te Kōkiringa e Waru, ā, ko tāna i kitea, i hē te mahi whakatūtū aukatinga rori, me te mahi tautāwhi tāngata i te wā o te kōkiringa a ngā Pirihimana i raro i te ture. Ko tā TMWPTM i whakatutuki, i whaitake, i tika tonu te whakataunga a te Kaikomihana Pirihimana i te wā i kawea ai te kōkiringa ēngari, i tōna whakakamaungatanga ka puta ngā hē. Ki te pūrongo a TMWPTM, i ngākau pono tonu te mahi a ngā Pirihimana e ai ki te whakamaherehere ā-ture i whiwhi i a rātou i taua wā ēngari, ka whakaei te kaikōmihana, ko te kawenga kē o te kōkiringa, "i tino ōa rawa atu i te māka, te pana i te ture" a ngā āpiha.

He huhua ngā tūtohutanga i whakataktoriora e TMWPTM ki ngā Pirihimana, whai muri atu i tana whakatewhatwhatanga. Ka uru atu ērā whakarerekētanga e pā ana ki te whakamahinga aukatinga rori, ā, ki te kaupapa here a Te Ope Hunga Hara Mau Pū, te whakamahinga o ngā arō matawai papātanga hapori māui i ngā haurapa i roto kōkiringa whārahi, ā, ngā whakarerekētanga ā-teki ki pai kē atu atu te whakatakoto mahere e pā ana ki te whakahaire i te pānga o ngā kōkiringa kē ngā tamariki me ngā tāngata whakarae. Ko tā te Kaikōmihana Pirihimana ki a mātou, kua whakatinanahia te nuiinga o ngā tūtohutanga, ā, he maha tonu ngā akoranga kua puta ki ngā Pirihimana nā tēnei āhuatanga, oirā, mō te manaaki tāngata harakore i mau ake i roto i ngā māhi whakamaunga a ngā Pirihimana.

Ngā āpiha kaitakawaenga Māori

Ka pātai mātou, he aha ngā Pirihimana i kore ai i whakauru i ngā āpiha kaitakawaenga Māori o te hau kāinga i roto i te kōkiringa. Ko tā rātou pūtaka, nō ngā momo takenga mai kē ngā ūngā, ēhara anake i te hunga Māori, ā, i reira anō hoki tētahi māharahara mō te whakaurunga mai o ngā āpiha kaitakawaenga, kei tūkinotia ō rātou hononga me te hapori. Ko tērā i hua mai i te pūronga a Te Mana Whanonga Pirihimana Tū Motuhake, ko te whakarerekētanga o te kaupapa here a ngā Pirihimana mō te whai wāhitinga o ngā āpiha kaitakawaenga Māori i roto kōkiringa whiwhiwhi. Ka rapuhia he tohutou i ngā āpiha kaitakawaenga Māori ināianei, ā, he tūranga whakatakoto whakamaherehere hoki tō rātou i ngā arō matawai papātanga hapori kua piki haere nei te whakamahinga ināianei. Uaratia ai e Te Kaikōmihana ō rātou āwhina, ā, ko tōna wawata kia kaha kē atu tō rātou kitea i ngā māhi a ngā Pirihimana i ngā wā kei mua i te aroaro.
WHAKATAKOTORANGA TOHUTOHU NŌ MAI I TE KAIKŌMIHANA PIRIHIMANA MŌ TE KÖKIRINGA I WARU A NGĀ PIRIHIMANA

Tāpiritanga

Huarahi o te komiti
I rongo taunakitanga mātou nō mai i Te Kaikōmihana Pirihimana i te 4 o Hakihea i te tau, 2013, ā, ka whakaaroarohia i te 29 o Kohi-tātea me te 7 o Haratua i te tau, 2014.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Joanne Hayes
Brendan Horan
Hōnore Nanaia Mahuta
Rino Tirikātene
Mētīria Tūrei
Meka Whaitiri
Nicky Wagner
Jonathan Young
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Briefing on the Ross Sea Fishery

Recommendation

The Primary Production Committee received a briefing on the Ross Sea Fishery, and recommends that the House take note of its report.

Introduction

On 14 November 2013, the committee received a briefing on the Ross Sea Fishery from Dr Ben Sharp, Chair of the Ministry for Primary Industries’ Antarctic Fisheries Working Group. Dr Sharp is also the New Zealand representative to the Scientific Committee of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR). He explained that the New Zealand interest and participation in the Ross Sea Fishery, and its Antarctic fisheries research programme relates to its participation in CCAMLR. The objectives and make-up of this multinational organisation are fundamental to understanding the current and future state of the fishery.

CCAMLR

The Convention on the Conservation of Antarctic Marine Living Resources is an international treaty that was adopted at the Conference on the Conservation of Antarctic Marine Living Resources in Canberra in May 1980. CCAMLR’s objective is the conservation of Antarctic marine living resources, and the organisation defines “conservation” as including “rational use,” meaning sustainable harvesting. In the Ross Sea fishery, this requires that members strike a balance between the competing interests of commercial fishing and ecosystem protection.

CCAMLR is a multinational organisation of 25 members. The Commission, which is its decision-making body, is advised by an independent Scientific Committee with subordinate scientific and technical working groups. Membership includes both fishing and non-fishing nations. The main fishery species involved are krill and two species of toothfish. The convention requires a “precautionary/ecosystem” approach to fisheries, and all decisions are made by consensus. As a member of CCAMLR, New Zealand is committed to its principles.

The Ross Sea fishery area

The Ross Sea lies 3,500 km south of New Zealand next to the Antarctic continent. An exploratory toothfish fishery was initiated there by New Zealand in 1997, and interest in the area from other countries increased from 2004. This fishery is among the most highly monitored, heavily regulated, data-rich high seas fisheries in the world. The fishery is managed on an “Olympic” (or “race to fish”) basis by individual vessels, and fishing is allowed until the total allowable catch (TAC) of approximately 3000 tons per year is taken. Only fishing vessels authorised by CCAMLR are permitted to operate in the Ross Sea toothfish fishery. Authorised fishing vessels are required to

- carry two independent scientific observers at all times
- fish only within stringent TAC limits set by CCAMLR
use only authorised longline fishing methods

• report daily on all catch, target and by-catch

• report their position via a satellite monitoring system continuously from the time the vessel leaves port until it returns

• follow strict measures to avoid any accidental bycatch (only one sea bird has been caught in the history of the fishery)

• meet scientific sampling and tagging requirements for toothfish and bycatch species.

CCAMLR bases all its management decisions on the best available science, which indicates that the Ross Sea toothfish fishery is in very good health, and is being managed cautiously and effectively. Management goals for the fishery are detailed in Article II of the Convention to ensure that harvested populations are maintained at an appropriate level which ensures stable recruitment. The TAC is set so as to ensure that the spawning stock of toothfish biomass will be reduced to a target level of 50 percent of its pre-exploitation state over a period of 35 years. The convention also demands that the ecological relationships between harvested, dependent, and related populations are maintained.

New Zealand’s role in CCAMLR and the Ross Sea fishery

New Zealand scientists at the National Institute of Water and Atmospheric Research (NIWA) produce the stock assessment model by which the TAC is set, and New Zealand scientists lead in the provision of all other science guiding the management of the fishery. The New Zealand scientific contribution is recognised by the other member nations as leading the world in the fields of stock assessment and marine ecosystem modelling, and we were told that New Zealand punches considerably above its weight at CCAMLR. New Zealand’s scientific credibility and international standing in Antarctica are substantially enhanced by this scientific contribution.

We were told that the requirements of the convention are that all scientific data be made available to all CCAMLR members. This means that New Zealand gains no advantage or privileged position with respect to access or economic rewards arising from the fishery in recognition of its leading scientific contribution to its effective management. New Zealand is encouraging the other members of CCAMLR to share more of the burden of research. Currently New Zealand is developing plans for collaborative research with Norway and the United Kingdom, and is trying to broaden this arrangement by including other countries.

It has been suggested that fish catches be allocated to vessels on the basis of scientific surveys they undertake, but all allocation decisions require international consensus, and to date this has only been achieved for one small annual survey for sub-adult toothfish, conducted by a New Zealand vessel. We asked if any other fisheries management model could be applied to the fishery, such as that used for the international agreement on the management of highly migratory species, to which New Zealand is a party. We were told that various allocation models could be considered and applied, but only with the consensus of all the members of the convention.

The annual economic benefit to New Zealand, which currently operates four licenced fishing vessels in the area, is $20–30 million per year. The cooperation between the fishing industry and scientific research in the Ross Sea fishery has been excellent since the fishery was initiated, and any suggestion that New Zealand fishing vessels should no longer fish in
this area would effectively remove the basis of, and reasons for, the country’s research in the area. Without New Zealand’s scientific contribution, the science-based precautionary management of the fishery would suffer.

We asked whether the scientists could be sure that their stock assessments and marine ecosystem modelling for toothfish are correct, in view of the disastrous decline of orange roughy resources in New Zealand, Australian, the Southern Indian Ocean, and the Northeast Atlantic Ocean waters. We were told that the decline of the orange roughy was caused by a poor understanding of biological characteristics of the species, inadequate stock assessment models and other factors, including a lack of independent oversight and strong economic incentives for depletion. The orange roughy example provided valuable lessons for the development of deep-sea fisheries and so far, these mistakes have not been repeated in the Ross Sea fishery. New Zealand scientists feel that the high level of scrutiny to which their science is subjected by other members within CCAMLR, including non-fishing members, ensures that similar mistakes will not occur in the Ross Sea fishery. We also heard that the relevant biological parameters for toothfish, such as maturity and life span, are not comparable to those of orange roughy and are more similar to blue cod. Current scientific knowledge of toothfish spawning, the dispersal by sea currents of eggs and larvae, and the migration to the Ross Sea shelf area of juvenile fish, have allowed New Zealand researchers to design and implement an annual sub-adult toothfish survey. This survey monitors toothfish recruitment and detects potential changes in numbers up to five years before the fish are exposed to commercial fishing. This annual sub-adult survey also indicates that toothfish abundance on the shelf has not declined. Fishing has little impact on the young toothfish.

Toothfish stock assessment is carried out using an age-structured population model which uses tag-recapture data, catch landings and catch age composition. The toothfish tagging programme also provides data that helps scientists understand toothfish movements, life cycle migration and growth. New Zealand fishing vessels first tagged toothfish voluntarily in 2001; in 2005, tagging became a CCAMLR requirement. Tagging programmes have subsequently become the primary means by which toothfish stock assessments are done in the CCAMLR Area. In the Ross Sea fishery so far there have been more than 30,000 tag releases and more than 1,500 recaptures. We were assured that by using tag-based models and other cutting-edge fisheries science, including spatially explicit population modelling, New Zealand scientists can test the consequences of alternative life cycle movement hypotheses and alternative spatial management arrangements, and estimate likely uncertainty or error in the models. Where uncertainty affects the estimate of stock status, their response is to err on the side of caution in accordance with convention rules. The result of this scientific research and the requirement to always act in accordance with CCAMLR’s precautionary decision rules means that the Ross Sea toothfish stock and the fishery generally, is well studied and well managed. The limits demanded by the convention are more precautionary than those for any other regional management organisation, and more precautionary than those applied domestically in New Zealand fisheries.

**Threats to the Ross Sea fishery**

We asked if there had been any problems with unlicensed or illegal fishing in the area. We were told that illegal, unreported or unregulated (IUU) fishing has not historically been a major problem in the Ross Sea. The major deterrent to illegal fishing was seasonal ice cover of the main fishable areas. During the ice-free season, the presence of the legal fishing fleet...
and scientific vessels deters IUU fishing and soon after the end of the season, ice again prevents access. Also, there are few nearby ports that can easily be reached to offload the catch. However, Antarctic toothfish is a valuable species and will always be at risk from IUU fishing activity. Over the last few seasons, an increasing number of known IUU vessels have been operating in other parts of the CCAMLR area near the Ross Sea and there is concern that certain licenced vessels may have links to unlicensed vessels, and may attempt to falsify their catch reporting to the eventual detriment of the fishery.

The efforts of New Zealand scientists to detect and expose catch misreporting by CCAMLR licensed vessels operating in East Antarctica (west of the Ross Sea) were successful this year, forcing the Korean government to withdraw the offending vessels and undertake a full investigation. New Zealand contributes practical support to efforts to combat IUU fishing activities in the CCAMLR area; inspections and aerial patrols undertaken by New Zealand in the Ross Sea region have been successful on a number of occasions in ensuring that illegal vessels are listed by CCAMLR. An increase in licensed vessels operating in the Ross Sea fishery area could become a problem for the operational management of the fishery, but the TAC effectively limits the impact on the toothfish stock.

However, more licenced boats from member countries with lower performance standards and cheap labour often produce lower quality data and poorer science, and another issue is that even some licenced fishers bend the rules of the fishery or falsify their data. It is important to engage with these operators in the CCAMLR context, to try to limit resultant harm. We were also informed that if New Zealand ever withdrew from the convention and ceased its presence in the area, this would undoubtedly encourage an increase in participation by members not contributing to the science, and possibly also an increase in illegal fishing in the fishery and a breakdown of its management. With this in mind, we were informed that New Zealand should not heed voices advocating withdrawal from the area.

We asked if various activist groups seeking a complete ban on fishing in the area, which seemed to be having some influence on public opinion, were perceived as a threat to the Convention; and whether New Zealand scientists should be raising their own game in informing relevant authorities. We were told that in order to gain publicity and legitimacy, these groups use emotional language and bad science to misrepresent the status of the stock and make unsupported allegations, for example alleging a drastic reduction in toothfish numbers, and corresponding effects on toothfish prey and predator species. We were assured that these allegations are not based on science, that the sustainable science-based management of the area is very well informed, and that New Zealand scientists were entirely confident in their assessments.

One other possible issue was future access to the area. This could become an operational problem because of increasing ice as a result of the effects of climate change and global warming. Climatologists suggest that seasonal sea ice is likely to increase in the coming decades, caused by changes in wind direction coupled with faster melting of polar ice shelves and a corresponding increase in fresh water inflow to the Ross Sea, with fresh water freezing more readily than salt water.

**Conclusion**

We heard that the Ross Sea fishery is scientifically one of the most effectively managed high seas fisheries in the world. It is a well-studied and well managed fishery in which New
BRIEFING ON THE ROSS SEA FISHERY

New Zealand plays an important role. New Zealand science leads the world in the study of the Ross Sea ecosystem and toothfish fishing, and this is recognised and appreciated by the other members of CCAMLR. The country’s scientific credibility and international standing in Antarctica are substantially enhanced by this contribution. The Ministry for Primary Industries and New Zealand scientists at NIWA are entirely confident that the management of the fishery is sustainable and that New Zealand’s science contribution to CCAMLR will stand up to any scrutiny. New Zealand officials and scientists would welcome independent external review of the toothfish stock assessment and supporting science produced by New Zealand.

Possible future threats to the sustainability of the fishery and the marine ecosystem would derive mainly from the absence of high seas governance as provided by organisations such as CCAMLR, or the abandonment of the area by responsible CCAMLR members contributing to its science-based management. Withdrawal of the New Zealand fishing industry from the convention would effectively reduce, or end, New Zealand’s leadership in the area.

While our questions on this issue were answered at this enquiry, given the sensitive nature of the Ross Sea, ongoing scrutiny of existing management frameworks will be required.
Appendix

Committee procedure
We heard evidence on the Ross Sea fishery on 14 November 2013 and considered it on 5 December 2013.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
The Primary Production Committee has considered Petition 2008/117 of Neville Donaldson on behalf of SFWU Nga Ringa Tota, requesting:

that the House of Representatives conduct an inquiry into the New Zealand fishing industry's relationship with foreign fishing companies, the foreign crewing of joint ventures, chartered and New Zealand fishing vessels, and its effects on sustainable fishing, employment and the relevant communities within New Zealand.

and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Shane Ardern
Chairperson
Food Bill

Government Bill

As further reported from the Primary Production Committee

Commentary

Recommendation
The committee has examined the Food Bill and recommends that it be passed with the amendments shown.

Introduction
This bill, on which we have previously commented, would on commencement, replace the Food Act 1981, and over time also replace the Food Hygiene Regulations 1974 and the Food (Safety) Regulations 2002. It would also make consequential amendments to the Animal Products Act 1999 and the Wine Act 2003.

The bill seeks to maintain New Zealand’s reputation as a producer and exporter of food by providing an efficient, risk-based regulatory regime that places a primary duty on persons trading in food to ensure that what is sold is safe and suitable. The bill also restates and reforms the law relating to the trading of food, with the aim of ensuring the safety and suitability of food for sale, and the protection and promotion of public health.

1 Food Bill Commentary 16 December 2010
The bill has five parts. Part One sets out preliminary provisions. Part Two concerns risk-based measures for achieving the safety and suitability of food. Part Three concerns the suitability of imported food. Part Four contains provisions relating to administration and enforcement; and Part Five sets out miscellaneous provisions, including exemptions, powers of delegation, regulation-making powers, and provision for the issuing of notices.

**Bill chronology**
The Food Bill (No 160–2) was first introduced to the House on 26 May 2010, had its first reading on 27 July 2010 and was reported on by the Primary Production Committee on 16 December 2010. On 2 July 2013, it was returned to the Primary Production Committee. Our commentary covers the main amendments we recommend to the bill.

**Purpose of the bill**
We recommend adding clause 4(ba) to make it clear that one of the primary purposes of the bill is to maintain New Zealand’s reputation as a producer and exporter of safe and suitable food.

**Primacy of food safety**
The bill as introduced does not in our view give enough weight to the principle of food safety. To maintain the primacy of food safety as the overriding principle of the bill, we recommend adding subclause 14(2), to ensure that in the event of conflict in the decision-making process between the principles in clause 14, the Minister or chief executive must give the greatest priority to that of food safety and the protection of public health. We also note that the risk factors referred to in clause 14(e) are not specified, and we recommend that the clause be amended to include a list of all the risk factors to be considered.

The changes to clause 14 also address concerns raised by some submitters, that the introduction of international agreements and treaties could put at risk the primacy of food safety in this legislation and could undermine New Zealand’s ability to set its own food standards.
Clearance of imported food
The bill as introduced requires some high-risk foods be cleared by a food safety officer before importation. We are aware however that the Joint Border Management System will allow clearances on an automated basis. To accommodate this facility we recommend adding clauses 122A and 122B, to allow the use of automated electronic systems to perform functions otherwise performed by a statutory officer under the legislation, and to ensure that persons using the Joint Border Management System supply information to the Ministry for Primary Industries and Customs for border-related purposes such as the importation of food.

Power to enter without a search warrant
We recommend that clause 275(5) be added to ensure there is a requirement to take into account the kawa of a marae, so far as practicable in the circumstances, when powers to enter without a search warrant are exercised at a marae or building associated with a marae. This will make the bill internally consistent, because the requirement also appears in clause 294, and consistent with the Animal Products Act 1999, the Biosecurity Act 1993, and the Wine Act 2003.

Standards in relation to food
We are aware of concern that the wording of clause 346(6) concerning standards for food sold for export, and food sold domestically, may be misunderstood and cause confusion as to intention, and we recommend that it be removed from the bill.

Sale of food by small producers
The classification of food sectors in the bill is based on the degree of risk their activities pose to public health. Most operators would be required to operate under a food control plan, as would small producers of high-risk foods. We acknowledge widespread concern about the implications for small producers who sell non-high-risk produce directly to consumers, organisations that sell food to raise money for charitable purposes, and small producers operating under exemptions who sell surplus produce to retail outlets. The bill includes exemptions and provides for a range of exemption mechanisms, and we are
fully satisfied that such food producers and traders would be provided with sufficient exemptions in the bill to allow them to continue these activities without curtailment.

**Power to recall food**
Clause 252 gives the chief executive the power to give directions to recall food or food-related accessories on the basis of a “reasonable belief” that they are unsafe or unsuitable, or contaminated, or incorrectly identified. We recognise concern that the “reasonable belief” threshold for decisions is set relatively high. We believe that a balance is necessary to ensure that food safety objectives are upheld while allowing for innovation in the manufacture and production of safe food. For this reason we have agreed to change the threshold to “doubt”.
Appendix

Committee process
The Food Bill was referred to the committee on 2 July 2013. The closing date for submissions was 16 August 2013. We received and considered 527 submissions from interested groups and individuals. We heard 19 submissions.
We received advice from the Ministry for Primary Industries.

Committee membership
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O’Connor
Eric Roy
Briefing on pest control of plants and animals including wilding pines and rabbits

Report of the Primary Production Committee

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Briefing on pest control of plants and animals including wilding pines and rabbits

Recommendation

The Primary Production Committee received a briefing on pest control of plants and animals including wilding pines and rabbits, and recommends that the House take note of its report.

Introduction

Wilding pines are introduced conifers that have spread unwanted into native forest, shrub land or grassland areas. The unchecked spread of wilding pines can pose a serious threat to biodiversity, landscape and recreational values, and can affect the flow of water in infested catchments. They compete for space with native trees and plants without encouraging native birdlife and insects, and the shade from the pines eliminates most other plants beneath them. There are ten species that pose a threat; the most commonly involved are the Radiata Pine (Pinus radiata), the Douglas-fir (Pseudotsuga species), and the Lodgepole Pine (Pinus contorta), with some geographical variation.

Threats usually originate from deliberate forestry plantings, such as the plantings of Lodge Pole pines on 250 hectares of Mid Dome from the 1950s to the 1980s for erosion control. Strong prevailing north-westerly winds in the area help to distribute up to 1.5 million seeds per hectare, annually. The very light, winged seeds have been found 40km downwind of Mid Dome and up to altitudes of 1400 metres. As a result, 475 hectares of Mid Dome are now covered by wildings, and another 13,000 hectares downwind are seriously infested. The costs of control increase exponentially as the wildings grow and breed, and chances of the success of eradication programmes diminish. If they are not eradicated, it is predicted that Mid Dome wildings will overwhelm 61,000 hectares of high-country tussock and pastoral land, and infest a further 100,000 hectares by 2053.

Wilding pines now cover about 805,000 hectares of land in the South Island and 300,000 hectares in the North Island. Central and regional governments spend approximately $6 million annually on control measures. Community trusts, industry, and private landowners are also involved in attempting to manage the situation.

Developing a control and eradication strategy

The New Zealand Wilding Conifer Management Group, established in 2006, includes the forestry and farming industries, regional and district councils, the Ministry for Primary Industries, the Department of Conservation, Land Information New Zealand, the New Zealand Defence Force, Scion Research, community groups, and landowners. The group was provided input into a commissioned status report on wilding conifer management by Pacific Eco-Logic. The report was completed in 2012, and in 2013, a working group led by MPI was established to develop a strategy based on its recommendations.

The strategy aims to enable participants to address the spread of wilding pines and to contain or eradicate established areas by 2030. The non-regulatory strategy lacks status
BRIEFING ON PEST CONTROL OF PLANTS AND ANIMALS INCLUDING WILDING PINES AND RABBITS

under the Biosecurity Act 1993, unlike for example TB eradication, but is intended to support collaboration between stakeholders and communities. It would also help to align and implement the existing regulatory framework provided by the Resource Management Act 1991 and the Biosecurity Act. The strategy is based on biosecurity funding principles, and sets out actions towards the 2030 goal, grouped under four principles:

- Individual and collective responsibility
- Cost effective and timely action
- Prioritisation
- Coordination

The ministry is currently undertaking an economic analysis to test assumptions underpinning the draft strategy, which will be completed later this year.

**Effectiveness**

We are concerned that the ministry is not on top of the situation, and asked about the success of the strategy to date. We were told that in some areas, especially where trusts are operating such as Mid Dome, there have been very good results, but elsewhere much more could be done. The strategy paper recognises that the situation is not wholly under control in many areas, but the ministry is working to improve wilding control and eradication using the accumulated knowledge and experience.

Since in many areas where wilding pines have taken control, they would now be difficult to eradicate, we asked if control and eradication efforts would be better concentrated only in areas where biodiversity is threatened; the trees in other, non-critical areas could be treated as a crop. We were told that such prioritisation measures were being considered in developing the strategy. Other priorities for eradication efforts would be high-value land, and land where eradication would be easiest; more difficult or lower-value areas would be candidates for containment. Another more controversial strategy would be the introduction of non-sterile trees in new forestry areas which would stop the spread of viable seeds.

We asked why nothing in the strategy so far indicates at what point at which switching from eradication to control would be appropriate. We were told that stakeholders were not agreed on this question, nor had the criteria for this decision yet been established. Once agreement has been reached, a plan will be notified to stakeholders and included in the developing strategy paper.

We asked if any factors such as a lack of funding were delaying effective action. We heard that the lack of a coordinated approach to the problem, and the previous lack of a well-developed strategy, had been big contributing factors. There is now investment in control methodology, and research by Scion on effective monitoring standards is using an allocation from the Sustainable Farming Fund, but until recently this research has been ad hoc. We heard that there is funding for community and stakeholder education on the problem, but that it needs to be more carefully directed, using smarter channels of communication, such as on-line facilities.

**Iwi engagement**

Māori land holdings include much undeveloped land that is ripe for colonisation by wilding pines, and there are large Māori forestry interests. We heard that iwi are heavily involved in
developing the control and eradication strategy. Ngāi Tahu in particular had embraced the strategy and were engaged in the planning process.

**Conclusion**

While acknowledging progress towards a more effective control and eradication strategy, we remain unconvinced of the effectiveness of current plans, which appear to be more aspirational than practical, and that plans that may already exist, do not address the problem. We were not told of any significant work being carried out that would be effective and affordable as a mechanism of control. We recognise that any new strategy needs to overcome the widespread public perception that all trees are by definition good. We consider that a sustained public education programme is needed to change this mindset. Such a programme could also tap into the undoubted public goodwill towards conservation measures, and we urge the ministry to engage with communities, and the volunteer spirit to ensure any new strategy is effective. We urge the Primary Production committee of the next Parliament to monitor progress on this issue closely, and to examine the completed control and eradication strategy in due course.
Appendix

Committee procedure
We heard evidence from the Ministry of primary Industries on 15 May 2014 and considered it on 29 May 2014.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
Meka Whaitiri
Briefing on new import health standards for pork

Report of the Primary Production Committee

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Briefing on new import health standards for pork

Recommendation
The Primary Production Committee received a briefing on new import health standards for pork and recommends that the House take note of its report.

Introduction and background
New Zealand has a relatively small pork industry, with around 300 commercial producers supplying the domestic market. Exports are negligible. Production has remained largely static for a decade, although consumption has steadily increased. As a result, over 40 percent of the pork consumed in New Zealand is imported. Major suppliers are Australia, Canada, the United States, Mexico, and Europe.

The Biosecurity Act 1991 empowers the Ministry for Primary Industries to decide on biosecurity measures to prevent high-risk imports while meeting New Zealand’s obligations under international agreements for science-based and least-trade-restrictive import requirements. The relevant provisions prescribe the matters that the Director-General must consider before making decisions on such measures. In 2011 the Director-General issued biosecurity standards permitting the importing of raw pig meat from countries where the highly contagious porcine reproductive and respiratory syndrome (PRRS) is present, and from which importing was previously restricted. The decision followed consultation with interested parties, and consideration by the Statutory Independent Review Panel. These standards restrict imports to consumer-ready cuts weighing no more than 3kg, with lymph nodes removed, derived from healthy pigs that have been inspected before and after slaughter, and certified for human consumption by official veterinarians in the exporting countries. The 3kg limit is an arbitrary figure based on assumptions about the maximum size of a typical family meal.

Although PRRS poses no health threat to humans, the New Zealand Pork Industry Board objected to these biosecurity standards and sought judicial review of the decision-making process, complaining that the ministry did not comply with the Act, and arguing that it was improper for officials whose work was the subject of the dispute to prepare a decision paper based on the disputed issues. It also argued that the issue was predetermined, as evidenced by lack of consultation on a revised model of risk analysis that could be applied to this matter.

Supreme Court analysis
In 2013, the Supreme Court of New Zealand, agreeing with the High Court, and Court of Appeal, found that the ministry followed a proper decision-making process before allowing raw pork into New Zealand from countries where the PRRS is found, and that their consultation procedure met the standard required under the Act. A minority opinion in both the Court of Appeal and the Supreme Court proposed that the ministry’s failure to consult on the revised risk analysis fell short of the standard required of it, with the result that the risk was not calculated appropriately.
Statutory Independent Review Panel

We asked whether the Statutory Independent Review Panel had been helpful in the decision to lift restrictions on the importation of pork, and whether it was needed at all since its findings can be overridden by the ministry. We were told that the panel was being reviewed and that any government decision on its future should be deferred until the review had been completed.

Porcine reproductive and respiratory syndrome

We asked whether the science regarding PRRS was robust and whether New Zealand would be able to contain the disease if there was an outbreak. We were assured that there was a substantial body of science available on the subject; but because only New Zealand and Australia are completely free of the disease, only these two countries were concerned and advocated caution. This caution has been reasonably questioned by our trading partners; and because New Zealand has decided on the basis of scientific evidence that any risks can be managed, imports have been allowed. Outbreaks of the disease are able to be controlled by the simple expedient of halting the movement of animals, unless to slaughter. Some of us have concerns about the ministry’s capability in this area. The success of this control method has been amply demonstrated in outbreaks in several countries, and most recently in Sweden.

Standards of acceptance for pork imports

We were concerned that there was a difference between the board’s standard of acceptability for pork imports and those applied by the ministry, and asked if international trade obligations, and a desire not to be seen introducing what might be interpreted as a non-tariff trade intervention, played a part in the ministry’s decision to lift restrictions on pork imports. We were assured that this was not the case, and that although the ministry was not obliged to accept risk under World Trade Organisation rules, it was obliged to justify the science demonstrating any risk, and the appropriateness of any measures taken to manage it.

We heard that the risk of importing pork from countries with PRRS was assessed, and on the basis of the scientific evidence available, it was properly decided to allow pork imports and manage the risk. We were told that risk assessments are inevitably subjective, and focussed on minimising rather than eliminating a threat; it was impossible to demand precision where expert reports differed, but the ministry believed that the final decision was appropriate. We were also assured that no “deals” with our trading partners had in any way led to the ministry’s lifting restrictions on pork imports.

In view of the requirement that the ministry assess and justify risk from imported products, we asked about the risks to the ministry and to New Zealand if it made a poor decision, and an import was either banned without good reason, or not banned and proved to be dangerous to consumers. We were told that doubt would be cast on New Zealand’s reliability as a trading partner in the first case, and in both cases on the credibility of New Zealand science.

Trade requirements

We asked if commercial pressure from pork exporters in the USA and the EU, both large producers of pork where PRRS is endemic, was in any way causing trade imperatives to triumph over robust science concerning risk in pork imports. We were told that this was
not the case, especially as the original notification of the PRRS risk came from scientific research in the EU, not New Zealand.

**Conclusion**

We took note of the ministry’s assurances that the decision to lift restrictions on importing from countries where PRRS is endemic was justifiable on the basis of robust science, and that biosecurity concerns were paramount in any assessment of risk. Some of us felt that the science was not considered adequately, and that New Zealand remains under international pressure in these matters, and may have to accept standards for imports that are lower than domestic standards. We recognise that such decisions must balance international trade obligations and scientific evidence, but we feel that the rationale behind these decisions could be communicated more effectively to both stakeholders and the public.
Appendix

Committee procedure
We heard evidence from the Ministry for Primary Industries on 15 May 2014 and considered it on 29 May 2014.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Colin King
Ian McKelvie
Hon Damien O’Connor
Eric Roy
Meka Whaitiri
Animal Welfare Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation
The committee has examined the Animal Welfare Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to make changes to the Animal Welfare Act 1999, to improve the enforceability, clarity, and transparency of New Zealand’s animal welfare system. The bill would implement the Government’s decisions resulting from a 2011–2012 review of the Act, but does not seek to alter appropriate fundamental principles and policy settings.

The proposed amendments to the Act seek to provide for clear and enforceable standards of welfare for animals, including live animals for export; increase the range of enforcement tools for small to medium-scale offending; clarify the obligations of animal-owners; make decision-making under the Act more transparent; and allow welfare standards to evolve with societal expectations.
The bill also provides guidance to the courts for considering the imposition of court orders, ordering the forfeiture of animals, or disqualification from owning or being in charge of animals. Our commentary covers the main amendments we recommend to the bill.

Animal sentience
Although the concept of animal sentience is commonly accepted in New Zealand, we recommend inserting new clause 3A to make it clear that animals are sentient beings.

Animal manipulation
We are aware of widespread concern about “manipulation” of animals; that is, the killing of animals for research, testing and teaching purposes. In particular, there is concern about oversight and transparency in this area. The bill seeks to address these concerns by amending the definition of “manipulation” and requiring the approval of an animal ethics committee to kill an animal for such purposes, or to breed an animal that may be at risk of increased suffering. We acknowledge however, that this requirement may cause unnecessary delay, if for example there is an urgent need for a national biosecurity response. To avoid this, we recommend inserting new clause 5(2A), which would insert new sub-sections 2(A), 2(B) and 2(C) in section 3 of the Act to provide for exemption from the requirement to seek approval in such circumstances.

Significant surgical procedures
Interest from our trading partners in the animal welfare aspects of on-farm animal management practices places New Zealand at some risk if these practices are not appropriately regulated. Clarifying the operation of the law as to what constitutes a “significant surgical procedure”, and therefore can only be carried out by a vet, will be an important component of any assurances sought in this area. However, we recognise concern that defining the term too narrowly could result in some procedures routinely carried out by farmers becoming unnecessarily restricted to vets. The bill as introduced gives no guidance on this matter. We recommend inserting new clause 13 Section
16 to clarify the definition of the term “significant surgical procedure” and to specify a set of criteria against which various procedures can be evaluated. We also recommend inserting new clause 56 183B(2) to enable the minister to make regulations as to how such procedures should be managed, or to decide whether or not certain procedures are to be treated as significant.

Export of live animals for slaughter
We acknowledge the widespread sentiment that the export of live animals for slaughter should be prohibited. We recognise that there are animal welfare, trade, and reputational risks associated with the export of live animals, if post-arrival conditions for the animals are inadequate, or animals are prevented from being unloaded. However, a ban on this trade would be inconsistent with New Zealand’s obligations to the World Trade Organisation and would risk being challenged.

While the existing regulatory framework allows these risks to be managed, we believe it important that it be strengthened. We recommend amending clause 21 by inserting new section 43(2), to enhance the Director General’s ability to take into consideration various relevant factors before issuing an export certificate. We also recommend amending clause 22 by replacing the amendment to section 45(1) with provisions to require an exporter to provide feedback to the Director General about the management and welfare of animals during the journey and for a specified period after their arrival.

Change or cancellation of compliance notice
The bill provides for applications to the Director General to change or cancel a compliance notice. The bill as introduced specifies no time limit for a response. We recommend amending clause 44, new section 156(E)(2)(a) to specify a time limit of 10 days for a response from the Director General to such an application.

Transitional provisions
The bill as introduced would allow the making of regulations to prescribe standards and requirements relating to animal care during transition periods, which might be up to 10 years. We are concerned that
this could allow a Minister to extend this period by further regulation, thus allowing non-compliant practices to continue for an unreasonably long time. We recommend inserting into clause 56 new section 183A(4C), limiting the ability to extend transitional regulations to once only, for up to an additional five years, and only if the industry as a whole has demonstrated commitment to the transition, and the Minister is satisfied that most producers have made significant progress towards becoming compliant, and will do so within the extended period.

**Greyhound racing**

We are aware of widespread concern about the transparency and accountability of the greyhound racing industry and the treatment of dogs. We note however that most of the issues raised relate to the ethics of the greyhound racing industry in general and are not limited to animal welfare. Cruelty and the welfare of the dogs are already addressed by the Act, and the existing Dogs’ Code of Welfare also applies. We do not therefore recommend amending this bill to specifically address these concerns.

**Cetaceans in captivity**

We recognise the concern in the community about the plight of cetaceans in captivity. There are no cetaceans in captivity in New Zealand at present, and the issue is addressed in the Marine Mammals Protection Act 1978. We feel that any application to hold cetaceans in captivity in New Zealand, unless it was essential for the conservation management of the species, is unlikely to be granted, and therefore we do not recommend amending this bill to specifically address this concern.

**Green Party minority view**

The Green Party acknowledges that this bill contains some improvements to current animal welfare law. However we are extremely disappointed that animal testing has not been addressed at all by the Committee despite it being an area of significant public concern due to the extremely high levels of pain and suffering involved in these tests and despite thousands of submissions seeking amendments to this section of the Act.
The Green Party has put up two simple amendments to the animal testing provisions of the Act which we would like to see incorporated in order to support the bill. The first amends the Act to ban animal testing of cosmetics in New Zealand in line with recent developments overseas. The second requires alternatives to animal testing to be used where there are suitable alternatives.

There is extremely strong public support for a ban on any animal testing of cosmetics and a large number of submissions were received in favour of including this amendment. A recent Horizon poll has revealed that 89% of New Zealanders are against animal testing for cosmetics and 89.2% want to see it ruled out in this country.

Requiring animal ethics committees to only allow animal tests to be undertaken when there are no suitable alternatives available is essential if we are to reduce the number of animals being subject to painful experiments and testing. Currently, animal ethics committees are not even required to consider alternatives to animal tests. In our view, it is extremely disappointing that the Committee has not chosen to endorse either of these two proposals aimed at reducing the number of animals used in research and testing.

The Green Party is also concerned that this bill will not result in meaningful welfare improvements for animals used in intensive factory farming; especially for layer hens, meat chickens, and intensively farmed pigs. Colony cages have been deemed to be compliant with the welfare requirements of the Act despite the fact that most people do not see these as resulting in meaningful improvements in the quality of life experienced by hens in factory farms. Nothing in this bill addresses that situation. We are also concerned that 15 years is an extremely long time to phase out existing practices that are clearly not compliant with the requirements of the Act, such as farrowing crates.
Appendix

Committee process
The Animal Welfare Amendment Bill was referred to the committee on 29 August 2013. The closing date for submissions was 4 October 2013. We received and considered 4,136 submissions from interested groups and individuals. We heard 30 submissions in Wellington and 17 submissions in Auckland.

We received advice from the Ministry for Primary Industries. The Regulations Review Committee reported to us on the powers contained in clauses 2, 8, 10, 12–14 and 56 (new section 183B).

Committee membership
Shane Ardern (Chairperson)
Steffan Browning
Colin King
Ian McKelvie
Hon Damien O’Connor
Eric Roy
Meka Whaitiri

Mojo Mathers replaced Steffan Browning, and Hon Trevor Mallard replaced Hon Damien O’Connor for this item of business.
Briefing on fertiliser standards

Report of the Primary Production Committee

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Briefing on fertiliser standards

Recommendation

The Primary Production Committee received a briefing on fertiliser standards, and recommends that the House take note of its report.

Introduction

On 22 May 2014, we received a briefing from the New Zealand Fertiliser Quality Council. The council was formed to ensure that farmers could be confident of purchasing quality fertiliser, and having it spread accurately. It provides assurance in two areas; the “Fertmark Tick” means that the fertiliser has been independently audited to ensure that it contains what is shown on the label; and “Spreadmark” accreditation means that fertiliser spreading operators have been trained, and their equipment independently assessed and systems audited. Fertmark commenced operations in 1992, after the government withdrew from fertiliser auditing. It covers over 95 percent of fertiliser sold in New Zealand. Testing is carried out for Fertmark by an independent auditor under a renewable contract. Fertmark operations are funded by a levy on certified fertilisers sold. Manufacturers pay a registration fee of $1600, and $600 for each audit of their product. The small percentage of fertiliser that is not Fertmark registered is not tested by the council unless there is a complaint. Fertilisers that vary from the norm can be the subject of exemptions, or can be legally sold without the Fertmark brand. It is uncommon, but if a registered Fertmark fertiliser fails audit repeatedly, Fertmark can remove its certification. Products that are not registered for the Fertmark brand are those that do not fit the strict definition of fertiliser, or also include growth-promoting compounds, for example.

Fertiliser quality assurance

We asked if Fertmark could counter claims by farmers that the auditing of some small fertiliser manufacturers is suspect, and that fertiliser content is not audited as often as necessary. We heard a review in 2013 re-invigorated the organisation, restoring previous high auditing standards, and that Fertmark is equipped to participate in debates about fertiliser standards, and issues such as run-off contamination.

The Council would investigate complaints or concerns about any product from customers of registered fertiliser companies had any, then and if necessary a technical advisory group would be formed to assist. We asked if members of the council had vested interests in the auditing of fertilisers, which might affect the robustness of auditing. We heard that by its very nature, probably all members of the council had an interest in the industry, but this was balanced by the inclusion of farmers on the council to look after the customers’ interests.

Fertiliser status

Concerns have been raised by farmers about the demarcation line between fertilisers and growth-promoting compounds. We heard that product status is determined by regulations under the Agricultural Compounds & Veterinary Medicines Act 1997 and that if there is any doubt, the Ministry for Primary Industries can carry out a class determination under the Act. We asked if the current system allowed product innovation to help to ensure that...
farmers received the latest products available. We heard that the council intends to investigate the possibility of testing other products in addition to fertilisers. The science regarding growth-promoting compounds is becoming more established and there is much debate as to their product status. The view of the Council is that if a product manufacturer wants product tested for commercial gain, then the manufacturer should pay.

**Organic and biological fertilisers**

The testing and certification of fertilisers that might not fit the strict definition, such as various “bio” products is equally difficult. Bio product testing can take years, and because the biological input is often not consistent among batches, it is impossible to certify with a high degree of certainty. Some organic fertilisers cannot be certified organic after certain processing treatments.

The council recognises, however, that there is a growing demand for these products, and that it will need to investigate these issues in the longer term, but establishing a testing regime has not yet been addressed. The Council believes that a far greater investment in fertiliser research and development in New Zealand is vital. A certain amount of reliance on overseas research is acceptable, but it is important to investigate local conditions, which can affect the performance of products.

**Funding for new product testing**

We are aware that some farmers consider it is difficult for fertiliser manufacturers to obtain an objective assessment of new and innovative products, and we asked if this is a valid concern. We heard that for many of the smaller producers the cost of obtaining that assessment was the obstacle. There is a view among manufacturers that the farming community should contribute to the cost, as it helps both manufacturer and farmer in the long run. Other sources of funding can also be accessed by farmers and producers and we suggested that the council investigate publishing a factual guide to such sources. We heard that the void left when the government withdrew from fertiliser auditing has still not been completely filled; the Council now intends to review its funding model and look at providing advice on government and other sources of funding.

**Cadmium in soil**

We were concerned about the possibility of cadmium entering the human food supply, as cadmium levels in soils high after the use of fertilizers derived from imported phosphate rock. We asked what options farmers had for alleviating this problem while still maintaining productivity. We heard that a cadmium working group has responsibility for developing policy in this area. However, Fertmark tests have indicated that the cadmium levels in soil are now dropping, probably due to the use of phosphate rock with lower levels of cadmium.

**Conclusion**

We were pleased to hear that the Fertiliser Quality Council is maintaining a sound fertiliser quality assurance regime for farmers, and that problems with the auditing regime have now been resolved. We are concerned that the funding hole left by the government’s withdrawal from fertiliser auditing has still not yet been satisfactorily filled, and we urge the council to investigate other sources of funding, and to advise producers, especially small ones, on obtaining these funds. We also recommend that the council looks to alliances with research
organisations, and particularly Massey University, to provide much needed research into fertiliser testing under New Zealand conditions.
Appendix

Committee procedure
We heard evidence on fertiliser standards on 22 May 2014 and considered it on 19 June 2014.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
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Ian McKelvie
Hon Damien O'Connor
Eric Roy
Meka Whaitiri
# Report from the Controller and Auditor General, Ministry for Primary Industries: Preparing for and responding to biosecurity incursions

Report of the Primary Production Committee

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Report from the Controller and Auditor General, Ministry for Primary Industries: Preparing for and responding to biosecurity incursions

Recommendation
The Primary Production Committee received a briefing from the Auditor General on the Ministry for Primary Industries: Preparing for and responding to biosecurity, and recommends that the House take note of its report.

Introduction
On 29 May 2014, we received a briefing on the report entitled Ministry for Primary Industries: Preparing for and responding to biosecurity, from the Auditor General.1

MPI Performance audit report
We note that the Auditor General’s performance audit report on the Ministry for Primary Industry’s preparedness for and capability for response to biosecurity incursions was carried out in 2012 and completed in February 2013 and so represents a snapshot taken some time ago. Since 2004, a number of mergers and restructures have changed the responsibilities for managing biosecurity. The Ministry for Primary Industries (MPI) has provided biosecurity leadership since 30 April 2012. This report reflects the situation in 2012, very soon after the merger that formed the ministry. Since then, substantial improvements have been made.

The audit was carried out to determine how effectively the biosecurity system can prepare for and respond to the arrival in New Zealand of foreign pests and organisms—biosecurity incursions. It followed the theme of the Office of the Auditor General’s 2013 work programme: “Our future needs – is the public sector ready?” The focus was on how public entities prioritise work, develop capabilities and skills, and use information to determine and address future needs. The aim of the audit was to inform Parliament, industry, the public and other stakeholders as to how effective the ministry was in detecting and responding to incursions.

The system to ensure biosecurity is complex. There are three levels of biosecurity: overseas; at the border, and behind the border. The performance audit was concerned only with biosecurity behind the border.

Audit overview
The audit found that improvements were in progress in a number of areas: surveillance, and planning for dealing with specific pests and diseases, and more regular testing of plans and preparations to ensure they will work if needed. A new response system was more consistent and efficient, and improvements to information systems and information use

1 Ministry for Primary Industries: Preparing for and responding to biosecurity incursions. February 2013.
had begun. Mistakes were being acknowledged more openly and treated as learning opportunities.

New Zealand is more dependent on effective biosecurity than any other developed country. No border control can be 100 per cent effective, so it is crucial that New Zealand be prepared to deal with incursions effectively. The audit found MPI under-prepared for potential incursions from some high-risk organisms. Responding to incursions had taken precedence over preparing for the potential arrival of other pests and diseases. Not enough priority had been given to planning, and many response partners with MPI and its predecessors believed that stronger response capability was needed as well as reprioritisation.

The audit also looked at how MPI coordinated with other stakeholders. MPI and its predecessor organisations responsible for biosecurity had dealt, generally successfully, with 30 to 40 incursions a year. They have developed trusting relationships, and improved biosecurity by sharing knowledge and fostering innovative practice.

Improvements were being made, including better targeting of surveillance to detect threats earlier, and updating and regular testing of plans for dealing with specific pests and diseases. A new response system dealt with incursions more consistently. Some improvements to information systems and the use of information had begun. Mistakes were acknowledged more openly and treated as learning opportunities.

However, the audit found that some serious weaknesses remained. Plans for responding to incursions of some high-risk organisms, including foot-and-mouth disease, were incomplete. Workforce planning and capability development were insufficient. Staffs were not using the new response system to its full potential, so improvement was needed to training and development. Contracting with response partners also needed work, as did information systems and use.

Performance reporting also needed stronger outcome-based measures and performance measurement tools.

The audit report says that following its merger and restructuring in 2012, MPI had an opportunity to substantially improve biosecurity preparedness and response. However, its track record for sustained improvements was thus far inadequate. Many initiatives were either not completed, or not embedded.

**Audit recommendations**

The audit report recommended improvements to biosecurity preparedness and response as follows:

- Make biosecurity planning more realistic about likely constraints on resources and available capacity.
- Complete response plans for high-risk organisms, including foot and mouth disease, and review them regularly to ensure they are fit for purpose.
- Improve staff’s response experience, training, and induction.
- Improve workforce planning.
- Improve the management of information and information governance.
• Make contracting simpler, faster, and more efficient for partners, and consider a panel contract arrangement for procuring response services from Crown research institutes.

Change the Biosecurity Response Services contract and the National Biosecurity Capability Network to reflect its new organisational structure and operating environment. Detailed steps to improve preparation for a potential outbreak of foot-and-mouth disease were also recommended: they included simulations to test readiness; planning for vaccination and carcass disposal; and replacing the enhanced bio-containment laboratory as soon as possible.

The audit also recommended that the Ministry for Primary Industries establish comprehensive performance measures; constantly seek to improve its preparedness and response activities; and report publicly on its effectiveness and efficiency.

We heard that funding had not apparently constrained MPI in any way from managing biosecurity incursions adequately. The audit had found that the ministry should have been able to respond effectively within its existing budget.

**Current situation**

We heard that the Auditor General was satisfied that MPI had taken the recommendations in the report seriously. Funding has now been agreed to build a biosecurity containment facility at Wallaceville; MPI has instituted regular six-monthly assessments of progress on their plans; there is now better international liaison, especially with the global Foot and Mouth Disease Reference Centre in the UK. Much more training is undertaken jointly with Australia; there is extensive joint work with industry in the Government Industry Agreements on biosecurity responses.

In general, there is more emphasis on practicalities, remedying many of the weaknesses found by the audit. Increasing use is made of simulations and testing, and a large-scale foot-and-mouth exercise is scheduled for 2015 or 2016, building as recommended on the Taurus simulation exercise in 2012. With better staff training and a willingness to learn from previous mistakes, response times to incursions have been greatly reduced, which was demonstrated in the second Australian fruit fly incident. Lessons from this can be applied to other biosecurity threats and detections, providing a mainly generic capability in the ministry.

We heard that the new management team is committed to a programme of improvements in biosecurity and the Auditor-General is confident that the ministry could demonstrate significant improvements in performance.

We were told, however, that the balance between preparation for an incursion and responding to an incursion needs careful thought. MPI was perhaps erring on the side of increasing its response capability at the expense of preparation to prevent incursions in the first place.

**Conclusion**

The performance audit carried out by the Auditor General was a significant report, which found weaknesses in MPI’s ability to respond adequately to biosecurity incursions. It was undertaken during a turbulent time for the ministry, as it strove to stabilise its operations following the merger. After the briefing on 29 May 2014 by the Auditor General, and after
perusing the answers to further questions put to the office,\(^2\) we are now satisfied that MPI is responding and addressing the failings set out in the report, significantly improving its performance in biosecurity.

Appendix

Committee procedure
We heard evidence on the report from the Auditor General, Ministry for Primary Industries: Preparing for and responding to biosecurity on 29 May 2014, and considered it on 26 June 2014.

Committee members
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Hon Damien O'Connor
Eric Roy
Meka Whaitiri
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BRIEFING ON THE FUTURE OF MĀORI AGRIBUSINESS

Briefing on the future of Māori agribusiness

Recommendation

The Primary Production Committee received a briefing on the future of Māori agribusiness, and recommends that the House take note of its report.

Introduction

On 26 June 2014, the committee received a briefing on Māori agribusiness from the Ministry for Primary Industries (MPI). We heard that there are 1.2 million hectares of land in Māori ownership. Of that total, approximately 900,000 ha would be suitable for either forestry or beef and lamb operations, and around 60,000 ha could be used for dairy or goat farming. Another study investigated the cost of bringing this land into productivity, and the potential economic return to New Zealand. We were told that the average Māori block was under 50 ha, with about 100 owners.

The ministry estimates that an investment of around $3 billion in such land could produce a gain in GDP of $8 billion by 2025.

Multiple ownership of land

We asked if multiple ownership hindered raising the capital needed for farming operations, or whether there was a lack of collective will on the part of the owners to drive forward land improvement and farming projects. We heard that there are problems in both areas. It is possible to obtain loans for this purpose, and the ministry has facilitated projects over the last few years with ownership groups.

Rangihamama, a block of 573 ha near Kaikohe used primarily for pastoral activities, is a well-known example. It operates on behalf of 2,000 owners who raised development capital, with the banks seeking to accommodate multiple owners. A more difficult problem was obtaining initial approval from so many widely dispersed owners to improve the land or commence farming operations. This is typical; many owners may be overseas, many may have died, and succession issues often hold up agreement. A majority of owners will never have seen the land; for them it is just a family memory. With the requirement that 75 per cent of owners approve plans and agree on strategies, these obstacles can often be almost insurmountable.

With a potential gain in GDP of $8 billion at stake, we asked what was required to ensure success in utilising this land. We were told that the few examples of success, such as Rangihamama, demonstrate that it is possible to succeed, even with the requirement for 75 per cent of owners to agree. However, we heard that the likelihood of success could be improved by liberalising decision-making under the Act.

Consensus is crucial so that owners of small blocks can combine them into worthwhile holdings. We were told that attitudes could probably be changed only incrementally, by promoting examples of success; small legislative changes might also allow more effective decision making. The ministry is considering proposing changes to the legislation so that land strategy can be agreed by 75 percent of “engaged” owners rather than of all owners. We heard that it would not be difficult to define “engaged”, thus restricting decision-
making to owners who were already interested in their land holdings and likely to want a good return.

We asked about the likely reaction among Māori landowners to any such legislative change. We heard that some backlash was likely, but that the majority of Māori would not necessarily be opposed. We were told that if no such changes were made, the problem would become more acute as the numbers of joint owners of blocks grew. It was suggested that the younger generations tend to have far less affinity with or knowledge of the land, and are less likely to engage in any improvement process.

We asked about the effects of rates on Māori land. We heard that rate dispensations were available if the land was not in production for commercial purposes, but large rates arrears were owed on much of the land. We heard, however, that they were a small barrier to progress compared with multi-ownership decision making.

**Kaitiakitanga**

We heard that one of the non-negotiable aspects of development of Māori land is the maintenance of sustainability and upholding the principles of good stewardship (kaitiakitanga) best practice.

**Leadership**

We heard that given the option, most Māori would prefer to secure a return from their land rather than maintain a sentimental attachment to the land for its own sake, but their efforts often foundered on the many obstacles. We were told that successes such as those achieved by Ngāi Tahu were good business models to follow, but these instances used settlement land rather than ancestral Māori freehold land, and followed a typical corporate strategy, making decision-making easier.

We also heard that even when owners agreed to commence farming operations, they often found it difficult to find farming professionals able to mentor them. Although Māori generally no longer had farming expertise, we heard that the ministry can help by making industry experts available through bodies such as Beef + Lamb New Zealand or Dairy New Zealand. With a lack of young Māori farm leaders and distrust among some Māori of those in farming leadership roles, probably 90 per cent of the farm managers of Māori farms are European New Zealanders, even though the management committees are Māori.

We asked if the ministry had found key leaders among Māori landowners who could drive progress on this very complex and sensitive issue. We heard that the ministry only works with groups that have clear leadership and mandate. If a group has internal conflicts and is uncertain about its direction, it is best for government agencies not to approach them unless invited. It is essential for Māori to take the lead and not have the Crown impose a solution.

Often when landowners see others’ successes, they are tempted to follow their lead. The ministry hopes that by vigorously promoting successes it will encourage others to follow suit. We heard however that ultimately, progress depends on legislative change to underpin that progress.

**Career opportunities**

We recognise that as well as unlocking the enormous potential of Māori land, enhancing the substantial range of existing career pathways in agri-business and service industries for young Māori should be a priority.
**Future development**

We endorse the work programme presented to the Select Committee “Next Steps for the Maori Agribusiness” and look forward to further progress in this area.

**Conclusion**

We firmly acknowledge the importance and significance of ownership of Māori ancestral lands, and the complexities of multiple ownership but we also recognise the huge economic opportunity these lands offer for the country as a whole, and for improving the lives of their owners. Despite the sensitivity of many of the issues involved, we recommend that the Primary Production Committee of the 51st Parliament initiate an in-depth inquiry into this, consulting iwi and other stakeholders, to establish a way forward.
Appendix

Committee procedure
We heard evidence from the Ministry for Primary Industries on 26 June 2014 and considered it on 3 July 2014.

Committee members
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Meka Whaitiri
Briefing on the regulation of the whitebait fishery on the West Coast

Report of the Primary Production Committee

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Briefing on the regulation of the whitebait fishery on the West Coast

Recommendation
The Primary Production Committee received a briefing on the regulation of the whitebait fishery on the West Coast and recommends that the House take note of its report.

Introduction and background
The West Coast Whitebaiters Association exists to protect and enhance by all possible means the interests of whitebait fishers in the territorial areas covered by the Whitebait Fishing (West Coast) Regulations 1994, or any replacement regulations or statutory provisions. Regulation 21 provided for exemptions from any restriction on the taking of whitebait where they were taken for the purposes of a hui or tangi, provided that certain associated regulations were also adhered to.

However, in 1995, following consultation with tangata whenua, the Department of Conservation recommended repealing regulation 21 on the basis that it had been superseded by Section 26ZH of the Conservation Act 1987. Poutini Ngāi Tahu and Ngāi Tahu iwi had asked for its repeal, and as this was a matter of customary authority, not conservation of the fishery, it was considered appropriate to take account of the wishes of tangata whenua. The Crown Law Office agreed that repeal was appropriate. In 1999 the department and the iwi confirmed agreed customary fishing protocols, outside of the regulations.

The association believes that since the revocation of regulation 21, and despite the 1999 protocol, major systematic abuses of whitebait fisheries are occurring, including what could be considered whitebaiting on a commercial scale. Frustration with the situation increased as a result of a customary fishing event on the Hokitika River in 2012, which the association considered a complete departure from responsible practice, and which broke most of the regulations regarding customary fishing of any species, anywhere in New Zealand. No action was taken by the responsible authority.

In order to rectify matters and to prevent a breakdown of community relations, the whitebaiters’ association is seeking a change to the regulations, so that conditions on customary fishing agreed to in the Ngāi Tahu Claims Settlement Act 1998, and set out in Section 48B of the Conservation Act 1987 (Special regulations relating to South Island freshwater fisheries) would be applied to customary whitebaiting in Westland, as they are in the rest of the South Island. They believe that this would provide a level playing field for all whitebaiters, protecting customary rights, applying a joint management structure to the fishery, and ensuring that the rules could be enforced, thus protecting the fishery from abuse and further decline.

Customary fishing protocols
We asked whether the 1999 document reaffirming customary fishing protocols between the department and iwi is still in force. We heard that it is still current and is observed in practice. In 2007, the head of the runanga reaffirmed the protocol in writing.
Compliance
We asked about the department’s legal authority to monitor whether customary fishing is carried out in an appropriate way. We were told that section 6(ab) and section 40 of the Conservation Act provide statutory authority for the department to monitor compliance with requirements including those regarding customary fishing, and to investigate suspected offences.

Regulations
We asked why an identical regulation to revoked regulation 21 is still in force in respect of whitebait fishing in the rest of New Zealand (regulation 18 of the Whitebait Fishing Regulations 1994). We were told that no-one is certain why, but it probably reflects the fact that whitebait fishing has been more important to the West Coast than other areas (exemplified by the West Coast having its own set of regulations) so there was more impetus for revocation.

We asked if the department had considered making regulations under section 48B of the Conservation Act 1987 equivalent to regulation 18 of the Whitebait Fishing Regulations 1994 with respect to whitebait fishing on the West Coast. We heard that the department has given some consideration to this possibility, but has not yet initiated the process of making further regulations. A major hindrance to progress is varying interpretation and definition of the term “customary fishing.”

We asked how regulation 18 interacts with section 26ZH(1) of the Conservation Act, which provides that “Nothing in this part shall affect any Māori fishing rights”. We heard that since this section is in Part 5B and the regulation-making powers are in Part 6 of the Conservation Act, the department’s interpretation has been that section 26ZH(1) does not apply to the regulations or override them; in effect they do not interact.

Conservation status
We asked about the conservation status of whitebait and whether catches are declining. We heard that although there is limited data on catch rates and they have always fluctuated from season to season, there has been significant decline in whitebait catches over time. This decline is attributed to habitat loss, predation by introduced fish, pollution, loss of fish passages, and fishing pressure.

Conclusion
We are concerned that if they are not swiftly addressed, the issues raised by the West Coast Whitebaiters Association could lead to friction within the community, and may already be doing so. In making regulations, we recognize the challenge of balancing customary fishing with the need to maintain or enhance fish stocks. However, we urge the department to pursue a satisfactory solution for all parties, as well as helping whitebait populations towards recovery, if necessary by initiating the making of regulations under section 48B of the Conservation Act 1987.
BRIEFING ON THE REGULATION OF THE WHITEBAIT FISHERY ON THE WEST COAST
Appendix

Committee procedure
We heard evidence from the Department of Conservation on 29 May 2014 and considered it on 3 July 2014.

Committee members
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Briefing on the health of bees

Report of the Primary Production Committee

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Briefing on the health of bees

Recommendation
The Primary Production Committee recommends that the House take note of its report.

Introduction
On 3 July 2014, the Primary Production Committee received a briefing on the health of bees.

The pollination of trees, shrubs and plants is critical to the economic and environmental health of New Zealand. Horticulture, flowering crops, and pastoral agriculture all require effective pollination. Pollination is carried out by various pollinators such as bumblebees, native solitary bees, flies and bats; but most food and pastoral crops are pollinated by honey bees.

Managed colony numbers are estimated from the number of hives listed by registered beekeepers. Both commercial and hobby beekeepers require registration under the American Foul Brood pest management strategy. Beekeeping has increased since the industry learned how to manage Varroa mite infestations, and now over 4,000 beekeepers are registered, operating around 450,000 hives. About 350 commercial beekeepers own over 90 per cent of the hives.

Although the bee industry is relatively small in New Zealand, there are two groups representing beekeepers: the National Beekeepers Association and the Federated Farmers Bee Industry Group. This divided structure has caused much internal dissension in the industry. However, in 2014 the two groups formed the Bee Industry Advisory Council, and both are committed to developing a national body to provide a unified voice for beekeeping, and address the issues affecting the industry more effectively.

Economic value of bees
The National Beekeepers’ Association has estimated the economic value of honey bees at $5.1 billion per annum, including $1.5 billion representing the value of clover pollination for the dairy industry. Bee pollination also supports a significant proportion of New Zealand’s horticultural crops and some vegetables. The export value of horticultural products for 2012/13 was $3.53 billion, and exports of seed reliant on bee pollination were valued at $64 million.

Although the main value of bees to the economy lies in pollination, they also produce honey, beeswax, pollen, propolis, and royal jelly. Nucleus colonies of honey bees, and queen bees, are also exported. In the year ended June 2013, the value of these exports amounted to $4.4 million. Total industry income is estimated at $271 million.

Honey production
Honey production is increasing in New Zealand, while fluctuating with the climate. The honey crop for 2012/13 was a record 17,825 tonnes, considerably above the previous peak of 12,500 tonnes in 2008–2010. Annual honey exports reached $145 million in 2013, representing a 20 per cent increase on the previous year. Because it has clinically proven
medicinal value, Manuka honey has been central to this increase, with growth in honey production and colony numbers concentrated in the North Island.

**Bees’ health**

Bees are sensitive to changes in the environment and it is difficult to get a comprehensive picture of their health. A simple count of colony numbers may not provide a true picture of the situation. Colony numbers over the last decade have increased despite reports of increasing losses from unexplained causes, which may have been masked by beekeepers dividing colonies faster to replace them.

When the Bee Industry Advisory Council was formed, one of its first decisions was to order an independent survey of the overall health of New Zealand’s bee colony populations, to monitor trends in colony losses, and try to determine the causes of colony loss. The survey results will allow the beekeeping industry, the Government and other industry stakeholders to understand better the overall health of bees in New Zealand and the threats faced by bees. The survey, which will be held regularly, will also help to focus scientific research.

**Pesticides**

The Agriculture Compounds and Veterinary Medicine (ACVM) Act 1997, regulates the use of agricultural compounds including pesticides and miticides. If a particular pesticide or group of pesticides is found to be harming bees, it can be withdrawn from use. The Environmental Protection Authority (EPA) assesses and manages the environmental impacts of pesticides. Labelling regulations aim to ensure that agichemicals are not used on plants when bees are likely to be present, but their inappropriate use has been a longstanding problem. Poor timing of spraying by commercial growers or home gardeners can kill bees, and the use of surfactants with pesticides can increase the threat. Risk assessment methodology is being examined in the European Union and in the United States to address the sub-lethal and long-term effects of systemic insecticides on honey bees and other important pollinators. The EPA is following these discussions closely.

We asked about the effects on bees and other pollinators of the herbicide glyphosate, especially when it is combined with surfactants. We heard that any problems would be investigated by the EPA but there was little evidence to suggest it presented a problem for bees. We were concerned that beekeepers, who suffer from the use of insecticides especially in some orchards, are often unwilling to complain because they need the goodwill of orchardists. We asked whether there were any requirements for notification of spraying. We heard that it is not in the orchardists’ or spray contractors’ interest to kill bees that are needed for pollination, and that inappropriate use of pesticides is an issue that needs to be resolved at a local level. The ministry acknowledges the sensitive nature of the relationship between landowner and beekeeper, but said it is very difficult to monitor the use of pesticides without complaints. The ministry assured us that it is always open to complaints from beekeepers and will ensure confidentiality.

**Neonicotinoids**

Internationally much attention has been given to the possible effect of neonicotinoid insecticides on bees’ health, and their possible role in colony collapse disorder. There is currently no evidence of the disorder in New Zealand, although these pesticides are commonly used here as a seed dressing and as foliar sprays. Some research has suggested that even at very low levels, these pesticides, perhaps in combination with viruses or other...
stresses, may harm bees. We were told that in New Zealand, the use of neonicotinoid pesticides is overseen by the EPA and the Ministry for Primary Industries ACVM Group, which ensures that they are used so as to minimise residues and to ensure that food safety is not compromised.

From December 2013 the European Union restricted some field uses of three neonicotinoid pesticides, clothianidin, imidacloprid, and thiamethoxam, including seed treatment, soil application, and foliar treatment on plants and cereals that attract bees. Before the ban is reviewed, its effect on bees' health will be studied, which may clarify the effect on bees of neonicotinoids. Currently, we heard there is no evidence that these pesticides, when used correctly, are affecting bees' health in New Zealand.

The Green Party member was concerned that the EPA was not assessing chemicals appropriately and with limited knowledge. As an example the member pointed out that controls were focused on direct application, such as spray or the unlikely event of a bee flying through dust from neonicotinoid seed coatings released during seed sowing, although international concern is increasingly about the systemic effect expressed through guttation or flowering although originating on a seed coating, even in subsequent crops or weeds.

The member remains concerned about longer-term, hidden effects of systemic insecticides such as neonicotinoids on the health of bees and other pollinators. The Ministry told us that the EPA would investigate any problems caused by the use of these chemicals. The Ministry for Primary Industries is responsible only for the labelling of these chemicals to ensure their proper use. Neonicotinoids have been used in New Zealand since the early 1990s with little controversy. Suspected problems have come to light in the EU much more recently. We heard that when anecdotal evidence of losses are investigated, the causes seem to be mainly Varroa or starvation rather than pesticides. A recent report by the Australian Pesticides and Veterinary Medicines Authority into the effects of neonicotinoids on bees in Australia, where the insecticides are used extensively, has also found little evidence of a problem.

The Green Party member believes that there is no monitoring of volumes of pesticides imported or used in New Zealand.

**Bee Diseases and pests**

**Varroa destructor**

The parasitic Varroa mite was first detected in the North Island in 2000 and reached the South Island in 2006. It remains the single most detrimental pest of honey bees and causes many winter colony deaths. Without treatment, most colonies die within six months of being infected. By piercing the bee’s cuticle, the mite introduces viruses such as the Deformed Wing Virus which usually result in colony death. Bees that are under stress from Varroa are also more susceptible to infection of all kinds.

Varroa has destroyed all wild colonies except those that have recently swarmed from apiaries. All beekeepers manage Varroa in their hives with miticides and other measures. The significant costs may not be returned in honey sales. In many parts of the world, Varroa mites have become resistant to the standard miticides and there is anecdotal evidence that this is now occurring in New Zealand. This represents a major threat to the beekeeping industry, and finding new strategies to manage resistant mite populations will be critical. Research is being undertaken here and overseas on Varroa, and the Sustainable
Farming Fund project “Betta Bees” is undertaking research aimed at improving bee genetics, and on mite resistance to miticides. Because there is no way to eradicate Varroa, the challenge is to find new ways to manage the mite and its effects on bees.

**Small hive beetle (Aethina tumida)**

The small hive beetle is not present in New Zealand. It is a destructive pest, which can damage comb, honey, and pollen, and may cause bees to abandon their hives. The ministry follows up on any suspected observation of the beetle, and recently undertook an exercise with the industry on responding to a simulated incursion of the beetle within the Government Industry Agreement framework.

We asked whether the ministry was confident of its ability to prevent or detect an incursion. We heard that it was most likely to come from Australia via the pallets that would carry bulk honey imports if in the future honey imports were permitted. The risk can be mitigated by thorough inspection and cleaning of these imports. In view of the World Trade Organisation requirements of providing least trade restrictive measures, the ministry does not believe that the risk is strong enough to ban imports, although the industry still believes otherwise.

**Nosema ceranae**

Nosema ceranae is a microscopic parasite that attacks the intestine of the honey bee. In September 2010, N. ceranae was detected in New Zealand in an investigation into hive illness at a Coromandel beekeeping operation. The Ministry of Agriculture determined that N. ceranae was established in New Zealand to the extent that it could not be eradicated. The ministry also determined that movement controls and restrictions would not control the pest and that eradication was not feasible. New Zealand beekeepers already manage nosema disease, traditionally attributed to a different parasite, N. apis. We were told that N. ceranae is not a notifiable or an International Organisation for Animal Health listed disease, and has no trade impacts or human health implications.

**European Foul Brood**

European foul brood (EFB), a bacterial disease, is not present in New Zealand. It is notifiable under the New Zealand Biosecurity Act 1993.

We noted that the causative organism of EFB cannot be eradicated from honey imports without destroying the honey, and we asked about the threat to New Zealand bees posed by honey imports. Australia has been seeking access to the New Zealand honey market for many years, but has been restricted on biosecurity grounds. New Zealand honey, however, can be freely exported to Australia. The bee industry in New Zealand is concerned about the risk of exotic pests and diseases, including EFB, being introduced if imports of Australian honey are permitted through a new Import Health Standard (IHS).

The Biosecurity Act 1993 and New Zealand’s international trade commitments require that an IHS be supported by scientific and technical evidence on biosecurity risks. In 2004, the ministry released an import risk analysis for Australian honey. It concluded that the risk of EFB in the honey could be managed effectively by heat-treatment. In 2006, the ministry released an IHS for honey from Australia. Its implementation has been delayed by legal action by the National Beekeepers Association, legislative changes to the Biosecurity Act 1993, and the Hazardous Substances and New Organisms Act 1996. Additional work is
BRIEFING ON THE HEALTH OF BEES

being done on bee diseases that have emerged since the 2004 risk analysis. This is proving to be time-consuming, and conclusions are not expected to be available before late 2014.

We were told that the proposed IHS for mitigating the risk of EFB resulted from research which showed that time/temperature requirements for imports could reduce the presence of EFB in the honey very substantially. The ministry is confident that the standard represents a very conservative regime for mitigating the risk. The risk analysis will be updated this year, towards an eventual decision on the import health standard.

Other Problems

Bee forage

Bees forage from a wide range of native and introduced plants. They need good quality pollen sources, and a strong nectar flow. Intensively-managed agricultural environments offer a limited range of nectar and pollen sources because of weed control, grazing practices and limited amenity plantings, adversely affecting the health of bee colonies. The “Trees for Bees” programme, established by the Federated Farmers Bee Industry Group and supported by the Sustainable Farming Fund, has been designed to offset the impact of these factors. It promotes the planting of appropriate species, and has strong bee industry support.

Intensive trucking

Commercial beekeeping involves trucking bees to where they are needed at particular times of the year for pollination, or nectar collection. In some countries, where large areas of land are planted in single crops, beekeepers must transport their hives long distances. Prolonged confinement and temperature fluctuation is stressful to bees and can increase the likelihood of disease in a colony. In New Zealand, where transport distances are comparatively short, there is little evidence of a problem.

Honey bee genetics

New Zealand bees lack genetic diversity, which limits opportunities to develop or breed resistance to Varroa and other pests and diseases. The “Betta bees” project aims among other things to improve New Zealand bee genetics and specifically to develop bees with a natural resistance to the Varroa mite.

Hive management

Bee health suffers when Varroa is managed ineffectively, when hives are overstocked, and when hives are overused for commercial pollination of trees or crops. For commercial beekeepers, who own the vast majority of the hives in New Zealand, business considerations are important, and there is pressure to use management methods that are not good for bee health, such as feeding sugar in winter to prepare bees for pollination of early crops; placing hives in orchards such as kiwifruit, which are of low nutritional value to bees, and moving hives to manuka areas which do not provide good food sources. The high price for manuka honey has led to overstocking of hives in some manuka-rich areas, which can reduce the income of individual beekeepers and place further stress on bees.

Threats to bumblebees and native solitary bees

Other important pollinators include bumblebees and native solitary bees. They often survive in wild areas away from agricultural spraying, but may still be poisoned in extensive
spraying for other insect pests. The major problem for wild pollinator populations is loss of habitat.

Bumblebee species are declining in Europe, North America, and Asia for various reasons, including land-use change and intensification of agricultural systems reducing their food supply. There is no information on bumblebee numbers in New Zealand.

**Government Industry Agreement for Biosecurity Preparedness and Response**

The Government Industry Agreement (GIA) on biosecurity preparedness and response is an opportunity for bee industry representatives to work with the ministry on pest and risks to New Zealand bees. In return a financial contribution will be required to any joint action agreed with the ministry.

The bee industry is also seeking to develop a GIA although serious biosecurity concerns about honey imports may be a stumbling block. Industry leaders have now signed the Memorandum of Understanding for the GIA and are considering signing the final deed in 2015, after securing a mandate from the wider industry. We heard that the bee industry is working well with the ministry towards developing a working GIA. The ministry was confident that it would be signed within a year.

**Ministry support to the bee industry**

Because of the crucial importance of honey bees to effective pollination, and to a lesser extent honey production, the ministry is working with various parties to support the bee industry, in the following areas:

- biosecurity protection of primary industries
- the review and approval of the American Foul Brood National Pest Management Plan
- working with National Beekeepers’ Association and the Federated Farmers Bee Industry Group on a national bee colony loss survey
- researching the baseline microbial flora of bees in New Zealand
- co-funding a national apiary register
- developing import health standards
- facilitating market access and honey residue testing
- negotiating and issuing export certification for honey and bee products
- supporting Sustainable Farming Fund programmes, including “Trees for Bees” and the “Betta Bees” project with Otago University, a study of the sustainable management of natural alkaloids in honey, and exploring the scope of Māori agribusiness in bees
- operating the Primary Growth Partnership – High Performance Manuka Plantations Programme to develop a science basis for manuka husbandry
- co-funding a study with the Department of Conservation on the estimated costs of introduced vespid wasps to New Zealand, including their effects on bees
BRIEFING ON THE HEALTH OF BEES

- participating in the Bee Products Standards Council
- developing a manuka honey labelling guideline
- working with the industry on the Government Industry Agreement for Biosecurity Readiness and Response

Riparian margins

We noted that 23,000 km of river banks in New Zealand are fenced or being fenced to form riparian margins to protect waterways from livestock. These areas are being planted mainly with native plants. We asked if the bee industry or the ministry had any intention of using this very extensive area of land for introducing plants of interest to bees, rather than just native plants. We were assured that beekeepers would no doubt utilise these areas without being prompted by the ministry.

We were also advised that the “Trees for Bees NZ” project sought to ensure that honey bees can gather sufficient pollen and nectar throughout the season. We remain concerned, however, that farmers in general would be unaware of the advantages of mixed plantings on riparian margins for the health of bees. We believe that insufficient attention is being paid by the ministry or the beekeeping organisations to this opportunity to improve honey yields and bees’ habitat, nutrition, and health.

We urge the ministry to consider this opportunity and to provide a lead in investigating the best use of riparian margins for bees, and to circulate information about riparian planting among the regional councils.

Advice to Parliament

Although the bee industry is of fundamental importance to New Zealand agriculture, very little is heard about it in Parliament. We asked about the ministry’s responsibility to apprise Parliament of progress in the industry. We were told that the ministry worked closely with ministers, was always available to advise select committees, and had provided information on bees and pollination to the Local Government and Environment Committee in 2013.

Conclusion

We were pleased to obtain such a thorough update on the health of bees and the bee industry in New Zealand and note that some problems affecting the industry are now being addressed with the formation of the Bee Industry Advisory Council. The health of bees is of fundamental importance to New Zealand and we would welcome comment on the industry in the ministry’s annual report to Parliament.
Appendix

Committee procedure
We heard evidence from the Ministry for Primary Industries on 3 July 2014 and considered it on 24 July 2014.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
Meka Whaitiri
Briefing on the policy, project management, and programmes of forestry grants offered by the Ministry for Primary Industries

Report of the Primary Production Committee

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Briefing on the policy, project management, and programmes of forestry grants offered by the Ministry for Primary Industries

**Recommendation**

The Primary Production Committee recommends that the House take note of its report.

**Introduction**

On 26 June 2014, the Primary Production Committee received a briefing on the policy, project management, and programmes of forestry grants offered by the Ministry for Primary Industries.

The Ministry for Primary Industries is responsible for two forestry programmes: the East Coast Forestry Project, established to address the widespread erosion problem in the Gisborne district, and the Permanent Forest Sink Initiative, which offers landowners of permanent forests established after 1 January 1990 the opportunity to earn emission units for the carbon absorbed by their forests since 1 January 2008. The ministry also monitors and audits $22 million in grants allocated to forestry projects under the Afforestation Grant Scheme, which ended in June 2013.

**East Coast Forestry Project**

We heard that interest among landowners in the East Coast Forestry Project had waned in recent years and new ways were being devised of increasing interest in forestry to cover the large remaining areas of erosion-prone land. Following robust consultation, the ministry is soon to introduce more efficient ways of administering and allocating the remaining $26 million in grants, which is available until 2020, to make it easier for landowners to get funding and advice. We were told that landowners in the region could apply for these funds and also apply to earn emission units for the carbon absorbed by their forests.

**Permanent Forest Sink Initiative**

This project aims to involve landowners in developing permanent forest areas, planting mainly native trees. A recent review of the scheme has sought to reduce its complexity and make it more attractive. The scheme initially targeted carbon sequestration and climate change outcomes, but the ministry is now promoting it as a sustainable land management programme, offering water quality and biodiversity benefits, and using land not suitable for other farming activities. The scheme permits harvesting of up to 20 per cent of the canopy cover.

**Harvesting timber from permanent forests**

We asked about the success or otherwise of the sustainable harvest of native timbers scheme. We were told that the legislation is too complex and restrictive, and seems to be regulating the wrong part of the forestry cycle. However, it does ensure the setting of sensible, sustainable harvest limits, and the strict monitoring and auditing of harvests.
We asked about the long-term future of the permanent forests, especially of pine plantings that by their nature do not have a long life. We heard that natural pine forests have a long-term future, and are different in growing habit from managed pine forestry. The expectation is that the natural forests will follow a natural cycle, with trees dying at different times and being replaced by replanting and natural re-seeding.

We asked if new harvesting methods and more capable machinery would enable permanent forest owners to harvest areas previously deemed inaccessible. We heard that the ministry had found that most owners planted permanent forest for land management of the estate as a whole, to improve water quality and control erosion; harvesting was not a major consideration except as part of a forest management regime.

We heard that around 80 per cent of harvestable timber remained. This large percentage was probably due to the complexity of the regime regulating harvests, and the cost to the landowner of entering into a plan or organising a permit. The percentage includes land covered by a plan or permit and where no harvesting activity has yet been undertaken; land for which applications are pending approval; and land for which no permit or plan has been applied for.

**Harvesting regulations**

One of us was concerned about the apparent lack of policing of harvests permitted under the regulations. We were assured that a robust system ensures compliance. Landowners must have either an approved harvesting plan, or a permit to harvest the timber. An overall harvest limit is allocated by the ministry if an approved 50-year harvesting plan is in place; or a harvest limit is allocated over ten years, if a permit to harvest has been issued. Before the timber is cut and removed, an annual logging plan, indicating the volume of the harvest, and which trees are to be removed, must be lodged with the ministry. Once the timber has been removed, it must be milled in sawmills registered with the ministry. Each sawmill completes a quarterly return which must indicate the origin of the timber and the plan under which it was harvested. Post-harvest aerial surveys of the forest involved confirm compliance.
Appendix

Committee procedure

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Committee members

Shane Ardern (Chairperson)
Steffan Browning
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Eric Roy
Meka Whaitiri
The Primary Production Committee has considered Petition 2011/72 of Mandy Carter on behalf of SAFE and Humane Society International requesting “that the House of Representatives note that 15,651 people have signed a petition calling for the Government to put in place a ban on cosmetic animal testing and ban the sale of new cosmetics that have been tested on animals and that the House support this request”. We have no other matters to bring to the attention of the House.

Shane Ardern
Chairperson
Parliamentary Privilege Bill

Government Bill

As reported from the Privileges Committee

Commentary

Recommendation
The Privileges Committee has examined the Parliamentary Privilege Bill and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to implement the recommendations we made in our 2013 report on the *Question of privilege concerning the defamation action* Attorney-General and Gow v Leigh (2013) AJHR I.17A, including recommendations restated in that report from various earlier Privileges Committee and Standing Orders Committee reports.

While the bill responds to specific recommendations we made in the context of particular questions of privilege, its coverage is broader than the particular issues raised by the events leading to the referral of those individual questions. In accordance with our recommendations in the *Question of privilege concerning the defamation action* Attorney-General and Gow v Leigh report, the bill seeks to restore and reaffirm understandings of the scope of aspects of parliamentary privilege, and to consolidate and modernise existing legislation.

Underpinning this legislation is the principle of comity: the mutual respect the legislature and the judiciary must have for each other in
a functioning democracy. The important roles and rights of both the courts and Parliament must be protected; this bill seeks to help clarify areas in which the authority of these institutions meet, with a view to strengthening the existing respectful relationship.

The importance of this bill for our country and parliamentary democracy should not be understated. Once enacted, it will form part of our constitutional framework. It will sit alongside the Constitution Act 1986, which contains provisions relating to the Sovereign as New Zealand’s Head of State, and to the three branches of government in New Zealand. The legislation will set the framework for the operations of our legislative branch of government, by affirming the key safeguards and immunities that Parliament (and particularly the component of it that is the House of Representatives) possesses to preserve its independence and to enable it to carry out its functions.

Parliamentary privilege is one of the building blocks of our democracy; it is the cornerstone of an effective Parliament, and protection of parliamentary privilege safeguards democracy itself. Parliamentary privilege ensures that we, the people’s representatives, can debate and deal with the issues of the day freely and frankly, without fear of coercion or punishment, and without concern that matters of accountability will be adjudicated by bodies outside the House. Protection of parliamentary privilege ensures that our democracy remains healthy and strong.

Parliamentary privilege evolved from a time when the repercussions of participation in parliamentary proceedings could be serious; members’ participation could be (and often was) challenged in the Sovereign’s courts as sedition. While such threats are long past, they are so largely because of the development of the protections afforded to Parliament by parliamentary privilege.

The long-protected group of privileges, immunities, and powers which form parliamentary privilege belong to Parliament itself, not its members. While it is inevitable that the members who make up the Parliament also experience the benefit of these privileges, we acknowledge that these privileges do not exist for the benefit of the members personally. We note that others who interact with Parliament, such as media and members of the public or officials, may also benefit from the protection of parliamentary privilege. We understand that with these privileges comes obligation; we must be
circumspect in the use and application of these privileges, and must be mindful of their source and purpose when seeking to invoke them. The Bill does not set out to amend directly, or limit or detract from, any other operation of Article 9 of the Bill of Rights 1688, the first formal instrument from a Parliament protecting the freedom of speech and debates or proceedings in Parliament. We note that the bill does not seek to codify comprehensively, or to replace entirely with legislation, every aspect of parliamentary privilege. It is particularly concerned with one aspect: Parliament’s freedom of speech, and the associated matter of communicating proceedings in Parliament to the public.

We recommend a number of amendments to strengthen and streamline the bill. Our commentary covers the major amendments we recommend. It does not cover minor or technical amendments.

**Purpose and scope of the bill**

We recommend that the bill be restructured into five parts. The bill as introduced is cast in two parts: one which deals with substantive provisions, and the other with savings provisions, related amendments, and repeals. Our suggested five-part structure organises the core elements of the legislation more clearly, with Part 1 to consist of general overarching provisions (purpose and interpretation), and new Part 1A the fundamental provisions relating to parliamentary privilege; new Part 1B setting out protections for communication of proceedings in Parliament, and Part 1C miscellaneous but important other provisions relating to parliamentary privilege (such as powers of the House). The scope of the final part of the bill (Part 2) would remain largely the same. Much of Part 1 of the bill as introduced would be simply shifted and restated elsewhere, unchanged, in this restructuring. In our view the restructure, together with some of the key amendments discussed below, reflects better the role this legislation will play as a new principal Act, which will form part of the fabric of our constitutional framework.

The restructure we suggest, along with many of the key amendments we propose, reflects our desire that the bill be of general application in those areas of privilege addressed by the bill as introduced, rather than simply a direct response to specific events leading to the referral of particular questions of privilege. We expect the bill to provide
guidance on how to deal with the kinds of issues that may come up in relation to, for example, statements which effectively repeat proceedings in Parliament. To simply respond directly to the approach taken by a court in any one particular case, setting out provisions according to issues rather than thematically, might not achieve the coverage we intend.

Interpreting the legislation

Comity is a key principle that underpins parliamentary privilege. It is about reciprocal courtesy and respect between the judiciary and the legislature: the mutual respect and restraint that is essential in maintaining the constitutional relationship between the two, and the independence of each.

We note that the principle of comity is not an isolated principle asserted by Parliament. Rather, comity—and the rationale behind it—has been expressed most eloquently and confidently by the courts themselves. In *Pickin v British Railways Board,* Lord Reid cited comity as a basis for considering questions relating to the actions of Parliament, saying that “for a century or more both Parliament and the courts have been careful not to act so as to cause conflict between them”, and that (regarding an investigation into how and why Parliament enacted a certain piece of legislation), “the whole trend for over a century is clearly against any such investigation”.

In the same case, Lord Simon of Glaisdale stated:

> It is well known that in the past there have been dangerous strains between the law courts and Parliament—dangerous because each institution has its own particular role to play in our constitution, and because collision between the two institutions is likely to impair their power to vouchsafe those constitutional rights for which citizens depend on them. So for many years Parliament and the courts have each been astute to respect the sphere of action and the privileges of the other—Parliament, for example, by its sub judice rule, the courts by taking care to exclude evidence which might amount to infringement of parliamentary privilege.

Our proposed new clause 3A emphasises the importance of understanding context when dealing with questions relating to parliamentary privilege or proceedings in Parliament. It would provide clear

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direction that the Act must be interpreted so as to promote the purposes we set out in the legislation (both the purposes of the bill, and the purpose of parliamentary privilege; see clause 3A(1)(c)). In addition, new clause 3A would ensure that, along with the purposes set out in the bill, the principle of comity was always uppermost in the minds of decision-makers interpreting and applying this legislation.

We recommend changes to the purpose clause (clause 3). The original purposes set out in the bill as introduced would not be lost, but would become subsidiary purposes (new clause 3(2)), supplementing the main purposes (new clause 3(1)), which would be to reaffirm and clarify the nature, scope, and extent of the privileges, immunities, and powers exercisable by the House, and to ensure adequate protection from legal liability for communication of, and of documents relating to, proceedings in Parliament. This is not a policy change; it was always the intention that a Parliamentary Privilege Bill responding to our original recommendations should do these things. While the bill as introduced did indeed include provisions to do so, it did not contain these high-level statements. We consider these statements important to set the scene for anyone who needs to interpret and apply the legislation.

We also recommend a revision of clause 6, which sets out the purpose of parliamentary privilege. Our changes (in new clause 6) would help to make clear the underlying justifications for parliamentary privilege; the privileges, immunities, and powers in the bill exist to uphold the integrity of the House as a democratic legislative assembly, and to secure the independence of the House, its committees, and its members, in the performance of their functions. Without the protection of parliamentary privilege, it has been suggested that “parliaments probably would degenerate into polite but ineffectual debating societies”.

Interaction with defamation law: removal of defamation concepts (adequacy of protection)

We recommend amending the bill by removing clauses 9 to 13, and clause 33(2), which propose specifying particular parliamentary matters that are to be protected by absolute privilege against any kind of

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criminal or civil liability. This recommendation is not made because we wish to reduce the level of protection available under Article 9 of the Bill of Rights 1688 regarding any of the specified matters, or because we do not consider these matters to be protected against liability in defamation by absolute privilege. Rather, we consider that introducing defamation concepts into this legislation is confusing and unnecessary, and that the existing absolute privilege protections against liability in defamation are best left in the Defamation Act 1992 itself.

We are particularly concerned that incorporating new absolute privilege protections modelled on defamation concepts into parliamentary privilege legislation might inadvertently extend the scope of parliamentary privilege, particularly to providing protection for statements made outside Parliament other than those that communicate accurately or effectively repeat proceedings in Parliament. We wish to restore the scope and understanding of parliamentary privilege to its proper balance, as it was in law before certain modern New Zealand courts’ decisions, such as those in *Attorney-General and Gow v Leigh,* and *Buchanan v Jennings.* Extending the protection of parliamentary privilege into uncharted and inappropriate territory—by adopting broad new absolute privilege protections against all liabilities—was never our intent.

We suggest instead retaining and strengthening the more orthodox approaches to parliamentary privilege taken elsewhere in the bill. For example, we recommend taking only an evidential prohibition approach regarding liabilities from statements that effectively repeat statements made in proceedings in Parliament (commonly known as “effective repetition”), and relying on reinforced provisions for stays of court or tribunal proceedings in respect of specified authorised communications of proceedings in Parliament.

We consider that these traditional approaches, together with retaining the pertinent provisions of the Defamation Act in that Act itself (rather than in the new legislation), should provide sufficient protection. In some of the reinstated clauses regarding communicating proceedings in Parliament (new subpart 2 of Part 1B), we recommend replacing all references to “qualified privilege” with “qual-

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ified immunity”, to reduce the potential for confusion with well-known defamation concepts and principles. Our other recommended amendments regarding the evidential prohibition for effective repetition statements are discussed below.

Our proposed new clause 20(2) would also make it clear, for the avoidance of doubt, that the Defamation Act’s absolute privilege and qualified privilege provisions would remain unaffected by the provisions of this bill, except where our recommended new qualified immunity provisions (subpart 2 of Part 1B, discussed below) would replace the qualified privilege provisions in clauses 1 to 3 of Schedule 1 of the Defamation Act (or where clause 33 aligns terminology).

**Exercisable**

We recommend defining the new term “exercisable” (clause 4), and using it as a key term throughout the legislation when referring to the privileges, immunities, or powers of the House (or of the House of Commons), its committees, or its members. The legislation as introduced uses for this purpose the conventional terminology, “held, enjoyed, and exercised”, as used in section 242(1) of the Legislature Act 1908. This bill seeks to repeal the Legislature Act 1908, and replace its provisions.

Our use of this new, defined term is to simplify expression only, so is not intended to change what is protected, or to prevent continued application of the legal precedents associated with these terms: it is simply an effort to modernise and rationalise the current legislation. We are confident that the extensive history and body of precedent associated with the terms “held, enjoyed, and exercised” would not be lost, if these terms are included in the definition of “exercisable”, as we recommend.

**Protection afforded by parliamentary privilege**

Our new subpart 2 of new Part 1A would replace clause 8 of the bill as introduced. This subpart sets out how this legislation relates to Article 9, and also defines proceedings in Parliament. Making sure that these provisions are clear, simple, and easy to understand is crucial if the bill is to achieve the purpose we intend. Our changes would disaggregate the key components of clause 8 into eight separate clauses,
and simplify and modernise the language so that the provisions were as unambiguous as possible.

Our new clauses 8A to 8H reaffirm and clarify Article 9 of the Bill of Rights 1688, in accordance with the main purpose of the bill (set out in clause 3(1)(a)). They also (in accordance with the subsidiary purposes in clause 3(2)(b), (c), and (d)) would

- make clear what “proceedings in Parliament”, as used in Article 9, means, and in particular seek to alter the law in the decision in Attorney-General v Leigh
- stop evidence being offered or received, questions being asked, or statements, submissions, or comments made, about proceedings in Parliament, to inform or support “effective repetition” claims and liabilities in court or tribunal proceedings (exemplified by the decision in Buchanan v Jennings).

The provisions we recommend broadly follow section 16 of the Parliamentary Privileges Act 1987 (Australia). Like this model, they would not replace, but declare the effect of, Article 9.

Clauses 8A to 8H require Article 9 to be taken to have a specified effect. However, they are not intended to directly override, or amend, Article 9. Rather, the provisions we suggest would sit alongside Article 9, for reference should clarification be needed in the areas covered by these clauses.

**Interaction of this legislation with Article 9 of the Bill of Rights 1688**

One of the main purposes of this bill (clause 3(1)(a)) is to reaffirm and clarify the nature, scope, and extent of the privileges, immunities, and powers of the House. One of these privileges, freedom of speech, is set out in Article 9 of the Bill of Rights 1688 (which is part of the laws of New Zealand, through the Imperial Laws Application Act 1988).

Article 9 says:

**Freedom of speech**

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

Our new clause 8A would require Article 9 to be taken to have the effect specified in the subpart, but also makes it clear that this would not stop any other effect of Article 9 beyond the matters dealt with
in the subpart. It also makes it clear that there would be times where the Article 9 rights were overridden by specified Crimes Act 1961 offences.

**Impeaching or questioning**

While we have taken a general approach of suggesting simpler and modernised drafting, we recommend continuing to reflect directly some of the wording of Article 9 (particularly: “That… proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”). Our new clauses 8C to 8F would make clearer what is covered or excluded by the term “impeaching or questioning” in respect of proceedings in Parliament.

We considered whether it might be useful to replace references to “impeaching or questioning” with more current terminology, but wanted to avoid the risk that the scope of parliamentary privilege protected by Article 9 would be broadened or narrowed, or that the courts might interpret any change in terminology as a shift away from the concepts established since the 17th century.

While these terms may today be considered synonymous, at the time Article 9 was drafted they probably reflected subtle differences of meaning. *Erskine May* says, “Use of the term ‘impeached’ in the context of the defence of parliamentary freedoms goes at least as far back as the Commons Protestation of 1621, where it appears in a very broad context along with ‘imprisonment…molestation, censure’.” Today, we understand freedom of speech to be “impeached” where there is an attempt to make a member or other person liable in criminal or civil proceedings on account of what they have said or done in Parliament. Freedom of speech is “questioned” when there is an attempt to use what is said or done in Parliament in criminal or civil proceedings in a way that involves a critical examination of that statement.\(^5\)

While Article 9 excludes evidence where the reason the evidence is offered or admitted is to “impeach or question”, it does not prevent evidence being used—with no impeaching or questioning—to estab-

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lish that something was said or done in Parliament as a matter of fact.\textsuperscript{7} Our new clause 8G is intended to recognise that the bill would not change this established position.

\textbf{Definition of proceedings in Parliament}

We recommend amending the definition of proceedings in Parliament (new subclauses 8B(3) and (4)), to make it clear that proceedings include matters which relate to the transacting of any “reasonably apprehended” business, and to ensure that it would be clear that necessity is not the appropriate test to apply when determining what might be a proceeding in Parliament. To avoid any doubt on this last point, we also recommend inserting new subclause 8B(7), to ensure that our definition applied despite any contrary law, including the decision made in \textit{Attorney-General and Gow v Leigh}.\textsuperscript{8}

This definition is a key provision of the proposed legislation: an understanding of what a proceeding in Parliament is underpins many of the operative protection provisions in the legislation. It was always the intention that this legislation would reverse the shift in understanding, and the reduction in the scope of parliamentary privilege, resulting from the decision made in \textit{Attorney-General and Gow v Leigh}. Our amendments make this irrefutably clear.

Our proposed definition recognises that much of the vital business of Parliament is transacted away from the floor of the House, or in reasonable anticipation of parliamentary business, and it is critical that privilege apply to such proceedings. Whether or not particular words, actions or documents are covered will require an examination of the particular matter and the occasion.

We discussed at length the types of matter we consider are “incidental to” the transacting of the business of the House or of a committee, and therefore covered by the legislation. We expect that any words or acts sufficiently connected to, or occurring in conjunction with, the business of the House or its committees are covered. We consider that advice provided to Ministers in preparation for reasonably expected questions in the House, as occurred in regard to \textit{Attorney-General and Gow v Leigh}, are proceedings in Parliament under this definition.

Beyond this, while coverage will need to be determined case by case, we note (without intending to limit the definition) that we expect matters covered to include preparation associated with questions for oral or written answer or preparation of notices of motion for lodging by a member, the preparation of evidence for a select committee by an individual or organisation, the preparation or the submission of a petition from an individual to a member for presentation to the House, and the preparation of documents for a member for use in a debate or for raising questions in the House. Other matters covered by the definition might include a member’s speech notes regarding a document tabled in Parliament, or written communications between a member and a Minister or a Minister and their department regarding an issue under discussion (or a document which is later tabled) in the House. We note that the main subclauses defining a proceeding in Parliament (clauses 8B(1) and 8B(2)) would reinstate the wording of clause 8(2) of the bill as introduced. This expressly draws on the comparable provision in the Australian Parliamentary Privileges Act 1987. We heard from our Australian Senate counterparts that this provision has served them well, and there has been no evidence of either limitation caused by the definition, or a need to expand the items specified. In view of this experience, we consider that the definition should also be satisfactory in New Zealand. We note an additional benefit of retaining this direct reflection of the Australian legislation; it should ensure that their body of case law remains relevant to the New Zealand context.

**Effective repetition**

We recommend the addition of new paragraphs (d) and (e) to clause 8C (which otherwise reinstates clause 8(3) of the bill as introduced), to strengthen the evidential prohibition for proceedings in Parliament. These new paragraphs would replace clause 8(4) of the bill as introduced, and would prevent proceedings in Parliament being relied upon to prove or disprove facts necessary to establish liability in court, or otherwise being used to resolve, support, or resist court proceedings.

Our recommended new clause 3(2)(d) (which refines clause 3(1)(e) of the bill as introduced) emphasises the strength of this prohibition,

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*Section 16(2).*
by making it clear that the prohibition (on use of proceedings in Parliament to inform or support “effective repetition” claims and liabilities in proceedings in a court or tribunal) is a subsidiary purpose of the Act.

At the heart of these changes are the protections we consider necessary to address the issues raised in Buchanan v Jennings.10 The principal issue in this case was the extent to which something said by a member inside Parliament could be used in a defamation claim on the basis of an effective (as opposed to actual) repetition of the parliamentary statement outside the House. In summary, the case established that, where a statement was made that the court considered to be effectively repeating a parliamentary proceeding, the proceeding itself could become evidence. In our 2013 report, we recommended abolishing this doctrine of effective repetition.

The bill as introduced takes a “belt and braces” approach to addressing this issue, by including a statement in clause 10 that effective repetition statements are protected by absolute privilege, and also by establishing an evidential barrier preventing the use of proceedings in Parliament in court proceedings (clause 8(4) of the bill as introduced). We recommend the deletion from this legislation of all provisions relating to absolute privilege, including clause 10. Our preferred approach to dealing with effective repetition is rather to ensure that the evidential barrier against a court using proceedings in Parliament is simple, clear, and complete. We consider that clause 8C, with our proposed additions of paragraphs (e) and (d), would achieve this purpose.

Confidential proceedings

We recommend replacing all references to “private evidence” with “advice, evidence, or otherwise” in our new clause 8D (which replaces 8(5)(a)(i) and 8(5)(b)(i) from the bill as introduced). This change makes it clear that it is not just evidence received in private that a court could not require to be produced; all information which is confidential to the House or a committee is protected from disclosure, unless the House or committee has communicated the material to the public or authorised its communication to the public.

Use of proceedings in interpreting legislation or to establish historical event or other fact

We recommend the insertion of new clauses 8E and 8G, so that a proceeding in Parliament could be used only for the purpose of interpreting legislation, or to establish a relevant historical event or fact, provided there was no impeaching or questioning of the proceedings in Parliament. New clause 8E would allow a court to examine proceedings in certain circumstances, for example by referring to Hansard or committee reports to ascertain the will of Parliament in enacting particular legislation, if faced with a question about the proper interpretation of that legislation. We consider such a reference entirely correct and not a breach of privilege.

Communication of proceedings in Parliament

Our recommended new Part 1B deals with communication of proceedings in Parliament. It would simplify the framework for protecting publishing and broadcasting of parliamentary proceedings, by replacing clauses 11 to 13 and 15 to 16 of the bill as introduced with a single new clause 15. New clause 15 provides for a stay of court or tribunal proceedings that are commenced on the basis of a proceeding in Parliament, or a document related to a proceeding in Parliament, communicated under the authority of the House (such as broadcasts made under the authority of the House). This clause would also provide for a stay of court or tribunal proceedings for which a copy of such a document was the basis.

Subpart 2 of this new Part deals with qualified immunity. Qualified immunity would be available as a defence for fair and accurate reports of proceedings in Parliament, or extracts or summaries of documents published under the authority of the House or related to proceedings in Parliament (clause 19), and for delayed communications of proceedings not made under the authority of the House (such as re-broadcasts of Parliament TV) (clause 18), providing that the defendant did not abuse the occasion of communication (for example, by acting in bad faith or with a predominant motive of ill-will) (clause 17).

A stay of proceedings is an order of the court or tribunal (in civil and criminal procedure) which halts any further legal process.
Definitions of communications and communication to the public
We recommend that the terms “communication” and “communication to the public” be defined (clause 4), and that they be used to rationalise the legislation, and obviate the need for use of multiple distinct terms such as parliamentary papers, authorised parliamentary papers, broadcasts, and statements. Consequently, we recommend the removal of these terms throughout the bill, and the deletion of these extraneous definitions.

Our proposed new definition of communication is designed to future-proof this legislation, by covering in a technology-neutral way all communications in any form. Regarding current technology, it is expected to capture delivery of a printed copy of a document, as well as transmission of an electronic copy of a document (whether by email, internet posting, or the like). It would also cover radio broadcasts, television broadcasts, webcasts, and podcasts. The definition also captures all transmissions regardless of the role or purpose of the transmitter; those who act solely as distributors, those who are reproducers of content, and suppliers of transmission services are all covered by the amended bill.

Hansard
In suggesting our amendment to remove the definitions of parliamentary paper, or an authorised parliamentary paper, from this bill, we recognise that what such “papers” might comprise is a matter for the House to determine. Likewise, the production of Hansard and the saving of approved forms or rules for Hansard must come under the exclusive cognisance of the House. Accordingly, we recommend the deletion of clauses 14 and 32, and we leave any rules needed in this regard in the hands of the House itself.

Process for issue of a certificate to stay proceedings
New subclauses 15(2) to 15(5) set out the process to be followed for a stay of proceedings to be granted. These new subclauses reflect modern court and tribunal practice and procedure. An application for a certificate would be made to the Speaker of the House of Representatives; and where the Speaker granted a certificate it would be required to state the nature of the communication for which the certificate was granted (see clause 15(2)(a)), and copies of each docu-
ment relating to the communicated proceedings in Parliament or the authorised parliamentary communication in question would have to be appended to the certificate. Once a certificate was granted, the applicant could apply to the relevant court or tribunal for a stay of proceedings, and would have to append the certificate to their application (clause 15(3)). The court or tribunal registrar would then refer the matter to the presiding judicial officer, who would have to immediately stay the proceedings related to the certificate (clause 15(4)). The order staying the proceedings must be processed in accordance with the practice and procedure of the relevant court or tribunal, but without fee (clause 15(5)).

As proposed in the bill as introduced, once stayed, the court proceedings would have to be taken as finally determined (clause 15(6)). We recommend a minor change to make it clear that the process to apply for a stay of proceedings would not prevent a plaintiff or prosecutor from discontinuing or withdrawing the court or tribunal proceedings (clause 15(7)).

Conclusion

The nature of Parliament’s relationship with the courts underpins the core proposals in this legislation. Both institutions are charged with separate constitutional responsibilities designed to protect the interests of, and maintain, our free and democratic society. To discharge our duties properly, we each need to be able to uphold our own independence, both from each other, and from others. We should each operate in a way that acknowledges and supports the other’s independence and role.

In this bill, we are looking to strike a harmonious balance in the area where the privileges necessary to protect the independence of Parliament, and the important role of the courts, intersect. Under New Zealand’s constitutional arrangements (like those of the United Kingdom), the precise boundaries of the authority of the courts and Parliament can be indistinct. It is of the utmost importance that conflict is avoided by careful and respectful considerations of each other’s constitutional roles.

By clarifying this area, we expect to enhance the ability of both institutions to live fruitfully and respectfully alongside each other, each making its own important contribution to fair and stable governance
within New Zealand. In our view, the provisions in this bill, with our suggested amendments, would strike the right balance.
Appendix

Committee process
The Parliamentary Privilege Bill was referred to the committee on 11 December 2013. The closing date for submissions was 28 February 2014. We called publicly for submissions, along with inviting submissions from a number of interested parties and our counterparts in certain other jurisdictions. We received and considered nine submissions in response, and heard from the Legislation Advisory Committee, the New Zealand Law Society, and the Clerk of the House of Representatives. We would like to thank all the submitters for their considered views.

We received advice from the Ministry of Justice, the Office of the Clerk of the House of Representatives, and our independent specialist adviser Mr John Pike QC.

Committee membership
Hon Christopher Finlayson QC (Chairperson)
Hon John Banks
Hon Gerry Brownlee
Dr Kennedy Graham
Chris Hipkins
Hon Murray McCully
Hon David Parker
Rt Hon Winston Peters
Grant Robertson
Hon Anne Tolley
Hon Tariana Turia
Social Security (Fraud Measures and Debt Recovery) Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Social Security (Fraud Measures and Debt Recovery) Amendment Bill, and recommends by majority that it be passed with the amendments shown.

Introduction
The Social Security (Fraud Measures and Debt Recovery) Amendment Bill seeks to amend the Social Security Act 1964 in order to strengthen measures to combat relationship fraud, a specific kind of benefit fraud. The Ministry of Social Development’s chief executive would be empowered and required to recover debt from partners and spouses of beneficiaries who obtained welfare payments fraudulently, making them jointly accountable for repaying the debt in certain circumstances. Criminal liability would also be extended to the partners of beneficiaries who committed relationship fraud.
Technical and consequential changes are not covered in the commentary.

**New offence for spouses and partners**

We recommend amending clause 12, new section 127A, to make clearer the criteria for liability on the part of a beneficiary’s spouse or partner who, knowingly or otherwise, benefits from an amount obtained by fraud. To be liable the spouse or partner must know, or be “reckless” as to whether, the amount obtained is in excess of what the beneficiary is entitled to, and that it is being fraudulently obtained. The bill as introduced is unclear about whether the spouse or partner would also have to know the exact amount involved, or the precise way in which it was obtained. The amendments would make it clear that the spouse or partner would not be required to know the exact amount obtained by the fraud, nor the precise way the beneficiary obtained it.

**Debt recovery**

We propose a number of amendments to clause 9(2) regarding the debt recovery provisions of the bill.

We recommend amending new section 86(1BA) so that the ministry’s chief executive, in determining the rate and method of debt recovery, is not limited to considering only factors set out in the ministerial direction. We believe that this would ensure that the amendment did not undermine the general public law principle that decision-makers must take all relevant considerations into account. It would also alleviate any concerns about the legislation breaching New Zealand’s international human rights obligations, by ensuring that matters pertaining to such rights could be taken into account where necessary.

We recommend amending new section 86(1BC) so that the Minister would not be limited to specifying “exceptional” circumstances in ministerial directions which identify circumstances for the temporary deferral of debt recovery. This would make it less difficult for the ministry to provide relief in cases of hardship that did not qualify as “exceptional”. This would allow more flexibility, and more consistent responses to circumstances identified by ministerial direction.

We recommend reversing the order of paragraphs (a) and (b) in new section 86(1BA) (and also in new section 86(1BC)) to require the
Commentary

Social Security (Fraud Measures and Debt Recovery) Amendment Bill

We recommend amending clause 2 to provide flexibility regarding the commencement date of the bill. Specifically, we recommend that the proposed amendments come into force on 31 August 2015, or an earlier date appointed by the Governor-General by Order in Council if the IT development necessary to support the changes has been completed.

New Zealand Labour Party minority view

While Labour supports the intent of this bill to hold those responsible for committing fraud within our benefit system to account, and stopping them from undermining the entire system for those who need it the most, we do so with grave reservations. Labour believes that the new offence represents a departure from the general principles of criminal law in that

- a positive act is normally required to ground criminal liability
- knowledge of or failure to report another’s offending is normally insufficient to ground criminal liability.

There are already a number of existing criminal offences that cover the criminal liability of spouses or partners of beneficiaries. These offences cover situations where a spouse or partner commits a positive act by

- agreeing with the beneficiary that the beneficiary will commit fraud
- encouraging or assisting the beneficiary to make false statements in order to obtain a benefit, or rate of benefit, by fraud
- making false statements for the purpose of assisting the beneficiary to obtain a benefit
- omitting to inform MSD when questioned on matters
Labour accepts the argument by the New Zealand Law Society that in the absence of a positive act, which would normally provide ground for criminal liability, the justification for making partners and spouses criminally liable is not apparent. Labour would support amendments to the bill for new provisions that aligned with the advice of the New Zealand Law Society.

We further support the view by the New Zealand Law Society that it is fundamentally unjust for a beneficiary’s spouse or partner to be liable for the full excess amount that the beneficiary obtained by fraud regardless of the spouse or partner’s benefit and that limiting recovery to the amount by which the beneficiary’s spouse or partner benefited would provide a more equitable outcome for relationship fraud.

Labour agrees with submitters who sought further protection of beneficiaries with dependents by calling for the suspension of debt recovery while a debt is in dispute under the review and appeal process, and to ensure that people with debt are not denied an opportunity to understand and challenge the debt established against them.

Labour objects to this Government’s obsession with welfare fraud, while it turns a blind eye to the more costly issue of tax fraud. It accelerates the pushing of legislation on beneficiary relationship fraud without equal effort towards those who misuse the tax system; the magnitude of tax fraud is significant and is just as wrong. While relationship fraud last year amounted to around $20 million, with this making up one third of welfare fraud prosecutions, the Inland Revenue Department estimates tax “discrepancies” amount to over $1.2 billion a year, while annual tax fraud is $141 million “at an absolute minimum”. The rate of taxation fraud is up to 150 times the rate of welfare fraud.

The double standards approach by this Government with its unrelenting focus on welfare fraud without equal focus on partners of white-collar fraudsters who commit fraud and tax evasion was commented on by Sarah Thompson of Auckland Action Against Poverty that “it highlights the prejudices we have against beneficiaries and that we’re judging them as different because of their work status.” Labour supports the concerns expressed by many submitters that this bill exposes more people to MSD’s policy change where it no longer
informs people that they are under investigation. MSD has given itself sweeping powers to gain information about people from those they interact with in their community without their knowledge or permission. These powers increase the potential risks for ongoing human rights and privacy violations plus greater risk of corrupt practices by government officials. These policy changes appear to encourage a new approach where every beneficiary is presumed guilty of relationship fraud up front rather than to be presumed innocent until they are proven guilty.

Green Party of Aotearoa New Zealand minority view
The Green Party opposes this bill. The Green Party is working for a social security system that provides everyone with enough income to fully participate in their community and to live safe, healthy lives. We support policies that are sufficient to ensure this, simple to understand and access, universal in their application, and equitable within a wider social context. We oppose the bill as it is not consistent with these values or this vision. This bill will, we believe, further stigmatise the most marginalised people in this country and in some cases further entrench poverty.
It will remove some of the leniency that exists within the system, which will result in less money in the hands of the poorest New Zealanders. It will treat debtors to MSD more harshly than debtors in other parts of our system despite many people being in debt because the basic benefit levels are too low to enable them to provide the very basics of life, and we believe the more radical measures to hold partners criminally as well as financially liable in the event of fraud require more research especially in relation to the safety of women in violent relationships.
This bill makes a range of changes to accountability and culpability for benefit fraud and debt recovery by MSD, including imposing a new obligation on the ministry to take all reasonable, practical steps to recover debt.
Over two-thirds of debt that the ministry recovers is not a result of fraud. Much of it is a result of administratively created overpayment. It is the interface between beneficiaries who are working part time and reporting that work and the systems through the Inland Revenue Department. A significant amount of debt is actually created
by a mismatch of those systems rather than the doing of the beneficiary. Further, what is recorded as debt in the system is often advances given to people to pay for some of the absolute essentials in life, including things like fridges, washing machines, school uniforms, sanitary items, food and so on. The rhetoric around this bill seems to have compelled most people to start their comments with the moral acceptance of the need for beneficiaries to repay any debt. The Green Party questions the legitimacy of this when discrimination is built into the system and so many children are living in poverty as a result. We do not support law change to strengthen the ability of the Government to reclaim money from the poorest families who are just trying to provide the basics for themselves and their children.

We oppose strengthening the requirement to recover debt but also acknowledge the amendments that will now enable the Minister to consider issues beyond exceptional circumstances for temporary deferral in ministerial directions and require MSD to consider the rate and method of recovery, and the ability to consider issues beyond the ministerial directions in setting the rate and method, before considering if conditions as outlined by directions will enable them to temporarily defer the recovery of the debt, are both an improvement on the initial wording of this legislation.

We note the belief that these amendments will protect against breaches of international human rights obligations, specifically economic, social and cultural rights. However the Human Rights Commission submission to the Universal Periodic Review noted: “at present economic, social and cultural rights are not recognised as fundamental, justiciable rights”, and therefore we would argue explicit protection in this bill is required. The refusal to consider the insertion of a clause to guarantee these rights is of considerable concern to us; being told the legislation will enable future Ministers to insert such a clause into the directions is not a comfort.

This bill also significantly allows the ministry to recover a debt from the partner of a beneficiary when that debt has arisen from fraud that they knew, or they knew there was a risk that, they were benefitting from fraud. On this point we are ambivalent.

We believe the current system of reclaiming the entire debt from the beneficiary, usually the woman, even when the partner has benefitted from the money directly or indirectly, is unjust. We are also concerned that currently violent partners regularly use the threat of in-
forming on a woman as a tool of abuse. This is easy for them because, currently, the consequences fall entirely on the woman holding the benefit.

We are, however, still very concerned, especially in light of the recent policy announcement of home visits that seem to accompany this law change. The Minister’s comments that “relationships could develop quickly and some people might not be aware of their obligation to tell Work and Income” seems to suggest beneficiaries are not allowed to have relationships without informing Work and Income New Zealand, and any relationship might signal fraud. The legislative test is whether your relationship is in the nature of marriage and this requires financial interdependence (meaning actual, or a willingness to support if the need arose), cohabitation and emotional commitment. Unless this is well understood at official and political levels we risk this law change fuelling an approach that stigmatises and breaches the human rights of beneficiaries and their associates.

Further, we note the concerns raised by a significant number of organisations that the current system does not have enough safety mechanisms in place to protect victims of domestic violence if their partner is caught up in this.

From what we are told the fraud investigation system is still quite fraught. Officials said that evidence they are using is often unsubstantiated, and we are hearing from women in violent relationships that they are often persecuted through this system.

The Green Party believes the Government needs to develop a policy or legislative response to the problems above based on the experience of those women/beneficiaries who have been affected, which also involves Women’s Refuge, to an approach that is fair and also ensures the safety of all involved.

The Green Party also shares the New Zealand Law Society’s concern regarding joint and several liability, which means that both parties will be liable for the whole debt should both parties be accountable for the debt arising from the fraud. The New Zealand Law Society believes this may lead to unfair or disproportionate outcomes. In their view, liability should be shared on the basis of attribution of benefits as per the Criminal Proceeds (Recovery) Act 2009. This has been dismissed in part due to cost and potential increase in reviews and appeals. The Green Party believes it is essential that our laws are fair and proportionate and open to appeal.
This bill also creates an offence for partners knowingly or recklessly benefiting from fraud committed by their partner, punishable by a fine of up to $5,000 or 12 months’ imprisonment.
The Green Party does not believe this is necessary and that attributing criminal liability on the basis of determinations of relationship status may well create perverse results.
Appendix

Committee process
The Social Security (Fraud Measures and Debt Recovery) Amendment Bill was referred to the committee on 27 August 2013. The closing date for submissions was 10 October 2013. We received and considered 13 submissions from interested groups and individuals. We heard seven submissions.

We received advice from the Ministry of Social Development and the Regulations Review Committee.

Committee membership
Melissa Lee (Chairperson)
Hon Phil Heatley
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Hon Peseta Sam Lotu-Iiga
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Chris Tremain
Louisa Wall
Hon Michael Woodhouse was also present for most of the item of business.
The Social Services Committee has considered Petition 2011/52 of Graeme Axford, requesting

That the House recommend that the Government conduct an inquiry into the Ministry of Social Development’s handling of the case of Graeme Axford, and that he be given a reasonable opportunity, due to his disability, to present his complaint in person.

Mr Axford submitted a large volume of written material in relation to his petition, and has also spoken to the committee in person. It was difficult for us to determine the issues in Mr Axford’s case. The information before us related to all matters previously brought to the attention of both Child, Youth and Family and the ministry, and included his concerns about his own treatment, and the treatment of a family member that was in the care of the chief executive. We have concluded that three issues form the core of Mr Axford’s grievances with the ministry.

- Mr Axford is unhappy with the experience that he had trying to secure employment as a social worker with the ministry in 2006, and feels that he was discriminated against because of his disability.
- Mr Axford is dissatisfied with the way a 2008 Family Group Conference was conducted in relation to a member of his wider family, and with the way that his family have been treated by the ministry.
- Mr Axford is unhappy with the way in which the ministry followed up recommendations made by the Chief Executive’s Advisory Panel in 2009, following his initial complaint regarding the treatment of his family.

Mr Axford has raised his grievances via several avenues. He has made complaints directly to the ministry regarding each of the above issues. His complaints about the treatment of his family have been heard by the Chief Executive’s Advisory Panel on Child, Youth and Family complaints twice, in 2009 and 2012. He has initiated complaints with the Ombudsman, the Privacy Commissioner, and the Social Workers Registration Board. Additionally, he has raised his issues directly with the Minister and petitioned Parliament on previous occasions.

The Ministry of Social Development acknowledged to us that there have been some shortcomings in the way that Mr Axford’s case has been handled by them. The ministry has apologised to Mr Axford for each of these shortcomings, and we are satisfied that the ministry has taken appropriate steps to rectify them. We consider that the ministry has now addressed Mr Axford’s grievances and our consideration of these matters has reached an end. Therefore, we have no other matters to bring to the attention of the House.

Melissa Lee
Chairperson
The Social Services Committee has considered Petition 2011/92 of Treacy Thompson, requesting,

That the House inquire into the mandatory deduction of $24.38 from a person when accessing eligibility for the Temporary Additional Support, under the (Temporary Additional Support) Regulations 2005.

Under the Social Security (Temporary Additional Support) Regulations 2005 it specifies that when receiving Temporary Additional Support for accommodation costs that $24.38 be subtracted from the person’s payment. We understand that Ms Thompson does not think that this is fair. We note that Ms Thompson took the chief executive of the Ministry of Social Development to the High Court of New Zealand over related matters in February 2013. In its decision the High Court states that there is no discretion regarding the mandatory deduction referred to by Ms Thompson, and that “the regulation is clear”, which we acknowledge it is. The issue raised by the petition was dealt with in this court case and we have no further matters to bring to the attention of the House.

Melissa Lee
Chairperson
The Social Services Committee has considered the report from the Controller and Auditor-General, Using the United Nations’ Madrid indicators to better understand our ageing population, October 2013, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Melissa Lee
Chairperson
Veterans’ Support Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Veterans’ Support Bill, and recommends that it be passed with the amendments shown.

Introduction
The Veterans’ Support Bill seeks to establish new support arrangements for veterans of military service, in response to recommendations made by the New Zealand Law Commission following a review of the War Pensions Act 1954. The bill would repeal and replace the War Pensions Act 1954, and associated subordinate legislation, which were found by the commission to be outdated.

The bill would introduce two new support schemes for veterans: Scheme One, tailored to veterans who served in deployments before the introduction of universal accident compensation in 1974, and Scheme Two for modern-day veterans who have served, or will serve in subsequent years. It reflects current knowledge that the risks faced by deployed servicemen and servicewomen are not only physical, but also psychological and environmental, and that veterans may require a wider range of support than can currently be provided under the
War Pensions Act 1954. The bill proposes more emphasis on rehabilitation, and provision of monetary and other forms of support to veterans who meet specified criteria. The bill would also ensure that support provided for veterans in New Zealand was consistent with the Accident Compensation scheme, and extend more benevolence to veterans than they would be entitled to under ACC.

A number of changes to Part 1 of the bill are recommended. With the exception of recommendations made regarding the bill’s decision-making provisions, these changes are not covered in the commentary. This is because they have largely been proposed for clarity and ease of understanding, rather than to reflect policy changes. Technical and consequential changes are not covered in the commentary.

**Impairment threshold for certain entitlements**

We recommend amending clause 148(1)(c)(i) to reduce the whole-person impairment threshold at which a veteran would become eligible for a veteran’s pension, from 55 percent to 52 percent. This would ensure that the threshold, although calculated using a不同的 assessment method, would be equivalent to the 70 percent disablement threshold veterans are currently required to meet under the War Pensions Act to be eligible for a veterans’ pension. Veterans who met the threshold under the War Pensions Act would thus continue to meet the eligibility threshold, and to be entitled to a pension, if the new assessment method were introduced.

We recommend a similar change for the other instances in the bill where a 55 percent whole-body impairment is the threshold degree of disability for entitlement. Specifically, we recommend amending subclauses 59(1)(b)(ii), 65(2)(a)(ii) and 65(2)(b)(ii)(B), and 69(2)(a)(ii) and 69(2)(b)(ii)(B) so that eligibility for the surviving spouse or partner pension, the children’s pension, and the dependant’s pension, would also be based on a veteran receiving a whole-body impairment rating of at least 52 percent. This would improve the consistency of the proposed scheme.

We recommend inserting new clause 4B into Schedule 1 to provide a guarantee that veterans who are entitled to a disablement pension under the War Pensions Act would not be disadvantaged, and would retain this entitlement, even if they failed to meet the 52 percent
whole-body impairment threshold required under the new assessment method.
Some of us believe that the impairment threshold should be set at zero percent in line with the recommendations of the New Zealand Law Commission.

**Terminal conditions**

We recommend amending subclause 46(5) regarding the payment of lump sums to veterans with accepted claims for terminal conditions. Under our proposed amendment, where a veteran had opted to receive a lump sum payment, this sum would be calculated using the maximum rate payable even if the veteran were not receiving the maximum rate of pension at the time.
We recommend inserting clause 46A so that such veterans would be able to opt to continue receiving a disablement pension, and at the maximum rate payable, rather than a lump sum. Clause 46A(3) would allow veterans who chose to do this to subsequently decide to receive a lump sum payment.
We believe that these two amendments would demonstrate appropriate benevolence towards veterans who will have their lives cut short as a result of their military service for New Zealand.

**Functions of Veterans’ Affairs New Zealand**

We recommend inserting new subclause 186(ba), which would require Veterans’ Affairs New Zealand (VANZ) to ensure that systems and processes are established to enable VANZ, the New Zealand Defence Force, and the Accident Compensation Corporation to work together effectively and exercise their respective responsibilities, under clause 79, in the management of veterans’ claims. New subclause 198A(2) would require the New Zealand Defence Force to report on the implementation of these systems and processes in the annual report of the New Zealand Defence Force.

We believe that having systems and processes that assign clear responsibility for the management of veterans’ claims would improve the operational alignment and interaction of these agencies. For example, it would reduce the likelihood of veterans having to go through duplicate processes in order to obtain entitlements, and also the possibility of a claim being left unmanaged.
**Statements of principle**

We propose a number of amendments to clause 17 regarding the statements of principle provisions of the bill.

We recommend amending clause 17(4) to require VANZ to provide a report to the Specialist Medical Advisory Panel, as well as the Minister, reviewing the Australian statements of principle and assessing the extent to which each of them should apply in New Zealand. We consider that this would allow a robust review of the Australian statements of principle before their adoption into New Zealand law, ensuring that their content is consistent with New Zealand law and is appropriate to the service-related illnesses and injuries of veterans in New Zealand. It would be unwise to incorporate Australian law into New Zealand law without such a review.

In addition to provision for an initial review of the Australian statements of principle, we recommend inserting two further clauses to provide processes for the review of any changes to the Australian statements of principle. These processes would allow consultation with, and feedback from, the Specialist Medical Advisory Panel, to ensure that any changes made to Australian statements of principle were appropriate for adoption into New Zealand Law.

First, we recommend inserting clause 17A to require VANZ, when it becomes aware of an Australian statement of principle being issued or revoked, to review the change and report to the Minister and Specialist Medical Advisory Panel. Clause 17A(2) would require the Minister to decide whether or not the newly issued or revoked Australian statement of principle should apply, or cease to apply, in New Zealand.

We also recommend inserting clause 17B to require VANZ, when it becomes aware of an amendment to an Australian statement of principle that is already applied in New Zealand, to review the change and provide a report to the minister. If the amendment were more than minor, VANZ would also be required to provide a report to the Specialist Medical Advisory Panel. New clause 17B(2) would also require the Minister to decide whether the amendment to the Australian statement of principle would apply in New Zealand.

We also recommend the insertion of subclause 239(2)(ab) to make it a function of the Specialist Medical Advisory Panel to advise the Minister on the proposed adoption of and subsequent amendments
Commentary

Veterans’ Support Bill

to Australian statements of principle, when VANZ provides a report under clause 17. This would ensure consistency with the recommendations to insert clauses 17A and 17B.

Appeal immunities

We recommend inserting clause 221B which would provide witnesses and others participating in an appeal hearing with the same immunities and privileges they would have if they were appearing in civil proceedings, and to apply relevant provisions of the Evidence Act 2006 to appeal hearings. We believe that stronger immunity provisions in the bill would increase the participation of veterans and witnesses in review and appeal processes.

We recommend inserting clause 191(1)(ca) to make review officers immune from liability in civil proceedings where they had acted in good faith to carry out their roles. This would ensure consistency with the immunity granted to other people with functions under the bill.

Appeal expenses

We recommend inserting clause 221A, which would entitle claimants and people summoned to attend appeal hearings to be reimbursed for reasonable costs and travelling expenses incurred. This clause would also empower the appeal board to order similar reimbursement of other people participating in an inquiry, at the level prescribed by regulations made under clause 250 of the bill. These amendments would ensure that veterans’ current reimbursement entitlements under the War Pensions Regulations 1956 were maintained. They would also encourage full participation of veterans and their witnesses in appeals where they were required to travel.

Decision-making process

We recommend making substantial amendments to clause 15, which sets out the central decision-making provision of the bill.

As introduced, clause 15 has elements which we consider to be more relevant to the overarching decision-making principles to be applied in determining veterans’ claims, rather than to specific steps to be taken by VANZ in reaching decisions. We recommend removing
these elements and inserting them into the more appropriate clause 14.

We recommend amending clause 15 to set out the sequence of steps VANZ would be required to take in deciding whether to accept or decline a claim. The steps specified would include the application by VANZ of both the presumptive decision-making conditions, carried over from the War Pensions Act, and the Australian statements of principle. Clause 15 would include a four-step process relating to the application of the Australian statements of principle. This should ensure that the application of the Australian statements of principles in New Zealand was consistent with their comparable application in Australia, while reflecting the differences of the New Zealand approach to veterans’ legislation.

We consider that the recommended changes to clause 15 are necessary to make the claim decision process, and the establishment of entitlements under the proposed legislation, as clear as possible for both VANZ as decision-makers, and veterans. This would promote accountability, and ensure transparency, in the decision-making process.

**Decision-making—timeliness**

We propose a number of amendments to clauses 14A to 14C. These clauses are clauses 18 to 20 in the bill as introduced, and relate to the time within which VANZ would be required to decide veterans’ claims.

We recommend inserting subclause 14A(2) to require VANZ to decide whether to accept or decline a claim as soon as practicable, and no later than 30 days, after that claim was accepted for processing. Subclause 14A(3) would allow VANZ to suspend the timetable if more information was required to process the claim. We believe the specification of time limits is necessary for transparency and accountability. It would also provide consistency with time limit provisions in other contemporary legislation.

We recommend inserting clause 14B to make it clear that VANZ would be required to keep veterans (or other claimants) well informed during claim processes, and to give them timely notice of its decisions. Again, we believe that this recommendation is important for transparency and accountability.
In order to ensure that VANZ is accountable for, and transparent about, the timeliness with which it processes claims, we recommend inserting clause 198A(1). This would require the New Zealand Defence Force to publish its actual claim processing times, against the required timeframes or processing times agreed with the Minister, in the annual report of the New Zealand Defence Force.

**Veterans’ Advisory Board**

We recommend amending clause 233(1) to require the inclusion of a serving veteran on the Veterans’ Advisory Board, to be nominated by the Chief of Defence Force. This would correct an oversight in the drafting process.

**Specialist Medical Advisory Panel**

We propose two amendments regarding the Specialist Medical Advisory Panel.

We recommend amending clauses 242(3) and 242(4) to limit the exercise of the panel’s decision-making function under these clauses to decisions on the application of income of the Veteran’s Medical Research Trust Fund for grants and awards. We consider it unnecessary for the bill to set out broad formal decision-making provisions for the panel to carry out its functions, which are specified in clause 239(2). We recommend amending clause 239 to change the name of the Specialist Medical Advisory Panel to the Veterans’ Health Advisory Panel. This would reflect more accurately the membership of the panel, which may include both medical and other health practitioners. “Health practitioner” is a broader term than “medical practitioner”. Although not all health practitioners are necessarily qualified as medical practitioners, they have an increasingly important role in the rehabilitation of veterans with illnesses and injuries.

**New Zealand Labour Party minority view**

Labour supports the Veterans’ Support Bill, which has its origins in an agreement between Hon Rick Barker as former Minister of Veterans’ Affairs and the late John Campbell, former President of the Royal New Zealand Returned and Services Association. It was in-
corporated into Labour’s agreement in 2008 to settle the grievances of Vietnam veterans.

Labour set up the review of the War Pensions Act 1954, which was conducted by the President of the New Zealand Law Commission, Sir Geoffrey Palmer. An important recommendation of the New Zealand Law Commission was that all veterans who met the qualifying criteria of having served on a New Zealand Defence Force overseas deployment, and who were otherwise eligible for New Zealand Superannuation, should be eligible for the veterans’ pension.

The National Government has rejected that recommendation in favour of retaining a further eligibility requirement of suffering from a 52 percent disability impairment. This equates to the level of disability required under the 1954 War Pensions Act. Labour supports removing this requirement and recognising that all veterans who have served their nation and put their lives at risk should have that service honoured by allowing them to choose the veterans’ pension rather than New Zealand Superannuation.

The veterans’ pension carries some relatively small additional benefits. It confers on the recipient an automatic entitlement to a Community Services Card, it allows continued payment of the pension while in hospital for more than 13 weeks, and a lump sum payment on death. Most of all, however, returned servicepeople want the veterans’ pension because it recognises their pride in having served their country.

The Royal New Zealand Returned and Services Association strongly supports the change to universal payments. This would extend the benefit from 3,200 recipients to 16,737 this year.

Because veterans are already eligible for New Zealand Superannuation, the cost, however, would not be great. Veterans’ Affairs New Zealand calculates a cost of $11.103 million for 2014/15, falling steadily so that three years out the cost would be $8.405 million. That figure would fall further as World War II and Korean War veterans’ numbers fall rapidly.

The year 2014 is the commemorative year for a century since the commencement of the First World War. Allowing all veterans who have served in conflicts overseas to be eligible for the veterans’ pension is a practical way that we can support our aging veterans. It would also send a positive message to the New Zealand Defence
Force today that we do honour and respect those who put themselves in harm’s way. This would benefit endeavours to recruit and retain personnel in the New Zealand Defence Force.

We would wish to see a change to the threshold for eligibility for the veteran’s pension to zero, in line with the recommendations of the New Zealand Law Commission, and the Royal New Zealand Returned and Services Association. This is also supported by the Green Party of Aotearoa New Zealand.

**New Zealand First Party minority view**

New Zealand First is firmly of the view that the Veterans’ Support Bill is long overdue. The Law Commission first reported in 2010 and four years later this legislation is finally reaching its conclusion. Progress should have been made with much greater urgency.

A great many veterans are affected by this review. They are not getting any younger. They deserve far greater respect for the service they have given to their country. Expediency in completing this exercise would be in order.

The National Government has rejected the Law Commission’s recommendation that all veterans who have served on an overseas operational deployment for the New Zealand Defence Force should be eligible for a veterans’ pension if they meet the criteria for New Zealand Superannuation.

New Zealand First supports the recommendations of the New Zealand Law Commission to lower the entitlement threshold to zero percent, which is strongly supported by the Royal New Zealand Returned and Services Association and some other submitters.

New Zealand First does not agree with the Government’s position. We strongly believe that all military veterans who meet the eligibility criteria should be entitled to receive a veterans’ pension in recognition that they have served their country. There should be a clear distinction which acknowledges that important difference compared to receiving standard New Zealand Superannuation.

The additional benefits of a veterans’ pension are relatively minor, but the sentiment and recognition is vitally important to all those affected by this.
Appendix

Committee process
The Veterans’ Support Bill was referred to the committee on 22 October 2013. The closing date for submissions was 25 November 2013. We received and considered 27 submissions from interested groups and individuals. We heard 14 submissions.
We received advice from Veterans’ Affairs New Zealand and the Regulations Review Committee.

Committee membership
Melissa Lee (Chairperson)
Hon Phil Heatley
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Hon Peseta Sam Lotu-Iiga
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Chris Tremain
Louisa Wall
Hon Michael Woodhouse was a member of the committee until 29 January 2014.
Andrew Williams replaced Le’aufa’amulia Asenati Lole-Taylor for this item of business.
Hon Phil Goff was present for this item of business.
Vulnerable Children Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Vulnerable Children Bill and recommends by majority that it be passed with the amendments shown.

Introduction—bill as introduced
The Vulnerable Children Bill is an omnibus bill which aims to protect and improve the well-being of vulnerable children. These reforms were initially proposed in the White Paper for Vulnerable Children and the Children’s Action Plan, released in October 2012. The bill is intended to create two new Acts: the Vulnerable Children Act and the Child Harm Prevention Orders Act. It also proposes substantive amendments to the Children, Young Persons, and Their Families Act 1989 (the CYPF Act) and the KiwiSaver Act 2006.
Cross-agency measures to protect vulnerable children
The bill would require the chief executives of specified agencies\(^1\) to work together on a “vulnerable children’s plan” for achieving the Government’s priorities in this area. District health boards, school boards, “prescribed state services”,\(^2\) and certain people contracted to or funded by them would be required to have child protection policies, with provisions for identifying and reporting child abuse and neglect. The bill would require the “safety checking” of people who are paid to work with children,\(^3\) in the state sector and in organisations funded by the government, and restrict the employment or engagement of persons with certain convictions.

Child harm prevention orders
The bill proposes a new legal instrument, a civil order called the “child harm prevention order”. Courts would issue such orders against those who pose a high risk of offending that will cause serious harm to children. Child harm prevention orders would contain standard terms, such as the requirement to notify any change of address, and specific terms to mitigate the risk posed by the particular person, such as prohibitions on living with any specified children or class of children. It would be an offence to breach a child harm prevention order, with a penalty of up to two years’ imprisonment.

Amendments to the Children, Young Persons, and Their Families Act
The bill seeks to strengthen the principles in the CYPF Act by making the child’s welfare and interests the paramount consideration, and

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2 Prescribed state services as listed in clause 15 include the Ministries of Business, Innovation, and Employment, Education, Health, Justice, Māori Development, and Social Development, and the New Zealand Police.
3 Paid workers include those undertaking unpaid work as part of educational or vocational training courses.
Commentary

by making more prominent the principles of protecting children and upholding their rights.
The bill introduces a new ground for declaring a child to be in need of care or protection: where the parent has previously had a child permanently removed because of abuse or neglect, or had been convicted of the murder, manslaughter or infanticide of a child in their care. Any subsequent child would be considered to be in need of care or protection unless the parent has demonstrated that they no longer posed a risk of causing or allowing similar harm.
The bill aims to reinvigorate the family group conference mechanism. Plans prepared by family group conferences would have to include certain information, such as the services needed, the responsibilities and objectives of the child and parent, and time-frames for achieving them, and a date to reconvene to review the group decisions. The bill proposes similar changes to court plans and social workers’ reports to the court.
The bill introduces a new type of long-term care and guardianship under the CYPF Act, called “special guardianship”, for children previously in the care of the Ministry of Social Development or an approved social service under the Act. It differs from additional guardianship under the Care of Children Act 2004 and the CYPF Act, which requires agreement between the new guardian and the child’s parents or other guardians on guardianship decisions. Under special guardianship, the court could specify which guardianship rights would be shared, and which, if any, would be held only by the new (special) guardian.
Currently, financial assistance is available for caregivers of people up to the age of 17 who have been in state care or have been the subject of a support or services order. The bill would extend this to allow advice and assistance, including financial assistance, to be given to people aged 15 to 20 years who have been in state care and are transitioning to independence.

KiwiSaver

The bill seeks to amend the KiwiSaver Act to allow an appointed guardian under the CYPF Act, who must be the chief executive of the Ministry of Social Development or an approved social service,
to enrol a child in a KiwiSaver scheme, and to make decisions in relation to the scheme, without the consent of other guardians.

Proposed amendments
This commentary discusses our major recommendations. It does not discuss minor or technical amendments.

Child protection policies
We recommend amending the definition of “school board” in clause 15 to include the managers of private schools. This makes it clear that private schools, like state schools and partnership schools kura hourua, would be required to have child protection policies.
We recommend amending clauses 16 and 17 to insert an additional requirement for state services and district health boards to report on their inclusion of the requirement for child protection policies in their contracts and funding agreements.

Children’s worker safety checking
In clause 23, we recommend modifying the definitions of “children’s worker” and “core worker” to make it clearer who is covered by each definition.

Clause 28 would prevent a specified organisation from employing or engaging as a core worker a person who had been convicted of a specified offence. The offences are listed in Schedule 2. We recommend the addition of some further offences that are relevant to the suitability of a person to work with children, including some historical offences and offences under the Films, Videos, and Publications Classification Act 1993.

We also recommend amending clause 28(4) and inserting clause 28(5A) to require that before any termination of employment a worker be suspended for a minimum of five working days, during which the worker must be paid, if appropriate.

Schedule 1 lists the kinds of services that would be required to safety-check their children’s workers. We recommend changing the terminology in clauses 23, 24, Schedule 1, and elsewhere in the bill, from “regulated activities” to “regulated services”. This describes more accurately the items listed in Schedule 1.
In clause 24, we recommend amending the definition of “specified organisation” to make it clear that such organisations may be directly or indirectly funded by state or local authorities. We recommend inserting subclause (3) into clause 24 to make it clear that people who are funded under individual arrangements (such as, for example, people funded by ACC to provide services to their own children), are not caught by the definition of “specified organisation”. We recommend amending clause 24 so that local authorities, and organisations they fund, would become “specified organisations” two years after the commencement of Part 1, subpart 3, unless they were declared to be such earlier, by regulation. This amendment should make it clear that local authorities are intended to be covered by the legislation, and allow them enough time to prepare for the introduction of safety checking. We also recommend amending clause 27(1) and inserting clause 33A so that, once local authorities became specified organisations, they could implement worker safety checking in the same phased way as other specified organisations, with periodic rechecking from the date of the initial check.

We recommend amending Schedule 1 to set out in more detail the services that are “specified services”. This amendment should allow organisations to determine with more certainty whether the service they provide is covered by the requirement to check children’s worker safety.

Schedule 1 could be amended by regulations made under clause 33. We recommend inserting, via new subclauses (2) and (3), a requirement that the Minister be satisfied that children’s safety checking should apply to any new services that are added to Schedule 1, and that removing any items from the Schedule must not unduly risk the safety of children. Similarly, we recommend inserting new subclause (4) to allow regulations to be made exempting persons or organisations from being specified organisations only if the Minister was satisfied that this would not create an undue risk to the safety of children. This would mirror the requirement for the granting of a workforce restriction exemption under clause 34.

We recommend inserting new paragraph (g), which is a standard regulation-making provision, into clause 33(1).

We recommend amending clause 32 to make it clear that it is not intended to allow specific individual exemptions from the
safety-checking requirements for organisations. Regulations made under clause 32 should be part of a comprehensive regulatory scheme, addressing circumstances in which organisations cannot undertake elements of the general safety check regime.

**Child harm prevention orders**

We recommend deleting Part 2 and Schedule 3 of the bill. Part 2 proposes only one of a range of measures that have been or are to be introduced to protect vulnerable adults and children from people who present a high risk of harming them. The Minister in charge of the bill wrote to us explaining that Cabinet had agreed not to proceed with the policy to introduce child harm prevention orders while work was proceeding on these related measures. The Minister invited us to delete the provisions relating to child harm prevention order from the bill, and we are removing them accordingly.

**Changes to Children, Young Persons, and Their Families Act**

**Principles of CYPF Act**

To maintain the bill’s commitment to protect children and young people, we recommend that clause 103(2), which would inadvertently alter the principles in section 13 of the CYPF Act, be amended by replacing the words “need to be protected” with “must be protected”.

**Permanent caregivers**

We recommend clarifying clause 101(b), which would amend the definition of “permanent caregiver” in section 2(1) of the CYPF Act, by removing the reference to “rights… under parenting orders” made under section 48 of the Care of Children Act, and requiring instead that such a person have the “day-to-day care” of the child or young person, either pursuant to a parenting order, or because no other guardian has the care of the child or young person.

We recommend inserting new clause 131A, new section 388A, to replace new subsections (2) to (4) of section 389 in clause 132, and to allow for the provision of non-financial as well as financial support. Permanent caregivers may well need other assistance, support, or ad-
vice and the chief executive should be able to provide it where appropriate. Along with the obligation to provide financial and other assistance in certain circumstances, we recommend inserting new section 388A(1) to give the chief executive general discretion to provide financial and other assistance to permanent caregivers.

Clause 115 provides that service orders cannot be made in respect of permanent caregivers. For consistency, we recommend inserting clause 115A, new section 92A, to make it clear that support orders for children in the care of permanent caregivers should not be available for services or assistance that can be provided under sections 388 or 388A (as proposed to be amended by clause 131A).

**Protecting subsequent children**

Clause 106 would insert new sections 18A to 18D, which relate to the assessment by social workers of parents of subsequent children, and its consequences. We recommend replacing these sections to reflect the intent that an assessment should be undertaken only if the subsequent child is, or is likely to be, in the care of the parent. We also recommend transferring the definition of a parent of a subsequent child (set out in clause 104, new section 14(3) to (5)) into new section 18B. We recommend amending clauses 104 (new section 14(1)(ba)) and 114 (new section 67(2)) to reflect our proposed changes to clause 106.

Our proposed new clause 106, new section 18D, would require the court to give reasons in writing if it declines to confirm a social worker’s decision not to apply for a declaration that a subsequent child is in need of care or protection. Such a decision would greatly affect the child and the family, and we consider this amendment would help the bill to accord with the principles of natural justice.

**Helping young people to achieve independence**

We recommend amending clause 131, new section 386A to allow better help for young people moving from care to independence. In particular, we recommend

- amending new subsection 386A(4) so that financial assistance could be available as considered necessary to enable the achievement of independence, rather than only in exceptional
circumstances; and so that assistance could be given without being requested

- adjusting subsection (5) and deleting subsection (6) so that financial assistance could be given for purposes other than education, training, or employment
- clarifying in new subsection 386A(1) that assistance would be available for those aged from 15 to 19 years who have been in care for a period of at least three months ending on or continuing after their 15th birthday
- adding new subsection (6) to provide for financial assistance for an eligible person to be paid, where appropriate, to a person who is caring for that person.

New Zealand Labour Party minority view
Labour shares the concern held by many New Zealanders that too many of our country’s children are being harmed, and often at the hands of those who should be offering them care and protection. We support initiatives that will improve the safety and well being of children, and have a strong evidence base.

While we support the bill, we maintain a strongly held view that we need to take a much broader approach to the issue of “vulnerability” and wellbeing. The bill, for instance, targets 30,000 children who are deemed to be “at risk”. At the same time, there are 285,000 children who are living in poverty. It is our view that an Action Plan for Children is required, one which takes a whole-of-government approach, and is focused on not just addressing harm, but preventing it occurring in the first place. Ultimately, we believe support is always a better and more successful approach than surveillance.

Child harm prevention orders
From the outset we expressed concerns with the proposed child harm prevention orders. These orders represented a significant departure from the usual tests and thresholds within our criminal justice system. We were pleased to see the Minister reconsider whether these orders should be contained within the bill, and subsequently asked us to consider removing them from the bill.
Safety checks in the children’s workforce

The bill puts in place safety checking provisions for prescribed state services. During public submissions questions were raised over whether these guidelines should only be prescribed for such a limited part of the children’s workforce. It is our view that more work should be done in this area to support community-based organisations that may not technically be covered by these provisions, but wish to protect themselves, and the children they support.

Home for Life—strengthening support for care givers

We welcome any efforts to improve stability and security for children in state care. Labour is concerned that currently, there are too many examples of parents who have repeatedly proven that they are unfit to provide a safe and loving environment for their children, who are then able to create further destabilisation within a child’s permanent placement. While the bill extends the ability of the courts to put limits on this occurring, we are concerned that court processes place a large cost and burden on foster families, and they already receive very limited support. We will be eagerly monitoring whether these changes make the difference we believe is needed.

Ongoing support for children in care

Labour believes it is unacceptable that currently, the state’s responsibility for a child in care ends once they turn 17 years old. We welcome moves to ensure support, advice, and care continues until at least the age of 20 years. We believe that this should include residential care, if that is the desire of a young person, and that every young person exiting care should have a support plan in place. We also strongly believe that children in care should be given a voice, similar to the networks that have been established in Australia. We will be closely monitoring the changes made in this area.

Green Party of Aotearoa New Zealand minority view

The Green Party agrees with some provisions in this bill, but will not support it further.

We appreciate that the Government is attempting to improve the safety of children. Some of the provisions in this bill assist towards this goal. However, the bill and the resources required to implement
it will not be effective if the Government continues to neglect the issues of child poverty and family violence, which increase the risk to children. We consider that the Government should, at the same time, be implementing specific child poverty reduction measures and policy initiatives that directly target family violence as a core driver of increased risk to children.

We agree with the new requirement that the chief executives of the ministries of Health, Education, Justice, and Social Development, and the New Zealand Police work together to produce and report on implementing a cross-sector child protection plan, and that prescribed state services should have child protection policies in place relating to the identification and reporting of child abuse and neglect. We also agree with providing better financial support for young people leaving state care, and amendments to the care and protection principles of the Children, Young Persons and Their Families Act to emphasise that the child’s welfare and interests are the paramount consideration when there are competing considerations.

We note our support for the Minister removing the child harm prevention orders from the bill.

However, we remain seriously concerned about the provisions that increase the powers of the state to remove children from their mothers at birth. The single most critical factor in how children survive exposure to domestic violence is the presence of at least one loving and supportive adult in their life. For many children the loving and supportive adult is their mother, who repeatedly does her best to provide her children a normal life even where she is being abused.

Currently the child abuse system does not consistently acknowledge the importance of the protective parent. We too often hear of women losing their children for the failure to protect the child from the abuser, even post-separation. This risks depriving the child of both parents and of increasing the negative effect of exposure to domestic violence on the child. We believe a child-centred approach would acknowledge the role of the protective parent and seek to enhance this relationship.

This legislation sits within a system that too often fails to acknowledge the protective parent and therefore creates the potential for increased harm. Increasing the powers to remove children, without also committing to extensive intervention and support services for the protective parent and his or her children in domestic violence
cases, increases the risk of harm to the child. We are aware of many cases where a protective parent has lost a previous child to the state, where she was unable to protect that child from domestic violence, only to have subsequent children also removed – even where her circumstances have changed.

We heard no advice from officials that the process for recognising the protective parent has improved and many submitters who work with these families also raised serious concerns about this. In addition, we are concerned that there is no intention by Government to help the community sector with the costs of the increased safety checks of staff. We agree with the intention but do not want to see more resources being taken from services which already provide support to vulnerable families, services which already struggle.
Appendix

Committee process
The Vulnerable Children Bill was referred to the committee on 17 September 2013. The closing date for submissions was 30 October 2013. We received and considered 115 submissions from interested groups and individuals. We heard 62 submissions, which included holding hearings in Auckland and Wellington.

We received advice from the Ministries of Social Development, Health, Justice, and Education, and the New Zealand Police. The Regulations Review Committee reported to the committee on the powers contained in clauses 2, 5, 15, 24, 31, 32, 33, and 35. Advice was also sought from the Office of the Clerk on regulation-making powers to be contained in Subpart 3 of Part 1, particularly clause 33, relating to the amendment by regulations of Schedule 1.

Committee membership
Melissa Lee (Chairperson)
Hon Phil Heatley
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Hon Peseta Sam Lotu-Iiga
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Chris Tremain
Louisa Wall
Metiria Turei replaced Jan Logie for this item of business.
Hon Michael Woodhouse was present for part of this item of business.
Petition 2011/38 of Dina Awarau and 186 others on behalf of Pomare community group, Petition 2011/39 of Michelle Ratima and 620 others, and Petition 2011/40 of Mary Utanga and 270 others

Report of the Social Services Committee

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Petition 2011/38 of Dina Awarau and 186 others on behalf of Pomare community group, Petition 2011/39 of Michelle Ratima and 620 others, and Petition 2011/40 of Mary Utanga and 270 others

Recommendation

The Social Services Committee has considered Petition 2011/38 of Dina Awarau and 186 others on behalf of Pomare community group, Petition 2011/39 of Michelle Ratima and 620 others, and Petition 2011/40 of Mary Utanga and 270 others, and recommends that the House takes note of its report.

Introduction

We have considered these three petitions together, as they deal with similar subject matter, namely redevelopment projects being carried out by Housing New Zealand Corporation in Pomare, Maraenui and Glen Innes. Each petition requests

That the New Zealand House of Representatives accept that quality affordable housing is a state responsibility and take immediate action to sort out the current housing crisis for low-income New Zealanders and in particular act to ensure

- all Housing New Zealand “urban renewal” programmes in Glen Innes, Maraenui, Pomare and other areas be halted so communities can discuss and negotiate the “renewals” with Housing New Zealand
- all 90-day eviction notices for “urban renewal” programmes be withdrawn pending the outcome of community negotiations with affected communities
- the criteria for access to a HNZ home revert to the requirements prior to July 2011
- vacant state houses in all NZ communities be immediately let to families in crisis
- the company to oversee housing redevelopment in Tamaki – the Tāmaki Redevelopment Company – be disestablished immediately
- reopen all Housing New Zealand offices around the country
- a major state-house building and renovation programme be started – aim to build 20,000 new state houses within two years.

Background

The corporation is carrying out redevelopment in Glen Innes, Maraenui, and Pomare. In recent times these communities have had disproportionately high rates of socio-economic deprivation, and social issues emerging in these suburbs made residents afraid for their safety. The corporation’s housing stock in these areas no longer meets its requirements. Some properties are ageing or earthquake-prone or of the wrong configuration to house
the families in need of them. In Glen Innes there are homes on large sections that could be used better to meet housing demand. We understand that high vacancy rates in Maraenui and Pomare have been exacerbated by social problems in these areas.

We were told that the redevelopment projects seek to address these issues by introducing more social housing options for communities, including renting from community organisations and private landlords, and opportunities for home ownership. The projects also seek to improve the quality of state housing in these areas. The corporation expects communities to be safer, more vibrant, and more prosperous after the redevelopment.

The Northern Glen Innes Redevelopment Project will increase the number of homes in that area and is expected to affect 142 households. The project in Maraenui has involved the removal of five mostly vacant housing blocks which were attracting crime and vandalism. We understand that this affected only three tenants, and the corporation intends to redevelop the now vacant sites. In Pomare, 89 older state houses were removed in 2011 and 2012, affecting 40 tenants or households. A further 65 state houses are potentially affected under the draft redevelopment plan, 47 of which were tenanted as at January 2013. We understand that the Pomare redevelopment plan also proposes improvements including better access to public transport, a new community and learning centre, shared green spaces, and community gardens.

**Petitioners' concerns**

Each of the three groups of petitioners spoke to us in person and expressed dissatisfaction with the way the corporation has engaged with their communities regarding the projects. The groups share a belief that there has been insufficient consultation with communities, and that the corporation has failed to adequately take into account the views of the communities. There is a belief that the redevelopment projects are fragmenting these communities, and that displacement has adversely affected the health and wellbeing of affected tenants.

We heard about concerns specific to each of the affected communities.

The Tamaki Housing Group expressed dissatisfaction with the corporation requiring tenants in Northern Glen Innes to move, particularly as some families have lived in the same homes for many years and had been under the impression they would be able to remain there. The group acknowledged that the corporation had consulted the wider community about the initial Tamaki Transformation Project. However, it believes that Northern Glen Innes did not form part of the initial redevelopment plan, and it is disappointed that there was no additional community consultation when the plan was changed. It believes that the corporation failed to meet its statutory responsibilities in this respect.

Tu Tangata Maraenui told us that Maraenui was previously an established, vibrant, connected community, where people had family support and friends. These petitioners expressed concern that people relocated to homes outside Maraenui had been isolated from their support networks, and that the corporation’s actions in the area were thus fragmenting the community. In particular, they raised concern about the closure of the corporation’s Maraenui office and the growing number of vacant Housing New Zealand properties in the area. They considered that the number of vacant properties had led to more antisocial behaviour, crime, and vandalism, that some of the properties were habitable, and that the corporation had not done enough to ensure they were tenanted.
Pomare Community Voice told us that residents of Pomare felt the corporation had led them to believe it was carrying out “housing renewal” in the area; they expected to be relocated briefly while homes were repaired or replaced, and then to return. We were told that some residents were unhappy to be permanently relocated, that many had been moved to homes in a poorer condition, and that there is a sense the community itself has been “demolished”. The corporation says it has advised tenants that they will have the option of returning to Pomare, but the group disputes this. It believes that fewer state houses in the area will prevent people from returning as tenants, and that the cost to purchase homes offered for private ownership will be beyond the means of tenants.

Response from Housing New Zealand Corporation

The corporation has acknowledged that its initial communication failed to engage the Maraenui and Pomare communities in its redevelopment planning. It told us it has taken steps to address the shortcomings of its dealings with these communities.

In March 2013 the chief executive and senior officials met with representatives from Tu Tangata Maraenui and updated them on its plan to involve the local community in the redevelopment project. It has responded to concern about the number of vacant Housing New Zealand properties by actively offering them to new tenants, and it has re-opened its local office. We were pleased to learn that the corporation meets regularly with key community stakeholders, including Napier City Council, the Police, and Tu Tangata Maraenui, regarding the redevelopment of Maraenui.

In Pomare, the corporation sought community feedback on its draft redevelopment plan for the area at a community open day in February 2013. We heard that feedback was collated and that some of the results had been incorporated into the redevelopment plan. For example, a decision has been made to integrate existing sculptures into the redevelopment rather than remove them. The corporation also surveyed tenants who moved from Pomare in 2011, and is developing a survey tool to follow up with all relocated tenants. The results of the survey suggested that most relocated tenants were happy with their new homes and felt safer in their new neighbourhoods; but there was a need to improve communication with tenants during the relocation process.

The corporation told us that it has engaged extensively with affected tenants, and with the community in Northern Glen Innes, on its redevelopment plans for the area. For example, all tenants who will be required to move have been personally spoken to by staff, and letters have been distributed to neighbouring private residents updating them on the redevelopment plans. In March 2013, the corporation also held four drop-in sessions to provide information about the redevelopment.

We were advised that “every effort” is being made to move affected families to locations and homes that suit them in terms of proximity to schools, work, and community networks, and that most families who wish to remain living in Glen Innes should be able to do so. We learnt that only four of the 81 tenants who had moved from their homes as at May 2013 had done so because they were required to by the corporation, and that all the tenants had moved to locations of their choosing. The corporation believes this indicates that most affected families were happy to move before they were required to. The corporation told us it is committed to working constructively with tenants, the community, and stakeholders to ensure that the redevelopment project is successful and that outcomes for the Glen Innes community are improved.
Conclusion

We are sympathetic to the state house tenants affected by the corporation’s redevelopment projects in Glen Innes, Maraenui, and Pomare, and acknowledge that significant disruption has occurred in these communities. We accept that the corporation’s initial community consultation processes have been inadequate in Glen Innes, Pomare and Maraenui.

The projects have now substantially progressed. The corporation has given assurances that it has learnt from its mistakes, has established better community consultation processes for these projects, and will apply them in any future redevelopment. Most of us remain optimistic that the current redevelopment projects will improve the living conditions, community safety outcomes and the prosperity of Glen Innes, Maraenui, and Pomare.

The Labour Party, Green Party, and New Zealand First members acknowledge that the corporation has made an effort to improve its community engagement processes, but we expect the corporation to learn from its mistakes and take a more careful and compassionate approach to communities. In our view tenants in redevelopment projects should be guaranteed a right of return to their communities, and the numbers of state and social housing units should not be reduced by those projects.
Appendix

Committee procedure

The committee met on 14 November 2012; 13 and 27 February, 20 and 27 March, 10 April, 8 May, 18 September, and 16 October 2013; 12 February and 21 May 2014. We received evidence from the Tamaki Housing Group, Tu Tangata Maraenui, and Pomare Community Voice, and advice from Housing New Zealand Corporation.

Committee members

Melissa Lee (Chairperson)
Hon Phil Heatley
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Hon Peseta Sam Lotu-Iiga
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Chris Tremain
Louisa Wall

Holly Walker replaced Jan Logie for all three items of business.

Phil Twyford replaced Sue Moroney for all three items of business.
The Social Services Committee has considered the report from the Controller and Auditor-General, *Public entities in the social sector: Our audit work*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Melissa Lee  
Chairperson
Social Security (Clothing Allowances for Orphans and Unsupported Children) Amendment Bill

Member’s Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Social Security (Clothing Allowances for Orphans and Unsupported Children) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The Social Security (Clothing Allowances for Orphans and Unsupported Children) Amendment Bill seeks more parity between the financial entitlements for orphans and unsupported children and the financial entitlements for foster children. Under section 363 of the Children, Young Persons, and Their Families Act 1989, the chief executive responsible for the Act’s administration has the discretion to determine rates of payment for foster children. At present this discretion has been used to determine a rate of payment for a clothing
allowance, for which orphans and unsupported children are not eligible.

The bill seeks to insert new section 29B into the Social Security Act 1964, to establish a clothing allowance for children whose caregivers receive an Orphan’s Benefit or Unsupported Child’s Benefit. The entitlement is intended to parallel the clothing allowance for foster children, available during any period when the chief executive uses their discretion under the Children, Young Persons, and Their Families Act to provide a clothing allowance.

Commencement date
In January 2014 the Government introduced an annual School and Year Start-Up Payment for carers in receipt of an Orphan’s Benefit or Unsupported Child’s Benefit. This payment ranges between $250 and $400 in 2014, and between $400 and $550 in 2015, and is intended to help cover costs arising at the start of each year, particularly school-related costs such as school fees, and the purchase of school uniforms and stationery. We understand that a one-off Establishment Grant of $350 is also paid to carers when an Orphan’s Benefit or Unsupported Child’s Benefit is granted, and that carers may be entitled to Special Needs Grants and Advance Payments of Benefit if they meet certain eligibility criteria.

These existing measures along with the changes proposed in the bill should sufficiently address the issue of parity; but we recognise that the School and Year Start-Up Payment is a new policy initiative and funding is expected to fall back within baseline levels in 2018.

Therefore, we also recommend amending clause 2 to delay the commencement of this new legislation, should it be passed, until 1 July 2018. This would ensure parity in the payment of clothing-related allowances for foster children, and orphans and unsupported children, should the School and Year Start-Up Payment no longer be available.

Clarification of entitlement
We recommend amending clause 4 to clarify that an orphan or unsupported child would be entitled to a clothing allowance only if the chief executive used their discretion to set a rate of payment for a clothing allowance for foster children under section 363 of the Children, Young Persons, and Their Families Act.
The clause as drafted may give the impression that the chief executive is required to determine such an allowance. However, section 363 of the Children, Young Persons, and Their Families Act relates to the chief executive’s discretion to determine the rates of allowances payable to caregivers of foster children and makes no specific reference to a clothing allowance.

We believe the amendment would clarify that, although a clothing allowance is currently provided for foster children, the provision, as well as the amount provided, is at the chief executive’s discretion, and it is not cemented in legislation. This amendment would not change the intent of the bill, which is to ensure parity between the clothing allowance entitlements for orphans or unsupported children and for foster children.
Appendix

Committee process
The Social Security (Clothing Allowances for Orphans and Unsupported Children) Amendment Bill was referred to the committee on 23 October 2013. The closing date for submissions was 5 December 2013. We received and considered 245 submissions from interested groups and individuals and we heard 11 submissions. We received advice from the Ministry of Social Development.

Committee membership
Melissa Lee (Chairperson)
Hon Phil Heatley
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Hon Peseta Sam Lotu-Iiga
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Chris Tremain
Louisa Wall
Tracey Martin was a non-voting member of the committee for this item of business.
Petition 2011/87 of Vivian Needham
Report of the Social Services Committee

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Petition 2011/87 of Vivian Needham

Introduction
The Social Services Committee has considered Petition 2011/87 of Vivian Needham, requesting that the House recommend that the Government conduct an inquiry into the case of Vivian Needham in relation to her dealings with Child, Youth and Family (CYF) and all the purported avenues of redress, and that she be allowed to present this in person.

Background
In 2009, CYF received notifications alleging abuse of a child in Ms Needham’s wider family. This child was placed into CYF care in February 2010. Ms Needham believed that the chosen caregiver was not satisfactory, and that Ms Needham was best placed to provide the care and stability the child needed. Although her view was later upheld by CYF, Ms Needham spent a long time trying to have the child moved into her care. This finally happened in June 2011.

Difficulties were exacerbated by the fact that the child lived in a South Island town, and Ms Needham lived in the North Island. In addition, she was overseas from June 2009 to June 2010. In May 2011, Ms Needham gave up her job and her home in the North Island, and moved to the South Island town in the hope of engaging more effectively with CYF there. In October 2011 she moved, with the child, back to the North Island.

Since November 2010, Ms Needham has made various complaints about her dealings with CYF. In June 2011, she initiated a complaint to the Chief Executive’s Advisory Panel of the Ministry of Social Development. The panel reported in March 2012, acknowledging that the child should have been moved sooner into Ms Needham’s care, and that this should have been achieved with less distress to Ms Needham. Ms Needham was awarded an ex gratia payment of $7,500 to recognise her financial and emotional costs.

Ms Needham disagrees with the amount that was awarded; she described it as a down-payment only, on a much larger (six-figure) amount.

Having escalated her grievances, unsuccessfully, to the Ombudsman and to the Social Workers Registration Board, Ms Needham has now exhausted her avenues of complaint.

Ex gratia payments
We are advised that neither CYF nor the Chief Executive’s Advisory Panel have ever made ex gratia payments in six figures. Since 2009, the panel has made 17 ex gratia payments, ranging from $1,000 to $15,000, with an average payment of $6,205.

Conclusion
We consider that the ministry has addressed Ms Needham’s grievances in accordance with its internal processes. We recommend that no further action be taken. We have no other matters to bring to the attention of the House.
Appendix

Committee procedure
The petition was presented to the House of Representatives on 19 November 2013 and was referred to the Social Services Committee. The committee received and heard evidence from the petitioner on 12 March 2014.

We received advice from the Ministry of Social Development.

Committee members
Melissa Lee (Chairperson)
Hon Phil Heatley
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Hon Peseta Sam Lotu-Iiga
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Chris Tremain
Louisa Wall
Report from the Controller and Auditor-General, Inquiry into the Plumbers, Gasfitters, and Drainlayers Board: Follow-up report and Information request to the Minister for Building and Construction

Report of the Social Services Committee

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Report of the Controller and Auditor-General, Inquiry into the Plumbers, Gasfitters, and Drainlayers Board: Follow-up report and Information request to the Minister for Building and Construction

Recommendation

The Social Services Committee has considered the report from the Controller and Auditor-General, Inquiry into the Plumbers, Gasfitters, and Drainlayers Board: Follow-up report and an information request to the Minister for Building and Construction, and recommends that the House take note of this report.

Background

The two items of business being reported here are related to two others that we have previously considered and reported to the House; the Report from the Controller and Auditor-General on Inquiry into the Plumbers, Gasfitters, and Drainlayers Board, and Petition 2011/9 of Wal Gordon on behalf of the Plumbers, Gasfitters, and Drainlayers Federation NZ and 1,227 others.

Report from the Controller and Auditor-General on Inquiry into the Plumbers, Gasfitters, and Drainlayers Board

The Report from the Controller and Auditor-General Inquiry into the Plumbers, Gasfitters, and Drainlayers Board found problems throughout most aspects of the Plumbers, Gasfitters, and Drainlayers Board’s work, including a need to embed basic administrative law disciplines into the board’s everyday work and decision-making. The report made fifteen recommendations intended to address the most serious of the problems that were found.

We reported this item of business to the House on 16 February 2012, noting that the board had been aware of the issues and had been working to address them. We acknowledged that the board needed more time to do so, stating our intention to follow up with the board, and seek an update from the Minister for Building and Construction during this Parliament.

Petition 2011/9 of Wal Gordon on behalf of the Plumbers, Gasfitters, and Drainlayers Federation NZ and 1,227 others

Petition 2011/9 of Wal Gordon on behalf of the Plumbers, Gasfitters, and Drainlayers Federation NZ and 1,227 others urged the Government to establish a Royal Commission of Inquiry into the regulation and governance of the plumbing, gasfitting, and drainlaying industry. The petition stated that the governance of the board had been in turmoil for over a decade, and that despite Government attempts to correct it, it remained substandard. It specified that the Plumbers, Gasfitters, and Drainlayers Federation NZ was born out of discontent amongst tradespeople who were suffering because the board’s actions had lost credibility, created stress, and cost some their jobs and livelihoods. The petition called for an inquiry “to set the path for a better and productive future for the industry”.

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We reported this petition to the House on 20 September 2012, noting that the petition raised matters also addressed by the Report from the Controller and Auditor-General Inquiry into the Plumbers, Gasfitters, and Drainlayers Board. In the circumstances, we declared our intention to “monitor the outcome of the review”.

**Correspondence from the federation**

On 29 January 2014 we considered correspondence from Mr Gordon on behalf of the federation, in which he raised ongoing concerns about the board. He argued that after 17 months, little at the board had changed and that the situation appeared to be worsening.

**Information request to the Minister for Building and Construction**

To determine the outcome of the follow-up review, we initiated an information request to the Minister for Building and Construction at the time, Hon Maurice Williamson, seeking an update on the board’s progress in implementing the recommendations resulting from the initial inquiry.

**Current situation**

On 28 May 2014 the report from the Controller and Auditor-General Inquiry into the Plumbers, Gasfitters, and Drainlayers Board: Follow-up report was presented and it was later referred by the Finance and Expenditure Committee to us for consideration. This report sets out the Office of the Controller and Auditor-General’s findings as to how the board has progressed the recommended improvements.

The Office of the Controller and Auditor-General “saw much less to concern us” than during the 2010 inquiry, and is satisfied that the board now has the necessary arrangements to govern and manage effectively. Thirteen of the fifteen recommendations for improvement have been carried out. Many of the legacy issues have been addressed, so problems are fewer, but the report says that because the Plumbers, Gasfitters, and Drainlayers Act 2006 is so complex, the board needs to focus constantly on matters of legality. We note that the board has written to the Ministry of Business, Innovation and Employment regarding the recommendations that relate to legislative matters.

The Office says that there is now more transparency in the board’s conduct of its affairs, and that some policies that were considered “weak or potentially unlawful” have been revised. The report encourages the board to review its supervision policy “in the next few months”, to give overseas applicants more information on exemptions, and to structure their interviews so it is clear what is being assessed, and to ensure that changes to the gas audit process have not created unintended gaps in the safety regime.

We learnt that the quality of the board’s examinations has improved, with pass rates of about 70 percent and higher, compared with about 30 percent at the time of the inquiry. It is also heartening that the board’s staff report a healthier organisational culture.

Importantly, the number of complaints from tradespeople, which at the time of the inquiry was of concern to the Minister, is now considered to be small, and few are about recent matters. Although the Office continues to receive complaints from plumbers and gasfitters, they are mainly about costs. We heard that this is largely because the cost of regulation falls more heavily on the trades the board regulates than on other regulated workers (such as joiners, electricians, and nurses) because the board is entirely funded by tradespeople, and the numbers of people in these trades is relatively small. We heard that the board struggles
to carry out its responsibilities at a cost that is acceptable to the trades, making its relationship with some tradespeople strained and less than productive. Although consultation with the industry is considered to be robust, we are aware that the relationship with the federation is still difficult. We support the Office’s view that matters between the board and federation have been challenging, but that the board needs to work more constructively with the federation.

The current Minister for Building and Construction, Hon Dr Nick Smith, supports the Auditor-General’s view that the board is now a “significantly changed and improved organisation, which has largely delivered a challenging programme of work to remedy problems that we had found during our original inquiry”. We learnt that the issues and suggestions raised in the follow-up report will be considered during the ministry’s review of the operation of the Act, which is currently in progress.

**Conclusion**

The board has taken the Auditor-General’s inquiry seriously and has made significant progress on implementing the recommendations for improvement. We are satisfied with the findings of the review, particularly that the board now appears to be on a more stable administrative and legal footing. We support the call for the board to continue to make improvements, to focus on legality, and to work more constructively with the federation.

Given the report’s findings we did not feel it was necessary to ask the board to come before us. We have no further matters to bring to the attention of the House.
Appendix

Committee procedure

The report from the Controller and Auditor-General on the Inquiry into the Plumbers, Gasfitters, and Drainlayers Board: Follow-up report was referred to us on 12 June 2014. Evidence was heard from the Office of the Controller and Auditor-General on 25 June 2014.

The Information request to the Minister for Building and Construction was initiated on 19 February 2014. We received evidence from the Minister for Building and Construction.

Committee members

Melissa Lee (Chairperson)
Hon Phil Heatley
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Hon Peseta Sam Lotu-Iiga
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Chris Tremain
Louisa Wall
In our report on the 2014/15 Estimates for Vote Social Development, presented on 19 June 2014, we included on page 2 the following paragraph in relation to welfare reforms:

The Minister told us that the number of people receiving a benefit decreased by 5 percent, to 295,320, and that the number of parents in receipt of the Sole Parent Support benefit decreased by 10 percent, to 68,932 in 2013/14. The Minister said this is the largest drop in the number of sole parents on the benefit since 1993.

We have since been informed by the Minister for Social Development that one of these statements is incorrect. The figure of 68,932 refers to the decrease in the number of long-term beneficiaries, not the number of parents in receipt of the Sole Parent Support benefit, which is 75,847.

We wish to correct the paragraph to read as follows:

The Minister told us that the number of people receiving a benefit decreased by 5 percent, to 295,320, and that the number of parents in receipt of the Sole Parent Support benefit decreased by 10 percent, to 75,847, the largest drop in the number of sole parents on the benefit since 1993. We heard that since June 2012, the number of long-term beneficiaries dropped by 12 percent, to 68,932.

The Social Services Committee recommends that the House take note of its report.

Melissa Lee
Chairperson
Inquiry into the funding of specialist sexual violence social services

Interim report of the Social Services Committee

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Inquiry into the funding of specialist sexual violence social services

Recommendation

The Social Services Committee is considering its inquiry into the funding of specialist sexual violence social services, and recommends that the House take note of its interim report.

Introduction

On 21 August 2013 we initiated an inquiry into the funding of specialist sexual violence social services. The terms of reference were to review

- the state of specialist services and determine whether they reflect an integrated approach to service delivery, full coverage, and best practice
- specialist services, including those for Māori and other diverse ethnic communities, and assess whether they are accessible, culturally appropriate, and sustainable.

Specialist sexual violence social services provide information, first response, and long-term support and treatment for those affected by sexual violence. They also include services aiming to prevent sexual violence. Services include

- information (such as printed material, phone lines, web sites)
- personal support during medical and police processes
- counselling (in person and via communication technology)
- social support (such as emergency housing)
- advocacy (such as providing support to victims during police interviews and/or through the court process)
- educational programmes
- social campaigns.

Services may be provided by individual practitioners or by organisations. Providers are regarded as “specialist” where their service provision is mainly focussed on sexual violence, and their staff have specialised knowledge and skills relating to sexual violence.

We acknowledge the dedication and hard work of the organisations and individuals working in this sector. We consider they have been working tirelessly, in a difficult environment.

We heard from a variety of submitters, both organisations and individuals. The organisations included sexual violence service providers, research and advocacy organisations, and professional organisations. Individual submitters included survivors of sexual violence, whānau and friends of survivors, and workers in the area, such as social workers, educators, counsellors, and medical staff.
Key issues

The key issues raised by submitters can be summarised as follows:

• There is a lack of stable funding for specialist sexual violence social services—all the submissions said that services are under-funded and are struggling to meet demand.

• Many services are relying on unpaid work and volunteers to support service delivery, and this is not sustainable in the long term.

• There are significant barriers to services for some groups, and culturally responsive services are not always available.

• Coverage of services varies across the country, resulting in gaps in service.

• More emphasis is needed on preventing sexual violence.

• Funding arrangements are disjointed and ad hoc, and an overarching comprehensive strategy is needed to guide the Government in purchasing services.

• Funding limitations at times mean organisations are not always able to deliver on their commitment to be client-focused, holistic, wrap-around, and family- or whānau-friendly, as per the sector’s standards for best practice.

• The impact on staff working in the sector under difficult conditions.

• The high costs of sexual violence to individuals, families, and communities.

Many submitters made specific suggestions for improvements.

Recent initiatives

We note that some current initiatives might help address the issues, including a cross-agency review of services, changes in ACC’s approach to sexual violence services, and interim additional funding to meet urgent needs.

Cross-agency review

In 2013 the Minister for Social Development commissioned a cross-agency review of sexual violence services. The aim is to develop a comprehensive, sustainable long-term plan for the sector.

ACC changes

ACC has developed a new Integrated Strategy for Action on Sexual Violence, to integrate and coordinate prevention, crisis response, and long-term support and recovery services, and make them more client-centred. ACC is also seeking to improve the quality of services, by ensuring that all providers are suitably trained, qualified, and experienced to deliver services. Suitability includes responsiveness to diverse groups, such as Māori and Pasifika. Some of us remain concerned about the impact of these changes.

Additional funding

It is estimated that in the 2009/10 financial year, $26.2 million was spent on contracted sexual violence services by ACC, the New Zealand Police, the Department of Corrections, and the Ministries of Social Development, Justice, and Health (and district health boards).

In Budget 2014, $10.4 million in new funding was allocated through Vote Health (administered by the Ministry of Social Development) to be spent over two years on sexual
violence services. We are advised that this interim funding is for the immediate stabilisation of existing crisis response services, and to fund treatment services for harmful sexual behaviour, better service delivery for male victims, and medical/forensic services, paving the way for cross-sector work on a comprehensive, long-term strategy.

**Concluding comment**

This inquiry has drawn out a number of significant and complex issues that are worth pursuing. Unfortunately, the dissolution of the 50th Parliament will occur before there is time to consider them adequately and make appropriate recommendations. While the recent initiatives are a step in the right direction, we believe it is a matter of priority for the select committee of the 51st Parliament that is charged with social services to reinstate this inquiry as an item of business, and give the subject further consideration.
Appendix

Committee procedure
The committee called for public submissions on the inquiry. The closing date for submissions was 10 October 2013. We received 997 submissions from organisations and individuals, and heard 87 of the submissions orally. We heard evidence at Wellington and Auckland. We met between 21 August 2013 and 30 July 2014 to consider the inquiry.

The Ministry of Social Development provided advice.

Committee members
Melissa Lee (Chairperson)
Hon Phil Heatley
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Hon Peseta Sam Lotu-Iiga
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Chris Tremain
Louisa Wall

Carol Beaumont replaced various Labour members during the inquiry.
Land Transport and Road User Charges Legislation Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the Land Transport and Road User Charges Legislation Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The Land Transport and Road User Charges Legislation Amendment Bill seeks to amend two Acts: the Road User Charges Act 2012 (the RUC Act) and the Land Transport Act 1998. Changes to the Land Transport Act are required to support the changes proposed to the RUC Act.

The bill seeks to make the following changes to current legislation:

• Create a new regulation-making power to exempt from road user charges vehicles that are not required to be registered.
• Establish an annual charge, in lieu of road user charge, for some vehicles that are exempt from road user charges.
• Establish offence provisions for the enforcement of conditions on exemptions from road user charges granted under section 40 of the RUC Act.

The bill would also make minor technical amendments to improve the operation of the road user charges system.

The amendments that we recommend are all to Part 2 of the bill, and relate to the RUC Act.

**Requirement to have a distance licence**

We recommend an amendment to clause 6A, to insert new subsections 9(4A) and 9(4B) into the RUC Act.

Under section 9(4) of the Act, if a specified vehicle is used outside the terms of its RUC licence, the only defence available is that there was a “reasonable excuse” to do so. The amendment we recommend gives guidance to operators and to enforcement authorities as to a particular circumstance that might constitute a “reasonable excuse”, without otherwise altering the effect of the provision.

**Agreements to pay RUC in relation to combination vehicles**

We propose an amendment to clause 8, new section 12A(2)(e) to remove the reference to the operator providing information to the regulator after the “completion of the operation of the vehicles concerned”. It is the provision of correct information which is important, rather than when it is received. The amendment we recommend reflects the intention of the bill that the required information be provided as soon as practicable once it becomes available.

**Correction to clarify RUC Act**

We recommend adding a new subsection to clause 13 of the bill, to insert the word “user” into section 57(1)(a) of the RUC Act. This would change the phrase “unpaid road charges” to “unpaid road user charges”, making the RUC Act clearer and more consistent.
Appendix

Committee process
The Land Transport and Road User Charges Legislation Amendment Bill was referred to the committee on 27 August 2013. The closing date for submissions was 17 October 2013. We received and considered five submissions from interested groups and individuals. We heard three submissions. We received advice from the Ministry of Transport.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Carol Beaumont
Dr Cam Calder
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Mike Sabin
Summary Offences (Possession of Hand-held Lasers) 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 Summary Offences (Possession of Hand-held Lasers) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The Summary Offences (Possession of Hand-held Lasers) Amendment Bill seeks to amend the Summary Offences Act 1981, to make it an offence for a person to possess a hand-held laser in a public place without reasonable excuse, and to empower police to seize and retain any such laser.
The bill as introduced defines a hand-held laser as any hand-held device designed or adapted to emit a laser beam.
Name of the bill
We recommend changing the name of the bill to refer more accurately to the type of laser it seeks to control. An amendment to re-title the bill “Summary Offences (Possession of High-power Laser Pointers) Amendment Bill” would reflect our recommended change to the definition of the devices covered, and thus avoid any confusion about the bill’s applicability.

Commencement date
We recommend amending the start date so that the legislation would come into force 28 days after the date on which it received Royal assent. This would provide the public with reasonable notice of the law change.

Seizure of lasers
We recommend deleting the seizure provision in clause 4, section 13B(2). It is not necessary, as seizure powers are available to police under the Search and Surveillance Act 2012.

Definition of hand-held laser
We consider that the definition of “hand-held laser” proposed in clause 4, section 13B(4) is too broad. In order to provide certainty and clarity for the police, for the courts, and for people wanting to own such devices, we recommend an amendment to adopt the definition of “high-power laser pointers” in the Customs Import Prohibition (High-power Laser Pointers) Order 2013. Adopting this definition, which includes all devices with a power output of greater than 1 milliwatt, would ensure consistency with other legislation, such as the Health (High-power Laser Pointers) Regulations 2013. We recommend consequential replacement of the phrase “hand-held laser” wherever it occurs in the bill with “high-power laser pointer”.
Appendix

Committee process
The Summary Offences (Possession of Hand-held Lasers) Amendment Bill was referred to the committee on 25 September 2013. The closing date for submissions was 7 November 2013. We received and considered seven submissions from interested groups and individuals. We heard three submissions.

We received advice from the Ministry of Transport and the Ministry of Justice.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Carol Beaumont
Dr Cam Calder
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Mike Sabin
Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill

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Report of the Transport and Industrial Relations Committee

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Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill

Recommendation

The Transport and Industrial Relations Committee has examined the Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill and recommends that it not be passed.

Introduction

The Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill is a member’s bill in the name of Scott Simpson. It aims to amend the Land Transport Act 1998 by making admissible, in a prosecution, a positive evidential breath test result in circumstances where a blood specimen cannot be taken from a suspected drunk driver for any reason.

Currently, the result of a positive evidential breath test is inadmissible if a person elects to have a blood test to measure alcohol level. The bill would close a loophole that allows a small number of drunk drivers to escape conviction by asking for a blood test when they expect that blood will not be able to be taken, for medical reasons or because they have previously had difficulty providing blood specimens. As long as they appear to comply with the alcohol testing procedure, this small group of drivers is, to all intents and purposes, beyond the reach of the law.

Issues raised by the bill

We agree that means of circumventing drink-driving legislation ought not to be available. Our consideration focused on whether the bill would be effective in preventing such circumvention, without creating additional problems.

We had several concerns about the bill as introduced, which we felt could not be addressed adequately by recommending amendments.

Advantages of blood tests over evidential breath tests

A scientist who performs a blood test can be cross-examined about the result; the blood-testing regime also allows two samples to be taken, one to be tested by the scientist on behalf of the prosecution, and the other held in case the defendant wants to get it tested independently. The accuracy of an evidential breath test result, on the other hand, cannot be challenged by cross-examination or by testing a second sample.

Unduly broad approach

We consider that, by seeking to make evidential breath tests admissible if blood cannot be taken “for any reason”, the bill is taking a broader approach than is necessary. It would cover more than the rare cases where a blood specimen cannot be obtained for medical or physical reasons; it could include, for example, the absence of staff and equipment for taking blood. This would go beyond the situation that the bill aims to address, that is, those drivers who cannot provide a blood specimen because of a medical or physical condition.
Inconsistency with the New Zealand Bill of Rights Act 1990

The Attorney-General has concluded that the bill is inconsistent with the right, under the New Zealand Bill of Rights Act 1990, to be presumed innocent, and that it cannot be justified under section 5 of that Act.

An evidential breath test is not required by law

Although it is not an offence to refuse an evidential breath test, a driver who does so must permit a blood test. However, if blood cannot be taken, there is no evidential breath test result for the police to revert to. If the bill were passed, therefore, drivers who know or suspect that blood cannot be taken from them could circumvent the aim of the bill by declining the evidential breath test and agreeing to the blood test.

An amendment to make evidential breath tests compulsory would go beyond the scope of this bill.

Other options

We support the presumption of innocence as affirmed in the New Zealand Bill of Rights Act, and we value also the worthy intention of this bill in trying to reduce the harm done by drunk drivers to themselves and to others. We do not believe the bill can adequately reconcile the issues raised from both Bill of Rights Act and road safety perspectives.

We note, however, two particular changes that could help reduce the harm that the bill is trying to address. One is legislative; the other concerns the Police’s operational arrangements.

Land Transport Amendment Bill 2013

We have received for consideration a Government bill, the Land Transport Amendment Bill, which seeks in part to amend section 60 of the Act, relating to failure or refusal to permit a blood specimen to be taken. While we are still to examine it in detail, the change proposed in that bill as introduced might go some way to addressing the concerns raised in this bill.

Operational changes

We understand the Police are exploring alternatives for taking blood samples in difficult situations, for example by using specialised equipment such as “butterfly needles”, which are especially suitable for people with small or shallow veins. These needles may help reduce the number of drivers who are unable to provide a blood sample because of a medical or physical problem.

Conclusion

We do not recommend that this bill be passed: its provisions are too broad, it could be inconsistent with the New Zealand Bill of Rights Act, and its aim of closing a loophole in current legislation could be circumvented.

We support the aim of the bill, however; and we are pleased to note that the issue it raises may be addressed by the Land Transport Amendment Bill currently before Parliament, and an investigation into practical measures to allow blood to be taken more readily in difficult circumstances.
Appendix

Committee procedure
The Land Transport (Admissibility of Evidential Breath Tests) Amendment Bill was referred to the Transport and Industrial Relations Committee on 14 November 2012. The closing date for submissions was 21 December 2012. We received six submissions from interested groups and individuals. We heard four submitters.

We received advice from the Ministry of Transport and the New Zealand Police.

Committee members
David Bennett (Chairperson)
Chris Auchinvole
Carol Beaumont
Dr Cam Calder
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Mike Sabin
Petition 2011/91 of Roger Fowler on behalf of the Respect Our Community Campaign

Report of the Transport and Industrial Relations Committee

The Transport and Industrial Relations Committee has considered Petition 2011/91 of Roger Fowler on behalf of the Respect Our Community Campaign, requesting that the House of Representatives note that 4,246 people have supported a petition calling for a stop to the proposed East-West Motorway through Mangere and Otahuhu and that the House support the aim of the petition.

Due to further information that the proposal which is the subject of the petition is not progressing at this time, we have no matters to bring to the attention of the House.

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/103 of David John McCormick and 433 others, requesting that the House of Representatives inquire into the decision of Immigration New Zealand to deny permanent residency to Kurukulasooriya Geegam Pelintos Fernando, his wife and three children.

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

David Bennett
Chairperson
Immigration Amendment Bill (No 2)

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 (No 2) and recommends by majority that it be passed with the amendments shown.

Introduction
The Immigration Amendment Bill (No 2) proposes changes to the Immigration Act 2009, which would affect provisions relating to areas including migrant worker exploitation, immigration officers’ search powers, the collection of biometric information, dishonesty in visa applications, and the funding of the immigration infrastructure.

The bill would

• give temporary migrant workers the same protection from exploitation that illegal workers currently have under the Act
• make liable for deportation employers who are residence class visa holders if they are convicted of exploiting migrant workers or knowingly employing migrant workers without work
rights, if the offence was committed within 10 years of the employer's visa being granted

- empower immigration officers to apply for search warrants in relation to suspected immigration offences
- allow warrantless entry and search if it were believed that migrants were working unlawfully or being exploited; or if a person liable for deportation refused to produce their identity documents
- allow immigration officers to conduct a personal search of a non-citizen who has failed to produce their identity or travel documents on arrival
- extend the circumstances in which biometric information¹ may be taken from non-citizens arriving in New Zealand who apply for entry permission, to include those who have been granted entry permission and are still in an Immigration Control Area
- allow both biometric information and “special biometric information”² to be collected from those liable for deportation or turnaround, and allow the Police to use reasonable force to collect it where a compulsion order has been granted by a court
- limit access under the Privacy Act 1993 so that people could not obtain personal information used in immigration decisions made using absolute discretion (as defined in section 11 of the Act)
- make residence class visa holders liable for deportation if information provided in relation to their application was fraudulent, forged, false or misleading, or any relevant information was concealed, whether or not there was a causal link between that information and the granting of residence
- change the way immigration is funded, with a renamed “immigration levy” chargeable to all visa applicants.

This commentary discusses our main recommendations. It does not explain minor or technical amendments.

¹ Biometric information, as defined in the Act, includes head-and-shoulders photographs, fingerprints, and iris scans.
² Special biometric information, as defined in clause 67, includes palm-prints, footprints, and measurements and photographs of the whole person.
Commencement date
Under clause 2(5) of the bill, clauses 61 and 65 (which relate to new powers of search and entry) would come into force two years after the Royal assent, unless brought into force earlier by Order in Council. The Regulations Review committee has advised that commencement of legislation by Order in Council is appropriate only in rare and exceptional circumstances. In the case of this bill, it is impossible to predict accurately how much time would be needed for operational policies to be developed and immigration officers to be trained in the use of the new powers. Some factors in the exact timing, such as scheduling training with the Police, are outside the control of Immigration New Zealand. We note also that commencement by Order in Council would provide an additional safeguard, in that Cabinet could be advised that the appropriate training was provided before the powers came into force.

However, we appreciate that commencement by Order in Council should be resorted to only when strictly necessary. We consider it appropriate to reduce the length of time before the legislation would come into force automatically, from two years to one. We therefore recommend amending clause 2(5) so that the legislation would come into force 1 year after it received Royal assent, if not brought into force earlier by Order in Council.

False information in visa applications
Clause 42, which seeks to amend section 158, would unintentionally narrow residence class visa holders’ liability for deportation to the provision, regarding their own applications only, of fraudulent, forged, false or misleading information, or the concealment of relevant information. We recommend widening this clause to make them liable for deportation if their visa is held on the basis of another person’s visa and fraudulent, forged, false or misleading information was provided, or relevant information was concealed, in the application for that other person’s visa. This would align the provision with the current provisions in section 158.

Serving deportation orders
We consider that clause 47, which seeks to amend section 175 as to when deportation orders may be served, is difficult to understand.
While we recommend no change to the policy, a redrafted clause 47 as we recommend would make the legislation clearer.

**Decisions made using absolute discretion**

We recommend inserting clause 48A, to bring section 177 into line with the intention of clause 8. This would make it clear that the ability to access personal information under privacy principle 6, as set out in section 6 of the Privacy Act, would not apply to any reasons for decisions by immigration officers made using absolute discretion and relating to the cancellation of deportation orders.

We recommend inserting a parallel new clause, clause 98A, specifying that privacy principle 6 would not apply to any reasons for decisions made by an immigration officer using absolute discretion and relating to cancellation of removal orders.

**Search powers**

**Power of entry**

We believe the Act should set thresholds for the exercise of search powers that are internally consistent and also, where possible, aligned with the model set out in the Search and Surveillance Act 2012. Thus, “good cause to suspect” would be used regarding offences, and “reasonable grounds to believe” for other purposes. We therefore recommend amending clause 61, new section 277A, to change the definition of “specified employee” to refer to a person who an immigration officer believes to be working for an employer who the immigration officer has “good cause to suspect” is exploiting migrant workers or employing migrant workers without work rights and therefore committing an offence under sections 350 or 351.

We also recommend amending clause 64, new section 281B(1)(c), which relates to searches to facilitate deportation; and inserting new clause 64A, to amend section 285, which provides for searches at the border.

**Search of persons**

We recommend a change to clause 65, which would permit an extension of the power to search new arrivals.
Sections 85 to 87 of the Search and Surveillance Act are a package of provisions defining the scope of rub-down searches. Sections 85 and 86 are already referred to in clause 65, and we recommend including a reference to section 87 also, allowing a visual examination of the mouth, nose, and ears in the case of non-citizens arriving in New Zealand who fail to produce identity or travel documents.

**Exploitation of workers**

We recommend amending clause 80, which relates to the exploitation of migrant workers, by inserting new clause 80(3A), so that an employer would be treated as knowing that a worker holds a temporary entry class visa if at any time in the preceding 12 months the employer had been informed of that fact in writing by an immigration officer.

**Regulations relating to service**

Clauses 95(3) and 90, new section 387B, provide the power to make regulations to modify the default rules in clauses 89 and 90, new sections 386A to 387A. We do not consider that the circumstances regarding this bill are so exceptional as to require the primary legislation to be able to be changed by regulation. We recommend removing this power and amending clauses 95(3) and 90 to authorise regulations to provide requirements, which may differ from those in new sections 386A to 387A, for the way notices are served or given in specific situations or circumstances.

**Immigration levy**

We recommend inserting savings provisions via new sections 399(7) and (8), into clause 94, to allow people to pay the migrant levy if they have applied for their visa before the new immigration levy is in place. The migrant levy is currently paid after a visa application is lodged and before the visa is granted, but it is intended that the immigration levy will be paid when the visa application is first lodged.
Green Party of Aotearoa New Zealand and New Zealand Labour Party minority view

It is with regret the Green and Labour Parties are unable to support this bill. New Zealand urgently needs extra protections to stop the exploitation of migrant workers. Sadly, after listening to all the submissions and considering the evidence, we do not believe this legislation will help.

We need to create an environment to enable workers to report abuse. Workers are not going to report exploitation if they risk being deported. The Green and Labour Parties believe the failure to provide visa protection for those on temporary visas undermines the entire intent of the bill. This is compounded by the failure of Government to employ enough labour inspectors to reduce the pressure on migrant workers to report.

We are uncomfortable with extending the search powers of immigration officers into private dwellings, especially without the requirement for a warrant. We are not convinced that if the goal is to protect migrant workers we should be giving these powers to immigration officers rather than labour inspectors. We need to create supportive systems for the exploited workers and migrant communities to report abuse. Our belief is that putting immigration officials into the role of enforcers confuses things and creates barriers to reporting.

We did not support the absolute discretion clause to make decisions without giving reasons and we do not support clause 8 which makes clear that the Privacy Act does not apply to reasons for decisions made using absolute discretion.

The Green and Labour Parties have concerns that the Legislation Advisory Committee’s recommendations regarding the purpose and scope of the proposed immigration levy were not picked up. This bill changes the scope of the levy and allows it to be used to fund the accumulated deficit of the Immigration Advisers Authority. While we recognise the validity of the Government seeking to expand the funding base for certain immigration tasks, we agree with the Legislation Advisory Committee that, to avoid the appearance of this becoming a tax, it would have been preferable to add more specificity to the bill. We are also concerned that migrants will be made responsible for the Government’s failure to properly fund the Immigration Advisers Authority.
We are further deeply concerned that this bill will enable those with residency to be liable for deportation if any information in their original application is proved to be false, even if this information was irrelevant to the decision to grant them a visa. They do not even need to be aware the information was false when they made the application.

We are opposed to the inclusion of clauses that provide for regulations that override or depart from the primary legislation. There will be discretion for the Minister not to deport someone and there will be the ability for people to appeal a deportation decision to the Immigration and Protection Tribunal. While this is some consolation in terms of basic access to justice it will increase work for immigration officials assessing whether allegations of false information, not relevant to the granting of visas, might be false or not. It will also increase the number of cases going to the Minister for decision and the Immigration and Protection Tribunal for appeal. The current system is already overburdened and we have not heard any justification that has convinced us this is needed or desirable.
Appendix

Committee process
The Immigration Amendment Bill (No 2) was referred to the committee on 19 November 2013. The closing date for submissions was 7 February 2014. We received and considered 18 submissions from interested groups and individuals. We heard 11 submissions.

The Regulations Review Committee commented on the powers in clauses 2 and 95(3).

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

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Carol Beaumont
Dr Cam Calder
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Mike Sabin

Jan Logie replaced Denise Roche for this item of business.
Dr Rajen Prasad replaced Carol Beaumont for this item of business.
Land Transport Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the Land Transport Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The Land Transport Amendment Bill proposes a number of amendments to the Land Transport Act 1998, to address the problem of alcohol-impaired driving. The bill seeks to

- lower the adult legal alcohol limits from 80 to 50 milligrams per 100 millilitres of blood, and from 400 to 250 micrograms per litre of breath
- create an infringement regime for adult drivers who return an evidential breath test result in the range of 251 to 400 mcg per litre, with proposed penalties of an infringement fee of $200 and 50 demerit points (There would be no right to request a blood test in these circumstances.)
set a higher infringement fee of $500 plus 50 demerit points, plus the costs of the blood test, for adult drivers who fail or refuse to undergo the breath test, and whose blood test results are in the infringement range (51 to 80 mg per 100 ml)

- address a loophole in the Act regarding drivers who cannot give blood samples for medical or physical reasons, by allowing prosecution of a driver for refusing to permit a blood specimen to be taken on a subsequent occasion, if a required blood specimen again cannot be taken for physical or medical reasons.

Presumption that driver has refused to give blood specimen
We recommend an amendment to clause 6, which would introduce the presumption that a driver had refused to permit a blood specimen to be taken if blood had been required on a previous occasion but he or she was medically or physically unable to provide it. We recommend making it clear in new section 60(3C) that a defendant could submit proof to challenge the presumption that they refused to permit the blood to be taken.

We also recommend extending the coverage of new section 60(3C) to ensure the presumption would also apply to a person who was required to give a blood specimen under section 72(1)(e) (which relates to persons who fail to satisfactorily complete a compulsory impairment test).

Section 64(1) provides a defence if the court is satisfied, on the evidence of a medical practitioner, that the taking of a blood specimen would have been prejudicial to the defendant’s health. We recommend inserting new clause 6A, to clarify the relationship between that defence and the presumption in new section 60(3C), so that the defence would not be available if the presumption applied.

Paying the costs of the blood test
Increased infringement fee for adults who fail to undergo breath test
We recommend removing clause 7, section 67(1A) from the bill as introduced, replacing it with new section 67(1A), and amend-
Recovery of blood test costs from others
We recommend further amendments to clause 7 to require all other drivers who elect or are required to provide a blood specimen to pay for the costs of their blood tests, regardless of the test results. This would mean inserting a new section 67(1) to replace existing section 67(1) in the Act. Under our recommended new subsection 67(1B), payment of blood test costs for those who went on to be convicted of a criminal drink-driving offence would continue to be ordered by the court as part of the sentence; while for those who were not convicted, the blood test costs would be a civil debt. (Those who failed or refused to undergo a breath test, and whose blood test results were in the infringement range, would be excluded by our recommended new section 67(1A), being instead subject to a $700 infringement fee.)

We also recommend specifying in new section 67(1C) that drivers with a pre-existing medical condition or disability, or an injury that precluded them from taking the evidential breath test, and those who had a blood test taken at a hospital or in a doctor’s surgery, could have the blood test costs waived if their test results were under the legal limit.

Advice that must be given to drivers
We recommend amending clause 8 so that all drivers who were required to undergo a breath test would have to be informed of the possible consequences, including the possibility that they might be liable for the blood test costs whether or not the test result showed that an offence had been committed.

Further, we recommend inserting new subclause 10(2) to require similar information to be given to drivers who have taken a breath test, failed it, and have the right to elect a blood test (new section 72(1D)); and to drivers required to undergo a blood test under section 72(1)(c), (d), or (e) (new section 72(1E)).
We consider that whether the results of a blood test should be admissible in court, even if the required advice was not given to the driver, should be a matter for the court to decide under section 30 of the Evidence Act 2006. We therefore recommend removing clause 8, new section 69(1B). However, under new section 67(1)(a)(ii), drivers would not have to pay the costs of the blood test if they have not been advised, under proposed new section 69(4A)(d), that they might be liable to pay these costs.

Procedure for dealing with blood specimens
In clause 11, we recommend replacing the phrase “reminder notice” with “infringement notice”. This would set an earlier start for the period during which defendants might organise a private blood analysis. The service of an infringement notice constitutes the start of proceedings, so it is a more appropriate starting point than the service of a reminder notice.

Ministry review of penalties for drink-driving offences
Cabinet has asked the Ministry of Transport to review the penalties for criminal drink-driving offences (over 80 mg of alcohol per 100 ml of blood, and over 400 mcg per litre of breath). The review will include an examination of section 61(1), which concerns drivers with blood alcohol levels over the criminal offence threshold of 80 mg per 100 ml of blood and 400 mcg per litre of breath, who cause injury or death. We encourage the Ministry to publicise this review so that members of the public are aware of it.
Appendix

Committee process
The Land Transport Amendment Bill was referred to the committee on 3 December 2013. The closing date for submissions was 14 February 2014. We received and considered 106 submissions from interested groups and individuals. We heard 21 submissions.
We received advice from the Ministry of Transport.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Carol Beaumont
Dr Cam Calder
Darien Fenton
Simon O’Connor
Denise Roche
Mike Sabin
Phil Twyford
The Transport and Industrial Relations Committee has considered matters raised in the report from the Controller and Auditor-General *Immigration New Zealand: Supporting new migrants to settle and work*, and has no matters to bring to the attention of the House.

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/58 of Darien Fenton, requesting

that the House note that Caroline Callow and 224 others have signed an on-line petition asking the Minister of Labour to launch an inquiry into the huge numbers of accidents occurring in the forest industry so that real solutions can be found based on evidence about the causes of these accidents in order to stop them continuing to occur.

We have examined this petition and note that the forestry industry is conducting its own inquiry into health and safety.

We will follow this inquiry with interest and hope that the outcome will lead to a real decline in deaths and injuries in the forestry industry.

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

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/83 of Raymond Neil Hellyer and Philippa Joan Hellyer, requesting that the unfair age-related discrimination in clause 52 of the Accident Compensation Act 2001 be repealed.

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

David Bennett
Chairperson
Supplementary Estimates of Appropriations for Vote Communications Security and Intelligence and Vote Security Intelligence for the year ending 30 June 2014

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. We heard from the Government Communications Security Bureau and the New Zealand Security Intelligence Service and received advice from the Office of the Auditor-General.

We recommend that the supplementary appropriations in respect of these Votes for the year ended 30 June 2014, as set out in Parliamentary Paper B.7, be accepted.

Rt Hon John Key
Chairperson
Activities of the Intelligence and Security Committee in 2014

Annual report of the Intelligence and Security Committee

Fiftieth Parliament
Rt Hon John Key, Prime Minister
July 2014

Presented to the House of Representatives and published under the authority of the House
# ACTIVITIES OF THE INTELLIGENCE AND SECURITY COMMITTEE IN 2014

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Activities of the Intelligence and Security Committee in 2014

Recommendation

The Intelligence and Security Committee presents this report to the House of Representatives in accordance with section 6(e) of the Intelligence and Security Committee Act 1996, and recommends that the House take note of this report.

Purpose

Section 6(e) of the Intelligence and Security Committee Act 1996 requires the Intelligence and Security Committee to produce a report on the activities of the committee and to make the report publicly available on the Parliament website.

This is the first annual report of the committee. It is a report on the work completed by the Intelligence and Security Committee of the 50th Parliament between 16 April 2013 and 30 June 2014. The coverage of the report ceases at June 2014 because the Parliament is to be dissolved on 14 August 2014.

Functions and proceedings of the committee

The Intelligence and Security Committee is a statutory committee, which was established in 1996 to oversee and review the intelligence and security agencies—the New Zealand Security Intelligence Service and the Government Communications Security Bureau. The Intelligence and Security Committee Act sets out the powers and functions of the committee:

- Examine the policy, administration, and expenditure of the intelligence and security agencies.
- Conduct an annual financial review of the performance of the intelligence and security agencies.
- Consider any bill, petition, or other matter referred to it by the House.
- Receive and consider the annual report of each intelligence agency.
- Consider any matter referred to it by the Prime Minister because of security or intelligence implications.
- Make an annual report to the House on its activities.
- Consider and discuss with the Inspector-General of Intelligence and Security his or her annual report.

The House, by sessional order, enlists the committee in its procedures. For the 50th Parliament the House resolved that

- the committee examine the Supplementary Estimates and main Estimates Vote for each intelligence and security agency
• the committee conduct a financial review of the performance in the previous financial year and the current operations of each intelligence and security agency
• a bill or other matter relating to an intelligence and security agency may be referred to the committee
• the Clerk will allocate any petition relating to an intelligence and security agency to the committee.

The House also resolved that no select committee can examine an intelligence and security agency. Consequently, intelligence and security matters are not within the subject area of any select committee. An inquiry by a select committee into an intelligence and security agency is prohibited by order of the House, not by law. This does not however remove the House's power to inquire into the agencies.

Under section 12 of the Intelligence and Security Committee Act, the proceedings of the committee are conducted in accordance with the Standing Orders. The Act requires the committee to conduct its proceedings mostly in private. It is not however required to do so when conducting a financial review examination of the intelligence agencies; the committee can unanimously resolve to the contrary.

We met nine times between 16 April 2013 and 30 June 2014 and presented reports to the House on our financial scrutiny work and on the Government Communications Security Bureau and Related Legislation Amendment Bill. These reports will be included in the Appendices to the Journals of the House of Representatives.

Legislation

The Government Communications Security Bureau and Related Legislation Amendment Bill was referred to the Intelligence and Security Committee by the House on 8 May 2013. In accordance with the Standing Orders, the bill was referred to the committee for examination and report-back to the House. We first met to consider the bill on 14 May 2013 and chose to order our proceedings according to the usual select committee process for examining legislation. A key aspect of the proceedings was a public call for submissions and holding public hearings on the bill. We held the hearings on 2, 3 and 5 July 2013. We met again on 10 and 22 July 2013 to complete the consideration of the bill and agree our final report to the House on the bill.

Operation of the Intelligence and Security Committee

With the enactment of the Government Communications Security Bureau and Related Legislation Amendment Bill on 26 August 2013, the operation of the Intelligence and Security Committee was changed to improve its ability to provide oversight of the intelligence agencies. The Prime Minister is now required to relinquish the Intelligence and Security Committee chair when we meet to scrutinise the performance of an intelligence agency (in the course of conducting a financial review) for which the Prime Minister is the Responsible Minister. We must now present an annual report to the House on our activities, and make the report publicly available on the Parliament website. We are also required to meet with the Inspector-General of Intelligence and Security about his or her annual report.
Financial scrutiny

On 5 June 2013 we met to examine the 2012/13 Supplementary Estimates and the 2013/14 main Estimates for Vote Communications Security and Intelligence and Vote Security Intelligence. We also examined the 2013/14 Supplementary Estimates and the 2014/15 main Estimates for these Votes on 30 June 2014. On both occasions we heard evidence (in private) from the Government Communications Security Bureau and the New Zealand Security Intelligence Service, and received advice from the Office of the Auditor-General.

We conducted the financial reviews of the 2012/13 performance of the Government Communications Security Bureau and the New Zealand Security Intelligence Service. On 3 December 2013 we heard evidence (in public) from both agencies. We also considered advice on the performance of the agencies from the Office of the Auditor-General.

Matters referred by the Prime Minister

Section 6(1)(d) of the Intelligence and Security Committee Act provides for the committee to consider any matter referred to it by the Prime Minister.

Kitteridge report

During the period covered by this report, the Prime Minister used this function to brief us on the findings of the Review of Compliance at the Government Communications Security Bureau (the "Kitteridge Report"). We met with its author, Rebecca Kitteridge, and valued the opportunity to discuss the report with her. We sought an update from the Government Communications Security Bureau on progress made in implementing the recommendations made in the report. The Director of the GCSB has undertaken to provide the committee with the update, which was due on 30 June 2014.

Proposals for legislative change

The Prime Minister also shared with us the Government’s proposals for legislative change in response to the compliance review. We were briefed on the proposed changes by Ian Fletcher, Director, Government Communications Security Bureau, Dr Warren Tucker, Director of Security, New Zealand Security Intelligence Service, and Andrew Kibblewhite, Chief Executive, Department of the Prime Minister and Cabinet.

Performance improvement framework review

We met with the lead reviewers, Peter Bushnell and Garry Wilson, to consider their summary of the key findings and main themes of the Performance Improvement Framework review of the agencies in the core New Zealand Intelligence Community (NZIC)—the National Assessment Bureau and Intelligence Coordination Group of the Department of the Prime Minister and Cabinet, the Government Communications Security Bureau, and the New Zealand Security Intelligence Service. The review considers the contribution New Zealand needs from its core intelligence community, and the associated performance challenge this represents. We note the summary report concludes that the business strategy needed to deliver NZIC’s objectives should be to

- clarify the national security priorities and the scope of NZIC’s role
- ensure NZIC works together effectively
- establish customer-driven priorities, products and practices
ACTIVITIES OF THE INTELLIGENCE AND SECURITY COMMITTEE IN 2014

- upgrade business systems
- establish a common workforce plan
- ensure continued legal compliance
- provide a competent vetting system
- manage within resources allocated to NZIC
- improve the public mandate
- maintain access to key international alliances.

We note that the summary of the PIF review was commissioned by the New Zealand Intelligence Community because of its commitment to transparency. We are pleased that this summary is to be made publicly available.

**Requirement to hold periodic reviews**

The PIF review refers to the committee’s responsibility to hold periodic reviews of the intelligence and security agencies. Section 21 of the Intelligence and Security Committee Act requires a review of the intelligence and security agencies, the legislation governing them, and their oversight legislation to be commenced before 30 June 2015. The review will be conducted by two reviewers appointed by the Attorney-General. The reviewers will provide their report to the Intelligence and Security Committee. After we have considered the report, it must be presented to the House. The next review of the intelligence and security agencies must be undertaken five to seven years after the 2015 review.
Appendix

Committee members

Rt Hon John Key (Prime Minister)
Hon David Cunliffe (Leader of the Opposition)
Dr Russel Norman (nominated by the Leader of the Opposition)
Hon Tony Ryall (nominated by the Prime Minister)

Members who serve on the committee do so in their capacity as members of Parliament.