APPENDIX TO THE JOURNALS
OF THE
House of Representatives
OF
NEW ZEALAND
2011–2014
VOL. 13
I—REPORTS AND PROCEEDINGS OF SELECT COMMITTEES

IN THE REIGN OF HER MAJESTY
QUEEN ELIZABETH THE SECOND

Being the Fiftieth
Parliament of New Zealand

0110–3407
WELLINGTON, NEW ZEALAND
Published under the authority of the House of Representatives—2015
ARRANGEMENT OF THE PAPERS

I—Reports and proceedings of select committees

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

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

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

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

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

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

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

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

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

VOL. 11
2012 Reports of select committees

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

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

VOL. 14
2014 Reports of select committees

J—Papers relating to the business of the House

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

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

### VOLUME 13

<table>
<thead>
<tr>
<th>Shoulder Number</th>
<th>Title</th>
<th>Date</th>
<th>Tabled</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 .22B</td>
<td>2013 Reports of select committees, February 2015</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Contents

#### Business

<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommended sitting programme for 2014</td>
<td>20 Nov 13</td>
<td>13</td>
</tr>
</tbody>
</table>

#### Commerce

<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crown Minerals (Permitting and Crown Land) Bill (70-2)</td>
<td>18 Mar 13</td>
<td>17</td>
</tr>
<tr>
<td>Commerce (Cartels and Other Matters) Amendment Bill (341-2)</td>
<td>13 May 13</td>
<td>37</td>
</tr>
<tr>
<td>2011/12 financial review of the Broadcasting Commission</td>
<td>17 May 13</td>
<td>45</td>
</tr>
<tr>
<td>Petition 2008/128 of Deborah Harcus on behalf of the Eden Terrace</td>
<td>17 May 13</td>
<td>69</td>
</tr>
<tr>
<td>Business Association Inc, Petition 2008/132 of Genevieve McClean on</td>
<td></td>
<td></td>
</tr>
<tr>
<td>behalf of the Save the Grey Lynn Post Office Working Group, Petition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008/136 of Andrea Deeth, and Petition 2008/137 of Duncan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Macdonald</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial Reporting Bill (42-2)</td>
<td>22 May 13</td>
<td>75</td>
</tr>
<tr>
<td>2011/12 financial review of the Financial Markets Authority</td>
<td>31 May 13</td>
<td>81</td>
</tr>
<tr>
<td>2011/12 financial review of Radio New Zealand Limited</td>
<td>7 Jun 13</td>
<td>99</td>
</tr>
<tr>
<td>Gambling (Gambling Harm Reduction) Amendment Bill (209-2)</td>
<td>17 Jun 13</td>
<td>121</td>
</tr>
<tr>
<td>Copyright (Parallel Importing of Films) Amendment Bill (133-1)</td>
<td>21 Aug 13</td>
<td>129</td>
</tr>
<tr>
<td>New Zealand International Convention Centre Bill (140-2) and Petition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011/73 of Denise Roche and 1,302 others</td>
<td>21 Oct 13</td>
<td>135</td>
</tr>
<tr>
<td>Electronic Transactions (Contract Formation) Amendment Bill (82-2)</td>
<td>11 Nov 13</td>
<td>151</td>
</tr>
<tr>
<td>Petition 2008/134 of Allen Hair and 236 others</td>
<td>6 Dec 13</td>
<td>155</td>
</tr>
<tr>
<td>Construction Contracts Amendment Bill (97-2)</td>
<td>11 Dec 13</td>
<td>161</td>
</tr>
</tbody>
</table>

#### Education and Science

<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report from the Controller and Auditor-General, <em>Education for Māori</em>: Context for our proposed audit work until 2017</td>
<td>15 Feb 13</td>
<td>169</td>
</tr>
<tr>
<td>Petition 2011/46 of John Leadbetter</td>
<td>21 Mar 13</td>
<td>171</td>
</tr>
<tr>
<td>Education Amendment Bill (77-2)</td>
<td>12 Apr 13</td>
<td>175</td>
</tr>
<tr>
<td>Petition 2011/27 of Helen McDonnell on behalf of the Board of Trustees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>of Salisbury School</td>
<td>12 Apr 13</td>
<td>191</td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General, <em>Crown Research Institutes</em>: Results of the 2011/12 audits</td>
<td>12 Apr 13</td>
<td>195</td>
</tr>
<tr>
<td>Petition 2011/50 of Hon Damien O’Connor on behalf of the students</td>
<td>30 May 13</td>
<td>197</td>
</tr>
<tr>
<td>and staff of Parklands School Motueka</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General, <em>Education sector: Results of the 2011 audits</em></td>
<td>30 May 13</td>
<td>199</td>
</tr>
</tbody>
</table>
Petition 2011/37 of Dorothy Stewart and 12,666 others 28 Jun 13 201

Report from the Controller and Auditor-General, Education for Māori: Implementing Ka Hikitia – Managing for Success 22 Aug 13 207

* Inquiry into Pacific languages in early childhood education (I.2B) 28 Nov 13

Finance and Expenditure

Student Loan Scheme Amendment Bill (No 2) (56-2) 5 Feb 13 209

* Budget Policy Statement 2013 and Treasury’s Half-Year economic and fiscal update, December 2012 (I.3H) 11 Mar 13

Standard Estimates Questionnaire 2013/14 28 Mar 13 215

* Reserve Bank of New Zealand’s Monetary Policy Statement, March 2013 (I.3I) 3 Apr 13

Report from the Controller and Auditor-General, Draft statement of intent 2013–2016 19 Apr 13 221

Report from the Controller and Auditor-General, Central government: Result of the 2011/12 audits 16 May 13 223

State Sector and Public Finance Reform Bill (55-2) 23 May 13 225

Public Finance (Fiscal Responsibility) Amendment Bill (54-2) 31 May 13 257

Report from the Controller and Auditor-General, Draft Annual Plan 2013/14 6 Jun 13 263

Supplementary Estimates of Appropriations for the year ending 30 June 2013 6 Jun 13 269

Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill (64-2) 6 Jun 13 275

Twelfth biennial conference of the Australasian Council of Public Accounts Committees (ACPAC), Sydney, Australia, 10 to 12 April 2013 6 Jun 13 291


* Reserve Bank of New Zealand’s Monetary Policy Statement, June 2013 (I.3K) 1 Jul 13

Insurance (Prudential Supervision) Amendment Bill (80-2) 5 Aug 13 317

Report from the Controller and Auditor-General, Roles, responsibilities, and funding of public entities after the Canterbury earthquakes 8 Aug 13 321

Briefing on the cost-sharing arrangement between the Christchurch City Council and the Government 5 Sep 13 329

Report from the Controller and Auditor-General, Inquiry into Aspects of ACC’s Board-level Governance 17 Sep 13 331

Report from the Controller and Auditor-General, Inquiry into decision by Hon Shane Jones to grant citizenship to Mr Yang Liu 17 Sep 13 333
Report from the Controller and Auditor-General, *Inquiry into the Government’s decision to negotiate with SkyCity Entertainment Group Limited for an international convention centre, February 2013* 17 Sep 13 333

Petition 2011/77 of Roy Reid 19 Sep 13 335

Report from the Controller and Auditor-General, *Discussion paper: Managing public assets, June 2013* 19 Sep 13 343


*Reserve Bank of New Zealand’s Monetary Policy Statement, September 2013 (I.3L)* 30 Sep 13


Statement on the long-term fiscal position, July 2013 17 Oct 13 361

Student Loan Scheme Amendment Bill (No 3) (147-2) 28 Nov 13 367

Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill (112-2) 28 Nov 13 375


**Foreign Affairs, Trade and Defence**

Briefing on free trade talks with Russia 1 Feb 14 427


International treaty examination of the Third Protocol to the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income 15 Feb 13 447


International treaty examination of the International Monetary Fund 2008 Voice and Participation Reforms and of the International Monetary Fund 2010 Quota and Governance Reforms 15 Mar 13 471
International treaty examination of the Protocol to Amend the Convention signed at Paris on the 22nd of November 1928 Relating to International Exhibitions 15 Mar 13 479

International treaty examination of the Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income 28 Mar 13 487

Petition 2011/59 of Margaret Millin on behalf of Nine Kiwi Social Studies Class, Sacred Heart Girls College, Hamilton 31 May 13 501

International treaty examination of the Protocol to the 2007 World Wine Trade Group agreement on requirements for wine labelling: Concerning alcohol tolerance, vintage, variety, and wine regions, Brussels, 22 March 2013 13 Jun 13 505

International treaty examination of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Amended by the 2010 Protocol 9 Aug 13 515

International treaty examination of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation 6 Sep 13 529

Briefing on the International Criminal Court and the Kampala Amendment on the Crime of Aggression 27 Sep 13 575


Border Processing (Trade Single Window and Duties) Bill (132-2) 31 Oct 13 599

International treaty examination of the Headquarters Agreement between the South Pacific Regional Fisheries Management Organisation and the Government of New Zealand 21 Nov 13 603

Petition 2011/84 of Sam Fang on behalf of the Falun Gong Association Incorporated 21 Nov 13 611

Briefing from the Ambassador of Georgia 6 Dec 13 615

International treaty examination of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 13 Dec 13 617

**Government Administration**

Marriage (Definition of Marriage) Amendment Bill (39-2) and Petition 2011/35 of Bob McCoskrie on behalf of Protect Marriage 27 Feb 13 629

Special report on the 2011/12 financial review of the Department of Internal Affairs 14 Mar 13 639

Plumbers, Gasfitters, and Drainlayers Amendment Bill (101-2) 4 Apr 13 643
2011/12 financial review of Drug Free Sport New Zealand and the Inquiry into the performance in the previous financial year, and the current operations of Drug Free Sport New Zealand

Statutes Amendment Bill (89-2) 11 Jun 13 657
Unit Titles Amendment Bill (89-2A) 11 Jun 13 661
Members of Parliament (Remuneration and Services) Bill (329-2) 20 Jun 13 665
Lobbying Disclosure Bill (15-1) 22 Aug 13 677
* Petition 2011/49 of Aaron Cross on behalf of the Greyhound Protection League of New Zealand (I.5A) 26 Nov 13 683
Sullivan Birth Certificate Bill (139-2) 18 Dec 13 687

Health

Petition 2008/148 of Geoff Annals on behalf of the New Zealand Nurses Organisation and the Service and Food Workers Union 15 Feb 13 687
Petition 2011/11 of Lyn Polwort 22 Feb 13 697
Briefing from Health Benefits Limited 21 Mar 13 703
Report from the Controller and Auditor-General, Effectiveness of arrangements to check the standard of rest home services: Follow-up report 19 Apr 13 707
Report from the Controller and Auditor-General, Health Sector: Results of the 2010/11 Audits 30 May 13 713
Psychoactive Substances Bill (100-2) 14 Jun 13 719
Briefing on District Health Board initiatives designed to meet the health target of shorter stays in emergency departments 2 Aug 13 737
Report from the Controller and Auditor-General, Health sector: Results of the 2011/12 audits 22 Aug 13 741
Petition 2011/63 of Stephen Manson on behalf of the New Zealand Anti-Vivisection Society 26 Sep 13 745
* Inquiry into improving child health outcomes and preventing child abuse with a focus from preconception until three years of age (I.6A) 18 Nov 13
Briefing on Health Workforce New Zealand work programme 5 Dec 13 747
Briefing on New Zealand Health Innovation Hub 5 Dec 13 751
Petition 2011/69 of Ras Vas Vahora 5 Dec 13 755
Briefing on the External Review of Maternity Care in the Counties Manukau District 6 Dec 13 757

Justice and Electoral

Local Electoral Amendment Bill (No 2) (76-2) 8 Mar 13 759
Prisoners’ and Victims’ Claims (Continuation and Reform) Amendment Bill (92-1) 3 Apr 13 769
Criminal Procedure Legislation Bill (74-2) 5 Apr 13 776
* Inquiry into the 2011 general election (I.7A) 30 Apr 13
Family Court Proceedings Reform Bill (90-2) 4 Jun 13 779
Petition 2011/53 of Noel Christopher Roderick Perry and 4,740 others 4 Jun 13 799
Petition 2011/44 of Ken Cashin 28 Jun 13 801
Joint Family Homes Repeal Bill (2-1) 15 Jul 13 805
Royal Succession Bill (99-2) 31 Oct 13 809
Electoral Amendment Bill (149-2) 18 Dec 13 813

Law and Order
Prohibition of Gang Insignia in Government Premises Bill (33-2) 20 Mar 13 817
Report from the Controller and Auditor-General, Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: Third monitoring report, October 2012 10 May 13 823
Briefing on Joint Thematic Review of Young Persons in Detention 6 Jun 13 827
Telecommunications (Interception Capability and Security) Bill (108-2) 19 Sep 13 831
Briefing on policing and prisons in Canterbury 17 Oct 13 851
Petition 2011/24 of Tracey Marceau on behalf of Christie’s Law Group and 58,000 others 5 Dec 13 857

Local Government and Environment
Petition 2011/12 of Fiona Kidman and 314 others 1 Mar 13 863
Special report on a matter relating to the Building Amendment Bill (No 4) 22 Mar 13 865
Report from the Parliamentary Commissioner for the Environment, Evaluating the environmental impacts of fracking in New Zealand: An interim report, November 2012 13 May 13 867
Report from the Parliamentary Commissioner for the Environment, Hydroelectricity or Wild Rivers: Climate change versus Natural Heritage 13 May 13 869
Subantarctic Islands Marine Reserves Bill (310-2) 4 Jun 13 873
Resource Management Reform Bill (93-2) 11 Jun 13 877
Report from the Controller and Auditor-General, Auckland Council: Transition and emerging challenges, December 2012 14 Jun 13 893
Report from the Controller and Auditor-General, Department of Conservation: Prioritising and partnering to manage biodiversity, December 2012 14 Jun 13 895
<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heritage New Zealand Pouhere Taonga Bill (327-2)</td>
<td>20 Jun 13</td>
<td>897</td>
</tr>
<tr>
<td>Petition 2011/34 of Trish Fraser on behalf of Stop the Tunnel and 162 others</td>
<td>2 Aug 13</td>
<td>909</td>
</tr>
<tr>
<td>Conservation (Natural Heritage Protection) Bill (72-2)</td>
<td>5 Aug 13</td>
<td>911</td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General, Local government: Results of the 2011/12 audits</td>
<td>9 Aug 13</td>
<td>917</td>
</tr>
<tr>
<td>Report from the Controller and Auditor-General, Matters arising from the 2012–22 local authority long-term plans</td>
<td>9 Aug 13</td>
<td>919</td>
</tr>
<tr>
<td>Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Bill (36-1)</td>
<td>9 Aug 13</td>
<td>921</td>
</tr>
<tr>
<td>Local Government (Auckland Council) Amendment Bill (No 2) (106-1)</td>
<td>23 Aug 13</td>
<td>927</td>
</tr>
<tr>
<td>Petition 2011/19 of Emma Moon on behalf of 350.org and 2,124 others</td>
<td>23 Aug 13</td>
<td>931</td>
</tr>
<tr>
<td>Petition 2011/55 of Brian Meachen</td>
<td>23 Aug 13</td>
<td>933</td>
</tr>
<tr>
<td>Report from the Parliamentary Commissioner, On a pathway to extinction? An investigation into the status and management of the longfin eel</td>
<td>9 Sep 13</td>
<td>935</td>
</tr>
<tr>
<td>Kaipara District Council (Validation of Rates and Other Matters) Bill (125-2)</td>
<td>11 Nov 13</td>
<td>939</td>
</tr>
<tr>
<td>Tasman District Council (Validation and Recovery of Certain Rates) Bill (96-2)</td>
<td>11 Nov 13</td>
<td>945</td>
</tr>
<tr>
<td>Petition 2011/32 of Simon Boxer on behalf of Greenpeace New Zealand</td>
<td>6 Dec 13</td>
<td>949</td>
</tr>
</tbody>
</table>

**Māori Affairs**

<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waitaha Claims Settlement Bill (65-2)</td>
<td>13 Mar 13</td>
<td>953</td>
</tr>
<tr>
<td>Inquiry into the financial performance and current operations of Māori Television Service for the financial year ending 30 June 2012</td>
<td>23 May 13</td>
<td>965</td>
</tr>
<tr>
<td>Inquiry into the financial performance and current operations of the Maori Trustee for the financial year ending 31 March 2012</td>
<td>23 May 13</td>
<td>977</td>
</tr>
<tr>
<td>Mokomoko (Restoration of Character, Mana, and Reputation) Bill (343-2)</td>
<td>28 Jun 13</td>
<td>989</td>
</tr>
<tr>
<td>Briefing on Damien and George Nepata and their entitlement to compensation</td>
<td>12 Jul 13</td>
<td>999</td>
</tr>
<tr>
<td>Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Amendment Bill (44-2)</td>
<td>30 Aug 13</td>
<td>1009</td>
</tr>
<tr>
<td>Te Tau Ihu Claims Settlement Bill (123-2)</td>
<td>19 Nov 13</td>
<td>1017</td>
</tr>
<tr>
<td>Maungaharuru-Tangitū Hapū Claims Settlement Bill (135-2)</td>
<td>18 Dec 13</td>
<td>1031</td>
</tr>
<tr>
<td>Raukawa Claims Settlement Bill (137-2)</td>
<td>18 Dec 13</td>
<td>1041</td>
</tr>
<tr>
<td>Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Bill (134-2)</td>
<td>19 Dec 13</td>
<td>1055</td>
</tr>
</tbody>
</table>
Ngā Punawai o Te Tokotoru Claims Settlement Bill (136-2) 19 Dec 13 1063

* Inquiry into the determinants of wellbeing for tamariki Māori (I.10B) 20 Dec 13

**Officers of Parliament**

* Alterations to the 2012/13 appropriations for Vote Audit, Vote Ombudsmen, and Vote Parliamentary Commissioner for the Environment, and 2013/14 draft budgets for the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment (I.15B) 25 Mar 13

**Primary Production**

Briefing on the Tamarillo industry including the impact of psyllid 3 Apr 13 1071

Briefing on the sheep milking industry 7 Jun 13 1075

Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill (75-2) 25 Jul 13 1079

Briefing on Molesworth Station 23 Aug 13 1087

Petition 2011/75 of Brendan Horan and 3,653 others 1 Oct 13 1091

Briefing from the grain and seed industry 6 Dec 13 1093

Briefing on the 2013 Balance farm environment awards 6 Dec 13 1099

**Privileges**

Interim report on Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of information by the NZSIS 11 Jun 13 1103

* Question of privilege concerning the defamation action Attorney-General and Gow v Leigh (I.17A) 11 Jun 13

* Interim report on Question of privilege regarding use of intrusive powers within the parliamentary precinct (I.17B) 3 Dec 13

**Regulations Review**

Investigation into the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 (SR 2013/10) 12 Aug 13 1117

Complaint regarding the New Zealand Teachers Council (Conduct) Rules 2004 (SR 2004/143) 12 Aug 13 1133

Subordinate Legislation (Confirmation and Validation) Bill (No 2) (142-1) 27 Sep 13 1153

Complaint about two notices made by the Plumbers, Gasfitters, and Drainlayers Board relating to an offences fee and the Complaint
Regarding the Offences Fee contained in the Amendment to the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 30 Sep 13 1157

Investigation into the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012 (SR 2012/363) 30 Sep 13 1167

Social Services

Petition 2011/14 of Curtis Antony Nixon 15 Feb 13 1189

Petition 2011/73 of Sue Moroney 15 Feb 13 1193

Social Security (Benefit Categories and Work Focus) Amendment Bill (67-2) 13 Mar 13 1195

Briefing into pension eligibility and entitlements, including portability 11 Apr 13 1217

2011/12 financial review of the Children's Commissioner 16 May 13 1219

2011/12 financial review of the Retirement Commissioner 16 May 13 1225

Housing Accords and Special Housing Areas Bill (117-2) 31 Jul 13 1231

Petition 2011/64 of Penelope Mary Bright 1 Aug 13 1249

Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Bill (116-2) 30 Sep 13 1251

Standing Orders

Members’ attendance, absence and suspension 18 Nov 13 1269

Transport and Industrial Relations

Minimum Wage (Starting-out Wage) Amendment Bill (69-2) 25 Feb 13 1281

Marine Legislation Bill (58-2) 27 Feb 13 1287

Land Transport Management Amendment Bill (46-2) 5 Mar 13 1297

Petition 2011/29 of Iain Lees-Galloway 31 May 13 1309

Report from the Controller and Auditor-General, Transport Sector: Results of the 2011/12 audits 31 May 13 1311

Petition 2011/57 of Raymond Hellyer 2 Aug 13 1313

Health and Safety (Pike River Implementation) Bill (130-2) 2 Oct 13 1315

Petition 2011/42 of R E Hill 6 Dec 13 1329

Petition 2011/56 of Henry Work on behalf of the Committee of International Retirees 6 Dec 13 1331

Petition 2011/70 of Suzanne Hubball 6 Dec 13 1333

Employment Relations Amendment Bill (105-2) 11 Dec 13 1335
Intelligence and Security

Proposal to hold an inquiry into the process for appointing Ian Fletcher as the Director of the Government Communications Security Bureau 18 Apr 13 1355


Supplementary Estimates of Appropriations for Vote Communications Security and Intelligence and Vote Security Intelligence for the year ending 30 June 2013 6 Jun 13 1383

Other reports of the 50th Parliament presented in 2013

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

Reports of select committees on the 2013/14 Estimates (I.19B)

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

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

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

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

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

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

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

Report of the Health Committee

Contents

Recommendation 2
Introduction 2
Projected savings for district health boards 2
Collective procurement 2
Finance, procurement, and supply chain 2
Facilities management and support services 3
Relationship management 3
Information services and human resources 3
Conclusion 3
Appendix 4
Briefing from Health Benefits Limited

**Recommendation**

The Health Committee recommends that the House take note of its report.

**Introduction**

We received a briefing from Health Benefits Limited (HBL), a standalone Crown company–the Minister of Health and the Minister of Finance are the shareholding Ministers. HBL was established as a result of a 2009 ministerial review group report, which recommended establishing shared administration and support functions with a national approach to procurement and supply chain management for the 20 district health boards (DHBs), to reduce costs and contain growth. HBL commenced operations on 30 July 2010, with the purpose of facilitating and leading initiatives to save DHBs money.

HBL is listed as a Schedule 4 company under the Public Finance Act 1989; it is subject to the Companies Act 1993 and other Acts governing statutory entities. The shareholding Ministers appoint the board of directors and the chief executive is appointed by the board. The board chair is Ted van Arkel and the chief executive is Nigel Wilkinson.

**Projected savings for district health boards**

HBL has been tasked with delivering $700 million in gross savings to the DHBs within five years after its formation. Its running costs equate to $6 million per annum, which is expected to decrease over time. HBL informed us that in the first two years since their inception they achieved savings of $114.6 million, higher than the estimated $100 million.

We asked whether these figures reflect solely the work of HBL, and were told that they use a methodology which takes into account initiatives preceding HBL’s inception. We understand that while the remaining savings will be difficult to achieve as they involve a higher degree of complexity and more investment, HBL expects to meet the savings target of $700 million over the next three years. We will closely review future savings against HBL’s projections.

**Collective procurement**

We were told that HBL’s first two years of operation focused on collective procurement, using national buying power to reduce the cost of goods and services to DHBs. Savings have been delivered in orthopaedic cement and togas, pulse oximetry, examination gloves, personal protective equipment, rehabilitation equipment, ward beds and mattresses, electricity, external legal services, and air travel.

**Finance, procurement, and supply chain**

During the 2011/12 financial year, HBL developed a finance, procurement, and supply chain programme for DHBs, designed to generate substantial savings and opportunities for better service provision. We heard that the programme will increase the purchasing power of the sector, reduce duplication, improve efficiency through technology, and optimise efficiencies by standardising design.
HBL assured us that they ensure products are of the required standard before costs savings are considered. We asked HBL if preference is given to New Zealand suppliers, and were told that local suppliers must compete with their international counterparts, quality and efficiency being the deciding factors rather than country of origin.

This programme is forecast to deliver net benefits to the health sector of approximately $138 million over five years, and approximately $538 million over a 10–year period. Implementation costs over the two-and-a-half-year implementation timeframe are estimated at $87.9 million.

**Clinical consultation**

We were interested to hear that once all DHBs are using the same system, more detailed purchasing data will be available, allowing HBL to develop guidelines for stock levels. We heard that clinicians are involved in the evaluation of products; some DHBs have developed research centres and are working with suppliers. A clinical council representing a wide range of health professionals will also be established in the near future to ensure adequate clinical consultation.

**Facilities management and support services**

We were told that options are being explored for catering and laundry services. A number of DHBs have expressed interest in expanding existing services to offer them to other regions and DHBs. Progress has already been made on national service standards and the standardising of diet codes and linen items.

**Relationship management**

We heard that HBL is working closely with Health Alliance, a shared services organisation incorporating all four Northern DHBs, to utilise their experience and expertise in developing national initiatives. HBL is also working closely with the Pharmaceutical Management Agency to find ways to reduce costs in the medical devices market.

**Information services and human resources**

HBL has been collaborating with DHBs on a national approach to lifting standards in information technology infrastructure and data centres.

We are aware that 20 different human resources information management systems are currently in use in the health sector, with varying methods of data capture and file storage, and no facilities for national staff data management. HBL said it is working to choose a human resources information system for eventual use by all DHBs.

**Conclusion**

We are pleased with the HBL’s efforts to deliver value to DHBs by optimising national purchasing power, and we acknowledge that measuring gains is initially quite difficult. We will continue to monitor HBL’s progress in implementing savings programmes and consulting with the sector.
Appendix

Committee procedure

We heard evidence from Health Benefits Limited on 17 October 2012 and met on 20 March 2013 to consider this briefing.

Committee members

Dr Paul Hutchison (Chairperson)
Shane Ardern
Dr Jackie Blue
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Louisa Wall
Dr Jian Yang
Report from the Controller and Auditor-General, Effectiveness of arrangements to check the standard of rest home services: Follow-up report

Report of the Health Committee

Contents
Recommendation 2
Introduction 2
Key findings 2
Tracer methodology 2
InterRAI 3
Cultural awareness 3
Complaints to the Health and Disability Commissioner 3
Third-party accreditation 3
Audit process 4
Future needs 4
Appendix 5
Report from the Controller and Auditor-General, Effectiveness of arrangements to check the standard of rest home services: Follow-up report

Recommendation

The Health Committee has examined the report from the Controller and Auditor-General Effectiveness of arrangements to check the standard of rest home services: Follow-up report, and recommends that the House take note of its report.

Introduction

In December 2009, the Auditor-General published a report entitled Effectiveness of arrangements to check the standard of services provided by rest homes. The report found that since its introduction in October 2002, certification of rest homes had not provided adequate assurance that rest homes had met the criteria in the Health and Disability Service Standards. The report made six recommendations to the Ministry of Health and three for action by district health boards (DHBs).

In September 2012, a performance audit was carried out to ascertain what progress the Ministry of Health and DHBs had made in response to the recommendations. The report considered whether the effectiveness of the overall certification process had been improved, and whether as a result better care was being delivered to rest home residents.

Key findings

The report found that the 2009 recommendations had been carried out. The ministry has strengthened the process by which rest homes are certified and monitored, and is shifting the focus of audits towards ensuring quality of care. The consistency and quality of rest home audits has improved, providing better assurance that rest homes meet the criteria in the Health and Disability Service Standards. The ministry, DHBs, and Designated Auditing Agencies now respond more quickly and effectively when issues arise.

The Auditor-General specified areas for further improvement, such as scope for certification and monitoring to provide better assurance about the quality of care provided in rest homes. The Auditor-General also recommended increasing the time auditors spend observing rest home practices, improving auditors’ competence in the use of tracer methodology (see below), and better analysis of information from audits for trends and opportunities for improvement. The Office of the Auditor-General will continue to monitor the ministry’s progress.

Tracer methodology

We were interested in the “tracer methodology” that auditors use to retrace the care residents have been given; it is focused on the patient and perspective and is not paper-intensive. The method involves observing and following systems and processes of care, treatment, and services, and how they relate to the recipient’s experience.

We asked about the origins of the methodology and heard that it was developed by an independent, not-for-profit organisation that accredits and certifies health care
organisations and programs in the United States, to follow and evaluate the quality of a patient’s healthcare experience. Tracer requirements were introduced to New Zealand with the August 2010 Designated Auditing Agency Handbook, and training sessions were held from September 2010.

**InterRAI**

The ministry is implementing the International Resident Assessment Instrument (InterRAI) to improve the quality of audit and clinical information, and uptake throughout the residential care sector is expected to be complete by 2015. The clinical data from InterRAI is expected to allow better assessment of rest home residents. The Office of the Auditor-General considers that the ministry should consider how to bring together and use clinical and audit information to continuously improve the quality of care provided in rest homes.

The office explained that InterRAI provides a consistent framework upon which to assess the care a resident is receiving, and for comparing facilities and rest homes. We also heard that InterRAI is expected to improve the monitoring of outcomes, as it has enjoyed success overseas.

**Cultural awareness**

We recognise that New Zealand is culturally diverse, and asked whether aged care facilities take into account the cultural needs of different ethnic groups. We were told that Standard 1.1.6 of the *Health and Disability Service Standards* requires that “consumers receive culturally safe services which recognise and respect their ethnic, cultural, and spiritual values, and beliefs”. This aspect of service provision is captured when auditors review an individual resident’s care plan using tracer methodology.

**Complaints to the Health and Disability Commissioner**

We asked if the rate of complaints to the Health and Disability Commissioner had decreased since the implementation of the 2009 recommendations. The office analysed the complaints received from 2006 to 2011, and found that the number increased from 2006 to 2009, then declined. It was also noted; however, that the proportion of complaints that have been upheld or had further action taken has increased.

However, the Health and Disability Commissioner said the volume of complaints does not necessarily reflect the quality of care. For example, when a complainant uses a rest home’s internal complaints procedure and is satisfied with the investigation, they are less likely to escalate their concerns to the commissioner.

We recognise that some significant changes to rest home certification, such as third-party accreditation, were not introduced until late 2010; therefore the effects of these changes may not yet have affected the number of complaints. We will monitor this situation closely.

**Third-party accreditation**

Before 2006, accreditation by a third party was required for an agency to be designated as an auditing agency. In 2006, the ministry removed third-party accreditation in response to two external reports it had commissioned, which found serious weakness in all or most designated auditing agencies. The weaknesses were in management controls, auditing practice, reporting, and auditing competency; the ministry considered that third-party accreditation was clearly ineffective. In 2010, the ministry reintroduced third-party
accreditation, appointing suitable accreditation bodies, and specifying the requirements that agencies had to meet to be accredited.

Accreditation bodies audit the compliance of designated agencies with international standards for quality auditing, which are referred to in the Designated Auditing Agency Handbook, and check general auditing systems. The ministry noted that most such agencies have had to improve their systems and processes to gain accreditation, which should lead to better consistency and quality in auditing. The ministry is planning another evaluation of third-party accreditation in late 2013, which we look forward to reading.

**Audit process**

Certification can last from one year to five years, depending on how well the rest home provider complies with the standards. However, the first certification period is always provisional for one year.

A rest home is required to submit an action plan for correcting any shortfall from the standards. The DHB is responsible for approving the corrective action plan and monitoring the rest home’s progress against it. The DHB advises HealthCERT, the ministry’s certification service, about progress on any critical risks or unmet standards.

**Future needs**

We are aware that the Office of the Auditor-General is currently working on *Meeting tomorrow’s needs: Is the public sector ready?* It will consider the likely needs of New Zealand’s ageing population and how the public sector is planning to meet them, using a set of internationally recognised indicators. Particular attention will be given to information on the opportunities and challenges of ageing. The office plans to share the interim results online, and publish a final report. We are pleased with its efforts in this area.
Appendix

Committee procedure

We met on 5 December 2012, 27 February 2013, and 17 April 2013 to consider the report from the Auditor-General *Effectiveness of arrangements to check the standard of rest home services: Follow-up report*. We heard from the Office of the Auditor-General.

Committee members

Dr Paul Hutchison (Chairperson)
Shane Ardern
Dr Jackie Blue
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Louisa Wall
Dr Jian Yang

Evidence received

Controller and Auditor-General, *Effectiveness of arrangements to check the standard of rest home services: Follow-up report*, September 2012.

Introduction 2
District health board financial performance 2010/11 2
District Health Board asset management 2
Reducing Health disparities for Māori 3
Managing the debt of ineligible patients 3
Procurement 4
Appendix 5
Recommendation

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

Introduction

In March 2012, the Auditor-General published a report on the Health Sector: Results of the 2010/11 audits. The report discussed the health sector’s operating environment, and the financial performance of the DHBs, with particular reference to asset management and health disparities for Māori.

The public health system faces serious challenges from a rising demand for services and access to technology, exacerbated by an ageing population. Additional challenges include international shortages of skilled clinical specialists, remuneration pressures, and high costs for replacing buildings and clinical equipment, which are unlikely to fall in the short term.

Vote Health continues to increase, but the Government expects financial pressure on health services to worsen, and has indicated an intention to constrain funding increases over the next few years. Much of the increase in Vote Health has been needed simply to keep pace with demographic and cost changes.

District health board financial performance 2010/11

In 2010/11, eight district health boards (DHBs) recorded a deficit; the total deficit for all the DHBs of $16.1 million fell well below the planned $76.5 million. The Office of the Auditor-General believes that the health sector is managing within its means, but that further efficiencies can probably be made with shared services, more efficient procurement, and recovery of costs from ineligible patients.

The Crown Health Financing Agency noted an expected increase in the deficit for 2011/12, largely due to the deficit forecast for Canterbury DHB. The Crown Health Financing Agency rated five DHBs as “not stable”, in that they were generally projecting deficits and would need support to meet planned operating costs and execute capital plans. Some had other aggravating factors, such as aggressive cost growth assumptions, optimistic efficiency targets, or a poor history of performance. We will monitor the progress of the five DHBs; Capital and Coast, Southern, Tairāwhiti, Wairarapa, and Whanganui.

District health board asset management

We note that a complex range of property, plant, and equipment assets must be managed well if DHBs’ services are effective and efficient. We heard from the Office of the Auditor-General that DHBs need to see asset management planning as a core part of their service and financial planning, and regularly update their plans.

We understand that most DHB’s asset management plans provide a descriptive summary of their assets, but they typically lack information about their condition and performance.
Most DHBs have not included a register of asset-related risks or set out their approaches to risk management. The Office of the Auditor-General advised us that DHBs need to bring together information about assets and their condition, and devise asset life-cycle management strategies. Links also need to be clearer between assets, models of care, required service levels, and the outcomes sought. We hope to see improvements in this area.

Reducing health disparities for Māori

We heard from the Office of the Auditor-General that a lack of information in DHB annual reports on Māori health needs and targets for reducing disparities makes it hard to gauge progress in this area. We note that DHBs have a statutory objective of reducing (with a view to eliminating) health outcome disparities. DHBs are expected to prepare and put into effect services and programmes to improve health outcomes for Māori and other groups with disparate health status.

The office found a lack of clarity in the plans as to who would monitor and evaluate the plan’s effect, how, and how often. The plans did not provide the information needed to hold the DHB to account, and it was not clear what processes had been established to allow Māori to contribute to strategies for improving Māori health. The Auditor-General expects to see measures and targets for Māori, with trend data, in the annual reports.

We understand that the Ministry of Health expects DHBs to maintain governance-level relationships with local Māori communities, to help assess achievement against the Māori health plan. DHBs are also required to report against 15 indicators in nine health areas, such as access to care, maternal health, cardiovascular disease, diabetes, cancer, smoking, and immunisation. The ministry also requires DHBs with high rates of rheumatic fever or sudden infant death syndrome to include these figures in their local indicator set. We recognise that there are also health disparities in the Asian and Pacific communities, and we consider it vital that these disparities be addressed with the goal of eventually eliminating them.

Managing the debt of ineligible patients

Health and disability services in New Zealand are generally free or subsidised for New Zealand residents and some other categories of people who meet certain clinical and other assessment criteria are also eligible for coverage. We heard that if DHBs fail to collect payment from ineligible patients, they must meet the costs of their treatment, which reduces the funds available for other services. These costs ultimately fall on the New Zealand taxpayer.

We are aware that there is some anxiety in the community, resulting from DHBs’ efforts to identify ineligible patients; there are reports that they are placing an unreasonable burden of proof on patients to demonstrate their eligibility. The concern is that health service providers might start asking vulnerable patients, such as frail elderly New Zealanders with no readily available proof of residency, for such proof before giving them free or subsidised treatment.

To try and address this issue Health Benefits Limited (HBL) worked with DHBs to create a best practice guide for revenue collection from ineligible patients, which was distributed in May 2011. HBL is producing further such material for DHBs, and the Ministry of Health has been working to improve data-matching to identify non-resident patients more accurately. We consider that there is a need to determine who is eligible without placing an
unreasonable burden of proof on vulnerable New Zealanders. We will keep abreast of developments in this area.

**Procurement**

DHBs use approximately half of their funding to pay other organisations to deliver health services, and often the third parties are not public entities. We believe that it is vital that health resources are not wasted and that the required services are provided to the specified standards in a publicly acceptable way. We were concerned to hear that, although procurement practices have improved, they still present an area of risk, especially where third-party contracts or service delivery is involved.

The Office of the Auditor-General explained that DHBs should continue to explore more effective and efficient procurement arrangements, and they need to ensure that they have sufficiently investigated potential conflicts of interest, especially where former staff have been appointed as contractors. We hope to see DHBs develop procurement initiatives to address these issues.
Appendix

Committee procedure
We met on 24 October 2012 and 29 May 2013 to consider the report from the Auditor-General on the Health Sector: Results of the 2010/11 audits. We heard evidence 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
Louisa Wall
Dr Jian Yang
Psychoactive Substances Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation
The Health has examined the Psychoactive Substances Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to regulate otherwise unregulated psychoactive substances such as “party pills” and other “legal highs” in New Zealand. The bill aims to restrict the importation, manufacture, and supply of psychoactive substances unless authorised by a regulator, while allowing the sale of products that meet safety and manufacturing requirements. Currently, any psychoactive substance can be sold legally if it is not listed in the Misuse of Drugs Act 1975. This bill aims to place the onus on the industry to demonstrate that a psychoactive substance is not harmful or poses only a low risk to human health before approval for sale is given. Approval could be given only to finished, packaged psychoactive products, allowing the regulator to assess all the ingredients and the risk that they might present in the particular combination.
The bill proposes the establishment of a regulatory authority within the Ministry of Health, and an independent Expert Technical Committee to advise the regulator on products submitted for approval. The bill is in three parts. Part 1 contains the interpretation section and provisions to establish the Regulatory Authority and Expert Advisory Committee. Part 2 would establish a licencing regime and process for approvals; and Part 3 would establish controls on approved products and provide for enforcement matters, and confer regulation making powers. Our commentary covers the main amendments we recommend to the bill.

**Purpose statement**
We consider that the primary purpose of this bill is to “regulate the availability of psychoactive substances in New Zealand and protect the health and minimise the harm to individuals who use psychoactive substances”. We recommend amending clause 3 to make this clear.

**Principles**
We recommend inserting new subclause 4(ba) to include an affirmative statement to the effect that any psychoactive product meeting the threshold for approval will be approved. We believe that this would assure the industry that Parliament is serious about making the regulatory regime workable.

**Interpretations and definitions**
We recognise the argument that the term “psychoactive substances” in clause 9(1) is very broad, which could have the effect of bringing other substances such as garden plants and low-risk herbal products into its ambit. After careful consideration, however, we think that the definition should remain broad to avoid leaving loopholes. Current exclusions for food and herbal products are sufficient for the purpose; and for products inadvertently caught by the legislation there is the declaring power in clause 81 to deem them not to be psychoactive substances for the purposes of the bill.
While we saw some merit in a similar argument that the degree of “psychoactive effect” covered by the bill should be defined, we consider that specifying a threshold degree of effect would be overly complex and open to challenge. We also agree that the interpretation of the term “low risk” was best determined through assessment by the expert committee, taking into account the nature of each product and its mode of administration.

**Expert Advisory Committee**

We recommend inserting new subclause 11(2A) to specify the matters that the Expert Advisory Committee must have regard to in advising the Authority about a psychoactive product.

We also recommend inserting new subclause 11(9) to make it clear that the advisory committee must act independently in performing its functions, and in accordance with the principles of natural justice.

**Granting of licence**

Licencing would provide an additional level of control over approved products, and we consider that additional licences for various kinds of uses should be a requirement in clause 12. We recommend inserting paragraphs 12(1)(c) and 12(1)(f) to allow the regulator to grant licences to research psychoactive substances, and to grant a licence to sell approved products wholesale and retail.

We recommend amending subclause 15(1)(c) to ensure that applicants meet certain conditions, including being fit and proper persons. We also recommend inserting new subclause 15(1)(d) to allow persons to apply for a licence on behalf of a body corporate, provided that the body corporate is of good repute.

**Exporting psychoactive substances**

For consistency with the requirement for advance notice to the regulator of imports of psychoactive substances, we recommend inserting new subclause 16(5) specifying that exports must be notified in advance. This would also allow Customs to check the requirements of the destination jurisdiction and inform them of shipments, in keeping with international cooperation in the area of psychoactive substances.
Code of manufacturing practice
We were concerned that the code of manufacturing practice for psychoactive substances in clause 27 would come into force no later than one year after the commencement of the Act, and we recommend that this period be reduced to six months.

Register of products
While we agree that the bill must ensure a commitment to protect confidential information provided under clause 34, we believe that the public should have access to information on both approved and unapproved products, and recommend that clause 41 be amended accordingly.

Appeals
Although we do not consider it desirable for third parties to be able to appeal decisions of the regulator, we recommend an amendment to clause 43 to include a general right of appeal for parties to a decision to revoke a licence or revoke approval for a product.

Control of approved products
We are aware of strongly held views that the age for purchase of approved products should be 20 or 21, rather than 18 as provided for. Discussion centred on expert advice concerning brain development in young people; it was argued that this was a new bill and it might be appropriate to start this new regime with a higher age threshold level to help minimise harm to young people. We consider, however, that a higher age limit for approved psychoactive products that pose a low risk to users might suggest to young people that alcohol and tobacco, having lesser age restrictions, are safer alternatives. We therefore recommend that the purchase age in clause 46 remain at 18, aligning it with the Sale and Supply of Alcohol Act 2012. If the age limit in that Act is amended, we recommend that the purchase age for approved products should be automatically amended.
We also recommend that clause 46 be amended to include an offence of possession of a psychoactive substance, including an approved product, by a person under the age of 18.
Supplying approved products to persons under 18
We recommend amending the reference in subclause 48(1) to the supply of approved products to persons under 18. We believe that the clause should specify supply in a public place, to align the provision with the Smoke-free Environments Act 1990, and to obviate the difficulties of enforcement regarding supply in a garage or home, for example.
We also recommend that the fine in subclause 48(2) be raised from $500 to $2,000, to align it with both the Sale and Supply of Alcohol Act 2012 and the Smoke-free Environments Act 1990.

Points of sale of approved products
We are aware of concern that outlets for approved substances might include dairies which are frequented by young and underage people, and off-licences. Under the bill as introduced, any restrictions on points of sale of approved products would be determined by regulation; we agree that this matter should be included in the primary legislation. We therefore recommend amending clause 50 to specify restrictions on point of sale.

Sponsorship
We recommend inserting clause 52A to include a prohibition on sponsoring activity involving the use of trademarks associated with, or the names of, approved psychoactive products.

Advertising
We recognise the strongly held views against advertising of such products, and recommend amending clause 53 to include a clear restriction of advertising of approved psychoactive products to point of sale, and that no advertising should be visible from outside a retail outlet. While recognising that it would be difficult to enforce, we also recommend a prohibition on internet advertising except on sites maintained for the primary purpose of selling approved products.
After careful consideration of the community issues surrounding the advertising and naming of approved product retail establishments, we recommend inserting new clause 53A which sets out restrictions on retailers’ names.
Psychoactive Substances Bill

Commentary

Labelling and packaging
We are concerned that some packaging might be designed to appeal to minors, and although we consider that to define “appeal” in this context would be difficult in practice, we recommend replacing clause 54 with new clause 54 which prohibits a design of this type. We also recognise the argument for requiring approved psychoactive products to be sold in plain packaging, but are not convinced that this is necessary. Unlike cigarettes, these products will need to be of “minimal or low risk” to be approved and psychoactive products are made up of a range of chemical formulations.
We recommend, however, clarifying the provisions in clause 54 regarding the wording required on the label of the approved product, and for any further requirements to be prescribed by regulations.

Local approved products policies
Despite advertising restrictions to limit advertising to the inside of retail premises and reduce visibility of the products in communities, we are concerned that retail outlets might be situated near schools or in other places considered inappropriate by the local community. We therefore recommend making provision for local community input on decisions as to the location of outlets, including a requirement to have regard to their density, by inserting clauses 61A, 61B, and 61C.

Offences relating to possession of unapproved products
Most of us recognise wide support for the offence for personal possession of unapproved products by persons over the age of 18 as specified in clause 63. However, there was strong debate within the committee whether this clause be deleted from the bill.
The arguments for deletion are:

- The Temporary Class Drug Notice provision (Misuse of Drugs Amendment Act 2011) does not include this offence. We were told that the existing powers of enforcement officers already address concern about unknown substances under the Misuse of Drugs Act 1975.
Commentary

Psychoactive Substances Bill

- There was a view that infringement fines could incur considerable costs to the public if contested in court and a fine may be difficult for young people to pay.

Arguments to retain clause 63 are:
- This is a new innovative bill and being consistent with the “temporary Class Drug Notice provision” it is not relevant.
- In their advice the Police strongly supported retaining the offence citing in particular the risk to young people from untested substances (both approved and unapproved) for those under 18 and no infringement for possession of unapproved psychoactive substances for those over 18.

Power to enter and search retail premises
In order to ensure compliance with the bill and the conditions of the licence, we recommend the addition of clause 69A allowing an enforcement officer or constable to enter retail premises from which approved psychoactive substances are sold.

Cost recovery
To clarify the bill’s provision for cost recovery, we recommend replacing clause 82 with a new subpart 4A. This subpart sets out the duty to recover costs, the principles on which cost recovery is to be based, the methods of cost recovery and appropriate regulation-making powers, and the requirement to consult with industry before making such regulations.

Duty to notify adverse reactions
We recommend amending clause 80(3) to require the name of the substance to be included in any report of adverse reactions to an approved psychoactive product.

We discussed the responsibility of medical practitioners to report any adverse reactions to approved psychoactive substances to the relevant authority. On balance, we were not persuaded of the necessity for reporting to be compulsory. Voluntary reporting of reactions to medicines works well. Rather than including such a requirement in the bill, we recommend that the Ministry of Health work with medical practitioners on a voluntary system of reporting.
**Immunities**

We recommend that new clause 84A include provision for immunity from liability for members of the Expert Advisory Committee providing they act in good faith, and an explicit statement that members are not public servants within the meaning of the State Sector Act 1988 by virtue of their appointment.

**Transitional provision**

The transitional provision applies to psychoactive substances that were lawfully being sold during the lead-in period before commencement. Upon enactment, these substances could continue to be sold providing an application for approval was made to the Authority within 30 days and accepted, and an application for a retail licence made within the same timeframe. While acknowledging the argument for removing these substances from sale immediately, we consider this might have the unintended consequence of increasing black-market activity because of a lack of supply and a continuing demand. We believe that controls applied by the bill such as minimal advertising, restricted outlets, and an age restriction are sufficiently robust to allay concern, but we recommend amending schedule 1 to reduce the lead-in period from 6 to 3 months.

**Report of the Interim Psychoactive Substances Expert Advisory Committee**

We received a report that was written by the chair of the Interim Expert Advisory Committee. We were advised that the report was agreed by consensus and that all members of the committee endorsed the report.

**Possible increased demand on health services**

We acknowledge that with the banning of some substances currently available there could be increased demand on mental health and drug and alcohol services, which health providers will need to make provision for.
Advice on the scope of the Psychoactive Substances Bill

Given that this area was controversial, we agreed that the advice dated 5 June 2013 should be recorded in the commentary:

**Background**
Standing Order 288(1) states that the committee may recommend only amendments that are relevant to the subject-matter of the bill, are consistent with the principles and objects of the bill, and otherwise conform to Standing Orders and practices of the House.
For an amendment to be within the scope of the bill, it must be relevant to the subject-matter and consistent with its principles and objects.

**Purpose of the bill**
The purpose of the bill is to “Regulate the availability of Psychoactive Substances in New Zealand”.

**Animal testing**
On 26 April 2013 the committee was given advice on whether possible amendments prohibiting testing psychoactive substances on animals would be within the scope of the bill as referred by the House.
The advice of the Office of the Clerk was that possible amendments relating to the prohibition of animal testing of psychoactive substances would not be within the scope of the bill.
The purpose of the bill is to regulate the availability of Psychoactive Substances in New Zealand. To this end the bill provides for the approval of the importing, manufacture and sale of psychoactive substances.
The bill does not prescribe any design or testing stage, and the ethics of any testing regime is not relevant to the purpose of the bill. As such, possible amendments prohibiting testing psychoactive substances on animals are not related to the subject matter of the bill as introduced.
The issue has since then been raised with the Clerk of the House outside of the Health Committee. The Clerk of the House confirmed the initial advice that amendments prohibiting testing psychoactive substances on animals were beyond the scope of the bill as the bill is about approval and licensing of the substances not their testing. The Office can advise that an amendment to preclude the use of information derived from animal testing of psychoactive products in support of any application for approval may be in order. An amendment setting out the types of information that may be used in the approval or licensing processes is not the same as providing for a testing regime or ruling out certain types of testing.

We considered whether or not to hear submissions regarding the use of animal testing in clinical trials of psychoactive products. A vote was held. Labour and Green and New Zealand First members voted in favour. National members voted against. The vote being tied, submissions were not heard.

**Green Party minority view**

The Green Party broadly endorses the Health Committee’s commentary on the bill and the amendments that have been made. We believe this important bill has been substantially improved by the committee’s work. Nonetheless, we have a significant reservation about the issue of possession of psychoactive substances by young people, which is unaddressed in the committee’s commentary, and we have a very substantial concern about the harm that may be inflicted on animals.

**Possession of psychoactive substances by young people**

The bill as reported back creates an offence for any person under the age of 18 to be in possession of a psychoactive substance, whether approved or unapproved. The committee concluded, on balance, that the creation of an infringement offence for under-18s, analogous to that for alcohol, would enable young people at risk of harm to be con-
nected with agencies in a position to help reduce harm. The Green Party accepts that conclusion, but remains concerned that the existence of this offence might be used by some Police officers as a means of harassing and coercing some young people. The committee heard that this is not the Police intention, and the Green Party wants this to be recorded in the commentary on the bill so that when the Act is reviewed pursuant to Clause 87 the performance of the Police in relation to this possession offence is particularly scrutinised.

Animal testing
The introduction of a requirement that psychoactive substances are proven to be relatively safe before being sold in New Zealand inevitably creates the requirement for a whole new area of product safety testing. It is unsurprising that this has given rise to very significant concern from New Zealanders who oppose the cruel treatment of animals and who believe that testing of these products on animals in order to establish safety is unnecessary and, indeed, inferior to alternative methods. This view has widespread public support, as public opinion polls on the subject have demonstrated, and many individuals and organisations received encouragement from the Minister and others to express their concerns in submissions to the select committee.

However, on 8 May 2013 the Health Committee Chair ruled that all submissions received on the subject of animal testing were outside the scope of the bill, and these submissions were returned to those who made them without being considered. By a majority the committee decided to reject a Green Party motion to hear evidence from these submitters even if their submissions were out of scope. It is the Green Party’s very strong view that both of these decisions were wrong.

The Clerk of the House had provided advice that amendments to the bill that sought to outlaw product testing on animals were out of scope. However, nearly all of the submissions that were rejected raised issues that could have been addressed by an amendment to the bill to prohibit the use of information derived from animal testing in an application for a licence. The Clerk has advised that such an amendment would clearly be in scope, and the Green Party believes that it was therefore manifestly wrong to refuse to hear public submissions on the matter.
Belatedly the committee did receive advice from the chair of the Interim Psychoactive Substances Expert Advisory Committee, which had been asked by the Minister to comment on the animal testing issues, but which also did not have access to the submissions that had been rejected by the Health Committee chair. That advice was that the interim committee does not believe substances can be established to be low risk without animal testing. This effectively introduces a requirement that there be animal testing data for licence applications, and this new requirement has been introduced entirely without any views from the general public, animal welfare organisations or experts (except those who happen to be on the interim committee).

The Green Party believes this to be profoundly unsatisfactory. In our view, with the initial decision to reject these submissions having been shown to be in error, the correct course of action would have been to reopen submissions on this specific matter.

In the absence of a select committee hearing these submissions, the Green Party invited those individuals and organisations who wished to have their voice heard to do so in a separate hearing. We found as follows:

**Non-animal tests are available and more accurate**

Evidence was heard that many countries do not use animal testing for pre-clinical trials for safety because the results from non-animal testing are more reliable. The New Zealand Anti-Vivisection Society (NZAVS) said that in 2008 the United States Environmental Protection Agency, the National Institute of Health, and the Food and Drug Administration started a process to replace all toxicology testing on animals with non-animal techniques to produce results that are more relevant to humans.

Submitters talked about other countries that use these non-animal testing programmes as a preference to animal testing. Evidence was presented that the data from animal testing was actually less reliable in safety testing than non-animal testing. It was argued that if the bill allows for the lower quality data from animal testing to be acceptable evidence of safety then human health would be put at risk.

NZAVS gave evidence about the Ministry of Health’s proposed testing regime and outlined in detail the non-animal testing options that
are available to provide an adequate, if not superior, guarantee of safety.

A safety testing regime would include four stages:

- manufacturing and controls information
- preclinical toxicology studies
- human clinical studies
- post registration surveillance

It is this pre-clinical testing where animal testing would be used.

The initially proposed pre-clinical testing involves four proposed parts, each of which has well regarded non-animal testing options.

<table>
<thead>
<tr>
<th>Type of testing</th>
<th>Non-animal option</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acute toxicity</td>
<td>• Ames Test&lt;br&gt;• Neutral Red Uptake Assay&lt;br&gt;• <em>In vitro</em> micronucleus assay as required by Health Canada&lt;br&gt;• 3D models with cultured human cells&lt;br&gt;• Computer models</td>
</tr>
<tr>
<td>Repeat dose toxicity</td>
<td>• Various <em>in vitro</em> human cell line studies e.g. liver, lungs, bone marrow (tests for effects on the immune system)&lt;br&gt;• Quantitative Structure-Activity Relationship (QSAR) computer modelling</td>
</tr>
</tbody>
</table>
Toxicokinetic investigations

- Cell line tests
- *In vitro* absorption tests e.g. Caco-2 cells
- Computer modelling
- *In vitro* assays on hepatocytes (liver cells)
- Physiologically Based Toxicokinetic (PBTK) modelling

Genotoxicity

- Ames test
- *In vitro* cell gene mutation test
- *In vitro* chromosomal aberration test
- *In vitro* cell micronucleus test

**New Zealand’s international reputation is at risk**

It was argued by submitters that New Zealand is known as an innovative country with a reputation for good animal welfare. Submitters said that developing legislation which allows for unnecessary animal testing will damage this reputation, especially given that there is an international trend towards avoiding animal testing wherever possible. SAFE submitted that this is an opportunity to avoid risking our reputation and to enhance our reputation as an innovative and ethical country.

Submitters also gave evidence that other countries are looking to New Zealand’s development of regulation of psychoactive substances as a potential model for their own regulation. Some of these countries also do not allow animal testing of recreational drugs. If they choose to follow the model developed in this bill as it stands they will adapt it to fit their bans on animal testing of recreational drugs.

NZAVS gave evidence gained from an Official Information Act request of correspondence between the chair of the National Animal Welfare Advisory Committee and her equivalent in the United King-
dom that showed the UK ban on animal testing would also apply to psychoactive substances.

**Animal testing is ethically and morally questionable**

One submission from an animal rescue organisation, Helping You Help Animals (HUHA), talked about the pain and discomfort that these sorts of tests inflict on animals. Their organisation was involved with rescuing dogs from an animal testing facility and they witnessed serious damage and harm to those animals.

They spoke about their experiences of working with some people who carry out animal testing who had been overexposed to animal suffering and had lost their empathy when it came to the animals under their care.

Submitters told the hearings that unless it was ruled out in the bill, then animal testing would most likely be carried out in other countries, some of which have no animal welfare regulations and so the conditions can be assumed to be worse.

A number of countries already ban non-medical animal testing from an ethical standpoint. Toxicity testing is particularly painful experimentation. Submitters argued that the consideration of this bill is the chance for New Zealand to draw an ethical line on this issue.

**Cost implications of non-animal testing**

The cost of alternatives to animal testing is significantly higher. Because the cost of safety testing for a product will be carried by the manufacturers, not the Government, submitters argued that this higher cost of non-animal testing creates an incentive for animal testing to be used.

In fact, the point was made that if the bill does not rule out the use of data from animal testing then the cost difference will ensure that manufacturers use the cheapest method to provide evidence, and that will be animal testing regardless of the quality of that evidence.

Submitters spoke about the dominance of animal testing in the industry in New Zealand—it is the norm, rather than a last resort. Evidence was received to show that this is also the case in some countries such as China where a large amount of contract animal testing is undertaken.
There was evidence presented by submitters that, if data from animal testing is ruled out, businesses will adapt their practices and the cost of non-animal testing will drop as demand for these tests increases and capacity to undertake these tests develops.

**Recommendation**
The Green Party recommends that an amendment should be made to the Psychoactive Substances Bill to exclude the use of new information gained through animal testing as evidence in determining the safety of an application.

**New Zealand First Party minority view**
New Zealand First does not support the use of the many dangerous psychoactive substances that are legally available for purchase. We know that these synthetic drugs are devastating the lives of many of our young people and unfortunately, research into the consumption of these on a long term basis has not been carried out.

New Zealand First accepts that this bill is the beginning of some control upon psychoactive drug manufacturers and distributors. We would advise that New Zealand closely monitor overseas jurisdictions where this issue is also being reviewed.

New Zealand First believes that these substances should be banned.
Appendix

Committee process
The Psychoactive Substances Bill was referred to the Health Committee on 9 April 2013. The closing date for submissions was 1 May 2013. We received and considered 122 submissions from interested groups and individuals. We heard 27 submissions in Wellington.

We received advice from the Ministry of Health, the Ministry for Justice, and the New Zealand Police. The Regulations Review Committee reported to the committee on the powers contained in clauses 81, 82, and 83.

Committee membership
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Scott Simpson
Barbara Stewart
Louisa Wall
Dr Jian Yang
Briefing on District Health Board initiatives designed to meet the health target of shorter stays in emergency departments

Report of the Health Committee

Contents
Recommendation  2
Introduction  2
Rationale of target  2
Monitoring of target  2
Re-admission rates  3
Challenges  3
Appendix  4
Briefing on District Health Board initiatives designed to meet the health target of shorter stays in emergency departments

Recommendation

The Health Committee recommends that the House take note of its report.

Introduction

We received a briefing from the Ministry of Health on District Health Board (DHB) initiatives designed to meet the health target of shorter stays in emergency departments. On 1 July 2009, the Government implemented the Shorter Stays in Emergency Department Health Target, to improve acute patient care. The target is defined as 95 percent of patients being admitted, discharged, or transferred from an emergency department (ED) within six hours of presentation.

Rationale of target

We understand that the average length of stay in an ED is an important measure of the quality of acute care in public hospitals. The target was introduced on the advice of clinicians, who expressed concern that overcrowding can compromise patients’ privacy and dignity, and result in adverse clinical outcomes, such as increased mortality and longer inpatient stays.

It was explained that the target, which was devised by clinicians, aims to eliminate waiting and delays for patients, and improve the quality of acute care. The ministry told us that the Australasian College for Emergency Medicine and the College of Emergency Nurses New Zealand agreed that six hours was a reasonable amount of time to treat and admit patients.

Individual DHBs’ results towards achieving the target are published quarterly and made freely available to the public. We understand that this works as an incentive to strive for improvement. We are aware that Western Australia and the United Kingdom distribute financial incentives, and understand that this can motivate departments to take a creative approach to figures.

Monitoring of target

We understand that all DHBs are committed to achieving the target, and have programmes for improving their performance, which reflect local characteristics and the operations of the particular DHB. A designated Shorter Stays in Emergency Department Health Target Champion has been appointed to provide support and a point of contact. The champion visited all the DHBs between 1 July 2009 and 1 July 2010, to learn about challenges faced and successful initiatives. The champion interacts regularly with DHBs and has facilitated the sharing of initiatives.

We were interested in initiatives that have shown promising results. The Hutt Valley DHB created a minor injuries clinic for people with non-life-threatening injuries, to make their care more timely and free up resources for those with more serious conditions. Auckland DHB instituted “rapid rounds”, bringing together the clinical staff on a hospital ward for a
short time each day to briefly discuss each patient, their progress, and their planned discharge date. This initiative has resulted in one in three patients being able to go home a full day earlier.

Counties Manukau DHB, one of the most pressured DHBs in the country, has made an intensive effort to improve, which is evident in its Ko Awatea innovation hub. Ko Awatea, a collaborative venture with the Auckland University of Technology, the Manukau Institute of Technology, and the University of Auckland, aims to draw together local and international knowledge to improve health systems and patient care. It is designed to get more value for money, and to help keep pace with the demand for more and better health services within tight financial constraints.

We were pleased to hear that the ministry has also taken initiatives to help the sector implement the target in a sustainable way: it has provided clear guidance on what is expected of DHBs, including structures and planning processes. An emergency department advisory group has also been established to provide the ministry with clinical advice on improving acute pathways and outcomes for patients.

Some of us were concerned that some DHBs may be driven by time targets rather than clinical need, placing patients in inappropriate wards, or otherwise taking measures that are not conducive to improving patients’ care or experience. The ministry said it was not aware of this happening. We were also told that the ministry emphasises to the DHBs that the purpose of the target is to promote genuine and sustainable quality improvements, and compliance should not be achieved at the expense of quality of care. We will monitor this situation closely. We were told that no measures have been developed to assess the impact of the target on the rest of the hospital, and we urge the ministry and DHBs to work together to formulate a measure as soon as possible. We do note, however, that a comprehensive set of ED measures, including Australasian College for Emergency Medicine triage times, have yet to be developed.

**Re-admission rates**

We were interested in re-admission rates of patients who have recently been discharged from the ED. The ministry said that New Zealand has not yet set a standard timeframe to measure re-admission rates. We note that the United Kingdom defines re-admission as admission within 48 hours, and other countries use timeframes ranging from 24 hours to one week. We consider that it would be useful if New Zealand developed its own measure for re-admission rates, to ensure that the target does not result in more re-admissions, and to evaluate quality improvement.

**Challenges**

The most common challenges faced in achieving the target were reported as access to hospital beds and diagnostic tests, delays in obtaining input from inpatient teams, rising demand for services, and deficiencies in facilities and staff availability.
Appendix

Committee procedure
We heard evidence from the Ministry of Health on 10 April 2013 and met on 31 July 2013 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
Louisa Wall
Dr Jian Yang
Report from the Controller and Auditor-General, Health sector: Results of the 2011/12 audits

Report of the Health Committee

Contents

Recommendation 2
Introduction 2
Health Benefits Limited 2
Appendix 4
Recommendation

The Health Committee has examined the report from the Controller and Auditor-General, Health Sector: Results from the 2011/12 audits, and recommends that the House take note of its report.

Introduction

In April 2013, the Auditor-General published a report, Health Sector: Results from the 2011/12 audits. It discussed the health sector’s operating environment, and the financial performance of the District Health Boards (DHBs) and other health-sector entities, including shared services agencies.

The Office of the Auditor-General does not audit Health Workforce New Zealand separately, as it is located within the Ministry of Health.

Health Benefits Limited

Health Benefits Limited (HBL), a standalone Crown company, was established to lead initiatives to save DHBs money, as a result of a 2009 ministerial review group report. The report recommended that the 20 DHBs share administration and support, taking a national approach to procurement and supply chain management, to reduce costs and contain growth. HBL commenced operations on 30 July 2010.

Reported savings

HBL’s goal is to contribute gross savings for DHBs of $700 million over five years. The target does not take into account the costs of achieving the savings, such as the $87.9 million investment by DHBs in the Finance, Procurement, and Supply Chain system. We note that this target is ambitious, as is HBL’s intention to reach it in 2015.

HBL and each DHB agree on the costs and benefits expected from its initiatives. The reporting of savings is based on unaudited returns submitted by DHBs to HBL. Savings are categorised as baseline savings, which improve DHB’s net operating result, such as price reductions and rebates; value-added savings, such as cost increases avoided; and other savings.

We were interested in the proposal recently announced by HBL to save $110–180 million by streamlining the provision of hospital food. We find it difficult to determine how these estimates were arrived at, and we understand that DHBs could not provide the details of the projected savings. The Office of the Auditor-General does not audit business cases and projected savings, but only actual savings recorded. We will monitor the progress of the food proposal with interest.

Since it was formed, HBL has reported sector-wide savings of $114.6 million as at 30 June 2012, consisting of $59.6 million in 2011/12 and $55 million in 2010/11. No quality assurance review has been undertaken by HBL, which indicated that it intends to introduce controls and procedures to verify savings reported by DHBs. The Auditor-General
recommended that HBL improve the transparency of its measurement and reporting of savings, and we hope to see this happen in the near future.
Appendix

Committee procedure

We met on 31 July and 21 August 2013 to consider the report from the Auditor-General on the Health sector: Results of the 2011/12 audits. We heard evidence 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
Louisa Wall
Dr Jian Yang
Petition 2011/63 of Stephen Manson on behalf of the New Zealand Anti-Vivisection Society

Report of the Health Committee

The Health Committee has considered Petition 2011/63 of Stephen Manson on behalf of the New Zealand Anti-Vivisection Society, requesting that the New Zealand Parliament includes a clause specifically prohibiting animal testing in any proposed legislation aimed at the regulation of psychoactive substances (“party pills or “legal highs”), and has no matters to bring to the attention of the House.

Dr Paul Hutchison
Chairperson
Briefing on Health Workforce
New Zealand work programme
Report of the Health Committee

Contents
Recommendation 2
Introduction 2
Strategic focus 2013/14 2
Future forecasts 2
Nursing 2
Doctors 3
Appendix 4
Briefing on Health Workforce New Zealand work programme

Recommendation

The Health Committee recommends that the House take note of its report.

Introduction

We received a briefing from Health Workforce New Zealand on its work programme. Health Workforce New Zealand (HWNZ) was formed in 2009, when it replaced the Clinical Training Agency. Its purpose is to ensure New Zealand’s health workforce is sustainable and fit for purpose.

Strategic focus 2013/14

Health Workforce New Zealand told us that for 2013/14 its primary strategy is to shift the onus for health workforce planning to health system service providers and employers. It pursues a number of secondary strategies, addressing barriers to workforce reform, the variable standard of leadership in the sector, and inadequate health sector intelligence; it also promotes the necessity of regional service and workforce planning, addresses limitations on elective service throughput, and implements national bowel cancer screening. Other priorities are responding to changes in medical workforce dynamics, and preparing the general practice medical workforce for a substantial shift in the delivery of care from hospitals to the community and home.

Future forecasts

We were interested to hear that in the near future New Zealand will face an oversupply of dentists, pharmacists, dieticians, and physiotherapists, and an undersupply of ultrasound technicians, MRI technicians, and oral hygienists and therapists. HWNZ explained that it uses an innovative forecast process which has been adopted by other members of the International Health Workforce Collaboration. This new process acknowledges the limitations of linear modelling, recognising an uncertain future and managing changes as they arise.

We heard that within the next five years cancer treatment will change considerably; with the development of new technologies, 99 percent of patients will be able to receive care in the community, which will require health workers with a general scope of practice, and a shift in investment.

Nursing

HWNZ told us that at present there are no nursing vacancies, and district health boards are employing newly qualified nurses on a casual basis rather than in graduate positions. However, the average age of nurses is 50, and many are expected to leave nursing when the economy moves out of recession. This will result in vacancies, and HWNZ is working to ensure an adequate, sustainable nursing workforce over the next decade. For example, a “nursing pipeline working group” is being established to align nursing student numbers with employment opportunities. We will monitor this situation with interest.
HWNZ is also investing in nurses through Nursing Matters in collaboration with the National Nurses Organisation and Health Workforce Australia.

**Doctors**

We were interested to hear that in 2001, 690 New Zealand trained doctors moved to Australia, while only 40 did so in 2012. New Zealand is training enough doctors, and senior doctors constitute the most stable workforce in the country; however they are unevenly distributed, especially in the most deprived areas. We would like to see incentives developed to encourage doctors to work in vulnerable communities where their services are badly needed.

HWNZ told us that 60 percent of doctors working here are trained in New Zealand, but they would like to see this grow to 85 percent. HWNZ emphasised the desirability of a highly-skilled, regulated workforce, which requires high-quality internships to produce work-ready graduates. In 2013/14, HWNZ will set up a medical pipeline working group to align medical student numbers, internships, Resident Medical Officers, and college training places, with long-term employment opportunities in New Zealand.

We were concerned to hear that senior Resident Medical Officers lack substantial career advice and counselling. HWNZ explained that they are developing initiatives for the uptake of training schemes for those other than surgeons or physicians. We wish HWNZ all the best with their work programme and we look forward to reviewing its progress.
Appendix

Committee procedure
We heard evidence from Health Workforce New Zealand on 6 November 2013 and met on 4 December 2013 to consider this briefing.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Moana Mackey
Scott Simpson
Barbara Stewart
Dr Jian Yang
Briefing on New Zealand Health Innovation Hub

Report of the Health Committee

Contents

- Recommendation .................................................. 2
- Background ....................................................... 2
- Strategic focus .................................................. 2
- Clinical trials ..................................................... 2
- Intellectual property .......................................... 3
- Conclusion ......................................................... 3
- Appendix .......................................................... 4
Briefing on New Zealand Health Innovation Hub

**Recommendation**

The Health Committee recommends that the House take note of its report.

**Background**

We received a briefing from New Zealand Health Innovation Hub, a limited partnership established in 2012. The hub’s purpose is to accelerate the commercialisation of innovation and intellectual property developed in the public health sector, research organisations, or private-sector industry that have the potential to materially improve health outcomes and generate commercial returns.

The hub’s general partner is New Zealand Health Innovation Management Limited, a Crown entity subsidiary; the hub itself is not a Crown entity subsidiary, but its governing documents specify that it may not act in a manner inconsistent with the district health boards’ objectives and statements of intent. The Auckland, Canterbury, Counties Manukau, and Waitemata DHBs are limited partners in the hub and shareholders in its general partner.

Dr Frances Guyett is the chief executive, and funding is provided by the Ministry of Business, Innovation, and Employment; Auckland Tourism, Events, and Economic Development; and the Canterbury Development Corporation.

**Strategic focus**

The hub aims to create a self-sustaining “ecosystem” for accelerating the development and adoption of products, services, and quality standards to improve the cost effectiveness of obtaining good healthcare outcomes. It aims to align and use the combined strength of the public health sector and private sector health technology businesses to deliver health and economic benefits for New Zealand. The hub also seeks to generate commercial revenue to become financially self-sustaining.

In the long term the hub seeks to help build New Zealand’s reputation for testing and exporting innovative products, and creating highly-skilled, well-paid jobs.

**Clinical trials**

As reflected in the Health Committee of the 49th Parliament’s *Inquiry into improving New Zealand’s environment to support innovation through clinical trials*, we would like to see New Zealand’s clinical trial environment become more user-friendly, with minimal bureaucracy and obstacles to local and international innovation. We want to see New Zealand innovators receiving sound advice and making global connections easily.

The hub agreed with these sentiments, noting that New Zealand clinicians generally lack skills in the commercialisation of ideas, even though New Zealand has the right infrastructure and international expertise to exploit our strengths and resources. The hub said it is leading collaboration to streamline clinical trials, starting at district health board level, to ensure the DHBs have a single contract, price, and ethics approval process for any trial, to avoid fragmentation. We support the efforts being made in this area.
In our view the New Zealand environment to innovate and take these innovations to market should be the best in the world, if we are to be competitive. We look forward to seeing our inquiry recommendations fully implemented.

**Medical devices**

We heard from the hub that when exporting medical devices and products, local data is very important, as medical devices that have been developed in New Zealand are highly valued in overseas markets. Therefore the hub is creating reference sites in DHBs, where medical devices are trialled and feedback collected from patients and clinicians.

**Intellectual property**

The hub told us it has implemented a highly repeatable, robust process, following global best practice in healthcare and technology development, which recognises and realises the commercial potential of ideas; it assesses the likelihood of success and wise adoption, protects intellectual property, secures finance and DHB support, and facilitates commercialisation and promotion in New Zealand and overseas. At present, the hub is receiving about 40 ideas per month, and its assessment process has been replicated by innovation hubs in Australia and the United States.

We asked about the process for distribution of monetary returns from intellectual property. We heard that as most DHBs do not have their own intellectual property policy, it takes over the licensing of the property to be commercialised, with a percentage of the returns going to the DHB, a percentage to the hub, and the largest percentage to the inventor.

The hub is having discussions with Capital and Coast and Southland DHB, with the goal that all DHBs become stakeholders in the hub and benefit from its expertise. The hub also collaborates with Callaghan Innovation, Kiwinet, Orion Health, Fisher and Paykel Healthcare, and the New Zealand Association of Clinical Research, to share expertise and avoid duplication. Relationships have been formed with the Ministry of Health and the National Information Technology Board, who provide support and work towards the alignment of strategies.

**Conclusion**

We consider that the New Zealand Innovation Hub has enormous potential to provide opportunities for the New Zealand economy and for the health system. We very much hope that all DHBs will be included in the collaboration and that every opportunity is taken to work well with industry and other providers such as universities, Crown Research Institutes and the Callaghan Institute. We look forward to meeting with the hub in a year’s time and hearing about its further progress.
Appendix

Committee procedure
We heard evidence from New Zealand Innovation Hub on 23 October 2013 and met on 4 December 2013 to consider this briefing.

Committee members
Dr Paul Hutchison (Chairperson)
Shane Ardern
Paul Foster-Bell
Kevin Hague
Hon Annette King
Iain Lees-Galloway
Moana Mackey
Scott Simpson
Barbara Stewart
Dr Jian Yang
Petition 2011/69 of Ravi Vas Vohora

Report of the Health Committee

The Health Committee has considered Petition 2011/69 of Ravi Vas Vohora, requesting that the House of Representatives investigate the need for changes to the practice of modern pharmacy and the petitioner’s request for redress. We asked the Ministry of Health to respond to the concerns raised in the petition, and their response is publicly available.

The petitioner asserts that there are two approaches to community pharmacy practice; at present pharmacists follow a business model and engage in general retailing of products not related to health. The petitioner followed a patient-focused model and confined his practice to medicines and related products. He asserts that the Pharmacy Quality Audits conducted by the Ministry of Health reflect the prevailing approach to community pharmacy practice and not the approach he adopted. Since 1992, the petitioner’s approach to pharmacy practice has been regarded as not complying with professional standards. He seeks equitable redress for the harm that this has caused him.

The Ministry of Health dispute the petitioner’s belief that there are two distinct models of community pharmacy practice or that its Pharmacy Quality Audits cannot audit the petitioner’s mode of practice. Evidence from the Ministry of Health is as follows:

The timeline in Mr Vohora’s petition dates back to 1994. Over the intervening years, the Ministry and other agencies have had many dealings with Mr Vohora. In the Ministry’s view, Mr Vohora failed to meet the legislative and contractual standards of professional and ethical standards since 1995. Evidence shows that he also failed to meet professional and ethical standards. They have extensive files relating to Mr Vohora and the Pharmacy and can provide further detail on aspects of the information provided, if required.

We heard from the petitioner in person and accepted numerous additional written submissions. We learnt from the Pharmacy Council that there is a clear pathway for the petitioner to return to practicing pharmacy. We encourage him to do so, if he feels he can comply with its regulations and conditions. We have no other matters to bring to the attention of the House.

Dr Paul Hutchison
Chairperson
The Health Committee received a briefing from the review panel members on the External Review of Maternity Care in the Counties Manukau District. We have included a substantial section on this briefing in our inquiry report Inquiry into improving child health outcomes and preventing child abuse with a focus from preconception until three years of age. We consider that the External Review of Maternity Care in the Counties Manukau District was of very high quality and of huge importance to the future of maternal and child outcomes in Counties Manukau.

From our inquiry a major recommendation was:

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. Particular attention should be given to the following areas: early pregnancy assessment and planning (medical and social), ultrasound scanning, prioritisation of vulnerable and high-needs women, family planning, Māori and Pasifika women, addressing gestational diabetes and obesity, outreach services, and integration of information services.

The recommendations of the Counties Manukau review should be fully implemented within five years of this report being published, both in Counties Manukau DHB and elsewhere in New Zealand, where relevant. We recognise this may require reprioritisation of funding.

We have no other matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Dr Paul Hutchison
Chairperson
Local Electoral Amendment Bill
(No 2)

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Local Electoral Amendment Bill (No 2), and recommends that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Local Electoral Act 2001 and the Local Electoral Regulations 2001 in order to
• improve consistency with the Electoral Act 1993 regarding electoral donations and expenses
• limit the amount or value of anonymous donations
• refine the definition of “anonymous” and “donation”
• enhance the obligations of candidates for the disclosure, reporting, and recording of electoral donations
• introduce penalties for non-compliance
• increase flexibility for territorial authorities to balance “fair” and “effective” representation requirements
The Local Electoral Act provides the framework for the conduct of triennial local authority elections and by-elections. Local authority elections include the election of members to regional councils, territorial authorities, local and community boards, district health boards, and licensing trusts.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

**Residence disclosure**

We recommend amending clause 15 (which inserts new section 61(2)(ca)) to require that candidate profile statements include whether or not the candidate’s principal place of residence is in the local government area in question. This is intended to ensure the new requirement is clear, easy to understand, and consistently applied.

We recognise the uncertainty of the new requirement for candidates to specify all positions to which they seek election. Our recommended amendment would clarify that the requirement for candidates standing for more than one position to specify each position to which they seek election would apply to all current local authority positions to which the candidate seeks election.

**Cancellation of a nomination**

The bill as introduced does not specify who may act as an “agent” to make an application for the cancellation of a nomination. We are aware that not all candidates will have an agent in the sense of a campaign manager; we therefore recommend amending clause 18 (new section 69(2)(b)) to remove the reference to “agent”, and make it clear that an application for the cancellation of a nomination could be made by any person with authority to act on the candidate’s behalf.
Voting documents
We recommend amending clauses 22 and 23 to insert a requirement that voting documents for elections and polls must include a warning describing the offence of interfering in any way with any person who is about to vote, with the intention of influencing or advising that person as to how he or she should vote. We believe this amendment represents good practice, and would uphold the integrity of the electoral system.

Anonymous donations
We consider that, for reasons of transparency, candidates should have to disclose in a return of electoral donations and expenses each office for which they have stood for in the election. Also, a candidate should be required to specify the campaign to which an anonymous donation over $1,500 was designated. We recommend changes to Schedule 1 (Return of electoral donations and expenses) to effect this.

Definitions
We recommend amending the definition of donation in clause 27 (new section 103A) to exclude goods and services worth less than $300 from the definition of “electoral donation or donation”, to align it with the Electoral Act. We believe this would strike an appropriate balance between transparency, the administrative burden, and the costs of recording lower-value goods and services.

To align the definition of “electoral donation or donation” with that of the Electoral Act 1993, we also recommend including the difference between the market value (being a value over $300) and the discounted price of any goods or services provided to a candidate.

However, this amendment would not address concerns raised by submitters about discounted advertising rates being afforded to candidates regularly below the reasonable market value threshold. A compelling example was given to us, in which a business provided a commercial discount to one candidate and charged other candidates standard rates. We believe the current wording in the bill should stop this from happening, but we encourage the Government to consider whether this can be addressed by further amendment to the definition of electoral donation in the committee of the whole House.
We also recommend that, as in the Electoral Act, the definition include the difference between the market value and the over-valued price of goods or services that a candidate has provided. For example, if a candidate sells tickets to a fundraising dinner for $200 per guest and the cost of the actual meal is $50, $150 is considered a donation.

Electoral Expenses
We recommend amending clause 28 to clarify that the definition of “electoral expenses” in new section 104(4) provides that the cost of any framework that supports a hoarding on which an advertisement is displayed is not considered an electoral expense, unless it is a commercial framework. This would mean that a candidate would not have to include in the election expenses the cost of timber.

Return of electoral donations and expenses
We recommend amending clause 31 (new section 112A(1A)) to clarify that candidates who are overseas on the day on which the election result is declared would be required to file a return within 76 days of the election result being declared. This provision is intended to provide more time for a candidate who has been overseas to get their affairs in order.

Obligation to retain records
To avoid any doubt, we recommend extending the obligation to retain records necessary to verify a return in relation to donations to cover expenses. This would ensure consistency with the Electoral Act and assist enforcement.

We believe the existing obligation to destroy records after seven years is not necessary, and impractical now that increasingly local authorities and electoral officers publish returns online. It is difficult to ensure returns that have been published online are destroyed, even after the website in question has been taken down. Therefore we recommend amending clause 31 (new section 112F) to remove this requirement. The local authority or electoral officer would still retain the discretion to destroy or take down returns once the period in which prosecution may be commenced was over.
Publishing of records
We were concerned about reported inconsistency by local authorities and electoral officers in allowing copies of returns to be made. Accordingly we recommend amending clause 31 (new sections 112F(1) and 112F(2)) to expressly allow electoral officers to publish, in any way considered appropriate, every return filed under new section 112A, and to require that copies of the returns be made available on request. Although there are existing avenues by which members of the public may obtain a copy of the return, we consider that the amendment is needed to provide clarity and consistency in practice.

Prosecution
The bill as introduced does not specify any particular limitation period for prosecuting offences under the Act. As the offences of filing a false return and arranging to circumvent the $1,500 limit on anonymous donations involve elements of fraud and dishonesty, we believe a relatively long timeframe for investigation and prosecution is appropriate. We therefore recommend amending clause 36 by adding new section 138AA, which specifies the timeframe for prosecuting the offences in new sections 112D and 103I as 6 months from the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings, but no later than 3 years after the offence was committed.

Matters for future consideration
We are concerned that the bill as introduced does not cover third-party donations and expenditure, leaving a potential gap for third-party campaigners to receive donations and use funds to promote a candidate without the candidate’s permission and appropriate regulation. We understand that this is a complex policy area, and as the next local authority elections take place in October 2013, limited time remains in which to enact the amendments to the Local Electoral Act in this bill, and implement the changes. These time constraints preclude our recommending the further amendments we consider absolutely necessary to prevent inequities in the future. We believe the matter should be addressed in a bill as a matter of priority.
Unpublished roll

Concerns were raised about the fact that people on the unpublished roll are required to cast a special vote despite the fact that they are on the roll. At present those on the unpublished roll receive a letter from the Electoral Commission reminding them that they will need to make an application for a special vote, which is a more complex process, involving requirements such as the completion of a declaration. We heard that in the process of issuing a special vote often more than one person has access to the details of the individual on the unpublished roll. This is contrary to section 115 of the Electoral Act, which is intended to protect the safety of the individual or his or her family.

We were told that the percentage uptake of those on the unpublished roll is considerably lower than the average participation rate. We were also told that these votes made up a significant number of special votes and there would be a significant cost saving if they were dealt with as ordinary votes.

The specific proposal that we were invited to consider was to cease requiring those on the unpublished roll to apply to cast a special vote and instead have their details sent electronically and confidentially directly to New Zealand Post via a data file separate from the file containing the names on the electoral roll. Ordinary voting papers could then be automatically printed and sent to the unpublished names. They would then receive their voting papers in the mail, in the same manner as those on the published roll, and could complete them and return them for processing. As their details would not be published on a roll this would better maintain their anonymity.

We believe there is merit in this suggestion, but we are not able to recommend amendment of the Electoral Act as part of our consideration of this bill. Therefore, we recommend the Government give urgent consideration to amending the way unpublished names are treated under the Local Electoral Act and the Electoral Act.

Green Party minority view

Green Party members of Parliament support legislation to modernise local electoral law and strengthen provisions about the transparency of candidate donations in local body election campaigns.
Recent high profile examples from the 2010 local body elections have highlighted unfortunate gaps in existing legislation allowing candidates to exploit so-called “anonymous” donation provisions. This bill improves the status quo by requiring that any person who works with a candidate and knows the identity of someone making a donation of more than $1,500 must declare the identity of that donor to the candidate. This is a good change, and for this reason the Green Party will continue to support the Local Electoral Amendment Bill. However, we are disappointed that the bill is narrowly focused on candidate donations, and does not also modernise rules governing third party spending on local body elections and the pecuniary interests of members of local authorities.

The Green Party has a member’s bill in the name of Denise Roche, the Local Electoral (Finance) Amendment Bill, which would give effect to further changes we would like to see made to the Local Electoral Act, including

- a $5,000 cap on donations by any person or group
- a $500 limit on anonymous donations
- a ban on overseas donations
- penalties for avoiding rules relating to donations
- regulation of third party spending in local body election campaigns
- a pecuniary interests register for members of local authorities.

We would have liked to see these changes included in the Local Electoral Amendment Bill (No 2).

The regulation of third party spending in local body election campaigns in particular was an issue discussed by the committee in its deliberations on the bill. It seems clear that there is a gap in current provisions which would, for example, allow unlimited spending by third parties to campaign against certain candidates, or for a third party to make a donation to a local campaign ticket which, if not spent specifically on the campaigns of individual candidates, would be subject to no cap or limit. This is clearly unfair and against the spirit of legislation setting spending caps for local body election campaigns. This issue should have been given greater attention and addressed in this bill.

We also remain concerned at the new powers given to the Minister of Local Government to adjourn elections in this legislation. Current
provisions allow the electoral officer to adjourn the close of voting in local body elections by up to 14 days under certain circumstances, such as natural disasters. This bill would allow the whole election to be postponed by Order in Council by up to six weeks, at the discretion of the Local Government Minister. This seems unnecessarily draconian, and gives excessive powers to the Minister. In light of the current Government’s enthusiasm for postponing local body elections—having recently passed legislation to delay the restoration of democracy to Environment Canterbury until 2016—we are concerned about the potential for abuse of this power.

While Green Party Members of Parliament will continue to support this bill for the improvements it makes to candidate donation provisions, we will oppose the provision allowing for the postponement of elections and continue to advocate for improvements to the bill to strengthen provisions governing donations, third party spending, and pecuniary interests.
Appendix

Committee process
The Local Electoral Amendment Bill (No 2) was referred to the committee on 6 November 2012. The closing date for submissions was 21 December 2012. We received and considered 30 submissions from interested groups and individuals. We heard seven submissions in Wellington. We received advice from the Department of Internal Affairs and the Ministry of Justice.

Committee membership
Scott Simpson (Chairperson)
Dr Jackie Blue
Hon Lianne Dalziel
Julie Ann Genter
Andrew Little
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Hon Kate Wilkinson
Prisoners’ and Victims’ Claims (Continuation and Reform) Amendment Bill

92—1

Report of the Justice and Electoral Committee

Contents

Recommendation 2
Introduction 2
History of the bill 2
The awarding of compensation to prisoners 2
Victims’ claims process 3
Green Party of Aotearoa New Zealand minority view 3
New Zealand Labour Party minority view 4
Appendix 5
Prisoners’ and Victims’ Claims (Continuation and Reform) Amendment Bill

Recommendation
The Justice and Electoral Committee has examined the Prisoners’ and Victims’ Claims (Continuation and Reform) Amendment Bill and recommends that it be passed.

Introduction
The Prisoners’ and Victims’ Claims (Continuation and Reform) Amendment Bill seeks to make the current regime under the Prisoners’ and Victims’ Claims Act 2005 permanent. This Act is set to expire on 1 July 2013. The Act sets out statutory guidelines to restrict the circumstances in which the courts can award compensation to prisoners for breaches of their rights, and a simplified process for victims of a prisoner to make civil claims against compensation payments before anything is paid to the prisoner.

The bill would also clarify that the Act applies to unlawful detention claims, and would suspend the civil limitation period for victims’ claims when compensation was paid to the Secretary for Justice, recommencing following the deadline for victims to file a claim against the compensation.

History of the bill
The Prisoners’ and Victims’ Claims Act was introduced following the Taunnoa proceedings, in which five prisoners were awarded compensation for breaches of their human rights while they were subject to the Behaviour Management Regime (BMR) operating at Auckland Prison between 1998 and 2004. The Act responded to views expressed that offenders should not receive financial compensation for wrongful treatment without first having to redress the harm they have caused to their victims.

The Act contains two sunset clauses providing for the expiry of the restrictions on compensation, and a cut-off date for compensation awarded to prisoners to be subject to the victims’ claims process. These sunset clauses were included to allow time for the historical cases to move through the courts, and for an independent prison complaints body to be established. Subsequently, rather than establish a new complaints body, the Office of the Ombudsman was given responsibility for investigating serious incidents in prisons regarding the safe, fair, and humane treatment of prisoners.

The awarding of compensation to prisoners
While the BMR claims were the catalyst for the Prisoners’ and Victims’ Claims Act, it applies more widely. The bill would allow the regime to continue beyond the finalisation of any BMR claims. We consider that it is desirable to provide restrictions and guidelines on the circumstances in which Parliament intends compensation to be available to prisoners, to avoid any potential inconsistency. At the same time the guidelines would in no way restrict the courts from taking into account other factors, or tie their hands on the final outcome of any action.
We recognise that the best way to prevent compensation payments is to ensure that abuse does not occur. We are aware that considerable improvements have been made in this respect since the days of the BMR. The Corrections Act 2004 requires every prison to have an internal complaints process that complies with the objectives set out in the Corrections Act. The aim is to ensure that complaints are properly resolved as soon as possible in accordance with comprehensive complaints management procedures. In 2007 the Ombudsman was designated a National Preventative Mechanism under the Crimes of Torture Act 1989. In this capacity, two inspectors appointed by the Ombudsman regularly visit places of detention to examine the conditions and treatment of detainees, and make recommendations for improvements.

We are aware that when the Prisoners’ and Victims’ Claims Act was introduced it was considered by the Attorney-General to be consistent with the New Zealand Bill of Rights Act 1990.

**Victims’ claims process**

The objective of the Prisoners’ and Victims’ Claims Act is not to provide a comprehensive compensation scheme for victims, but simply to ensure that where compensation is paid to a prisoner, any victims should have first claim against that money. The victims’ claims process provides a simple way for victims to take a civil claim in circumstances where the offender has at least some capacity to pay and the Crown has control of the money. We recognise that giving the victim the opportunity for redress serves an important purpose of supporting efforts by victims of crime to recover compensation.

**Awards made under the victims’ claims process**

We have been informed that since the Prisoners’ and Victims’ Claims Act came into force, 26 awards of compensation to prisoners have been finalised under the victims’ claims process. Of these, five have resulted in successful claims. A further 20 awards of compensation are currently at various stages of the process.

**Access to other money available to prisoners**

The bill does not provide for victims’ access to any other funds available to an offender, such as an inheritance or a lottery prize. We understand that this was investigated as a policy option when the Victims’ Claims Act was developed, but that any advantages of capturing other funds were outweighed by practical problems such as how to monitor and intercept money, and privacy issues.

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

The original Prisoners’ and Victims’ legislation was passed containing a sunset clause. The expectation was that before it expired a comprehensive analysis and review of the whole issue of victims’ rights would have been conducted, and provisions put in place that would render redundant the measures in that legislation.

Unfortunately no such review has ever been conducted, and we have seen instead extensions of the legislation and now a determination to embed it permanently into law.

This is despite the fact that effectively denying inmates the right to be compensated for any abuse or mistreatment suffered while in the custody of the State is contrary to our own Bill of Rights and numerous international human rights agreements and conventions. It perpetuates a populist, punitive approach to being “tough on crime” that is unhelpful and increasingly irrelevant.
The solution to sensitivity about inmates being recompensed for abuses of their rights by the state is readily apparent—create a culture and practice in corrections and other sectors of the justice system that ensures that no such abuse can or will occur.

There are good international examples and indicators of what such a progressive system could look like in New Zealand, systems that are demonstrably more successful, humane, and less costly in financial and human terms than our own failed approach, grounded as it is in 18th and early 19th century notions of punishment.

This bill’s purpose and intent reflects a complete lack of insight into the failings of our current system, a lack of vision of how we could do much better, and the Greens will continue to oppose its passing.

**New Zealand Labour Party minority view**

The Labour Party will be supporting this legislation. However we note that it does not satisfactorily address victims’ rights. The reason the original legislation had a sunset clause was to enable a full review to occur.
Appendix

Committee procedure
The Prisoners’ and Victims’ Claims (Continuation and Reform) Amendment Bill was referred to the Justice and Electoral Committee on 11 December 2012. The closing date for submissions was 8 February 2013. The committee received seven submissions from organisations and individuals and heard three of the submissions orally. Advice was received from the Ministry of Justice.

Committee members
Scott Simpson (Chairperson)
Dr Jackie Blue
Hon Lianne Dalziel
Julie Anne Genter
Andrew Little
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Hon Kate Wilkinson
Criminal Procedure Legislation
Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Criminal Procedure Legislation Bill, and recommends that it be passed with the amendments shown.

Introduction
This bill proposes minor and technical amendments to the Criminal Procedure Act 2011 and 18 other enactments. The amendments largely fall into the following categories:

• cross-referencing and technical matters
• amendments to allow procedures and processes to operate as intended
• references to “crime” (reflecting the repeal of the definition of “crime” in the Crimes Act 1961) to make explicit the type of offence that is being referred to, where the context requires it
• clarification of Community Magistrates’ jurisdiction.
Normally amendments of this nature would be suitable for inclusion in a Statutes Amendment Bill. However, with no guarantee of the 2012 Statutes Amendment Bill being enacted by 1 July 2013, when the bulk of the criminal procedure legislation is due to commence, a stand-alone bill was considered necessary.

During our consideration of the bill a small number of additional technical amendments have been identified, which have also been included.

The Criminal Procedure Act 2011 and its 14 associated Amendment Acts were passed in October 2011 to modernise and simplify criminal procedure. The comprehensive package of reforms is designed to make the criminal justice system more transparent, understandable, and efficient.

This commentary covers the significant amendment we recommend to the bill; it does not cover the other minor or technical amendments.

Changes to references to “crime”

The Crimes Act 1961 defines a “crime” as an offence where the offender may be proceeded against by way of indictment. Under the Criminal Procedure Act 2011 offences are to be proceeded against by way of charging documents, and the summary or indictable distinction is to be abolished and replaced by four categories of offence. The definition of “crime” will therefore be repealed from 1 July 2013.

We are aware of concern about sub-clause 15(3) of the bill as introduced, which would insert new section 409(h) into section 409 of the Criminal Procedure Act 2011 to add “crime” to the list of terminology that may be amended by regulation. Although the purpose of section 409 is to make only consequential amendments, we share the concern about the use of a “Henry VIII” power (a power to make regulations that amend statutes) here. We would not want to see the addition of “crime” inappropriately used to make substantive changes to the criminal law, and recommend that clause 15(3)(h) of the bill be removed.
Appendix

Committee process
The Criminal Procedure Legislation Bill was referred to the committee on 4 December 2012. The closing date for submissions was 8 February 2013. We received and considered two submissions, one of which was presented orally. We received advice from the Ministry of Justice.

Committee membership
Scott Simpson (Chairperson)
Dr Jackie Blue
Hon Lianne Dalziel
Julie Anne Genter
Andrew Little
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Hon Kate Wilkinson
Family Court Proceedings Reform Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Family Court Proceedings Reform Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The Family Court Proceedings Reform Bill seeks to implement the Government’s decisions resulting from a review of the Family Court conducted by the Ministry of Justice in 2011. The review involved a public consultation paper, “Reviewing the Family Court”, an online questionnaire for court users, and an independent external reference group.

The reforms proposed are intended to address the following issues raised during the review of the family justice system, and confirmed by the external reference group:

- insufficient focus on children and vulnerable people
Family Court Proceedings Reform Bill

- lack of support for the resolution of parenting disputes out of court
- complex and uncertain court processes
- significant reliance on court professionals
- fiscal constraints.

The principal reforms proposed would affect the way the system deals with post-separation parenting arrangements for children, shifting the focus from court resolution of disputes to encouraging parents to resolve matters themselves where possible.


This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.

**Commencement of the Act**

We recommend amending clause 2 of the bill as introduced, so that most of its provisions, instead of coming into force on 1 October 2013, would come into effect on a date appointed by the Governor-General by Order in Council or 1 October 2014, whichever was earlier. This would provide more time to put new processes and systems in place to implement the changes made by the bill, and in particular to ensure there is a workforce of appropriately skilled family dispute resolution providers.

To the same end, we also recommend that some provisions come into force on the day after the bill receives the Royal assent. These provisions relate to the approval of counselling organisations and service providers, the appointment of counsellors, and the family dispute resolution provisions (except those concerning the use of forms).
Structure of the bill
Part 3 of the bill as introduced seeks to amend the Family Courts Act 1980 and to insert family dispute resolution provisions into the front of that Act and change its title to the “Family Dispute (Resolution Methods) Act 1980”. Concern has been expressed about the proposed title and in particular the omission of any reference to the Family Court.
We recommend that the bill be amended to restrict Part 3 of the bill to the provisions relating to family dispute resolution only, moving the small number of unrelated amendments to the Family Courts Act 1980 to new subpart 2A in Part 5 of the bill. The title of the Family Courts Act 1980 would then remain unchanged.

Family dispute resolution
The bill proposes to introduce a new out-of-court family dispute resolution (FDR) service. We recommend amending clause 9 to insert new section 46CB into the Care of Children Act 2004. It would be mandatory for a person who sought to apply to the court under that Act for a parenting order or to resolve a guardianship dispute to first attend FDR, unless an exemption listed in new section 46CB(3) of that Act applied, for example because of domestic violence.
Family Dispute Resolution would be free for those under the income threshold for civil legal aid (estimated at about 60 per cent of participants). People above the threshold would be required to arrange FDR privately and pay for it themselves. We heard concerns about the cost involved, but most of us are aware of the view that FDR is likely to be less expensive than hiring a lawyer and proceeding to a defended hearing in court.

FDR providers
We considered the absence of criteria for granting, suspending, or cancelling the approval of an FDR provider. We consider it desirable to include more detail about FDR in the bill.
We recommend amending the FDR provisions in the bill as introduced to allow the Secretary for Justice or an approved dispute resolution organisation to appoint a person as an FDR provider. In making the appointment the Secretary for Justice or approved dispute resolution organisation would have to apply the high-level criteria
listed, and any more detailed criteria prescribed by regulations under new clause 60E(c).

New clause 60E(d) would provide for the making of regulations prescribing the matters that would disqualify a person from being appointed as an FDR provider. New clause 60A sets out the duties of an FDR provider.

As introduced the bill proposes that providers, after FDR, give to each party a form setting out the matters on which resolution was and was not reached. We recommend inserting new clause 60(B)(6)(b) to require these forms to also include the FDR provider’s opinion as to whether a settlement conference would be likely to help settle matters, and whether either of the parties would need legal representation at such a conference. Most us believe that the FDR provider would be well placed as a result of the time they had spent with the parties to form a view on the capacity and ability of parties to self-represent.

We also recommend amending clause 9 of the bill as introduced to insert new section 46CB(2) of the Care of Children Act, so that an FDR form would be valid for one year.

**Referral to FDR**

We also recommend amending clause 9 to insert new section 46D into the Care of Children Act to allow a Judge to refer a case to FDR and to refer parties back to FDR. This reinforces the focus on out of court processes to resolve disputes, and would reduce any incentives that might exist for parties to refuse to participate in FDR.

**Lawyers acting for parties**

Clause 5 of the bill as introduced would insert a new section 7A into the Care of Children Act 2004 to allow a lawyer to act for a party in a proceeding if the application was made without notice, relates to international child abduction, the party is the Crown, a Judge has directed that the case proceed to a defended hearing, or the lawyer is lawyer for a child who is party to the proceedings. The changes proposed in the bill to the role of lawyers for parties have attracted expressions of concern that lawyers would no longer be involved in the initial stages of proceedings under the Care of Children Act.

We consider that lawyers can assist in settlement conferences by mitigating power imbalances, representing parties incapable of represent-
ing themselves, and ultimately improving the chances of resolving a dispute. We therefore recommend amending clause 5 of the bill as introduced to insert new paragraphs 7A(5A) and 7A(5B), which would allow a lawyer to act for a party at a settlement conference if a Judge considered that at least one of the parties needed representation, and that legal representation would be likely to facilitate settlement of the issues in dispute. A lawyer could also act for a party to a proceeding if their application met the criteria set out in new paragraph 7A(4).

Concurrent proceedings
The provisions in the bill concerning legal representation for parties relate to Care of Children Act proceedings only. We recommend further amending clause 5 of the bill to insert new subparagraph 7A(4)(b)(ii) into the Care of Children Act to allow a lawyer to act for a party if the Judge has directed that the application under that Act be heard concurrently with an application filed under any other Act. We recognise it would make sense for a lawyer to act on all proceedings that have been directed to be heard concurrently.

Conciliation
We also recommend amending clause 5 by inserting new section 7B into the Care of Children Act 2004, which would place an obligation on lawyers to promote conciliation in cases proceeding under sections 46L, 48, or 56 of that Act by ensuring that the person concerned was aware of the need for the best interests and welfare of children to be the paramount consideration, the mechanisms for assisting resolution of family disputes, the steps for commencing and pursuing the proceedings in court, and the types of directions and orders the court may make.

We consider that the duty of lawyers to consider the best interests and welfare of the child and the requirement to promote conciliation in the interests of the child is an overarching one that should be reflected in the bill. We therefore recommend that clause 81B also be included to insert new section 9A of the Family Courts Act to make it clear that a lawyer acting for a party in any proceedings in the Family Court must, so far as possible, promote conciliation between parties.
Definition of settlement conference
We recommend amending clause 9 of the bill by inserting new sections 46J and 46K into the Care of Children Act to provide for settlement conferences to be convened by a Judge at any time before a proceeding is set down for a hearing. The purpose of settlement conferences is to ascertain whether the issues disputed by the parties can be settled and, if so, settling them by consent orders.

Contribution to costs of lawyers appointed to assist the court
Most of us consider it should be a default requirement that parties contribute to the cost of a lawyer to assist the court under the Care of Children Act, the Family Proceedings Act, and the Child Support Act, unless this would cause serious hardship. Most of us therefore recommend amending each of these Acts to include provisions that mirror those in the Legal Assistance Amendment Bill that require parties to contribute to the costs of lawyers appointed to represent children. The proportion of costs to be paid by parties would be prescribed by regulation; we were advised it is likely to be set at one third of the total cost.

Lawyer for the child
Most of us recommend amending the bill as introduced to amend new section 9B(1)(d) of the Family Courts Act (via new clause 81B) to make it clear that a lawyer for the child would be required to advise a child or young person on the merits of an appeal only to the extent that it was appropriate given the level of understanding of that child or young person.
We also recommend amending new section 9B(2) to make it clear that a lawyer should have regard to a child’s age and maturity in ascertaining his or her views on matters in relation to the proceedings.

Counselling
The bill would repeal existing provisions for Family Court counselling under the Family Proceedings Act and Care of Children Act, and replace them with a new scheme involving mandatory parenting information programmes, FDR, and Judge-directed counselling. Most of us believe that counselling may help parties to prepare for
FDR, but rather than providing for this counselling in the bill, we recommend it be considered as an operational matter.

We recommend amending proposed section 46E(4) of the Care of Children Act (contained in clause 9 of the bill as introduced) to clarify that a Judge may direct parties to attend counselling when making a final order. We consider that taxpayer-funded counselling should still be available for cases under the Care of Children Act, before or after final orders are made, if a Judge considers counselling to be the best way to help parties with their parenting relationship and the implementation of any decision of the court.

We also recommend amending clause 29 of the bill to enable regulations to be made prescribing the criteria to be applied when approving counselling organisations and the qualifications and competency requirements for appointment as a counsellor.

**Parenting information programmes**

The bill as introduced would require applicants for a parenting order to have undertaken a parenting information programme within the preceding two years of filing their application. However, this would not apply if they had been unable to participate effectively in a programme, or the application was made without notice. The applicant must state in their parenting order application whether they have attended a parenting information programme, or give a reason why they have not done so.

We recommend amending clause 9 of the bill to insert new section 46I into the Care of Children Act, allowing a Judge to direct parties to attend a parenting information programme, unless they have done so within the preceding two years. We consider that it could be useful for a Judge to be able to direct a person to attend a parenting information programme if they would not otherwise be required to attend or if they last attended a parenting information programme more than two years ago.

We also recommend amending the bill to make provision in section 8 of the Care of Children Act for parenting information programmes to be specified in regulations made under the Act.
Interim orders
We recommend amending clause 12 of the bill to move proposed new sections 49(2) and 49(3) of the Care of Children Act into new section 49A, and to insert a new section 49(2) requiring that before making an interim order a Judge must be satisfied that it would serve the welfare and best interests of the child better than a final order would. It is generally agreed that children need finality and certainty about arrangements for their care, and this change would ensure that their needs remained paramount in decisions on the making of interim orders.

Short reports
Short reports are crucial for alerting the court to potential risks to a child’s safety, particularly when there are allegations of violence and abuse. They are generally provided within a day. We recommend the insertion of new clause 21A to insert new section 131A in the Care of Children Act to allow a Registrar to request brief written advice from a social worker on the nature and extent of any involvement Child, Youth and Family has had with the parties. We recommend replacing section 133(5)(b) of the Care of Children Act (inserted by clause 22 of the bill) to allow the court to obtain a short-form psychological report on any of the matters specified in the definition of psychological report in section 133(1) of the Act. Short-form reports would be timely and less expensive than standard reports. We also recommend amending clause 22 of the bill to insert new section 133(11A), to make it clear that a party requesting a second opinion must pay for it.

Cases involving allegations of violence
The bill as introduced seeks to repeal sections 58 to 62 of the Care of Children Act 2004 and rely instead on sections 4 and 5 to protect the welfare and best interests of the child in all proceedings under the Act as well as in any other proceedings involving the guardianship, day-to-day care of, or contact with a child. The provisions in sections 58 to 62 require the court to establish whether the violence is proven, and if it is, to determine whether the child will be safe in the care of, or having contact with, the violent person. The existing provisions are concerned only with physical and sexual violence. Psychological
violence is excluded unless the applicant has a protection order under the Domestic Violence Act 1995 on that ground; and the provisions do not distinguish levels or contexts of violence. The process is also considered to result in significant delay.

Clause 4 of the bill states that the welfare and best interests of the child must be paramount, and sets out the principles that must be taken into account by the court in determining a child’s best interests. Proposed section 5(a) states that a child’s safety must be protected and a child must be protected from all forms of violence, as defined in the Domestic Violence Act, from any person. This would allow a broader inquiry into any situation that might pose a risk to a child’s safety than the current provisions. We consider that sections 4 and 5 provide strong protection for children.

However, we have taken into account concern that removal of the current provisions risks reducing the protections for children; so we recommend an amendment to clause 4 of the bill, to insert section 5A in the Act. This new section would mean that when the court is considering the safety of a child in relation to an application for a guardianship or parenting order, and a final protection order made under section 14 of the Domestic Violence Act is or has been in force against any of the parties to the application, then it must have regard to certain matters listed in section 5A(2).

Clause 4 of the bill as introduced proposes that section 4(2)(b) of the Care of Children Act specify that the conduct of persons wishing to have a role in the upbringing of the child may be taken into account in considering the child’s welfare and best interests if that conduct was causing unnecessary delays in decision-making or was obstructive to any other person seeking to have a role in the upbringing of the child. We recommend amending proposed section 4(2)(b) of the Act to allow the court to take into account the conduct of a person seeking to be involved in the upbringing of the child to the extent this conduct is relevant to the child’s welfare and best interests.

**Domestic violence**

The bill proposes changes to the Domestic Violence Act 1995 to ensure that existing provisions for the safety of children and other vulnerable people affected by domestic violence can be implemented safely and practically.
We recommend deleting clauses 38 to 50 of the bill as introduced and introducing a new clause 52A to insert new Part 2A into the Domestic Violence Act to set out the provisions relating to the delivery of safety programmes for protected persons and non-violence programmes for respondents and associated respondents. It is intended that practice guidelines and other operational matters would be developed with providers to support their practice, and these guidelines would be made available to the public.

We recommend that the interpretation in new section 51A now refer to “safety programme” rather than the “domestic violence support programme” in the bill as introduced. The proposed change in the term reflects the intended emphasis on the improvement of safety of protected persons in programme content. New section 51A would also change “programme provider” to “service provider”, recognising that providers undertake an assessment as well as delivering a programme. We also recommend that the definition of assessment in new section 51A include a service provider’s determination of the extent to which the respondent poses a safety risk for any person.

We recommend including new sub-section 51C(3) in new Part 2A of the Domestic Violence Act to allow persons who are under a protection order to request provision of a safety programme at any time. New section 51C(5) would allow a Registrar to determine the number of safety programme sessions following discussion with the service provider. We consider this flexibility would address the individual safety needs of each protected person and improve attendance at such programmes.

We recommend including new section 51L in the Domestic Violence Act, providing for the service provider and the respondent to settle the terms of attendance at a non-violence programme. We recommend, however, that new section 51M be included, to require the service provider to notify the Registrar if things are not going to plan, and the Registrar to bring the matter to the attention of a Judge if necessary. We consider this would provide increased opportunity for review where the respondent might have difficulty meeting the terms of the programme.

We recommend including new section 51I, which would require the service provider to notify the Registrar without delay if safety concerns are identified after undertaking an assessment of the respondent, or during the provision of a non-violence programme to a re-
spondent. New subsection 51I(3) would then require the Registrar, on receiving a safety concern notification under 51I(2), to forward a copy of the notification to a Judge and advise the protected person of the service provider’s concerns. This would ensure that a protected person was notified promptly if there were any perceived risk to their safety. New section 51I(4) would allow a Judge, on receiving a copy of a notification, to make any orders or directions appropriate to the circumstances.

We also recommend the inclusion of new section 51R requiring the service provider, on a respondent’s completion of a non-violence programme, to promptly provide the Registrar with a report stating whether the respondent has achieved the non-violence programme objectives and advising of any concerns the service provider has about the safety of a protected person. Section 51R would also require the Registrar to forward the report to a Judge and to notify the protected person of any safety concerns raised in that report. New section 51R(3) would also enable a Judge to make any orders or directions he or she thinks fit following receipt of the report.

**Approval of service providers**
Within proposed new Part 2A, we recommend including sub-section 51B(1) to provide for the Secretary for Justice to grant, suspend, or cancel an approval of a person or organisation as a service provider. We also recommend amending clause 54 of the bill as introduced to replace section 127(a) to (e) of the Domestic Violence Act with a regulation-making power providing that regulations may be made prescribing the approval process to be followed by a person or an organisation seeking an approval, and the criteria to be applied by the Secretary for Justice when deciding whether to grant, suspend, or cancel an approval. This regime would replace the current Approvals Panel, which is expensive to administer and prevents the Ministry of Justice collaborating with other government funders of service providers. It would also streamline the process for providers.

**Regulations Review Committee consideration**
On 14 March 2013 the Regulations Review Committee considered the Family Court Proceedings Reform Bill, as provided for by Standing Order 314(3). The committee advised us that the bill as intro-
duced contained a number of empowering provisions that would allow regulations made under them to include matters of substantial policy that would more appropriately be included in primary legislation.

The committee raised concern about family dispute resolution, and particularly the fact that the bill does not specify the principles, criteria, purpose, operational details, selection of providers, and the duration and scope of the process. It also highlighted a lack of detail on the appointment and payment of lawyers for children and lawyers to assist the court, and specialist report writers.

We have considered the matters drawn to our attention by the Regulations Review Committee and discuss our recommended amendments in the commentary above.

**Petition of Noel Christopher Roderick Perry and 4,470 others**

On 14 March 2013, Noel Christopher Roderick Perry and 4,470 others requested that the House “take action against imposing certain reforms in the New Zealand Family Court”. They asked that Parliament

Not implement changes to the Family Court system that will place restrictions on the right for people to have a lawyer represent them in proceedings involving the care of children or any proceedings in the Family Court.

Not implement changes to the Family Court system that will restrict the ability of a Judge to appoint a lawyer for the child in proceedings, even proceedings that are not regarded as serious cases.

Not reduce the availability of legal aid in proceedings in the Family Court including those cases involving the care of children.

Not to impose a fee for parties to enter the Family Dispute Resolution process to ensure that the process is not inaccessible and will not prevent matters resolving in a timely and child focussed way.

We have considered the petition alongside the Family Court Proceedings Reform Bill, as it concerns the reforms that the bill proposes to the family justice system. We have reported the petition to the House separately.
Labour Party minority view

The establishment more than 30 years ago of a specialist Family Court, with its jurisdiction covering care of children, domestic violence and property matters, with a high degree of state assistance provided to the parties, signalled an important policy principle: the state has an interest in effective and just resolution of family disputes.

It is natural that after 30 years of operation, with its jurisdiction extended and adjusted in that time, the court should be subject to review and reform. It is widely known that the court suffers from delays which in turn can prevent effective resolution of disputes and can shift the focus away from the needs of children and vulnerable persons when their needs should be paramount.

Reasons for delays in the court were not fully explored in the evidence and advice received by the committee, but anecdotally they appear to include a greater insistence on issues in dispute going before a Judge for decision, elevated expectations by one or more parties of what they can achieve, more complex family arrangements being subject to court orders (for example the involvement of grandparents) and an increasing workload being carried by a static number of professionals advising the court and parties. Delays in the court almost certainly are one factor behind a rapid increase in the cost to the state of family dispute resolution.

The review and reform process which preceded this bill included an admirable level of consultation with interested stakeholders. This entailed a day-long workshop hosted by the then Minister in 2011, the release of a consultation paper in September 2011 which elicited over 200 submissions, and the establishment of an external reference group. The external reference group comprised court professionals, lawyers, a Judge and academics.

In the end, the reform to the court has focused on care of children disputes, which comprise 39 per cent of the court’s work. But the main reforms in the bill are not reflective of the results of the consultative process.

The principal reforms in the bill are:

- Limiting access to court-funded counselling at the time of separation. Limited counselling is only available after proceedings have been commenced (clause 9).
• Limiting the role of lawyers in the processes of the court and, therefore, limiting access to legal aid where that is presently available to a party. Legal aid will be available to a party entitled to it to a limited degree prior to (but not during) any mandated dispute resolution process and if the dispute or any part of it goes before a Judge (clause 5).

• Establishment of a mandatory (except where domestic violence is alleged) private, non-judicial process, called family dispute resolution (FDR), for resolving disputes which will require parties to participate in a mediation or facilitation process without representation. The parties are to meet the cost of this process which official advice suggests will be around $900, although no advice has been provided about how much mediation/facilitation time this might purchase and whether it is expected to be sufficient for most disputes (clause 9). The court will have the power to order parties to undertake further FDR if the court considers it may benefit the parties, and this may entail more expense for the parties.

• Limiting the role of counsel for the child by raising the threshold for appointment by the court. In order to make an appointment, the bill requires the court to have “concerns for the safety or well-being of the child and consider an appointment necessary” (clause 5). Children will not be separately represented in the FDR process where that takes place. The official advice is that parents are expected to represent the best interests of the child in that process.

• Part of the costs of a lawyer appointed to represent a child or to assist the court (usually where one or neither party to the proceeding is represented) may be passed onto one or both parties to the proceeding (clause 21).

• Principles relating to the child’s welfare and best interests to include that a child’s care, development and upbringing should entail ongoing consultation and co-operation between parents and/or guardians and a child should continue to have a relationship with both parents (clause 4).

We are opposed to the bill.

We reject the ideological underpinning of the reform, which appears to be that as family disputes are private matters, there is no role for
the state in assisting people to resolve those disputes. We believe that there is a very real public interest in the peaceful resolution of disputes, whether or not they are of a personal nature. This bill is a departure from what is well settled practice. The New Zealand legal system has always reflected the need to provide specialised support to assist people deal with the breakdown in a range of relationships, including employment relationships; and family relationships are no different.

The Family Proceedings Act 1980 requires the court to promote reconciliation (that is, restoring parties’ intimate relationship) or, if that is not possible, conciliation (that is, reaching an amicable agreement). The regulatory impact statement states that the court fulfils this obligation by providing court-funded counselling. It then goes on to say that counselling costs the State approximately $9.7 million per year.

Instead of identifying the public benefit in promoting reconciliation and conciliation, the RIS states that this may not be the best use of the court’s limited resources. “The primary expertise of Judges is adjudicating disputes. A reconciliation and conciliation function can contribute to delay and may be better dealt with in the community.” This makes it clear that the primary interest is the cost, rather than the outcome. The private nature of the dispute is used as a convenient smokescreen for shifting the cost of a tried and true method for achieving what is an enormous public benefit, as well as risking losing those successful reconciliations or conciliated results.

When children are involved then the public interest is even clearer. Children, unfortunately, cannot always rely on their parents, especially in the throes of a relationship breakdown, to keep their interests as a paramount consideration, which is the foundation of the Care of Children Act 2004.

We do not accept that a process in which separating parents are required to resolve their disputes without representation and with only a mediator/facilitator to assist can realistically or practically be relied on to deliver robust and enduring settlements. Moreover, we do not think that parents going through the stress and distress of separation are, in most cases, able to objectively consider the best interests of their children. We think that independent assistance to the child is necessary for the benefit of the child and for the parents.
The overwhelming evidence received by the committee was that counsel for the child played an invaluable role, often mediating between the parents’ positions and interests. One submitter, a father, averred that counsel for the child was the only objective advice in the process and was crucial to achieving an acceptable outcome in his family’s case.

The external reference group involved in the consultation processes before the bill was introduced made its own submission to the committee largely out of concern that the principal reforms in the bill did not reflect their advice and work on the reforms. They stated in their submission:

Most Family Court cases involve high stress to parties and for a wide variety of reasons parties struggle to advocate for themselves in the legal process. The risk to vulnerable adults and children from a limited right to legal representation will be significant because in the absence of legal representation:

(a) It will be more difficult to identify the “hidden” risks in what may appear to otherwise be a straightforward case;
(b) Cases will be more, rather than less, adversarial;
(c) It will be more difficult to focus on the relevant factual and legal issues in cases and where there is risk for adults and children;
(d) The power imbalance between parties which permeate cases under this Act is more entrenched if parties do not have legal representation. (Antony Mahon and others, “Response of Members of Expert Reference Group to Cabinet Policy Announcements for Reform of the Family Court”, paragraph 3.7)

Even though the Minister of Justice announced during the committee’s consideration of this bill that more provision for access to legal advice would be made than had earlier been proposed, we do not think the bill in its present form goes far enough to ensure parties will be properly advised and supported.

Since the Minister’s announcement there has been a further change in the landscape, with the Court of Appeal decision on 24 May 2013 in Criminal Bar Association v. Attorney General [2013] NZCA 176 on the operation of the legal aid system. Even though that decision concerned legal aid for criminal cases, it will have implications for legal aid for family cases too, and so the claimed fiscal benefits of the Family Court reforms are now uncertain.
We do not think that the denial of independent representation of the child in the FDR process or the higher threshold for appointment of counsel for the child satisfies New Zealand’s obligations in the United National Convention on the Rights of the Child (UNCRoC), specifically Article 12, which says:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

We do not see how the FDR process, which excludes the voice of affected children, can be seen as enabling a child to express their views and ensure they are given due weight. We do not think that excluding the child’s voice in a process that is an informal substitute for a purely judicial proceeding is consistent with the words and spirit of paragraph 2 of Article 12 of UNCRoC.

It is clear that the overriding motivation behind this bill is fiscal. It is the wish to reduce the costs to the state of family disputation. In our view, the measures contained in this bill go far beyond a sensible adjustment to reduce delay in the present system and will more likely result in a transfer of the cost of family conflict and poorly resolved family disputes to other parts of government.

**Green Party minority view**

It has been proposed that this bill is necessary to effect changes to the Family Court, as it has not worked as well for some children and their families as it should have for many years.

While after some thirty years of operation it is evident that improvements could well be made to the court, we do not see in this bill a positive or workable set of provisions that will serve the interests of those who seek remedy through the court.

The intention to try and reduce the number of cases going to court, to divert separating couples into some form of dispute resolution, is not without merit. What has been largely overlooked however is that
a significant majority of couples do resolve their issues informally, without recourse to the court, and that those who do become engaged in legal proceedings are already less amenable to a negotiated outcome.

The select committee heard from a large number of submitters, including lawyers, counsellors, and other professionals with experience in Family Court matters, and many of them expressed serious concern about the proposed changes. These concerns included the limits being placed on access to court-funded counselling; the reduced role for legal representation for parties to disputes; the expectation that parties will be obliged to pay quite substantial amounts of money at a time when many are already financially stressed; and concerns that the wellbeing of children and vulnerable parents would not be adequately protected.

Some useful amendments have been made to the bill in the course of the select committee process, but we still have no confidence that the reforms will not leave some people in a much worse position than might otherwise be achieved.

There is no evidence that the suite of services required to implement the bill will be available to all those who might need those services—barriers will include location, lack of access to information about what (if any) services are available, the complexity of processes and documents, and affordability.

We are not convinced that victims of domestic violence will be identified at an early stage in every case, and so victims may well find themselves obliged to enter a resolution process with their abusers. The Green Party does not support this bill, and recommends that it proceed no further.
Appendix

Committee process
The Family Court Proceedings Reform Bill was referred to the committee on 4 December 2012. The closing date for submissions was 13 February 2013. We received and considered 383 submissions from interested groups and individuals. We heard 217 submissions, which included holding hearings in Christchurch and Auckland.
We received advice from the Ministry of Justice. The Regulations Review Committee reported to the committee on the powers contained in clauses 60, 64, and 66.

Committee membership
Scott Simpson (Chairperson)
Hon Lianne Dalziel
Paul Foster-Bell
Julie Anne Genter
Andrew Little
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Hon Kate Wilkinson

David Clendon replaced Julie Anne Genter for this item of business.
The Justice and Electoral Committee has considered Petition 2011/53 of Noel Christopher Roderick Perry and 4,740 others. The petition requests that “the House take action against imposing certain reforms in the New Zealand Family Court”. The petitioners ask that Parliament

Not implement changes to the Family Court system that will place restrictions on the right for people to have a lawyer represent them in proceedings involving the care of children or any proceedings in the Family Court.

Not implement changes to the Family Court system that will restrict the ability of a Judge to appoint a lawyer for the child in proceedings, even proceedings that are not regarded as serious cases.

Not reduce the availability of legal aid in proceedings in the Family Court including those cases involving the care of children.

Not to impose a fee for parties to enter the family dispute resolution process to ensure that the process is not inaccessible and will not prevent matters resolving in a timely and child focused way.

The committee has no matters to bring to the attention of the House.

Scott Simpson
Chairperson
Contents

Recommendation 2
Introduction 2
Background to District Court changes 2
Issues raised in submissions 2
Comment 3
Appendix 4
Recommendation
The Justice and Electoral Committee has considered Petition 2011/44 of Ken Cashin, and recommends that the House take note of its report.

Introduction
We have considered Petition 2011/44 of Ken Cashin requesting

That the House of Representatives note that 1281 people have signed a petition calling for the withdrawal of the proposal to reduce services at Dargaville Courthouse, and that the House support the aim of the petition.

We have received a submission from the petitioner in support of the petition, and a response from the Ministry of Justice to the petition and the matters raised by the petitioner in his submission.

Background to District Court Changes
In early 2012 the Ministry of Justice conducted a review of the use of small courts, considering the need to modernise the delivery of court services, and a reduction in workloads of some courts. On 3 October 2012, the Minister for Courts announced a series of Cabinet decisions about changes to services at District Courts. As a result, Dargaville District Court became a hearing court, serviced from the Whangarei District Court, on 22 March 2013.

Issues raised in submissions
The petitioner’s submission proposes that full courthouse services should be retained. His concerns centre on a belief that the changes to Dargaville court will require people from the Dargaville and wider Kaipara communities to travel to Whangarei for court hearings. He is concerned that this will impose costs on people on low incomes, and that there has been a lack of consultation. He argues that the change will result in delays in the system and an increase in the issuing of warrants for non-attendance at court. He submits that the change will restrict public access to justice.

The Ministry of Justice has made it clear that court users do not need to travel. Judges and court staff located in Whangarei now travel to Dargaville to conduct hearings. The Ministry told us that the type and frequency of court sittings at Dargaville has not changed. What has changed is that Dargaville court will be open only when court sittings are scheduled. This means that counter services will not be available on non-hearing days. The Ministry appreciates that this may inconvenience some people, but there are other ways to access court services, including the internet, and the phone lines 0800 COURTS and 0800 4 FINES. To help people adapt to the changes, the Dargaville courthouse’s public counter will remain open for enquiries for six months following the change.

The Ministry of Justice has advised that the relatively small change to services meant that community consultation was not considered necessary. The Ministry’s view is that the new operating model is flexible enough to be adapted to fit local needs, and it is working with
lawyers and justice-sector agencies in this regard. The Police and the Department of Corrections were consulted at national and local levels about the change, and both organisations supported the proposal.

Since the implementation of this change there have been no workload issues for the staff at Whangarei District Court who undertake Dargaville court work. As hearings continue to be scheduled at Dargaville court, an increase in warrants for non-attendance at court is not expected. The Ministry does not consider that public access to justice will be restricted by the change.

Comment

While we appreciate that counter services will be unavailable on non-hearing days, it is unlikely that people will be inconvenienced as there are sufficient other ways to access court services to meet the needs of local court users. We are satisfied that the hearing court model will retain court services in Dargaville, where demand for court services has been decreasing, while making better use of resources in the wider region.
Appendix

Committee procedure
The petition was referred to us on 11 December 2012. We received written submissions from the petitioner and the Ministry of Justice.

Committee members
Scott Simpson (Chairperson)
Hon Lianne Dalziel
Paul Foster-Bell
Julie Anne Genter
Andrew Little
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Hon Kate Wilkinson
Joint Family Homes Repeal Bill

2—1

Report of the Justice and Electoral Committee

Contents
Recommendation 2
Introduction 2
Background 2
Existing joint family home registrations 2
Transitional issues 3
Conclusion 3
Appendix 4
Joint Family Homes Repeal Bill

Recommendation
The Justice and Electoral Committee has examined the Joint Family Homes Repeal Bill and recommends that it not be passed.

Introduction
The Joint Family Homes Repeal Bill, a member’s bill in the name of Simon O’Connor, would repeal the Joint Family Homes Act 1964, meaning that existing joint family home registrations under the Act would not be preserved.

Under the Joint Family Homes Act, married couples can register their homes as joint family homes, providing protection against unsecured creditors. The amount protected by the Act is the lesser of the equity in the home, or the specified sum of $103,000. A joint family home cannot be sold to meet the demands of unsecured creditors without the permission of the High Court. Secured creditors are not affected by the Act.

Background
The Joint Family Homes Repeal Bill adopts the recommendation of a Law Commission report of December 2001, *The Future of the Joint Family Homes Act*, that the Act be repealed and not replaced for the following reasons:

- The legislation is discriminatory as it applies only to married couples.
- Many of the original advantages of joint family home registrations have disappeared with the abolition of death and stamp duties.
- The protection against unsecured creditors is of limited practical value, as there is usually little equity left over for home-owners after secured creditors are paid.
- The specified sum of $103,000 is unfair as it takes no account of regional differences in house prices.
- The current low rate of new registrations, 151 in 2011 (from a peak of 30,000 in 1974) suggests little support for the scheme.
- There are other options for protecting a home against creditors, such as trusts.
- Automatic protection is offered by the Property (Relationships) Act 1976 for non-debtor spouses who do not own the property.

Existing joint family home registrations
The three submissions we received all support repealing the Joint Family Homes Act. However, we consider it important that existing joint family home registrations be protected. If the Act were repealed and existing registrations not preserved, approximately 36,000 couples who have organised their affairs on the basis of this legislation would lose the protection offered against unsecured creditors.

One solution would be to allow current registrations to remain in force while not allowing any new registrations to be made. We have carefully considered the advantages and
disadvantages of not preserving, and of grandparenting, the existing registrations. Our preferred option would be to grandparent existing registrations. However, we were advised that to do so would be out of the scope of this repeal bill.

**Grandparenting existing registrations**

In considering whether to grandparent existing registrations we heard that a major advantage of not grandparenting existing registrations by repealing the Joint Family Homes Act would be simplification of the statute book. However, we understand that even if this action were taken, complicated provisions would be needed to address transitional issues. A second important advantage would be the removal of legislation that discriminates against couples in de-facto or civil union relationships, and people who are single.

On the other hand, the bill would remove existing rights and is therefore inconsistent with the common-law principle that legislation should operate prospectively and not affect rights and duties established in the past. People should be able to rely on the current state of the law when organising their affairs.

We heard also that it may be difficult for couples to set up suitable alternative protection from unsecured creditors. For example, the protected interest regime under the Property (Relationships) Act 1976 exists for the protection of the non-owner of the property, providing no protection for the owner. To set up a trust would cost an estimated $3,000.

We understand that if existing joint family home registrations are not grandparented there would be a number of transitional difficulties, including the practicalities of updating the land title register, informing people of the change without up-to-date postal addresses, and the costs of arranging alternative protection. The bill would also need to contain complicated provisions to address transitional issues that might arise. This would not lead to a simplification of the statute book in the medium term.

**Transitional issues**

We would like to see existing joint family home registrations preserved. To allow this, many of the Act’s provisions would need to remain in force, with additional provisions to address transitional issues. We understand that the transitional provisions needed are complex and might take some time to draft. If existing registrations are retained, it will not be possible to completely repeal the Act until there are no longer any registered joint family homes. This could take 50 years or more.

**Conclusion**

We consider that the adverse effect on those who would lose rights as a result of the repeal of the Joint Family Homes Act without preserving existing registrations would not be easily mitigated. Failure to gain effective alternative protection against unsecured creditors could even mean losing a family home. At the same time, we are also very aware that the Act is discriminatory. We think that no new joint family home registrations should be made, but existing registrations should be preserved. However, that is out of scope of this repeal bill.

We recommend that the bill not be passed, but we acknowledge the intent of the sponsor of the bill, and recommend that the Government consider a bill to prevent new registrations under the Joint Family Homes Act.
Appendix

Committee procedure
The Joint Family Homes Repeal Bill was referred to the committee on 25 July 2012. The closing date for submissions was 7 September 2012. The committee received three submissions from interested groups and individuals. Advice was received from the Ministry of Justice.

Committee members
Scott Simpson, (Chairperson)
Hon Lianne Dalziel
Paul Foster-Bell
Julie Anne Genter
Andrew Little
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Hon Kate Wilkinson
Royal Succession Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Royal Succession Bill and recommends that it be passed with the amendments shown.

Introduction
The Royal Succession Bill seeks to modernise historic Royal succession rules by making three specific changes to provide for

• gender-neutral succession, allowing the eldest child to succeed to the throne regardless of their sex, so that a younger son would no longer precede an elder daughter in the line of succession

• succession to and possession of the Crown by a person who marries or has married a Roman Catholic, removing the current exclusions

• requiring only the first six in line to the throne to seek the Sovereign’s permission to marry (in order to remain in the line of succession to the Crown). Currently all descendants of King
George II require the Sovereign’s consent to marry (in order to ensure that their marriage is valid).

The bill has a narrow scope. The changes to Royal succession have been agreed by the 16 Realms of which Her Majesty the Queen is Sovereign. Any substantive changes to the 16 Realms’ agreement proposed by New Zealand or any other Realm through their legislative vehicles, would need to be agreed by all of the Realms.

Each Realm is implementing the proposals in a form appropriate to their constitution, while ensuring the substance of the changes is consistent with the approach taken in the United Kingdom. The Realms agreed that the United Kingdom legislation would be drafted first, and introduced once agreed by the Realms. The resulting Succession to the Crown Act 2013 (UK) received Royal Assent on 25 April 2013.

Changes to the United Kingdom succession laws do not automatically apply to New Zealand, so the Royal Succession Bill is necessary.

**Commencement**

We recommend a minor amendment to the time specified in clauses 3(b) and 5(1) for the gender-neutral succession to take effect from “1 pm on 29 October 2011 (New Zealand daylight time)” to “12 noon on 29 October 2011 (New Zealand daylight time)”. This amendment is necessary to take account of British Summer Time.
Appendix

Committee process
The Royal Succession Bill was referred to the committee on 2 July 2013. The closing date for submissions was 23 August 2013. We received seven submissions from interested groups and individuals, and heard four of these. We received advice from the Ministry of Justice.

Committee membership
Scott Simpson (Chairperson)
Paul Foster-Bell
Raymond Huo
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Hon Maryan Street
Holly Walker
Hon Kate Wilkinson
Dr Kennedy Graham replaced Holly Walker for this item of business.
Electoral Amendment Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation
The Justice and Electoral Committee has examined the Electoral Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The Electoral Amendment Bill seeks to make amendments to the Electoral Act 1993 to improve services to voters, candidates and parties in time for the 2014 general election. The amendments would allow more use of technology in the conduct of the election.

On 30 April 2013, following its Inquiry into the 2011 General Election, the Justice and Electoral Committee presented a report to the House with 32 recommendations. This bill seeks to implement 11 of the committee’s recommendations requiring legislative change, which can be effected in time for the 2014 general election.

This commentary covers the main amendments we recommend to the bill; it does not cover minor or technical amendments.
Change of address
We recommend amending clause 22 to insert new sections 89B(7) and 89C(14A), so that a registered elector (a voter) who gave late notice to a Registrar of Electors of a change in their address would not be liable to be prosecuted for an earlier failure to do so. This would be consistent with section 82(6) concerning voter registration, and act as an incentive for electors to update their registration details.

Electioneering
We recommend the removal of clauses 35 and 36, which are to amend sections 197 and 198, to preserve the status quo, allowing members of the public to wear or display on a vehicle, ribbons, streamers, rosettes, or similar items in party colours on election day. The proposed provisions would allow only scrutineers to wear party rosettes inside polling places. We recognise that the general prohibition on electioneering on polling day has long been part of New Zealand’s electoral system, with the aim of allowing people to vote without influence. However, we are concerned about the workability and enforceability of the proposed changes and specifically the removal of offending items. In our view issues about electioneering on election day would be more appropriately addressed in a specific review of election day rules.

Reallocation of list seats
Clause 51 inserts new section 243A, which would require the High Court to direct the Electoral Commission to recalculate and amend the allocation of list seats following a successful electorate seat petition. To avoid confusion between new section 243A and section 258, which gives the Court of Appeal the power to determine election petitions regarding list seat allocation, we recommend that new section 243A(2) be amended to set out more clearly the orders that may be made by the High Court.

Party donations
Section 210C requires a party secretary to disclose within 10 working days of receipt any donation exceeding $30,000 received from the same donor. Where the donation comprises contributions, there
is currently no requirement to disclose this fact or the identity of the contributors. We recommend inserting new clause 48A to amend section 210C of the Act, to require that, in respect of every contribution to a donation made by the same contributor that exceeds $30,000, the name and address of the contributor, and the amount of the contribution be disclosed. This would make section 210C more consistent with section 210, which requires the disclosure of contributors in annual returns of party donations. Addressing this inconsistency would improve transparency about large contributions.

**Enrolment confirmation cards**

We recommend deleting clauses 24 to 28, 31 to 34, 37, and 38, which would expand the use of EasyVote cards, in favour of the existing law. We consider that the proposed provision for a new process known operationally as EasyVote Express would in effect lower the threshold for casting a vote, increasing the potential for fraud and harming the integrity of the voting process. The EasyVote card is an administrative tool; we consider that it should not be used as a record that a voting paper has been issued.

**Confirmation of identity**

We recommend the insertion of new clause 24 to amend section 167, to require each voter to verbally give or verbally confirm their name when being issued voting papers. If a person could not do this because they did not understand English or have a physical disability, they could use gestures or the assistance of a person accompanying them. This provision would address our concern about people not explicitly confirming their identity before voting, particularly those with an EasyVote card, who are not currently required to identify themselves verbally.
Appendix

Committee process
The Electoral Amendment Bill was referred to the committee on 2 July 2013. The closing date for submissions was 23 August 2013. We received and considered 14 submissions from interested groups and individuals, and heard three of these. We received advice from the Ministry of Justice and the Electoral Commission.

Committee membership
Scott Simpson (Chairperson)
Paul Foster-Bell
Raymond Huo
Alfred Ngaro
Denis O’Rourke
Katrina Shanks
Hon Maryan Street
Holly Walker
Hon Kate Wilkinson
Holly Walker was replaced by David Clendon for this item of business.
Prohibition of Gang Insignia in Government Premises Bill

Member’s Bill

As reported from the Law and Order Committee

Commentary

Recommendation
The Law and Order Committee has examined the Prohibition of Gang Insignia in Government Premises Bill and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to restrict the display of gang insignia in the premises of departments of the public service, statutory entities, and local authorities in New Zealand. It would make the display of gang insignia on government premises an offence, and empower the police to arrest any person who contravenes this prohibition and seize the offending insignia.

Purpose
We recommend amending clause 3 to add police and school premises to the areas in which displaying gang insignia would be prohibited. The interpretation of the “public service” in the State Sector Act 1988
does not include the New Zealand Police or any schools, so they are not generally considered to be public service premises. We believe that the intent of the bill is to include such places.

**Interpretation**

In clause 4, the interpretation of “gang” is limited to the gangs listed or any included by regulation. Some gangs could thus avoid coverage by the legislation by changing their names slightly. We recommend amending clause 4 to specify that a gang is subject to the prohibition if its name is substantially similar to one listed. We also consider that 17 other gangs warrant inclusion, and recommend adding them to the list.

We recommend adding the suffix “MC”, denoting motorcycle club, to the majority of gang names listed in clause 4 to distinguish them from other similarly named groups.

We recommend amending the interpretation of “government premises” to include police and school premises, reflecting the intention of the bill. We also recommend adding an interpretation of “Police” and amending the interpretation of “school” to cover all schools and early childhood education centres that receive State funding.

**Regulations**

We recommend amending subclause 5(2) to clarify the requirement that the Minister of Police establish with certainty that an organisation meets the statutory criteria defining a gang before recommending a regulation identifying the organisation as such. The amended subclause would forbid the Minister to make such a recommendation unless satisfied on reasonable grounds that the group in question exhibited the specified characteristics.

**Minority views**

**New Zealand Labour Party**

Labour has no truck with gangs with a culture that promotes, encourages, facilitates, or tolerates criminal activity collectively or individually among its members.
We are absolutely intolerant of intimidation of the public by gang members, patched or otherwise.

However, we believe that this bill fails to address the substance of gang problems in this country and will make little or no difference to gang activity.

The power already exists for government departments to prohibit people wearing gang patches on their premises. If that is not being used now we need to ask why not.

Government agencies could be enforcing that rule right now where the wearing of patches is considered to be a problem to staff or members of the public.

The bill adds nothing to a power that already exists.

The bill by contrast does nothing to prevent patch-wearing gang members loitering outside government premises, which would not be illegal under the bill and which government agencies including schools currently have no power to do anything about.

However, other legislation does deal with preventing unacceptable gang behaviour. The Summary Offences Act 1981 (section 3) makes threatening behaviour an imprisonable offence and (section 4) makes offensive behaviour a criminal offence. Section 21 makes it an imprisonable offence to intimidate anyone.

If intimidation is occurring, the focus should be on enforcing this law.

The manner in which this bill is drafted also creates major anomalies. It prohibits the wearing of a gang patch on government premises but not other offensive symbols such as a swastika.

Unlike the Wanganui Act, it covers only some public places. A covered footpath may be included but not an uncovered pavement. Swimming pools are covered but not playing fields. Clubrooms may be covered if owned by government or local authorities but not if they are not. Bus and train stations may be covered in some instances if there is a shelter but not if there is not.

This legislation fails the basic test of the need to be clear and consistent.

A gang member can go into government premises with insignia like “Mongrel Mob” tattooed across their face but not with the same words printed on their jackets.

This bill will not make any significant difference to the real problems gangs create in our community. It exists for political purposes rather
than reflecting any determination to genuinely tackle the gang problem.

It is Labour’s view that the Government would be far better to fully enforce laws against intimidatory conduct, use alternative legislation like the Labour-initiated Criminal Proceeds Act, and tackle issues like rising youth unemployment that fuel gang recruitment.

**Green Party**

This member’s bill is well-intentioned, and identifies a problem that is very real in some situations and some communities. We recognise that the display of gang insignia at government premises has the capacity to intimidate and to cause concern and distress to staff members, and to other people having cause to enter such premises.

Our objections to the bill are primarily that it would be ineffective; creates major definitional issues; would be difficult to enforce; and could provide perverse incentives for gang members to behave in ways that create further public concern and unease.

One submitter provided a useful summary of legislation that has been enacted over time targeting gangs and associated criminality. While some of this legislation has been effective, much of it has not, and given the difficulties noted above we are inclined to agree with the submitter’s view that this bill if enacted would add to the list of legislative failures.

It is interesting to note that despite gangs having been present in New Zealand for over four decades, there has never been a legal definition of “gangs”, which this bill seeks to achieve in order to establish criteria for adding to the list of banned patches over time.

It will be very difficult for “lay people” (especially people employed in government premises) to accurately identify which patches or insignia are banned, and which are not—or indeed, to distinguish between gang insignia and commercial labels or branding on such items as t-shirts, caps, and jackets.

The committee quickly discovered that defining the places where insignia may or may not be worn under this proposed legislation leads quickly to farce. It is generally agreed, for example, that insignia may be worn by someone standing at a bus stop, but not if they sit on a bench or within a shelter provided at that stop, assuming it is under the control of a local authority.
A blanket ban on insignia overlooks the fact that some patched gang members have given up on criminal behaviour, and in fact in some instances are actively working on positive (and government sanctioned) programmes in their communities (White Ribbon, anti-violence, drug and alcohol issues, for example). As noted in the Rethinking Crime and Punishment submission, these people have turned away from offending but are in no way prepared to step away from their gang association or identity, which in some cases is cross-generational.

The passing of this legislation is likely to lead to a situation where for some gang members it will be a matter of pride to have their insignia added to the banned list, and so will actually encourage the sort of behaviour the bill seeks to limit.

While not denying the “power” of a gang patch, or its ability to intimidate and concern members of the public and people working in government premises, the reality is that people are intimidated as much by the attitude and stance of individuals or groups as by a piece of coloured cloth, or a badge.

This bill would do little to address the underlying social, cultural and economic drivers of gangs and criminal behaviour, and so cannot be seen as part of any long-term solution.
Appendix

Committee process
The Prohibition of Gang Insignia in Government Premises Bill was referred to the committee on 29 August 2012. The closing date for submissions was 31 October 2012. We received and considered 26 submissions from interested groups and individuals, and heard 12. We received advice from the Ministry of Justice, the New Zealand Police, the Department of Internal Affairs, and the Parliamentary Counsel Office. The Regulations Review Committee reported to the committee on the powers contained in clause 5.

Committee membership
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Report from the Controller and Auditor-General, Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: Third monitoring report

Report of the Law and Order Committee

Contents
Recommendation 2
Appendix 3
The Law and Order Committee has considered the report from the Controller and Auditor-General, *Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: Third monitoring report*, and recommends that the House take note of this report.

In 2007, the Office of the Auditor-General was asked to monitor for 10 years the Police’s response to the recommendations published in the Commission of Inquiry into Police Conduct, which criticised the historical conduct, including sexual conduct, of some police officers and their associates. The office completed its third monitoring report in October 2012, making five recommendations. The report notes that there has been mixed progress on responding to the Commission’s recommendations, and most of the actions are still to be completed. The Auditor-General reported that progress against recommendations about adult sexual assault investigation is relatively poor. There is still an unacceptable, although low, level of inappropriate behaviour of a sexual nature, and of harassment. The Police said they are giving higher priority to progressing the recommendations related to adult sexual assault, and there have been improvements in management practices and in the way the Police report their progress on these recommendations. However, improvements are still needed in services for adult sexual assault complainants, specialist training for police staff who might supervise or be involved in investigations of such assaults, and access to specialist medical assistance for complainants in the area serviced by the South Canterbury District Health Board.

On 27 March 2013 the New Zealand Police appeared before us to respond to the report. We were told that the Police are confident that they are addressing the recommendations well, considering the significant change the organisation has undergone in the last two years. Their approach to the recommendations has been to attempt to change the culture of the Police holistically, as well as tackling the recommendations. The Office of the Auditor-General’s monitoring period ends in 2017, and we heard that the Police are confident that the recommendations will be implemented by that time.

We are generally pleased with the progress the Police have made to date on addressing the recommendations, but would like to see improvements in some areas. We acknowledge that a comprehensive culture change will take time to achieve, and, just over halfway through the monitoring period, we consider they have time to complete the recommended reform. However, we do not believe that much culture change is needed in order to implement the recommendations regarding adult sexual assault victims, and we would like the Police to make appreciable progress on them before the fourth monitoring report is released.
Appendix

**Committee procedure**

The committee heard evidence from the Office of the Auditor-General and the New Zealand Police. The committee met between 28 November 2012 and 8 May 2013 to consider the report.

**Committee members**

Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Briefing on Joint Thematic Review of Young Persons in Police Detention

Report of the Law and Order Committee

Contents
Recommendation 2
Introduction 2
Background 2
The review 2
Update 3
Appendix 4
Briefing on Joint Thematic Review of Young Persons in Police Detention

Recommendation
The Law and Order Committee recommends the House take note of its report.

Introduction
The Joint Thematic Review of Young Persons in Police Detention was launched in December 2010 by the Independent Police Conduct Authority (IPCA), the Office of the Children’s Commissioner, and the Human Rights Commissioner. It examines the treatment of and conditions experienced by children and young people detained in police cells, in order to ensure that such detention is safe, humane, and consistent with international standards. This report was the first review exercising the IPCA’s mandate under the Optional Protocol to the Convention Against Torture (OPCAT). It makes 24 recommendations.

Background
Since 2009 the number of young people spending time in Police detention has increased steadily; in 2011, 213 young people were held for more than 24 hours, at an average of 1.9 days per stay, compared with 76 young people in 2009. There are legal obligations and international conventions pertaining to detention, but the decision to detain often takes into account the balance between responsibility to adhere to such obligations and the practicality of doing so. Sometimes adherence is simply not practical; for example, if no appropriate residence is available, public safety must prevail.

In practice, detaining young people in custody raises significant human rights issues because of the difficulty of ensuring they will be dealt with consistently with their needs. Ensuring that police cells provide adequate youth-appropriate amenities and safeguard against age-mixing, which brings safety risks, can be difficult.

The review
The joint review focused on systemic issues and possible ways to ensure youth detention conditions are safe, humane, and compliant with international standards. It adhered to the principle that young people should be held in detention in accordance with the law, only as a last resort, and for the shortest time possible. The review examines what could be done to reduce the number of young people detained in police custody and the time spent there, to improve the treatment of the young people who are detained, and to strengthen monitoring and feedback mechanisms in order to identify systemic issues and ensure best practice is followed.

Recommendations
The review makes 24 recommendations including that Police improve conditions of detention and the treatment of young people; improve information provided, Police training and reporting practices; review options for transport arrangements, and that the
Police continue to work with the IPCA and Child, Youth and Family on reviewing practices.

At the hearing Judge Carruthers noted that the Supported Bail initiative had been an “outstanding success”. He said, however, it was not available everywhere, but it would be a huge advantage to expand the programme. We support the expansion of this initiative.

**Update**

The authority commented that it is satisfied that work is progressing towards completing the implementation of the recommendations, and is being monitored by the organisations that conducted the review.

The various agencies involved are already collaborating. Monthly meetings held between the Police and Child Youth and Family, for example, to consider trends and discuss Police guidelines and practices regarding the transportation of prisoners. The memorandum of understanding between the two organisations is also being reviewed.

The Police are continuing to improve conditions of detention and the treatment of young people while in custody, and regular meetings are held on this matter between the authority and Assistant Commissioner Nick Perry. Under the Crimes of Torture Act 1989, the authority has responsibility for monitoring places of police detention, and it will continue to carry out random inspections.

The Police are improving their training and reporting mechanisms in a number of ways. They have developed an online training module on issues for young people in custody, and all the appropriate staff should have completed it by July. Also, a youth-specific custody training module will be established in November 2013 to ensure the correct procedures are always followed when dealing with young people in custody, and that detailed records of such experiences are kept and monitored. Finally, the Police have begun recording their decisions and reasoning to identify trends in decision-making and address district variations.

We note the progress in response to the review’s recommendations, and thank the Independent Police Conduct Authority, the Children’s Commissioner, and the Human Rights Commission for their ongoing work on this review, and subsequent reviews.
Appendix

Committee procedure
The committee heard evidence from the Independent Police Conduct Authority. The committee met between 24 October 2012 and 5 June 2013 to consider the review.

Committee members
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Ian McKelvie
Mark Mitchell
Richard Prosser
Jami-Lee Ross
Lindsay Tisch
Telecommunications (Interception Capability and Security) Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation
The Law and Order Committee has examined the Telecommunications (Interception Capability and Security) and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to repeal and replace the Telecommunications (Interception Capability) Act 2004 in order to ensure that interception obligations applying to the telecommunications industry are clear, do not impose unnecessary compliance costs, and are sufficiently flexible to respond to current and future operational needs and technological developments. It also seeks to require network operators to engage with the Government on network security matters, inform the Government of certain proposed decisions, courses of action, or changes in relation to an area of “specified security interest”, and work with the Government to apply any specific risk-based and proportionate security measures.
The bill is split into four parts: part 1 sets out the preliminary provisions, part 2 interception duties, part 3 network security provisions, and part 4 registration, enforcement, and miscellaneous provisions. This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

**Preliminary provisions**

**Interpretation**

Under section 50 of the Search and Surveillance Act 2012, the Department of Internal Affairs or the New Zealand Customs Service can become law enforcement agencies subject to the criteria set out in that section. We recommend amending the definition of “law enforcement agency” in the bill to include a law enforcement agency that is appointed by Order in Council under section 50 of the Search and Surveillance Act 2012.

We consider that the definition of “security risk” in the bill as introduced is potentially too broad. We therefore recommend deleting “or economic well-being” from the definition of “security risk”, and inserting a new definition of “national security” that includes the concept of economic well-being. We also recommend an amendment to clause 49 to exclude its application to minimal risks, and inserting new clauses 48A and 54A (which are discussed later in this commentary), to provide more certainty for network operators.

We recommend amending the definition of “service provider” to clarify that it includes any domestic or international service provider that provides or makes services available in New Zealand. We recommend the consequential deletion of subclause 24(6).

**Principles relating to network security**

We recommend inserting a new principle to clause 8, to the effect that when the Director of the GCSB is exercising any function or power related to network security, he or she should make decisions as soon as practicable. Consistent with the new principle, we recommend inserting new subclause 33B(2) in part 2 to include a requirement regarding a Minister’s determination on an exemption.
Interception duties

Interception accessible
We recommend amending subclause 12(a) to specify that a network operator would be required to provide access only to a point of the public telecommunications network suitable for effecting an interception warrant or other lawful authority. Under the bill as introduced, there is no limit on the access a network operator would be required to provide, which we consider to be inappropriate from security and commercial points of view.

General practice
We recommend changes to the following clauses to set out operational provisions: clauses 17 and 35, to require that affected network operators be notified in writing; clauses 17, 19, 20, 35, 37, and 39, to require reasonable timeframes for procedures to be completed; clauses 20, 38, and 40, to require the Government to consult the telecommunications industry; and clause 30, to require that extensions to applications for exemption, variation, or revocation of exemption be notified within 20 working days.

Submissions
In the bill as introduced, the intended effect of submissions to an appeal, for example, on the ability of the Minister to make a decision is not made clear. We recommend amending clauses 19(1)(a), 35(6)(a), and 39(7) so that an absence of submissions would not prevent a decision being made.

Meaning of “delegate”
We recommend amending the definition of “delegate” in subclauses 19(5), 35(9), 39(11), and 54(5), so that the Minister could delegate only to another Minister, and could not delegate to a chief executive of a department. These clauses would override the delegation provision in section 28 of the State Sector Act 1988.

Duty to assist
The current Act requires all network operators and service providers to take all reasonable steps necessary to effect a warrant or other
lawful interception authority; these steps may include decryption. We recommend amending sub-paragraph 24(3)(b)(vi) and inserting new subclause 24(3A) to explicitly specify the limits of the obligation in relation to decryption. If a telecommunications service provider or network operator provided the encryption, it must take all reasonable steps to assist; if it did not, then it would not be obliged to do so. New subclause 24(3A) is consistent with the limits of existing decryption obligations in clause 10(4).

However, this clause would not require a service provider to execute a warrant where to do so would be in conflict with the law of any other jurisdiction. A service provider would be required to take all “reasonable steps” to execute a warrant, and acting in conflict with another jurisdiction’s law would not be considered reasonable.

**Minister’s powers in determining a new application for exemption**

Where an application for exemption or variation of an exemption had been declined, the applicant could apply to the Minister for a decision on the matter. We recommend inserting new clauses 32A, 33A, and 33B, and amending clause 33, to set out the Minister’s powers in making such a decision and the process he or she must follow.

**Review**

The bill provides for a review of a direction issued under clause 35 requiring a service provider to have the same obligations as a network operator. We recommend inserting new subclause 36(2A) to specify the criteria that would have to be met for a person to be considered suitably qualified for the purposes of subsection (3). These criteria include experience in specified fields, no conflict of interest regarding the Minister’s direction under clause 35, and an appropriate security clearance.

**Ministerial direction relating to resold overseas telecommunications services**

Under the bill as introduced, the Minister, on the application of a surveillance agency, could forbid the provision or supply in New Zealand of any telecommunications service that is provided from overseas and resold in New Zealand by a network operator. We rec-
ommend inserting new subclauses 39(2A) and 39(2B) to specify the criteria that the Minister would have to use when deciding whether to make such a direction, giving primacy to national security or law enforcement interests.

Network security

Network operators’ duty to engage in good faith
We consider that the broad scope of the requirement to engage might lead to over-reporting and hamper interpretation of the bill. We recommend amending two clauses to address these concerns: subclause 45(1), to require network operators to engage with authorities only regarding risks that might arise from a proposed decision, course of action, or change, if implemented; and clause 48, so that the ability of the Director of the GCSB to issue exemptions would also apply to the duty to engage set out in subclause 45(1). We also recommend the insertion of new clause 54A (discussed later in this commentary), to provide more certainty for network operators.

Areas of specified security interest
As introduced, aspects of this clause are not clear or are too broad. To narrow the scope and improve clarity, we recommend amending paragraph 46(1)(d) to make it clear that it applies to data belonging to the customer or end user, as opposed to data about the customer, and to such data as is held on a public telecommunications network specifically.
We also recommend inserting paragraph 46(2)(a) to allow the Minister to make regulations amending or removing what constitutes an area of specified security interest. However, we recommend rewriting subclause 46(3) to require the Minister to consult registered network operators before making such regulations.

Exemption from section 45 or 47
To ensure the exemption provision is sufficiently flexible, we recommend inserting subclause 48(2) to allow the Director of the GCSB to grant an exemption as he or she sees fit. This would increase the likelihood of exemptions being granted in response to specific circumstances.
We also recommend inserting new paragraph 48(5)(a) to require notices of exemption issued to a class of network operators to be published on an internet site operated by the GCSB. This would avoid the need for a network operator within that class to apply to the GCSB for the exemptions in force.

**Consideration of network security risk by Director or Minister**

As introduced, the bill does not set out how the Director of, or the Minister for, the GCSB would be required to approach their consideration of network security risk. We recommend inserting new clause 48A to require the Director or the Minister to consider the likelihood of a particular decision compromising or degrading the telecommunications network or impairing the confidentiality, availability, and integrity of telecommunications on the network, and any potential flow-on effects, as set out in subclause 48A(1)(b). This is intended to clarify the matter for the industry.

**Guidelines**

We recommend inserting new clause 54A to allow the Director of the GCSB to issue guidelines on any requirements applying to network operators under part 3 of the bill. This would help network operators to comply with the legislation.

**Registration, enforcement, and miscellaneous provisions**

**Classified security information in court**

We recommend inserting new clauses 96A–96H to set out the court procedures for dealing with classified security information. They include requirements to keep information confidential and hold closed hearings if necessary; to appoint special advocates and allow them to access classified security information, participate in examinations of witnesses, make submissions to the Court, and communicate with the parties they represent; and they impose on the Crown a duty to provide access to the Court to the relevant classified security information.
Minority views

New Zealand Labour Party

The balance between privacy and security has not been met

Privacy is fundamental to an open democracy. Without privacy, there is no democracy. Likewise, security is also fundamental to democracy. Without security, there is no democracy. This creates a dilemma: a crucial public good and a core individual right. No society can maximize both at the same time. The dilemma is how does society ensure that both can co-exist and where they butt up against each other that there is robust debate and careful deliberation on how to achieve the best possible compromise or balance. With advances in technology and our increasing reliance on internet-based communications, this is the core dilemma of the modern age.

Edward Snowden’s leaks have revealed that the United States and Britain’s intelligence agencies are capable of intercepting vast amounts of internet traffic, that they have developed sophisticated data-mining tools; that the agencies cooperate with the private sector in their collection effort, that they spy on allies and that the government’s code breakers have cracked encryption that was previously considered safe. It appears there are more revelations to come.

These revelations have occurred during the passage of this bill through its first reading and select committee. Yet the government has refused to engage in a wider discussion about the implications of these revelations on New Zealand’s security environment; our relationship with our allies and the current and planned practices of our intelligence community to align itself with its counterparts.

Also, we have had another significant piece of legislation pass through the House which provides wider powers for the GCSB and importantly, a new power, to spy on New Zealand citizens. The bill gives effect to the Government Communications Security Bureau and Related Legislation Amendment Act (the Act).

Cyber security concerns have become paramount for New Zealand businesses generally. Tech companies are taking security provisions more seriously. The Snowden issue has put this to the fore. The public debate is just beginning. This legislation was an opportunity to allow that debate to happen in a way that embraced the views of the industry, civil society and our security agencies and those concerned
with protecting our economic and sovereign interests and our political alliances. That opportunity has been squandered by a Government which has railroaded through legislation against the cautioning voices of our local telco companies and also those of the increasingly important service providers, or over-the-top companies, such as Google, Facebook and Microsoft.

And the voices of civil society, the representatives of our legal community and many other organisations have been dismissed and ignored.

Labour opposes this bill. It has been rushed, it is ill-conceived, there has been no case made for the extraordinary expansion of powers to the GCSB and various Ministers. Sensible suggestions to improve the bill have mostly been rejected out of hand. Instead the scales have tipped towards unreasonable powers to secret agencies which have not proved their ability to adhere to the rule of law or to be modern and responsible 21st-century organisations. The government has over-reached in this bill.

Specifically, Labour’s concerns are listed below.

**Expansion of powers**

The Government has argued that the bill does not alter the authority of surveillance agencies to intercept telecommunications, or reduce checks and balances on how these agencies can access and use private communications information. Labour and almost all submitters disagree.

The bill is a companion measure to the Act which would give the GCSB the right to carry out surveillance on New Zealanders. More technical in nature, the bill compels telecommunications companies to provide assistance to the GCSB in intercepting and decrypting customer communications and forces them to follow the spy agency’s instructions on network security.

This is a fundamental expansion of the State’s role in monitoring communications.

It expands the reach of interception obligations to a much wider group of companies—now including service providers as well. It gives the Minister the power to change the obligations impinging on a single company, or on a class of companies.
The Labour Party agrees with Internet NZ’s submission that the challenge in this bill is to strike the appropriate balance between addressing national security concerns without introducing a permission-seeking process that is too involved and uncertain to incentivise network operators to innovate and to support a competitive telecommunications market. Part 3 of the bill introduces a regime that must by its very nature introduce transaction costs to the design and build of networks in New Zealand by requiring network operators to pass possible purchase and design decisions through the GCSB for approval.

Cost implications
Labour notes that supplementary submissions to the select committee by several network operators outlined potential significant annual operating costs and the potential capital expenditure costs. The committee did not seek advice on these supplementary submissions and the economic impact was therefore not taken into account.

The case for expansion of powers has not been made
During the hearing of submissions the Labour members consistently asked submitters whether they considered there was a case for the expansion of powers in this bill to the GCSB and to Ministers. Not one submitter agreed that there had been a case made for the expansion of those powers. The committee was not allowed to hear submissions from any of the surveillance agencies, including the GCSB, the SIS, or New Zealand Police, outlining the case for increased interception powers or expanded powers in network design and build. The committee heard one submission from the NZ Police Association, which, while well intentioned was unable to shed light on the rationale for increasing the GCSB and other surveillance agency powers. Labour believes the committee has been asked to change the legislation while blindfolded to the reasoning behind making the changes. This alone is a fundamental reason to oppose the bill and should be a warning to government never to treat a parliamentary committee with such contempt.
Definitions
The bill covers “network operators”, “service providers”, and “resold overseas telco services” in the name of national security, law enforce- ment and a vague term, economic well-being. The bill does not define economic well-being and instead gives discretion to the GCSB Director and a Minister to make that call with no requirement for public discussion or reference to an independent group.
We also note that surveillance agencies are defined by the bill as law enforcement or intelligence and security agencies. It is unclear from this definition whether the bill purports to allow foreign agencies as well as New Zealand agencies.
We believe that New Zealand’s interests—in terms of national secu- rity, economic well-being, and protection of citizens’ basic privacy rights—will be best served if New Zealand businesses have the flex- ibility to innovate, compete, and succeed in creating products and services that provide robust protection for the privacy rights of their customers, while also effectively supporting legitimate interception capabilities required by law where applicable.
“National security” is not defined anywhere in the bill. Yet the bill provides for national security and law enforcement to be given pri- macy over service availability, compliance costs and innovation. A surveillance agency can use the pretext of not revealing classified in- formation to impose such costs and technical requirements on a service provider (or a class of service providers) which may drive it out of business or frustrate non-commercial operations.
On the application of a surveillance agency (Police, SIS, GCSB, the Department of Internal Affairs, and Customs) the Minister can require a service operator (or a class of service operators) to provide full interception capability like a network operator. There is a provi- sion for the Minister’s directions to be looked at by a three-member review panel. However, the Minister retains what we consider to be extraordinary powers and we oppose this.

“Deeming in” powers, unintended consequences and the conflict of law
During the course of the select committee discussions it became clear that the new “deem in” power granted to the Minister to extend inter- ception capability obligations beyond the traditionally recognised
group of network operators who have that obligation under current legislation.

Labour acknowledges the position of network operators in NZ who argue they are at a competitive disadvantage because they are under current law unable to offer innovative services that do not have an interception capability.

However, under the proposed law we see two serious issues which could put at risk future innovation and the offering of services in New Zealand, and which could put NZ law at odds with laws in other jurisdictions.

Microsoft in particular gave a very strong submission describing this provision as a dramatic change in the law. They pointed out that New Zealand’s surveillance laws had been designed for an era in which spying meant tapping into someone’s analogue phone calls, but the bill took things much further and was no longer about just tapping into the telephone exchange. There were now a diversity of data connections carrying every imaginable service such as games, banking, education services, entertainment, company and government meetings, shopping, email and documents. Many of these were never subject to interception capability obligations in the pre-digital world.

Potentially, the GCSB could use the law change to force any provider of those online services to change their technology or business model, including in ways which might fundamentally undermine the security of those services.

Labour agrees that an obligation to have interception capability on a fundamentally different technology in our view needs to be considered on its merits and given more thought and consideration. It should not be swept up in broad legislation that gives wide powers to surveillance agencies and Ministers.

Encryption

Labour considers this to be one of the most vexed and confusing parts of the bill. The submissions on this matter took up much of the time of the committee and what has ended up in the bill provides a gaping hole in the ability of the law to meet the government’s supposed intentions. Labour considers there are inconsistencies and unintended consequences in this part of the bill which are deeply concerning for
New Zealand’s technology community and for our economic development.

The two most significant issues are the duty to assist for a company which has encryption at the core of its business model to provide a decryption capacity to surveillance agencies. The capture of such companies and software services developed in New Zealand could not only be counter-productive to business innovation but could result in reputational issues.

The uncertainty around how this bill applies to companies who are built on a business model which vests the power of decryption in the customer is still unclear. Increasingly, businesses and individuals are looking for ways to store and send their data where they (as customers) have control over decryption. As amended, the bill requires that if a telecommunications service provider or network operator provides the encryption (capacity), it must take all reasonable steps to assist; if it does not, then it is not obliged to do so. The bill has not explored the unintended consequences for New Zealand-based software products, which may be caught up in a duty to assist because they (as the business owner) have control over encryption.

Labour agrees with submitters who argued that encryption is incompatible with lawful intercept. We believe that this section of the bill requires a much wider discussion about what is and isn’t possible to intercept lawfully being mindful of the balance between privacy and security and taking into account the impact on new and existing business models.

If New Zealand sees cloud-based technology service companies as an important part of an emerging tech-based economy, why is this bill creating unnecessary and untested risks to that?

There are countless New Zealand tech companies that may find themselves caught up in requirements to provide interception capability and with associated damaged reputational perceptions if this bill proceeds in its current form without wider debate and robust checks and balances to ensure that the over-reach of security requirements is not damaging New Zealand’s economic growth. The bill is still unclear on how this requirement may affect existing and future businesses in New Zealand which provide an encryption capacity.
The notification regime and the chilling effect on innovation

Labour agrees with all submitters who argued that the obligations placed on network operators in Part 3 of the bill will have a chilling effect on innovation and competition because the bill provides expansive powers to the GCSB, backed up by a Minister to moderate or restrict the ability of New Zealand network operators to deploy new technologies.

This bill will create a chilling effect on the business development of network operators in New Zealand. As noted in many submissions on this bill, under the regime in Part 3 of the bill, a network provider may seek permission to change part of its network and, while waiting for permission to be granted, lose a business opportunity. Also, if network providers are cognisant of approved additions, the effect on innovation could be dampened and they may elect to follow the known path as opposed to a new path that could take an undue amount of time for permission.

Despite strong recommendations for the bill to include a timeframe within which the GCSB Director must respond to a notification, no such timeframe has been required, instead requiring the GCSB Director to make decisions “as soon as practicable”.

This again provides extraordinary discretion to the GCSB and will impact on a network’s ability to conduct its business.

There is no system in place to ensure that surveillance agencies can keep up with rapidly developing technology being deployed within the New Zealand environment in terms of expertise or cost. The bill does not provide adequate opportunity for a network operator to challenge or appeal decisions made by the Director or a Minister.

There is no indication that the new roles set out for the GCSB will be adequately resourced to allow them to be performed effectively. Labour believes that recent events where the GCSB has been shown to be lacking in judgement in spying on New Zealand citizens unlawfully provide urgent incentives for a wide-ranging review of its functions and ability to perform those functions before such legislation is enacted.

Conflict of law

Labour is dubious about the assurances given by officials that the bill could require non-New Zealand service providers to provide access
to customer data to the New Zealand government, is not at odds with their domestic legal obligations. There has been strong advice regarding this matter from several submitters that the internet’s global nature means that service providers based outside New Zealand may find themselves under conflicting legal obligations.

Under Part 2, Subpart 5 of the bill the Minister may direct service providers to give surveillance agencies access to customer data. Clause 24(6) of the original bill stated that this applied regardless of whether the service provider is New Zealand based.

As noted in the submissions of Google, Facebook and Microsoft, this would create a catch 22 situation. Under the US Electronic Communications Privacy Act, US-based service providers can only disclose customer data to non-US law enforcement agencies if it is directed to do so through a warrant issued by a US court or law enforcement agency.

Yet under the bill as originally drafted, service providers are required to disclose or provide access to customer data to New Zealand, or perhaps other, surveillance agencies.

By complying with the bill, these service providers would be in violation of US law. And by refusing to comply with the bill, these service providers would also be in violation of New Zealand law.

A late amendment to the bill says Clause 24 (6) has been deleted and the commentary now says this section (Duty to assist) would not require a service provider to execute a warrant where to do so would be in conflict with the law in another jurisdiction. It says the service provider is required to take all “reasonable steps” to execute a warrant and acting in conflict with another jurisdiction’s law would not be considered reasonable.

This is a very late addition to the bill and should have been discussed with the committee in more depth. Labour believes this is an attempt to appease certain submitters with a piecemeal response rather than address a substantive problem identified in the bill.

And, in the event that a service provider’s services are resold in New Zealand by a network operator, under clause 39 of the bill, the Minister may effectively prevent the service provider from doing business in New Zealand. The only concession made here is to set out a list of criteria which the Minister would have to use in making this decision.
Lack of checks and balances and independent oversight

The bill empowers a handful of Ministers, without independent oversight, to order service providers to become intercept capable – and thus potentially to open up years of customer correspondence for collection by the government for the purposes “law enforcement” or “national security”.

The directive process, covering both interception and network security, where, on the advice of a security agency, the Minister can issue a direction that could compel a network operator to:

- Impose increased interception capability requirements above that ordinarily required under the bill (Subpart 5); or impose specific requirements regarding network architecture or vendor selection.
- Many submitters argued this would impose significant risk and potential financial impacts on providers if a directive was issued, under an arbitrary process. It is essential that any request for a directive is appropriately considered, tested and consulted upon.
- The Government has little incentive to consider the financial impact on the impacted service provider. Appeal rights are limited to judicial review. And yet, impacted providers have limited ability to be consulted or participate in the decision making process. There are some costs which will be borne by the surveillance authority incurred by a network operator or service provider in providing interception assistance to an agency.

The bill is silent on whether costs incurred following changes to network operator occurred as a result of complying under Part 3 of the bill will be borne by the network.

Labour supported submissions by all network operators (telcos) that a joint industry/security technical advisory board should be established to evaluate any application for a Ministerial directive as an appropriate check and balance measure and argues strongly that this bill puts too much power in the hands of a surveillance agency with the ultimate decision-making power left in the hands of a Minister who is not required to take external advice.

The Bill of Rights test

Labour supports Internet NZ’s submission in calling for a thorough test of the bill against the New Zealand Bill of Rights Act. The New Zealand Law Society in its submission on the Act called for the same.
In its sparingly used direct reporting power to the Prime Minister, the Human Rights Commission, determined that the Ministry of Justice Bill of Rights vet of the Act and the bill fell short. Just as the Act failed to provide adequate safeguards for peoples’ privacy to balance the intrusive power of the State to collect the private information of New Zealanders, as implementing legislation the bill has failed as well, as the Government has refused to add adequate safeguards.

**Mitigating measures inadequate and window-dressing**

The Government’s attempts to provide some measures to address the criticism of the lack of checks and balances, unfettered powers of the GCSB and Ministers and the lack of independent oversight of decision-making has fallen flat in this bill. Requiring the GCSB Director to make decisions on network security operations as soon as practicable, providing a list of criteria that the Minister must use when deciding to make a direction to forbid the resale in New Zealand of a service, and requiring the GCSB and Minister to consider whether its decisions about a network might compromise its availability, integrity or confidentiality are steps forward, but there are no accompanying transparency measures or independent oversight over those decisions. They remain secret with no accountability.

**Conclusion**

There are many reasons to oppose this bill. It is ill-thought out, rushed and the government has refused to take account of core concerns raised by submitters. There has been no case made for the expanded powers of the GCSB and of Ministers. Labour robustly opposed its companion law which expands the powers of the GCSB to spy on New Zealand citizens. The proposed legislation as currently drafted is not clear enough to fully evaluate, but nonetheless raises significant concerns that it may be ineffective and have unintended consequences that undermine its primary objectives. We therefore oppose this bill and will in government make wide-ranging changes to the GCSB Act and the bill after conducting an extensive inquiry into all security agencies.
Green Party
The Green Party opposes this bill. We are very concerned that the changes to the interception capabilities are being changed at a time when there are so many questions about the role, scope, and ability of the intelligence agencies in New Zealand, and the privacy of New Zealanders. The Green Party firmly believes that there needs to be a wide-ranging, independent inquiry into New Zealand’s intelligence services before the power of these services is extended any further. The Green Party acknowledges the purported intention of this bill to ensure interception capability in situations of criminality, and also the desire to protect telecommunications systems and users from security risks. However, this bill neither ensures effectiveness for those purposes nor protects the rights and freedoms of New Zealanders. Citizens in a democracy have the right to understand how and when they could be surveilled. This bill raises many questions about the fundamental rights and freedoms of New Zealanders. There are grey areas around the warrant process, and limited accountability to Parliament or the public.

The bill is the mechanism providing access, with very limited oversight, for an unprecedented level of surveillance capability by the Security Intelligence Service, the Government Communications Security Bureau, the New Zealand Police, and potentially the New Zealand Customs Service, and the Department of Internal Affairs. This bill also gives the GCSB unprecedented powers of veto over how network providers can operate their businesses. It is adding a layer of bureaucracy over everything these companies do and is entrusting this agency with the central planning of the telecommunications industry.

The bill goes some way in reducing compliance costs to telecommunications network providers but leaves much in doubt and may restrict development and innovation in information technology. This bill will hold back our ICT sector and could discourage investment and jobs. These changes will slow software development and make our ICT industry susceptible to additional costs and uncertainties, particularly as they will be required to deal with a non-transparent Government department.
The flexibility of exemptions for a network operator, class of network or network service, while appearing practical, also leaves uncertainty in its application.
The bill is uneven in its application of interception capability among providers, and cannot address some technical features of encryption/decryption which brings into question the bill’s effectiveness in addressing purported security surveillance needs.

**New Zealand First Party**

New Zealand First holds the view that the issues covered by this bill are too broad and disparate to be dealt with by a single piece of legislation.

Network security is a pressing issue which requires the timely attention of the House, and the expeditious passing of legislation to facilitate the protection of New Zealand’s data networks by way of the exclusion of hardware, of certain types or from certain suppliers, identified as being potentially risk-bearing. This we regard as being a singular issue, which we support.

Interception capability however is both a less urgent concern, and one which has generated a great deal of controversy.

We note that an overwhelming majority of public and industry submissions are opposed to some or all of the proposed legislative changes.

There are unresolved issues and unanswered questions surrounding the cost to network providers, the exclusion of smaller providers, the non-inclusion of over-the-top service providers, and the commercial implications of having OTT providers subject to requirements which may limit the availability of certain products and services to the New Zealand market. In addition several submitters suggested that aspects of the proposed changes may limit innovation and expansion in some areas of information technology in New Zealand. Many submitters were of the opinion that the exclusion of small providers, and of OTT services, would largely negate the effectiveness of the law as proposed.

While these issues remain unresolved, and while existing legislation provides for an alternative framework through which the aims of the bill may be addressed, we feel it is precipitous to proceed with this part of the bill.
New Zealand First suggests that the bill be divided into two distinct bills, in order to address these separate concerns. We may yet choose to pursue this option by way of a supplementary order paper. In the event that the bill is so separated, New Zealand First will support the network security provisions as outlined. However as the bill presently stands, we are unable to support it in its entirety, due to our concerns as detailed here.
Appendix

Committee process
The Telecommunications (Interception Capability and Security) was referred to the committee on 8 May 2013. The closing date for submissions was 13 June 2013. We received and considered 88 submissions from interested groups and individuals. We heard 17 submissions.

We received advice from the Ministry of Business, Innovation and Employment, the Department of Prime Minister and Cabinet, and the New Zealand Police. The Regulations Review Committee reported to the committee on the powers contained in clauses 3, 19, 20, 29–34, 35–38, 39, and 40.

Committee membership
Jacqui Dean (Chairperson)
David Clendon
Kris Faafoi
Hon Phil Goff
Hon Todd McClay
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch

For this item of business, Steffan Browning replaced David Clendon and Clare Curran replaced any Labour member.
# Briefing on policing and prisons in Canterbury

Report of the Law and Order Committee

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Policing</td>
<td>2</td>
</tr>
<tr>
<td>Prisons</td>
<td>3</td>
</tr>
<tr>
<td>Conclusion</td>
<td>4</td>
</tr>
<tr>
<td>Appendix</td>
<td>5</td>
</tr>
</tbody>
</table>
Briefing on policing and prisons in Canterbury

Recommendation

The Law and Order Committee received a briefing from the New Zealand Police and the Department of Corrections on policing and prisons in Canterbury, and recommends that the House take note of its report.

Introduction

Following the severe earthquakes in Canterbury in 2010 and 2011, the New Zealand Police and the Department of Corrections had to reassess their operations in the region. The agencies moved into the same building. The department’s properties withstood the earthquakes well, and it has initiated a “Rebuilding Canterbury” project.

We visited the Christchurch Central Police Station, Christchurch Men’s Prison, and Christchurch Women’s Prison to observe the situation first-hand.

Policing

District Command Centre

District Command Centres are being established nationwide to coordinate the deployment of personnel. The Christchurch District Command Centre is situated in the new Corrections Hub, of which we were given a tour. We visited the small arms simulator training room and some of the new cells, and were impressed with the new technologies and facilities available.

We observed operations at the centre in Christchurch, and heard that a preventive focus has replaced the reactive focus of the past. The centre allows the Police to analyse hotspots of criminal activity and deploy officers according to the data gathered from field officers’ iPhones and iPads and CCTV cameras around the city, using a live information feed of data on criminal activity in the region. This aligns with the Police’s Prevention First strategy, introduced in 2011.

Christchurch Metro Police Safety Order Project

This pilot project is looking for issues and gaps in family violence services. It seeks to ensure the safety of children while addressing the intervention needs of both parents. The project is piloting the issuing of police safety orders, which are permitted under the Domestic Violence Amendment Act 2009. The Act allows police to issue a police safety order, lasting up to five days, when there are reasonable grounds to believe that family violence has occurred or may occur. After such an order has been issued, the person bound by it is offered support and safety advice by Stopping Violence Services. The project has received positive feedback so far, but funding has proved to be an issue.

Local alcohol policy

We heard about the Canterbury Police’s submission to the Christchurch City Council regarding its local alcohol policy. The submission proposes to reduce crime by introducing one-way-door policies in bars, and closing times of 1 am in suburban areas and 3 am in the central city, in order to concentrate drinking in the city centre, making it easier to police.
There is some opposition to this policy on the grounds that it could reduce the city’s “vibrancy”, but the police dispute this. For off-licenses, the Police proposed a 9 pm closing and 9 am opening time, to avoid the period when children are travelling to school. We heard that a similar approach in Sydney has resulted in a 30–40 per cent reduction in crime. The council is currently hearing submissions to the policy, and a provisional policy is expected to be adopted in December 2013.

Community Justice Panel

The Community Justice Panel project involves certain criminal behaviours being dealt with by the community to which the offender belongs. To be eligible to participate, an offender is required to admit guilt and accept the panel’s process. The panel seeks to determine the drivers behind the offence, and decide on a resolution accordingly; resolutions might involve apologies, for example, community service, or medical treatment. A formal evaluation of the project found 79 per cent full compliance and 10 per cent partial compliance with the sanctions administered. A report is being prepared on the feasibility of implementing the project nationally, and is due for release by the end of 2013.

Prisons

Christchurch Men’s Prison

Christchurch Men’s Prison, established in 1915, currently holds 920 prisoners. It provides motivational, rehabilitation, education and employment, and reintegration programmes for its prisoners.

The department is using education and training initiatives in the hope of achieving a 25 per cent reduction in re-offending by 2017; they are intended to help prisoners find sustainable employment on their release. One such initiative is the Trade and Technical Training programme at Christchurch Men’s, where we visited motor industry and pre-trade painting courses. The motor industry course has a 100 per cent pass rate, and has been visited by employers who have offered jobs to prisoners upon release. The prisoners receive an NZQA-accredited qualification. However, we heard that the limited availability of Christchurch Polytechnic Institute of Technology tutors is a constraint.

We visited the prison’s at-risk unit, which houses the prisoners most at risk of suicide, the mentally unwell, and sometimes those who have recently been sentenced for murder. In this unit, interventions take the form of counselling or medication. However, staff cannot forcibly medicate the prisoners and prisoners have sometimes offended as a result of not taking appropriate medication. We heard that in the United Kingdom, some prisons have been designated as hospitals for mental health purposes.

The Department of Corrections believes that audio-visual links between the courts and prisons are being under-utilised. It is a useful tool, with potential for cost savings. We heard that the department must sometimes fly an offender to another centre for a court hearing only to have the hearing rescheduled because the defence lawyer came up with new evidence, leaving the department out of pocket. The department hopes to have audio-visual links set up nationwide by the end of 2014.

The prison’s Youth Unit administers its youth offender programme for those aged from 15 to 20 years; 15- to 18-year-olds receive automatic entry, while a “best interest” test is used to determine whether 19- and 20-year-olds should stay in the programme. They learn life skills such as numeracy, literacy, and first aid, and industrial skills such as handling
machinery and farming. The unit has too few students to be eligible for funding from the Ministry of Education; the maximum class size is eight, while 12 students are required for funding, and eligibility stops beyond age 18.

**Rebuilding Canterbury**

The Rebuilding Canterbury project was established in the wake of the Canterbury earthquakes to utilise prisoners' labour skills to rebuild the community and give prisoners a chance to rehabilitate by gaining sustainable employment. The project matches demand for labour by training prisoners in the skills needed. In analysing the demand, the department brings potential employers into the prison to see the training programmes in person, which has helped to focus the content of courses to meet the market's demand. We heard that as a result of the programme, 27 people had directly gained employment, and nearly 27,000 hours of labour were dedicated to rebuilding Canterbury between January and March 2013. We asked at what point the department's involvement with a prisoner stops, and heard it is legally required to cease assisting the prisoner upon the completion of his or her sentence. It is possible for an employer, non-governmental organisation, or community organisation to pick up the prisoner's labour, but this is not guaranteed. We note that there is a gap in the system for post-sentence community assistance.

**Christchurch Women's Prison**

Christchurch Women’s Prison is one of three women’s prisons in New Zealand and can accommodate 134 prisoners. It has a specialist mothers and babies unit which houses four offenders with their babies up to the age of two years, and self-care units which assist prisoners to prepare for life outside of prison. There is also a puppy programme where prisoners look after dogs from the department’s drug dog unit.

The mothers and babies unit resembles a flating situation. The prisoners receive income and have a budget, and do chores such as grocery shopping. These prisoners also travel to places such as the library, the park, or play facilities so that the babies can interact with other young children. The Family Health Trust also assists the prisoners in raising the children. We heard that living with and taking care of the baby significantly helps a prisoner’s rehabilitation.

In the prison’s puppy programme, prisoners become dog handlers, which helps them to learn life skills such as consistency and responsibility. The puppies move on from the programme at 9–12 months old, and generally go on to work searching for narcotics, cellphones, or tobacco. We were impressed with the dog handling skills displayed by the prisoners.

**Conclusion**

We thank the staff of the New Zealand Police and the Department of Corrections for providing us with the opportunity to observe the excellent facilities and training 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 the staff members 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 Canterbury between 8 May 2013 and 16 October 2013. We heard evidence from the New Zealand Police and the Department of Corrections, and visited the Christchurch Central Police Station, Christchurch Men’s Prison, and Christchurch Women’s Prison on 17 June 2013.

Committee members

Jacqui Dean (Chairperson)
Jacinda Ardern
David Clendon
Hon Phil Goff
Hon Todd McClay
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch
Petition 2011/24 of Tracey Marceau on behalf of Christie’s Law Group and 58,000 others

Report of the Law and Order Committee

Contents

Recommendation 2
Introduction 2
Amendments to bail legislation 2
Judicial accountability 2
Police opposition to bail 3
Conclusion 4
Appendix 5
Petition 2011/24 of Tracey Marceau on behalf of Christie’s Law Group and 58,000 others

Recommendation
The Law and Order Committee has considered Petition 2011/24 of Tracey Marceau on behalf of Christie’s Law Group and 58,000 others, and recommends that the House take note of its report.

Introduction
We have considered Petition 2011/24 of Tracey Marceau on behalf of Christie’s Law Group and 58,000 others, requesting

that the House immediately amend bail legislation, ensuring public safety is of paramount consideration at all times, and instigate an annual performance review of judges.

We heard evidence from the petitioner and other members of the public in Auckland, and received a submission from the Ministry of Justice and the New Zealand Police. We also visited District Courts in Wellington and Auckland to observe bail hearings, and heard evidence from the Chief District Court Judge, Her Honour Judge Jan-Marie Doogue, regarding accountability for the administration and organisation of the judiciary. The petition and the Bail Amendment Act 2013 were referred to us by the House in quick succession, but we decided to consider them separately in order to examine each item comprehensively, and recognising that some matters raised by the petitioner were out of scope of the Bail Amendment Bill.

Our consideration of the petition covered three broad areas: amendments to bail legislation, judicial accountability, and police bail.

Amendments to bail legislation
In 2012, we considered the Bail Amendment Bill, which sought to amend the Bail Act 2000, the Children, Young Persons, and their Families Act 1989, the Sentencing Act 2002, and various other Acts, to improve public safety and enhance the integrity of New Zealand’s bail system. On our recommendation, the reverse burden of proof in bail decisions was extended to include 17-, 18- and 19-year-olds if they had previously been sentenced to imprisonment, and police were empowered to arrest children or young persons who had been released on bail and had repeatedly breached their bail conditions. The Bail Amendment Act 2013 also extended the list of offences subject to the reverse burden of proof to include serious violent and class A drug-dealing offences, and provided for the electronically monitored bail regime. The Act received the Royal assent on 3 September 2013.

Judicial accountability
Judicial accountability is a complex and sensitive area. On the one hand, judicial independence is a fundamental aspect of New Zealand’s constitutional separation of the
powers of Parliament, the Executive, and the judiciary. It is important that Parliament does not impinge on the judiciary’s ability to make independent decisions; this is not our intention. On the other hand, the judiciary needs to be transparent and accountable for its decisions and the processes within its control, and to maintain a high degree of public confidence. We are pleased to note that the Chief District Court Judge is investigating ways to improve public confidence in the judiciary.

A report by the Chief District Court Judge, *Accountability for the administration and organisation of the judiciary*, proposes areas in which judicial activity could be assessed: the timeliness of decisions, the giving of reasons, and training, for example. Any improvement in these areas might in effect increase judges’ accountability. The Chief District Court Judge updated us on developments since the report was published. No action has been formally decided, but we were pleased to hear that progress is being made towards positive change. Measures being considered include a risk management tool for bail decisions, national standardisation of bail decisions, specific training for judges, and a peer review programme for judges’ practice.

Having observed the New Zealand Police using the Ontario Domestic Assault Risk Assessment tool for predicting the likelihood of re-assault in intimate partner relationships, the judiciary is considering a more generic tool for assessing bail decisions. We heard that an international framework of court excellence is being adopted in New Zealand, with ongoing legal education for judges, and templates for making bail decisions with the aim of improving their consistency. We consider that consistency would also be improved by wherever possible having the same judge hear any further hearings on a particular bail application. The Chief District Court Judge is also investigating a peer review or mentoring programme for judges.

We believe that procedures should be established within the judiciary to analyse bail decisions critically where the decision to grant bail has allowed the commission of a further serious crime.

**Police opposition to bail**

In deciding whether to oppose bail, the police consider if the defendant presents any of the risks listed in paragraph 8(1)(a) of the Bail Act 2000: failing to appear in court; interfering with witnesses or evidence; or offending while on bail. If any of these risks appear to be present, police consider whether they can be mitigated adequately by the imposition of bail conditions. If not, police oppose bail. If police bail is not granted, a defendant may still apply for court bail. In opposing court bail, police make a written submission to the judicial officer, taking into account matters such as the seriousness of the charges. The views of a victim of an offence are also taken into account, in accordance with section 8(4) of the Act, and the need to protect victims of domestic violence where the charge involves breach of a protection order.

The petitioner requested that police be given powers to appeal bail decisions equal to those of the defence. We were consistently advised that the power to appeal a bail decision is in fact equal on both sides. Nevertheless, we investigated the potential for improvements to the system.

We heard from the New Zealand Police about procedures for bail hearings; they said that in general, they are reasonably satisfied with the process. However, efficiency could be improved by streamlining the process to allow police prosecutors to appear in the High
PETITION 2011/24 OF TRACEY MARCEAU AND 58,000 OTHERS

Court as well as the District Court to speak to bail decisions. This would shorten the time taken to reach a resolution, and, it was argued, would improve consistency and continuity between courts. Adequate resources and procedures would be needed to ensure confidence in determinations of applications opposing bail.

Finding enough time to prepare submissions opposing bail is a constant challenge for police prosecutors. While allowing more time would be helpful for police, it might infringe the right of offenders and victims to a speedy resolution.

From the Chief District Court Judge’s perspective, improvements could be made to IT systems and the opposition to bail forms completed by police prosecutors in bail applications. We heard that the Ministry of Justice and the New Zealand Police computer systems do not interact well regarding convictions for reoffending while on bail. The Government intends to introduce legislation this year to modernise the technology used in courts, which may help. We also heard that the forms used to record police opposition to bail could be improved, to provide judges with more accurate, current, and concise information. The Chief District Court Judge is working with the Police on this issue.

Conclusion

We consider that the points raised by the petitioner and other parties consulted have merit, and particularly recommend that consideration be given to the judiciary reviewing bail decisions where bail has been granted and the offender has subsequently committed a further serious crime. We suggest that police prosecutors being allowed to advance opposition to bail appeals in the High Court be investigated. We also recommend continuity of the judicial personnel in subsequent bail hearings following the original case.
Appendix

Committee procedure
The committee called for public submissions on the petition. The closing date for submissions was 20 July 2012. The committee received 16 submissions from organisations and individuals and heard eight of the submissions orally. The committee heard evidence in Auckland and Wellington. The committee met between 30 May 2012 and 4 December 2013 to consider the petition.

Committee members
Jacqui Dean (Chairperson)
Jacinda Ardern
David Clendon
Hon Phil Goff
Hon Todd McClay
Ian McKelvie
Mark Mitchell
Richard Prosser
Lindsay Tisch
The Local Government and Environment Committee has considered Petition 2011/12 of Fiona Kidman and 314 others, which requests that

the House of Representatives review the National Environmental Standard on Telecommunications (2008) with particular reference to the current lack of any requirement to consult the community when cell phone towers, antennae, and masts are erected even if they are located adjacent to homes; obtain resource consents even if the erection of these technologies will impact on property values and could affect the health and wellbeing of nearby residents and students; and take into account the potential adverse health effects of long term and chronic and cumulative exposure to electromagnetic fields from cell phone towers, antennae, and masts.

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

Nicky Wagner
Chairperson
In our report on the Building Amendment Bill (No 4) we stated on page two:

… issues of joint and several liability in the construction industry, and whether a mandatory home warranty insurance scheme should be introduced, have both been referred to the Law Commission for review and the Government is awaiting the outcome of this work.

This statement was based upon advice included in the departmental report (pages 11 and 12).

We have since been informed that, while this information was based on the relevant Cabinet decisions, the Minister of Justice did not make explicit reference to issues with guarantee products when the Law Commission was asked to review joint and several liability; and that whether home warranty insurance should be mandatory was not included in the terms of reference for the review.

The committee recommends that the House take note of its report.

Nicky Wagner
Chairperson
The Local Government and Environment Committee has examined the Report from the Parliamentary Commissioner for the Environment, *Evaluating the environmental impacts of fracking in New Zealand: An interim report, November 2012*. We look forward to the final report.

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

Nicky Wagner
Chairperson
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
The Local Government and Environment Committee has examined the report from the Parliamentary Commissioner for the Environment on *Water quality in New Zealand: Understanding the science*. We have no matters to bring to the attention of the House.

Nicky Wagner
Chairperson
Subantarctic Islands Marine Reserves Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Subantarctic Islands Marine Reserves Bill and recommends that it be passed with the amendments shown.

Introduction
The Subantarctic Islands Marine Reserves Bill seeks to create three new marine reserves:

- Moutere Mahue/Antipodes Island (860km south-east of New Zealand)
- Moutere Hauriri/Bounty Islands (700km east-south-east of New Zealand)
- Moutere Ihupuku/Campbell Island (700km south of New Zealand).

The bill provides for a review of the Moutere Ihupuku/Campbell Island Marine Reserve five years after the commencement of the Act.
to consider protecting the remainder of the Campbell Island /Motu Ihupuku territorial sea by including it in the marine reserve. The bill would also allow commanding officers of the New Zealand Defence Force to act as rangers under the Marine Reserves Act 1971. This commentary covers the key amendments we recommend to the bill. It does not cover minor or technical amendments.

**Moutere Ihupuku/Campbell Island Marine Reserve**

We recommend a number of amendments to clause 8 including the following:

- Reducing to three years the time after commencement of the Act that the review must begin (new subclause 1A(a)).
- Requiring the review to be completed no later than five years after commencement (new subclause 1A(b)).
- Requiring the review to take into account a deepwater crab fishery (new subclause 2A).
- Requiring reviewers to consult with relevant stakeholders (new subclause 2B).
- Requiring the Minister for Primary Industries to respond to the review within 90 working days (new subclause 2D).

We consider it appropriate for the review to be conducted more quickly, and thus recommend these amendments. We also recommend a consequential amendment to subclause (4), bringing forward the date that might be appointed by Order in Council to no later than the sixth anniversary date.

**Green Party minority view**

The Green Party members support this bill proceeding but would encourage stronger conservation measures.

The bill establishes new marine reserves around parts of the territorial sea surrounding Moutere Hauriri/Bounty, Moutere Ihupuku/Campbell Islands, and all of the waters surrounding Moutere Mahue/Antipodes Island.

The Green members believe protection should be expanded to cover the full territorial sea around Moutere Hauriri/Bounty, Moutere Ihupuku/Campbell Islands also. We note these waters have already been recognised as a World Heritage Area by UNESCO and the
majority of submitters supported extending marine reserves around the full territorial sea around Moutere Hauriri/Bounty, Moutere Ihupuku/Campbell Islands.

There are considerable economic and national brand benefits to marine reserves, particularly in these World Heritage Sites. We question whether international consumers would purchase sea life, for example the proposed crab fishery, from a World Heritage Area and whether or not there would be consumer pressure campaigns or boycotts that could damage our brand. We believe greater marine protection will return greater dividends to New Zealand’s fishing industry than possible future exploitation of waters surrounding these islands.

The Green members believe the independent review of Moutere Ihupuku/Campbell Island marine reserve coverage area after five years is too long and should be reduced to one year.

While we welcome the inclusion of new marine reserves we note they only take the total amount of New Zealand’s waters protected in marine reserve to 0.41 percent, far short of the 10 percent target agreed to domestically and at international fora. The fact these reserves are being created in statute highlights the flaws and inadequacies in the current Marine Reserves Act 1971 and we urge the Government to prioritise modernising this legislation to encourage more marine reserves being proposed and created.
Appendix

Committee process
The Subantarctic Islands Marine Reserves Bill was referred to the committee on 4 December 2012. The closing date for submissions was 14 February 2013. We received and considered nine submissions from interested groups and individuals. We heard five submissions. We received advice from the Department of Conservation.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Hon Phil Heatley
Gareth Hughes
Raymond Huo
Moana Mackey
Eugenie Sage
Hon Maryan Street
Louise Upston
Andrew Williams
Resource Management Reform Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Resource Management Reform Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.
Resource Management Act 1991

District rules
The majority of us recommend amending clause 12 to clarify the rules that may be included in a district plan regarding the felling, trimming, damaging, or removal of trees on single allotments (section 76(4A)) and two or more adjacent allotments if the trees are described in a schedule (section 76(4B)). It was never intended that local authorities could protect individual trees only by scheduling, and we note that clause 12 would not preclude them from protecting trees by other means such as resource consent conditions. The majority of us also recommend deleting the examples in section 76(4C) which were taken from an Environment Court judgment (Auckland Council [2011] NZEnvC 129), and have caused considerable confusion.

Consent and territorial authorities’ subsequent processing
We recommend amending clauses 14, 39, and 42 to specify that consent and territorial authorities would be party to Environment Court proceedings, and to require them to be available to give evidence regarding their reports. These amendments are intended to strengthen the requirement in clauses 14, 39, and 42 for consent and territorial authorities to provide “reasonable assistance to the Environment Court in relation to any matters raised” in their reports.

We propose amendments to ensure the centrality of a local authority’s planning report in determining an application. Authorities would be required to attend any hearing to assist the Court, for example by clarifying or discussing matters in the report, giving evidence, speaking to submissions or addressing issues raised by them, or providing any information the Court might request. We also recommend deleting clause 41, as the changes it proposes to section 198I are inconsistent with the provisions in section 198H of the Resource Management Act.

Environment Court
The majority of us recommend amending clauses 15, 40, and 43 to make it clear that “the grounds upon which” an application is made refer to the grounds upon which an application for resource consent is made, or the grounds upon which an application for confirmation of
the requirement is made. It was not the policy intent of these clauses to alter the current sequence for a direct referral so that people could apply to the Court for a grant of consent as soon as a request was made.

**Regulations**

The majority of us recommend amending clause 61 to allow regulations to be drawn up regarding the application of the threshold amounts to different types of proposals, and potentially the application of different threshold amounts in different areas.

We also recommend amending new section 360(1)(hl) in clause 61 to require local authorities to “provide information gathered” rather than “report information gathered”. Requiring local authorities to produce their own reports was not intended, and the proposed amendment reflects the intent that central Government be provided with the necessary data.

We also recommend amending clause 61 to require the appropriate Minister to “have regard” to the intent of such regulations when recommending new regulations to the Governor-General.

We note the Government’s intention that councils, iwi, and other key stakeholders would be involved in the development of any such regulations, and that factors such as costs, the capability of councils, and existing monitoring systems would be taken into account.

**Evaluation reports**

The majority of us recommend amending clause 69 so that evaluation reports required by section 32(2)(a)(i) of the Resource Management Act include reference to opportunities for economic growth that are “anticipated to be provided or reduced” rather than those that are expected to “cease to be available”. This would cover both positive and negative change. Clause 69 is intended to increase the understanding of economic effect, and there is no weighting in the bill between economic growth and employment. The extent to which decision-makers considered various potential effects of proposals would be largely a question of practice.
Six month consenting process

The majority of us recommend amending clauses 91 and 114. Clause 91 relates to time limits for processing resource consents, while clause 114 relates to designations and heritage orders. As introduced the clauses could adversely affect local authorities in a way that was not intended. The amendments we recommend are designed to reflect the policy intent more accurately while retaining the current terminology in the Resource Management Act.

We recommend deleting clause 92(5). Subclause 5 as introduced would leave the resource consent processing “clock” “ticking” for three days after a request for information being made; this was intended to give applicants certainty regarding the progress of their application and likely decision dates. We consider, however, that its practical effect would be to reduce from 20 to 17 the number of processing days available to a local authority. We recommend deleting subclause 5 to avoid this unintended effect.

We recommend amending clause 94(4) to make clear at which point the processing “clock” might be “stopped” for applicants attempting to obtain written approval from affected parties. As introduced, subclause 4 could have led to perverse outcomes when applicants had not advised a local authority of their decision to seek written approval, because it does not make it clear whether notification would be required in these circumstances.

We recommend amending clause 96 (new section 91C) to clarify that a consent authority would have to either return an application or continue to process it after reaching the 130-working-day time limit. The majority of us also recommend inserting new clause 119A to provide for the right to object to a decision under new section 91C(1A) to either return an application or continue processing. We further recommend inserting new clause 119B so that there could be no right of appeal against a decision on an objection.

---

1 Designation: a provision made in a district plan to give effect to a requirement made by a requiring authority.

Transitional regulations
We recommend amending clause 124 to restrict the ability of the Minister for the Environment to recommend regulations regarding preparation of the first Auckland combined plan. We also recommend amending clause 124 to restrict the use of regulation-making powers to deal with unforeseen situations or issues that arise during preparation of the combined plan, and that the responsible Minister be required to consult with the Auckland Council and the Hearings Panel before recommending any regulations. These amendments are intended to provide an efficient and orderly process for the development of the Auckland Council’s first combined plan.

The Regulations Review Committee reported to the committee on the powers contained in clause 124. The amendments we propose to clause 124 address the issues it raised.

We draw to the House’s attention the first reading of the Local Government (Auckland Council) Amendment Bill No 2, and recommend that any related changes that might arise from our report could be integrated into that bill or addressed as the relevant Minister sees fit.

Auckland Council’s first combined plan
We recommend a number of amendments to clause 125, which seeks to insert new Part 4 into the Local Government (Auckland Transitional Provisions) Act 2010, including the more substantive amendments that we discuss below.

Process for development of first combined plan
We recommend amending sections 115 and 116, and inserting new section 117A so that the Auckland Council must exclude the Hauraki Gulf Islands District Plan (HGI Plan) from the first combined plan. Excluding provisions relating to the HGI Plan is unlikely to affect the integrity of the combined plan as the Hauraki Gulf Islands are geographically isolated, and are not identified as a growth area.
Initial preparation
We recommend amending section 120 so that owners or occupiers of land covered by a proposed designation or heritage order would be the only parties directly notified of the designation or order by the Auckland Council. We propose this amendment to avoid any potential confusion over whether the council would be required to serve notice on parties whose land is not covered by the designation but who might be directly affected by it.

Amendments or variations
We recommend amending section 121 to grant the Hearings Panel the authority, in particular circumstances, to direct the Auckland Council to initiate a variation to the combined plan. We also recommend consequential amendments, including inserting new section 121A, to establish a process for managing variations to the combined plan. While we believe that a complete restriction on variations would be impractical because Auckland’s combined plan is so large, we also believe that it is desirable to allow the Hearings Panel to direct the council, in certain circumstances, to initiate a variation, and for the Auckland Council, in certain circumstances, to amend the proposed plan.

Material provided “without prejudice”
We recommend amending sections 127, 129, and 130 to state that reports prepared for pre-hearing session meetings (section 127) and conferences of experts (section 129), and reports of alternative dispute resolution processes (section 130) must not include any material provided on a “without prejudice” basis unless consented to by the party providing the information.
We also recommend amending sections 127 and 129 to clarify that reports may be provided electronically.

Directions to provide evidence
We recommend amending section 135 so that directions from the Hearings Panel to provide evidence would also apply to the Auckland Council. We also recommend amending section 135 and inserting new section 138A to require the Hearings Panel to make evidence and reports available on the council’s website and to provide
electronic notices to the council and relevant submitters—unless it considers it unreasonable. We do not support a fixed timeframe for providing evidence. We consider flexibility is desirable for the provision of written evidence, as the Hearings Panel is likely to have a heavy workload.

Protection of sensitive information
We recommend amending section 137 to allow parties to apply to the Environment Court for an order cancelling or varying any order made by the Hearings Panel to restrict the publication of a document or to exclude the public from all or part of a hearing. While it is important that sensitive information, such as trade secrets or the location of wāhi tapu, be protected, we consider it necessary to balance this against the need for transparency. The amendment we propose would be similar to current provisions in section 42 of the Resource Management Act.

Hearings Panel
We recommend amending section 139 to make it clear that the Hearings Panel must specify where it is making a recommendation outside the scope of submissions, and could not make recommendations on existing designations or heritage orders that are unmodified and on which no submissions have been made. These amendments correspond with amendments to section 150, which we discuss below.

The majority of us recommend amending section 143 to prohibit the council, in making its decisions, from considering new evidence or any other material that was not available to the Hearings Panel. This is intended to reduce the likelihood of the council making decisions based on inappropriate political lobbying, and ensure that it follows fair process requirements.

Designation and heritage orders of other requiring authorities
We recommend inserting new section 145A to provide a more detailed process for designations of requiring authorities other than the Auckland Council. We also recommend consequential amendments to section 146.
Appeals to the Environment Court

We recommend amending section 150 to provide a clear right of appeal to the Environment Court where the Auckland Council had amended a provision recommended by the Hearings Panel. We also recommend that this right of appeal be limited to the effect of the Auckland Council’s amendments.

We recommend amending section 150 to enable a merit-based appeal to the Environment Court where the Hearings Panel makes a recommendation identified as out of scope. The appeal right would be available to anyone unduly prejudiced, regardless of whether or not the Auckland Council accepted or rejected the recommendation of the Hearings Panel.

We are aware of concern that the combined effect of sections 139 and 150 as introduced would represent a significant departure from existing law, and could lead to the Hearings Panel making substantive recommendations that were not the subject of evidence. The amendments we recommend to both sections are intended to provide a practical solution without preventing the rest of the proposed plan from becoming operative.

The majority of us recommend amending sections 151 and 152 so that

- submitters who are owners or occupiers of land covered by a designation or heritage order could appeal to the Environment Court
- submitters who are not owners or occupiers of land covered by a designation or heritage order could appeal to the High Court on a point of law where a requiring authority agreed with a recommendation of the Auckland Council or the Hearings Panel
- submitters who are not owners or occupiers of land covered by a designation or heritage order could appeal the merits of a decision where a requiring authority disagreed with a recommendation of the Auckland Council or the Hearings Panel.

These amendments are more consistent with the policy intent of the bill, and we believe would be fairer to requiring authorities.
Judicial review

We recommend amending section 153 to require anyone intending to appeal (on a point of law) a decision of the Auckland Council or a requiring authority, who also intends to bring judicial review proceedings in respect of the same decision, to lodge them together. The amendments we propose would also require the High Court to endeavour to hear them together. This would, in essence, impose a statutory timeframe on appeal and judicial review proceedings with a view to minimising delays.

New Zealand Labour Party minority view

The Labour Party is committed to improving processes under the Resource Management Act (RMA) so that unnecessary and vexatious delays in decision-making around consents can be avoided. We do not support, however, any undermining of environmental protections or of the right of communities to be engaged in the consent process.

Clause 12 (section 76 RMA amended)—Tree protection

Despite amendments to recognise a group, cluster, grove, or line of trees, the tree protection provisions in the section remain unwieldy and will cause unnecessary effort and therefore cost for local authorities, and risk for communities. As the provision now stands, it still requires local authorities to identify by street address or legal description the tree or trees for which protection can be consented. While individual trees no longer have to be itemised, each section, even where groups of trees traverse more than one section of land, must be identified and listed separately. Groups of trees cannot simply be identified by the use of maps or aerial photographs.

Submitters on this part of the bill, such as the Tree Council and the Environmental Defence Society, explained how the felling of one tree in parts of West Auckland where there are tree-clad hills and steep terrain can affect another adjacent property by virtue of the stabilising properties of tree roots. This was a very good example not simply of the amenity value of trees in the urban environment, but of their intrinsic worth for drainage, moisture absorption, and ground stability, as well as the interdependence of properties adjacent to each other.
Labour contends that the bill will atomise the protection of trees in the urban environment, and ignores the collective and community significance of trees and groups of trees in that environment. We support the general tree protection rules which existed previously. There is a legitimate and important case for protecting trees for wider community benefit and not simply defending the right of an individual property owner to fell any tree on their property.

Clause 69 (section 32 RMA amended)—Cost/benefit analysis
This section causes Labour great concern. It is designed to fit with the Government’s wider agenda to turn the RMA into an economic development Act rather than an environment protection Act. It requires evaluation reports of consent applications to provide an examination of how the proposal will achieve the purpose of the Act. Should the purpose of the RMA be changed in the future, as has been foreshadowed by the Government, this section would be required to reflect that new purpose. The problem with this section, in our view, lies in its requirement that any proposal be “monetised” or given some quantitative monetary value, as opposed to any intrinsic value of the environment affected by the proposal. While environmental, economic, social, and cultural effects are mentioned in the bill in this section, the two items singled out for specific assessment are economic growth and employment opportunities which might be provided or reduced by the proposal. This immediately biases the bill towards economic development and away from environmental protection, defeating its original purpose.
A particular example of this was given by a submitter who, when asked how one assessed the value of a favourite swimming hole in a river which would be detrimentally affected by a proposal, said that it would be possible to count the number of people (children) who used the swimming hole in the summer and multiply that by the cost of admission to the local community swimming pools and that would provide the “value” of the swimming hole. Labour believes that that submitter misses the point of intrinsic worth completely.

Clause 124—Transitional provisions
Labour originally had concerns over this clause because it invested the Minister for the Environment to make regulations which could
conceivably pervert the original intention of the Act (Henry VIII provisions). This power was amended by the select committee to make the transitional regulations more consistent with best constitutional practice and we support those changes. However we are left puzzled as to why legislation to turn other transitional provisions into primary legislation (the Local Government (Auckland Council) Amendment Bill (No 2)), has been introduced to the House for its first reading (5 June 2013) before this report has even been submitted to the House. That legislation needs to be blended with the work done by the select committee and is the subject of this report, in order to avoid unnecessary amendment later.

Conclusion

While there are some useful parts in this bill, Labour cannot support its passage for the major reasons outlined above.

Green Party minority view

The Green Party supports improving the Resource Management Act to ensure decision-making processes are timely and efficient. It believes, however, that the Act’s implementation can be improved by better national leadership, training, and guidance by the Ministry for the Environment rather than complex and cumbersome legislative provisions specifying timeframes and implementation practice. Parts of the Resource Management Reform Bill have been improved through the select committee process. The Green Party opposes its attack on urban tree protection, and provisions which undermine local decision making and reduce public participation and access to justice. The bill increases uncertainty in the administration of the RMA and risks litigation around some new provisions, in apparent contradiction to the Government’s purported aims.

The bill promotes speedy rather than well informed, sound decisions where potential effects are thoroughly evaluated and addressed. It does this by the six-month deadline for council processing of “medium sized consents”. This does not recognise the complexity of some major development applications, the value of community input, and that applicants can be responsible for delays.
Tree protection
The bill compromises urban amenity by its making it much harder for councils to protect and control the loss of urban trees. The bill will effectively allow landowners to trim or fell any urban trees with no need for a resource consent, unless the trees are individually described and their location legally identified in a plan schedule. It overturns a 2010 Environment Court decision which upheld councils’ ability under section 76 of the RMA to have general plan rules which required a resource consent to, for example, fell or trim urban trees of a particular species (such as coastal pohutukawa) or above a height or girth threshold.

Many submitters including the Tree Council, the Auckland Council, and the Environmental Defence Society strongly opposed the bill’s ban on general tree protection rules and the changes to section 76 of the RMA. Submitters said that trees help create a liveable city and are a community asset not just an individual property right. They highlighted the loss of mature and amenity trees which would result from the change, especially in Auckland given current development pressures. They variously said the requirement to schedule all trees deserving protection would be “costly and impractical,” “onerous and unworkable,” and “involve huge amounts of time and resources.” The Green Party agrees.

Reduction of local authority decision making
Resource management decisions are best made by communities affected by those decisions and the RMA is based on this. The Green Party opposes the removal of a council’s discretion to approve or decline an applicant’s request for direct referral to the Environment Court of projects above a yet to be specified investment threshold. This erodes local decision making and is likely to reduce public participation because of the greater formality and expertise required to participate in Environment Court processes.

The changes to section 35 of the RMA around state of the environment monitoring and reporting are likely to have significant additional resourcing and practice implications for local authorities which the bill does not address. The changes are ad hoc given the lack of a Government commitment to implementing independent consolidated nation-wide state of environment reporting.
Section 32
The Green Party opposes the changes to section 32 of the RMA in clause 69. New criteria requiring assessment of opportunities for economic growth and employment bias the assessment towards measures which have quantifiable economic benefits and against those which benefit environmental protection and ecosystem health. This risks obstructing councils seeking to regulate land and water use to promote sustainable management.

Variable performance in local authorities in section 32 analysis has more to do with the capability, capacity, and resourcing of local authorities than the provisions of the RMA. The level of detail the bill requires in section 32 analysis may be beyond the capacity of some local authorities and risks plan making becoming “paralysis by analysis” and significantly increasing its costs.

Auckland Unitary Plan
The Green Party supports a combined plan for Auckland. It opposes the provisions which allow the Ministers for the Environment and Conservation rather than the Auckland Council to appoint the hearing commissioners and set their terms of reference. This is undemocratic and ignores the mandate councillors have from being elected by Aucklanders.

The bill’s three-year deadline to complete the Auckland combined plan is unrealistic and will impact adversely on plan quality and genuine and effective public consultation and participation. The bill’s side-lining of the Environment Court and only allowing appeals to it if the Auckland Council rejects a Hearings Panel recommendation is opposed. This will make the Council hearing process more formal (potentially reducing engagement by lay submitters) and more cumbersome because of the myriad of issues which must be resolved through a one stage process. It also removes the check on plan quality which appeal rights to the specialist jurisdiction of the Environment Court provide. The provision is unnecessary when the Environment Court has indicated that it can expedite the resolution of appeals on large plans.

The bill provides that sections 86A to 86G of the RMA relating to the legal effect of rules will apply to the combined plan (clause 147). Accordingly, plan rules relating to water, air, soil, significant indigenous
vegetation, significant habitats of indigenous fauna, and aquaculture activities will have immediate legal effect from the date that the proposed plan is publicly notified. Those relating to land use will not have legal effect until the Council notifies its decision on the Hearings Panel’s recommendations. The Green Party supports the Auckland Council’s submission that all rules should take effect on plan notification so the benefits of Auckland’s amalgamation can be fully realised to provide certainty to the community and because many of the existing plans are more than a decade old.

Clause 137 which gives the Auckland Hearings Panel power to make recommendations beyond the scope of submissions and on any other matter relating to the proposed plan is opposed as being a substantial departure from the established case law, and contrary to the right to be heard—a core principle of natural justice. As the Auckland Council noted “A recommendation beyond the scope of submissions could have a significant impact on property rights and other interests, yet the affected parties would have no opportunity to respond to it: they could only hope that the Council refused to accept the Hearings Panel’s recommendation.” It also risks lobbying of the Hearings Panel.

The exclusion of the district plan provisions for the Hauraki Gulf Islands from the Auckland combined plan process is supported because these are second generation district plan provisions that have been finalised relatively recently.

**Regulation-making powers**

The Green Party opposes the Henry VIII clause 124(4) in Part 2 of the bill which enables the Minister to make regulations in relation to the Auckland Combined Plan which override the Local Government (Auckland Transitional Provisions) Act 2010 and the RMA. This clause is arguably unconstitutional.

Regulations by the Executive are not subject to the scrutiny and debate which consideration by Parliament and the public through select committee provides. While the Local Government and Environment Committee has clarified the circumstances in which such regulations can be made, the power is not restricted to exceptional circumstances. As the Resource Management Law Association noted, these powers mean “participants have to operate in a legislative framework with
legal processes and tests that could change at any point in time. Such a situation is confusing, creates uncertainty, and could be used in a manner that breaches natural justice".
Appendix

Committee process
The Resource Management Reform Bill was referred to the committee on 11 December 2012. The closing date for submissions was 28 February 2013. We received and considered 278 submissions from interested groups and individuals. We heard 110 submissions, which included holding a hearing in Auckland.

We received advice from the Ministry for the Environment. The Regulations Review Committee reported to the committee on the powers contained in clause 124.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Raymond Huo
Moana Mackey
Eugenie Sage
Hon Maryan Street
Andrew Williams
The Local Government and Environment Committee has examined the report from the Controller and Auditor-General, *Auckland Council: Transition and emerging challenges, December 2012*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Nicky Wagner
Chairperson
The Local Government and Environment Committee has examined the report from the Controller and Auditor-General, Department of Conservation: Prioritising and partnering to manage biodiversity, December 2012, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Nicky Wagner
Chairperson
Heritage New Zealand Pouhere Taonga Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Heritage New Zealand Pouhere Taonga Bill and recommends that it be passed with the amendments shown.

Introduction
The Heritage New Zealand Pouhere Taonga Bill seeks to repeal and replace the Historic Places Act 1993. The New Zealand Historic Places Trust (Pouhere Taonga) in its current form, which was established under the Act, would continue under the name Heritage New Zealand Pouhere Taonga. The new name is intended to remove confusion as to the organisation’s legal status as a Crown entity.

The bill also seeks to reform the organisation’s governance and structure by disestablishing branch committees, removing three elected board member positions, and creating two board member positions to be filled by appointment by the responsible Minister. The bill would continue the Māori Heritage Council.
The bill aims to redress the balance between heritage values and private ownership. New archaeological provisions are intended to improve efficiency, reduce costs, and improve alignment with the Resource Management Act 1991.

The bill would also
- simplify and streamline the archaeological authority processes
- establish an emergency authority process
- ensure Heritage New Zealand Pouhere Taonga and the Māori Heritage Council could reject vexatious applications for registration of historical and cultural heritage sites
- increase the maximum monetary penalties to bring them into line with those under the Resource Management Act.

**Supplementary Order Paper**

Supplementary Order Paper 135 in the name of the Minister for Arts, Culture and Heritage, Hon Christopher Finlayson, proposes a number of amendments to the bill to
- clarify the purpose of the Register of historical and cultural heritage
- recognise the full range of types of Māori heritage places
- help set national priorities for the conservation of heritage places.

The proposed amendments include the addition to clause 6 of definitions of “common marine and coastal area”, “protected customary right”, and “wāhi tūpuna”, and the replacement of Part 4 of the bill (clauses 63 to 81 as introduced).

We agree with the amendments proposed on the SOP, and have incorporated them into our recommendations.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

**Principles**

We recommend amending clause 4 to widen the range of parties Heritage New Zealand Pouhere Taonga must work with to include tangata whenua and central Government agencies. We consider it is important that this Crown entity work collaboratively with as many
of the interested parties as possible, including other central Government agencies.

We do not consider it necessary to amend clause 4 to include a principle specific to underwater heritage, as the bill is intended to apply to all of New Zealand’s historical and cultural heritage. We note that the bill’s archaeological provisions would apply to underwater sites including certain wrecks; and that the definitions of “historic place” and “historic area” cover land within New Zealand’s territorial limits, while the definition of “land” includes land covered by water.

Interpretation

We recommend a number of amendments to clause 6, including the following:

- Amending the definitions of “exploratory investigation”, “historic place”, “scientific investigation”, and “site of interest to Māori”.
- Inserting definitions of “building”, “owner”, “person”, “structure”, and “tangata whenua”.
- Deleting the definition of “harm”.

Amending the definition of “exploratory investigation” is intended to address concern that it could capture non-invasive activity such as walking across a site; and amending the definition of “site of interest to Māori” is intended to make it more inclusive and cover archaeological sites in which iwi or hapū have or have had an interest, and other places of heritage interest to iwi or hapū.

Clause 37(6) of the bill as introduced includes a definition of “owner” which would apply only to heritage covenants. We believe it would be more helpful to delete this definition and insert a new definition of “owner” (similar to that in the Resource Management Act) in clause 6 so that it would apply throughout the bill. We also recommend that the definition of “owner” recognise ownership interest in Māori reserve land.

Harm

The Historic Places Act, which this bill would replace, uses the phrase “destroy, damage, or modify” in relation to archaeological sites. The intent of including a definition of “harm” in the bill as
introduced (in line with current drafting practice) was to modernise this language and use fewer words where possible. We have reached the conclusion that the proposed definition does not recognise the fact that archaeological activity can have both positive and negative outcomes.

We therefore recommend deleting the definition of “harm” in clause 6, and replacing the term “harm” throughout the bill with “modify or destroy”. Because the original phrase was “destroy, damage, or modify” we recommend, for the avoidance of doubt, amending clause 6 by adding a definition of “modify” that includes damage.

**Treaty of Waitangi (Te Tiriti o Waitangi)**

We recommend amending clause 7 to reflect the provisions in the bill that would give effect to the Treaty of Waitangi, such as those for notifying appropriate iwi of applications for registration of wāhi tapu and wāhi tūpuna. The amendment we propose reflects current drafting practice regarding legislative provisions for Treaty clauses.

**Heritage New Zealand Pouhere Taonga**

**Special adviser**

We recommend inserting new clauses 10A and 10B to allow the responsible Minister to appoint the chief executive of the Ministry for Culture and Heritage as special adviser to the governing body of Heritage New Zealand Pouhere Taonga (its board). This is to facilitate the flow of information between the responsible Minister and the board on government policy issues. The special adviser would not be a member of the board and would not have voting rights.

**Functions**

We recommend amending clause 11 to require Heritage New Zealand Pouhere Taonga to recognise landowners’ interests when fulfilling its advocacy function under subclause (1)(b). We were not persuaded that the subclause should be deleted in its entirety, and believe that the amendment we propose would resolve possible tensions between the Crown entity’s regulatory role and its advocacy function.

For the sake of clarity, we also recommend amending clause 11 to provide a more comprehensive list of the entity’s functions, primarily
those regarding the New Zealand Heritage List, which we discuss later in the commentary.

Powers
The majority of us recommend amending clause 12(1)(a) to make clear the nature and extent of the Crown entity’s advocacy role by stipulating that it is limited to advocating its interests in a public forum or a statutory planning process in which it has standing under an Act. This is intended to ensure that Heritage New Zealand Pouhere Taonga maintains an appropriate statutory role; that is, presenting a professional heritage perspective in appropriate contexts, such as council hearings.

For the sake of consistency with the amendments proposed to clause 11, the majority of us also recommend amending clause 12 to require Heritage New Zealand Pouhere Taonga to recognise landowners’ interests.

Rights of entry onto land
We recommend amending clause 13 to make it clear that Heritage New Zealand Pouhere Taonga would be permitted to enter land with any assistance deemed reasonably necessary, such as persons, vehicles, machinery, or equipment for the purposes set out in subclauses (1) and (3). The wording we propose is similar to that used in the Public Works Act 1981 and is intended to facilitate the practical application of clause 13.

Policy statements
We recommend amending clause 14(2) to provide Heritage New Zealand Pouhere Taonga with 18 months to develop general policy statements, including those for the administration of archaeological sites and emergency authorities. Increasing this from 12 months would allow the entity time for public consultation and deliberation.

Procedures for adopting policy statements
We recommend amending clause 15 to require Heritage New Zealand Pouhere Taonga to develop a general policy statement for the administration of the New Zealand Heritage List (clause 63) and the
National Historic Landmarks List (new clause 81B). We discuss the New Zealand Heritage List and the National Historic Landmarks List below.
We also recommend requiring Heritage New Zealand Pouhere Taonga to issue a general policy statement for its statutory advocacy role. This is intended to ensure public input into the way its functions under clauses 11 and 12 relating to landowners’ interests would be carried out.

Breaching policy statements and conservation plans
We recommend inserting new clause 15A and amending clause 16 to allow Heritage New Zealand Pouhere Taonga to amend a general policy statement (new clause 15A), or breach a conservation plan (clause 16).
We recommend inserting new clause 16A so that the Crown entity could only breach a general policy statement or conservation plan if the board had resolved “on reasonable grounds” that such an action might be taken. This would require a unanimous resolution, and would apply only in exceptional circumstances such as a natural disaster.
These provisions are similar to those in the Local Government Act 2002 that allow local authorities to act inconsistently with their long term plans in certain circumstances.

Protection of names
We recommend amending clause 21 to protect the name “Māori Heritage Council” so that no body or entity could be incorporated or registered under the name Māori Heritage Council. The name Māori Heritage Council has been in statute since 1993 and we feel it is important that it be protected.
We do not agree with the argument for changing the name of Heritage New Zealand Pouhere Taonga to include the word “historic” rather than “heritage”, as we consider it is important that the name be appropriately distinctive. Furthermore, the use of “heritage” would reflect the name of the entity’s long-running publication *Heritage New Zealand*. We note that there is international precedent for using the
word “heritage” to describe organisations with a similar mandate to Heritage New Zealand Pouhere Taonga.¹

**Māori Heritage Council**

**Māori Heritage Council continued**

We recommend amending clause 23 to allow the Minister for Arts, Culture and Heritage to appoint the chairperson of the Council, from among the council members, in consultation with the Minister of Māori Affairs. As introduced, clause 23 reflects the arrangements of the current Māori Heritage Council, which the bill would continue. The amendment we propose would better reflect the Council’s status as a part of a Crown entity.

**Functions**

We recommend amending clause 24 to cover fully the functions of the Māori Heritage Council. The amendment is intended to ensure that the Council’s functions are set out clearly, and are consistent with clause 7 (Treaty of Waitangi, Te Tiriti o Waitangi).

As a consequence of amendments we propose to clauses 11 and 12, the majority of us also recommend amending clause 24 so that the Māori Heritage Council must recognise landowners’ interests.

**Meetings**

We recommend amending clause 32 to align the procedures of the Māori Heritage Council regarding roving resolutions with the Crown Entities Act 2004.

**Archaeological sites**

We recommend transferring the provisions in clause 40 as introduced to new clause 41, and those in clause 41 as introduced to new clause 40. We consider it important to place the prohibition (new clause 40) ahead of the declaration (new clause 41).

---

¹ For example, English Heritage and the Australian Heritage Council. New Zealand is also a signatory to the World Heritage Convention, which relates to historic places.
We also recommend amending clause 40 to make it clear that it would apply to all sites that met the definition of an archaeological site, whether or not they were recorded or entered on the heritage list. We further recommend amending clause 40 to remove the requirement to apply for an archaeological authority to modify or destroy a standing building unless it is being demolished in its entirety. If a building were to be demolished in its entirety, an authority would still be required. We recommend amending clause 41 to require Heritage New Zealand Pouhere Taonga to notify the appropriate iwi or hapū and the relevant local authorities, as well as the affected owner, of a declaration of an archaeological site.

Applications

We recommend inserting new clause 42A, and including in it the provisions that were in clause 45 of the bill as introduced. New clause 42A would allow Heritage New Zealand Pouhere Taonga to approve a person to carry out archaeological work independently of the relevant application for the work to proceed. We also recommend a consequential amendment deleting clause 43(2)(e).

We recommend a number of amendments to clause 43 including the following:

- allowing applications, for all types of archaeological authorities, to be submitted without an owner’s consent, whilst requiring that work under an authority does not commence until a consent is given (new subclause (2)(ba))
- requiring applicants to provide a description of all known archaeological sites in their application (subclause (2)(c))
- clarification that those seeking to conduct a scientific investigation of a site of interest to Māori must obtain the consent of the appropriate iwi or hapū (subclause (3)(a)).

The proposed amendments to new subclause (2)(ba) and subclause (3)(a) are designed respectively to ensure that projects are not delayed unnecessarily while an owner’s consent is obtained, and that there are no delays if an applicant has not selected an archaeologist. The proposed amendment to subclause (2)(c) is intended to ensure comprehensive information is provided by applicants to facilitate the decision-making process.
Factors relevant to determination of applications
The majority of us recommend amending clause 47 to require Heritage New Zealand Pouhere Taonga, when determining an application for an archaeological authority, to consider all of the matters that the Environment Court is required to consider. They would include the extent to which protection of a site prevents or restricts the existing or reasonable future use of the site for any lawful purpose, and the interests of any person directly affected by the decision.

Determining applications for an emergency authority
We recommend similarly amending clause 60 to require Heritage New Zealand Pouhere Taonga, when determining an application for an emergency authority, to have regard to all of the matters that the Environment Court is required to consider. We consider that this would result in more robust and balanced application decisions. For consistency, we further recommend requiring the Crown entity to “have regard to” public health and safety when making decisions on emergency authority applications, rather than requiring them to “take [them] into account”.

Registration of historic places
In the bill as introduced, clause 63 would require Heritage New Zealand Pouhere Taonga to “continue and maintain the Register of historic places, historic areas, wāhi tapu, and wāhi tapu areas established under section 22 of the Historic Places Act”. Amendments to clause 63 on SOP 135 would change the name of the list from “Register” to “Record”, because the term “register” conveys a legal situation not imposed by the bill. SOP 135 does not seek to affect the requirement to “continue and maintain” a register or record.
While we agree that it would be inappropriate, in the context of this bill, to use the term “register”, we consider that replacing it with the term “record” is not without disadvantage, as it could create confusion with the New Zealand Archaeological Site Recording Scheme, under which archaeological sites are often referred to as “recorded”.
For these reasons, we recommend amending clause 63 to replace the proposed name “Register of historic places, historic areas, wāhi tapu, and wāhi tapu areas” as the “New Zealand Heritage List/Rārangi
Kōrero”. This is intended to reflect the Māori heritage component of the list, as well as eliminating potential ambiguities.

We also recommend amending clause 63 to make it clear that all entries in the existing register would be deemed to be in the heritage list.

National Historic Landmarks List

We recommend inserting new clause 81A to make it clear that entries in the National Historic Landmarks List could include a landmark incorporating more than one or building or site, such as an art deco precinct or the Treaty Grounds at Waitangi. This provision was never intended to be restricted to individual buildings, and this amendment would make the intent clear.

We recommend amending clause 81B to provide a dual name for the list: National Historic Landmarks list/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu.

We also recommend amending clause 81B by removing the provision that the National Historic Landmarks List must not include more than 50 places at any one time. The purpose of the list is to ensure that the most important places are protected to the highest standard practicable and other provisions already set a high bar for inclusion. We consider that a restriction on the total number is unnecessary.

We are recommending above that Heritage New Zealand Pouhere Taonga be required in clause 15 to develop a general policy for administration of the National Historic Landmarks List.

Offences

We recommend amending clause 89, and deleting clauses 87, 88 and 91. Clause 87 largely duplicates the provisions in clauses 84 and 85, while the offence provisions in clauses 88 and 91 have never been used and are considered unworkable. The proposed amendments to clause 89 would delete reference to bylaws, as there are no existing bylaws or provisions in the bill for bylaws to be promulgated.

These amendments would provide for the more objective “knows or reasonably ought to have known” test for determining if a person has committed an offence.
Branch committees dissolved
We recommend amending clause 100 to require Heritage New Zealand Pouhere Taonga to take reasonable and practicable steps to support independent heritage groups formed to replace current branch committees in the 12 months following enactment. Although the Crown entity is already assisting with the formation of new groups, there is concern that insufficient support might be available. We are not recommending the transfer of members to a new membership structure, as it would be inappropriate to prescribe this in legislation without members’ agreement.
We recognise that some transitional financial support, and other support, has been made available to local organisations. Some of us would recommend that such support be greater and made available on an ongoing basis.

Other matters
During our consideration of the bill issues relating to earthquake strengthening of heritage buildings were raised. They are being addressed in the Government’s review of New Zealand’s earthquake-prone building system, and fall outside the scope of this bill. We realise the importance of this work, and look forward to the results of the review.
Appendix

Committee process
The Heritage New Zealand Pouhere Taonga Bill was referred to the committee on 8 May 2012. The closing date for submissions was 21 June 2012. We received and considered 80 submissions from interested groups and individuals.
Supplementary Order Paper 135 in the name of the Minister for Arts, Culture and Heritage, Hon Christopher Finlayson, was received by the committee on 18 October 2012. We invited further submissions, with a closing date of 29 November 2012. We received and considered an additional 15 submissions.
We heard 36 submitters, which included holding hearings in Auckland and Christchurch.
We received advice from the Ministry for Culture and Heritage and the New Zealand Historic Places Trust.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Claudette Hauti
Hon Phil Heatley
Gareth Hughes
Raymond Huo
Moana Mackey
Eugenie Sage
Hon Maryan Street
Andrew Williams
Holly Walker replaced Gareth Hughes for this item of business.
The Local Government and Environment Committee has considered Petition 2011/34 of Trish Fraser on behalf of Stop the Tunnel and 162 others, which requests that

the House urge the Government to decline the Milford Dart Ltd proposal for a concession to build and operate a tunnel in Fiordland and Mount Aspiring National Parks in the Te Wahipounamu World Heritage Site; and note that 25,425 people have signed a petition supporting this request.

On 17 July 2013 the Minister of Conservation announced that he was declining the proposal in question. While we do not rule out absolutely the possibility of commercial activity in national parks and World Heritage areas, we recognise their conservation value, and we believe that great care needs to be exercised when considering concession applications.

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

Nicky Wagner
Chairperson
Conservation (Natural Heritage Protection) Bill

Member’s Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Conservation (Natural Heritage Protection) Bill and recommends that it be passed with the amendments shown.

Introduction
The Conservation (Natural Heritage Protection) Bill is an omnibus bill that seeks to increase the penalties in the main enactments administered by the Department of Conservation. This is intended to encourage compliance and protect New Zealand’s natural and historic resources and legally protected wildlife. It would also implement a consistent approach to the penalties administered by the department.

The bill as introduced would amend the following Acts:
• the Conservation Act 1987
• the National Parks Act 1980
• the Reserves Act 1977
• the Wildlife Act 1953
The bill does not seek to alter the department’s compliance and enforcement strategy, processes, or resources; it would maintain its existing policy of educating people to encourage compliance. Like other Crown enforcement agencies, the department would be required to apply Crown Law Office Prosecution Guidelines when determining whether to prosecute.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

**Purpose**
We recommend deleting clause 3 to reflect the general principle that amendment bills should not include statements of purpose, as they could conflict with the purpose provisions of the principal Act or Acts.

**Penalties**
We recommend a number of amendments to Parts 1 to 5 to update and organise the existing penalties for offences we do not consider to be motivated by commercial gain or reward. We discuss penalties for offences motivated by commercial gain or reward below. This approach takes into account a number of factors, including intentionality and the type of offence.

For lesser offences we recommend that the following penalties apply:

- For individuals: a term of imprisonment not exceeding one year or a fine not exceeding $100,000, or both.
- For bodies corporate: a fine not exceeding $200,000.
- For a continuing offence: a further fine not exceeding $10,000 per day.

For more serious offences, such as discharging a firearm into a protected area, injuring or taking absolutely protected wildlife, obstructing an officer, and taking plants from conservation areas, we recommend similar penalties, but with a higher maximum term of imprisonment, 2 years, for individuals.
Marine wildlife (Wildlife Act)
To reflect the bill’s intended consistent approach to the penalties administered by the department, we recommend amending clause 13 to remove from section 67 of the Wildlife Act a further fine provision “not exceeding $10,000 for every item of marine wildlife (other than coral)”.

Offences committed for commercial gain or reward
We also recommend a number of amendments to Parts 1 to 5 to establish new standardised penalties for commercially-motivated offences. We recommend that the following penalties apply:
• For individuals: a term of imprisonment not exceeding five years or a fine not exceeding $300,000, or both.
• For bodies corporate: a fine not exceeding $300,000.
• For a continuing offence: a further fine not exceeding $20,000 per day.
Recommending higher penalties for commercially-motivated offending (including smuggling) than for otherwise-motivated offending is intended to create a strong deterrent and penalise the most serious offending sufficiently severely.

Regulations and bylaws
Clauses 6 and 8 seek to increase the penalties for breaching Conservation Act regulations and National Parks Act bylaws. Consistently with the bill’s aim of increasing and standardising penalties, we recommend inserting new clauses 11A and 15D and amending clause 17 to increase the maximum penalties for breaching regulations under the Reserves Act, the Wildlife Act, and the Wild Animal Control Act. We also recommend amending clause 11 (as it relates to section 104 of the Reserves Act) to remove the distinction between national reserves and other reserves, and apply the same penalty regime to all reserves. National reserve status does not necessarily designate the most important places and we consider the distinction to be unnecessary.
Other penalties
We recommend inserting new clause 4B to amend section 39 of the Conservation Act. Subclause (2) would increase the maximum penalties for releasing contaminants into various waterways. We also recommend amending clauses 14 and 15 to replace sections 67A(1) and 67B of the Wildlife Act.

Marine Mammals Protection Act
We recommend inserting new Part 6 to reflect the intention of bringing consistency to the penalties administered by the Department of Conservation. New Part 6 would update the penalty regime of the Marine Mammals Protection Act 1978. For the sake of consistency, we recommend that the changes be aligned with our proposed amendments to Parts 1 to 5.

Standing Order 288(1) states that a select committee may recommend only amendments that are relevant to the subject-matter and consistent with the principles and objects of a bill. We are confident that our proposal to include the Marine Mammals Protection Act in this bill meets this requirement.

We note that new Part 6 would not affect section 9 of the Act in terms of what constitutes the offence of “taking” a marine mammal without a permit including attracting, disturbing, or injuring.

Drafting amendments
To reflect current drafting practice we recommend that the term “corporation” be replaced with “body corporate”. For the sake of consistency, we also recommend replacing in clauses 5, 9, 11, and 18 references to a person being sentenced to community work with reference to an individual being sentenced.
### Appendix

**Committee process**
The Conservation (Natural Heritage Protection) Bill was referred to the committee on 14 November 2012. The closing date for submissions was 28 February 2013. We received and considered eight submissions from interested groups and individuals. We heard one submission.
We received advice from the Department of Conservation.

**Committee membership**
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Raymond Huo
Moana Mackey
Eugenie Sage
Hon Maryan Street
Andrew Williams

<table>
<thead>
<tr>
<th>Nicky Wagner (Chairperson)</th>
<th>Maggie Barry</th>
<th>Jacqui Dean</th>
<th>Paul Goldsmith</th>
<th>Claudette Hauiti</th>
<th>Hon Phil Heatley</th>
<th>Gareth Hughes</th>
<th>Raymond Huo</th>
<th>Moana Mackey</th>
<th>Eugenie Sage</th>
<th>Hon Maryan Street</th>
<th>Andrew Williams</th>
</tr>
</thead>
</table>
Report from the Controller and Auditor-General, Local government: Results of the 2011/12 audits

Report of the Local Government and Environment Committee

The Local Government and Environment Committee has examined the report from the Controller and Auditor-General Local government: Results of the 2011/12 audits, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Nicky Wagner
Chairperson
The Local Government and Environment Committee has examined the report from the Controller and Auditor-General *Matters arising from the 2012–22 local authority long-term plans*, and has no matters to bring to the attention of the House. The committee recommends that the House take note of its report.

Nicky Wagner
Chairperson
Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill

36—1

Report of the Local Government and Environment Committee

Contents
Recommendation 2
Introduction 2
Water quality 2
Exceptional circumstances 2
Green Party minority view 3
Appendix 5
Recommendation
The Local Government and Environment Committee has examined the Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill and recommends that it not be passed.

Introduction
The Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill is a member’s bill in the name of Catherine Delahunty. It seeks to amend section 107 of the Resource Management Act 1991. Section 107(2)(a) allows discharges into water in “exceptional circumstances”. This term has never been defined, and some consents have been issued for up to 35 years. The bill would limit the maximum period for which a discharge permit or a coastal permit could be issued under section 107(2)(a) to five years. It would not affect current permits. The catalyst for the bill is the state of the Tarawera River in the Bay of Plenty, the water quality of which has been much affected over the decades by discharges from the Tasman Pulp and Paper Mill.

Water quality
The quality of New Zealand’s waterways is important. We acknowledge that the water quality of a number of lakes, rivers, and other waterways has suffered over decades; and while the bill would have little immediate effect on the Tarawera River, we note the widely held concern over its water quality. We also note, however, that the water quality of the river has improved considerably.

Nevertheless, most of us were not persuaded that this bill is the most effective way of improving water quality. Rather, most of us consider that initiatives at a national level, such as the Land and Water Forum and the National Policy Statement for Freshwater Management 2011, are likely to be more effective vehicles.

Exceptional circumstances
Section 107(2)(a) of the Resource Management Act has only been used a few times. In each case the Environment Court has applied a stringent test and considered timeframes. Each case has also involved detailed discussions about what constitutes “exceptional circumstances” including the following considerations:

- something “out of the ordinary” or “unusual or not typical”
- a substantial investment
- projects that involve a regionally or nationally significant resource
- projects that of their nature rely on using a waterway
- projects that will contribute to resilience to natural hazards.
The bill would limit the period for which a discharge permit or a coastal permit could be issued to a maximum of five years. A shorter duration for exceptional circumstances could provide a strong incentive for consent holders to address ongoing environmental effects. However, most of us believe it could also adversely affect the ability of companies to raise capital and ensure adequate long-term investment.

The committee has no other matters to bring to the attention of the House.

**Green Party minority view**

The Green Party strongly disagrees with the majority of the committee in their decision to oppose this member’s bill. We do not agree with the summary in the departmental report that the issues in the bill will be addressed by the Government’s water management reforms, which are unrelated to water being polluted under exceptional circumstances.

We do not agree that the bill is unnecessary and that the courts have addressed the issues raised in the bill via consent timeframes and conditions. In a small but vital number of cases the law has been used to perpetuate long-term pollution of waterways and the bill would provide a real incentive for the companies involved to innovate rather than pollute.

The bill has no effect on existing consents that rely on section 107(2)(a) as we recognise that certainty is a legitimate expectation of companies that have been through the Environment Court.

**Proposed amendment**

The argument that other parties have used is that the bill is a disincentive for investment. There is one example where this is clearly true. The bill as written would have unintended consequences for geothermal companies having the right to use section 107(2)(a) for deep aquifer geothermal discharges. We are proposing an amendment to section 107(2)(a) which would exempt geothermal discharges into deep water aquifers below 200 metres from the five year time limit. This amendment was negotiated with Contact Energy in a spirit of good faith with a renewable energy industry which has a proven and genuine exceptional circumstance and will not be polluting waterways. There are no other situations where waterways do not merit the normal Resource Management Act protections. It is hard to envisage what modern industry would claim exceptional circumstances to justify a high level of pollution for a period longer than five years.

There was one submitter who gave a concrete example of a new activity possibly requiring section 107(2)(a). This was a mining lobby group who suggested that polluting a river in exchange for cleaning up some other river might be an acceptable offset mechanism but would rely on section 107(2)(a).

It is disappointing to say the least that 131 submitters out of 148 will be ignored and that rivers such as the Tarawera will continue to face no time limit to protect them from the misuse of Resource Management Act clauses which have a valid role for up to five years of exceptional circumstances. It was interesting that at least one regional council, the Otago Regional Council, supported the bill and identified gross pollution as unacceptable. It is disturbing that tangata whenua of the Mataatua waka who submitted in numbers in support of the bill and were well aware of its limitations will be ignored and their rights to a clean river where food can be safely gathered are trampled upon.

Suggestions that the Green MP amend the bill to 10–20 years make the entire rationale for the bill pointless. The bill already allows existing consents to run their course and then
provides a fair deadline to incentivise innovation. In 2013 it is extraordinary that such a reasonable environmental modification which addresses a deep cultural hurt since 1955 and an ongoing misuse of the environment in at least one instance should be ignored by Parliament.
Appendix

Committee procedure
The Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill was referred to the committee on 29 August 2012. The closing date for submissions was 29 November 2012. We received and considered 148 submissions from interested groups and individuals, as well as three form submissions comprising 18 individuals. We heard 27 submissions, and held hearings in Whakatane and Wellington.

We received advice from the Ministry for the Environment.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Raymond Huo
Moana Mackey
Eugenie Sage
Hon Maryan Street
Andrew Williams

Gareth Hughes was replaced by Catherine Delahunty for this item of business.
Local Government (Auckland Council) Amendment Bill (No 2)

106—1

Report of the Local Government and Environment Committee

Contents

Recommendation 2
Introduction 2
Appendix 3
Local Government (Auckland Council) Amendment Bill (No 2)

Recommendation
The Local Government and Environment Committee has examined the Local Government (Auckland Council) Amendment Bill (No 2) and recommends that it be passed without amendment.

Introduction
The Local Government (Auckland Council) Amendment Bill (No 2) is a technical bill that seeks to enable local boards to delegate responsibilities, duties, or powers conferred or allocated to them under the Local Government (Auckland Council) Act 2009.

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

Committee procedure
The Local Government (Auckland Council) Amendment Bill (No 2) was referred to the committee on 2 July 2013. The closing date for submissions was 23 July 2013. We received and considered one submission.

We received advice from the Department of Internal Affairs.

Committee members
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Raymond Huo
Moana Mackey
Eugenie Sage
Hon Maryan Street
Andrew Williams
Petition 2011/19 of Emma Moon on behalf of 350.org and 2,124 others

Report of the Local Government and Environment Committee

The Local Government and Environment Committee has considered Petition 2011/19 of Emma Moon on behalf of 350.org and 2,124 others, requesting

That the House of Representatives make a rapid transition away from fossil fuels to a renewable, clean energy future by making the following actions:

- Putting in place an immediate 10-year freeze on all new coal mining in New Zealand.
- Expanding the current 90 percent renewable electricity by 2025 target to a target of 100 percent renewable energy (including transport and other uses) by 2050.
- Creating an accompanying action plan, including interim targets every five years to make sure we stay on track.
- Prioritising public transport, pedestrian, and cycling solutions instead of continuing to increase the capacity for private vehicles through roading projects.
- Supporting research and development for a zero-carbon private transport system.

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

Nicky Wagner
Chairperson
Petition 2011/55 of Brian Meachen

Report of the Local Government and Environment Committee

The Local Government and Environment Committee has considered Petition 2011/55 of Brian Meachen requesting that the House investigate the actions of the Hutt City Council with regard to the drainage requirements at and around 24 Grimsby Grove, Wainuiomata, and that it grant relief to the petitioner.

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

Nicky Wagner
Chairperson
The Local Government and Environment Committee has considered the report from the Parliamentary Commissioner for the Environment On a pathway to extinction? An investigation into the status and management of the longfin eel, and endorses the commissioner’s recommendations.

To obtain more accurate information on our iconic species that are not necessarily high-economic-value or high-volume fisheries we also suggest that agencies such as the Ministry for Primary Industries undertake regular stocktakes, perhaps five-yearly. We encourage the ministry to use a range of research methods, not simply catch-per unit effort.

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

Nicky Wagner
Chairperson
The Local Government and Environment Committee has examined the report from the Parliamentary Commissioner for the Environment *Investigating the future of conservation: The case of stewardship land*. Our examination included hearing evidence from the commissioner. We appreciate the work carried out by the commissioner and endorse the recommendations of this report. We have no other matters to bring to the attention of the House.

Nicky Wagner
Chairperson
Kaipara District Council
(Validation of Rates and Other Matters) Bill

Local Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation
The Local Government and Environment Committee has examined the Kaipara District Council (Validation of Rates and Other Matters) Bill and recommends that it be passed with the amendments shown.

Introduction
The Kaipara District Council (Validation of Rates and Other Matters) Bill seeks to validate a number of irregularities that occurred in the setting and assessing of rates by the Kaipara District Council in the financial years 2006/07 to 2011/12. It also seeks to validate the 2010/11 annual report of the council, a number of irregularities relating to its 2009–2019 and 2012–2022 long-term plans, and use of the special consultative procedure regarding the 2012–22 long-term plan.
Mangawhai Community Wastewater Scheme
Between 2008/09 and 2011/12 the council levied a one-off targeted rate for capital costs on properties connected to the Mangawhai Community Wastewater Scheme—the Mangawhai uniform targeted rate. The bill seeks to validate the targeted rate set by the council for the financial years 2008/09 to 2010/11. It would also validate the requirement to pay amounts in line with the proposed scheme the council consulted on in 2006.

The following historic issues relating to the scheme are outside the scope of the bill:
• the basis on which the scheme was commissioned and financed
• the decision to expand the scheme or increase borrowings
• the level of debt incurred or the council’s debt management approach.

While outside the scope of this bill, these are important issues and are being covered by the Controller and Auditor-General’s inquiry into the scheme.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Purpose
We recommend amending clause 3 by deleting paragraph (g). This paragraph would not validate any actions or omissions by the council, and implies that the proposed legislation would have a wider legal effect than intended.

Validation of penalties
We recommend amending clause 6 to ensure that only penalties that would have been lawful had they been added to valid rates would be validated under this legislation.

Validation of the annual report and long-term plan
For the avoidance of doubt, we recommend amending clauses 12 and 13 to remove the suggestion that the 2012–22 long-term plan and the 2011–12 annual report are invalid because they were adopted after the statutory deadlines (sections 93(3) and 98(3) of the Local...
Government Act 2002). We are satisfied that the late adoption of a long-term plan or annual report does not invalidate it.

The right to bring proceedings

We recommend amending clause 14 so that any person—not just the Kaipara District Council—might bring proceedings against any person arising out of, or in connection with, any actions or omissions associated with matters validated by this legislation.

Wider issues

We recognise that elements of the governance of the Kaipara District Council were unsatisfactory over a period of time, and led to the problems that this bill addresses. We hope this bill, while limited in scope, will contribute to a resolution of the issues so the council and its ratepayers can move forward.

We have given considerable thought to the question of penalties being waived that relate to rates withheld as part of the “rates strike”. Notwithstanding the legal requirement for ratepayers to pay their rates, we acknowledge that the strike came about after many people from across the district had raised concerns about the activities of the council, which do not seem to have been actioned.

Section 85 of the Local Government (Rating) Act 2002 stipulates that a local authority may remit rates in accordance with its rates remission policy. This approach was followed by the Kaipara District Council Commissioners for the 2011/12 rates. We are pleased that the commissioners have undertaken to extend this to include the 1 January 2013 and 1 July 2013 rates. We support this course of action and feel that it, in conjunction with the withheld rates being paid, would go some considerable way to resolving the situation so that the people of the Kaipara District as a whole may move on.

We note that the Controller and Auditor-General is soon to release a report on these issues. The report was not available at the time of deliberation, but we were assured that the bill contains nothing that interferes with, or compromises, the pending Controller and Auditor-General’s report, or actions that might eventuate from it.

In the interests of securing a fair and legitimate settlement of the matter of the Mangawhai Community Wastewater Scheme, we trust that if the Controller and Auditor-General finds parties culpable then
the Government and the council will ensure those parties are held accountable.
For the same reason, we welcome the agreement by the Kaipara District Council to implement an amnesty by way of relief of rates penalties levied on ratepayers in relation to the Mangawhai Community Wastewater Scheme from July 2012 to 1 January 2014.
Appendix

Committee process
The Kaipara District Council (Validation of Rates and Other Matters) Bill was referred to the committee on 12 June 2013. The closing date for submissions was 25 July 2013. We received and considered 157 submissions from interested groups and individuals. We heard 77 submissions, and held hearings in Maungaturoto and Wellington. We received advice from the Department of Internal Affairs.

Committee membership
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
Tasman District Council  
(Validation and Recovery of Certain Rates) Bill  

Local Bill  

As reported from the Local Government and Environment Committee  

Commentary  

Recommendation  
The Local Government and Environment Committee has examined the Tasman District Council (Validation and Recovery of Certain Rates) Bill, and recommends that it be passed with the amendments shown.  

Introduction  
The Tasman District Council (Validation and Recovery of Certain Rates) Bill seeks to validate a number of irregularities that occurred in the setting and assessing of rates in the financial years 2003/04 to 2008/09. While retrospective legislation should be used sparingly, there are precedents for Parliament validating rating irregularities through local bills. We were pleased to learn that steps have been taken by the Tasman District Council to improve the way rates are set so that similar errors are not likely to occur in future.
Technical amendments
For the sake of consistency, we recommend amending clauses 5(a), 6, and 9 to replace “declared to have been” with “declared to be and to always have been”.

Ligar Bay and Tata Beach stormwater rates
Clause 9 seeks to validate targeted rates set by the council for the 2006/07 financial year for the purposes of stormwater works in the Ligar Bay and Tata Beach urban drainage areas. While we are sympathetic to proposals to delete clause 9, this course of action would be outside the scope of the bill. Therefore, we recommend only the technical amendments discussed above.

We also note that the practical implications of deleting clause 9 would be manifold. The intent of the Local Government (Rating Act) 2002 is for local authorities to address rating errors as soon as practicable. However, given the historic nature of the rating errors in question, this would be decidedly difficult. Without such validation the council would be required to
- determine which ratepayers had paid the rate in 2006/07 and the amount they paid
- ascertain whether the current ratepayers are the same ratepayers as those in 2006/07
- apportion rates if there are or were multiple owners
- write to each ratepayer advising them of the amount of the refund and requesting bank details for repayment.

We are aware of opposition to the initial levying of a stormwater rate on the grounds that no stormwater drainage services are provided by the council and that there is no need for them. While we acknowledge that council consultation on this matter was not perhaps ideal, the merits of setting a stormwater rate are also outside the scope of this bill.
Appendix

Committee process
The Tasman District Council (Validation and Recovery of Certain Rates) Bill was referred to the committee on 20 February 2013. The closing date for submissions was 4 April 2013. We received and considered 14 submissions from interested groups and individuals. We heard four submissions.

We received advice from the Department of Internal Affairs.

Committee membership
Nicky Wagner (Chairperson)
Maggie Barry
Jacqui Dean
Paul Goldsmith
Claudette Hauiti
Hon Phil Heatley
Gareth Hughes
Moana Mackey
Eugenie Sage
Su’a William Sio
Phil Twyford
Andrew Williams
Petition 2011/32 of Simon Boxer on behalf of Greenpeace New Zealand

Report of the Local Government and Environment Committee

Contents

Recommendation 2
Introduction 2
Appendix 3
**Petition 2011/32 of Simon Boxer on behalf of Greenpeace New Zealand**

**Recommendation**

The Local Government and Environment Committee has considered Petition 2011/32 of Simon Boxer on behalf of Greenpeace New Zealand and recommends that the House take note of its report.

**Introduction**

The Local Government and Environment Committee has considered Petition 2011/32 of Simon Boxer on behalf of Greenpeace New Zealand, requesting that the House permanently stop all plans to open up New Zealand's coastal waters to offshore drilling and stop any expansion of coal mining in New Zealand, and note that 142,000 people have signed an online petition supporting this request.

We heard evidence from the petitioner, the Ministry for the Environment, and the Ministry of Business, Innovation and Employment.

The petitioner noted New Zealand's isolation, and expressed concern that distance would make it difficult for relief rigs to arrive quickly enough in the event of an oil spill or other accident. He also expressed concern that applications to drill or explore cannot be challenged now that they are non-notifiable activities. The petitioner also expressed the belief that “clean energy” could reap greater economic benefits for and create more jobs in New Zealand than oil exploration.

In response to the issues raised by the petitioner the Ministry for the Environment and the Ministry of Business, Innovation and Employment replied that New Zealand still needs oil and coal. They said that checks preceding the issuing of permits have improved, and that if organisations cannot demonstrate an ability to perform safely in the environment they would be working in they would not be allowed to drill. They also noted that regulators must be informed of any changes to a permit-holder’s plans.

We have no desire to see New Zealand’s environment and reputation damaged by pollution, and acknowledge the threats faced by human-induced climate change. This does not, however, preclude any and all economic activity. It does mean that care should always be taken and that New Zealand must have the highest quality of regulations to protect the environment and economy, which depend on them. We heard that following a review of New Zealand’s oil pollution preparedness and response capability in 2011, Maritime New Zealand has developed an action plan detailing how it intends to implement the review’s recommendations; an adequate, regularly reviewed response capability is vitally important. We note the agreement amongst submitters that there was an economic opportunity in developing clean energy.

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

### Committee procedure

The petition was received on 25 July 2012. We received submissions and heard evidence from the petitioner, the Ministry for the Environment, and the Ministry for Business, Innovation and Employment.

### 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
Waitaha Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Waitaha Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Waitaha Claims Settlement Bill would give effect to the deed of settlement entered into by the Crown and Waitaha on 20 September 2011 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill includes only those components of redress in the settlement package for which legislative authority is required. The deed of settlement sets out in full the redress provided to Waitaha in settlement of its historical claims.

Waitaha is the collective group composed of individuals descended from a tūpuna of Waitaha who exercised customary rights predominantly within the Waitaha area of interest on or after 6 February 1840 by virtue of being descended from Hei and Waitaha.
Waitaha’s area of interest extends from Tauranga Moana, southeast along the coastline to Maketu, and forms a triangle southwards between Tauranga, Te Pupe, and Ōtanewainuku.

Our commentary covers the main amendments we recommend. It does not include comment on all the technical amendments, including those proposed to correct references to land in the bill.

**Ngā pae maunga: joint cultural redress properties**

We recommend a number of amendments (new subpart 5A in Part 2) to allow the vesting of the peaks of Ōtanewainuku and Pūwhenua in Ngāti Ranginui, Ngāti Pūkenga, Ngāi Te Rangi (including Ngā Pōtiki), Tapuika, Ngāti Rangiwehi, and Waitaha as tenants in common, with a joint administering body. The vesting would be given effect by Order in Council.

We were told that the Crown and Waitaha had preliminary negotiations about their interests in several maunga of significance, but because of the extent of overlapping claims at the time, the Crown did not offer vestings of these maunga to Waitaha as part of the settlement. Since the Waitaha deed of settlement was signed, we understand that negotiations have progressed with other iwi to allow the joint vesting of the peaks in the six claimant groups.

**Consistency between bill and deed of settlement**

In the light of a request from Te Kapu o Waitaha to better align the bill with the deed of settlement, we recommend a number of amendments to the bill to do so.

The amendment proposed to the language in the preamble and inserting the definition of “ngā tikanga o Waitaha” in clause 41 would improve the accuracy of the historical account. Inserting a reference to ngā tikanga o Waitaha in clause 45 would ensure the tikanga was considered by the Minister of Conservation as part of the protection principles for the Te Whakairinga Kōrero site. Omitting “before” and substituting “when” in clause 46 makes it clear that the consideration of Waitaha values would be required when decisions were made regarding the Te Whakairinga Kōrero site.
Bylaws and Legislation Act 2012
We recommend inserting new clause 54A to reflect changes that take effect following the enactment of the Legislation Act 2012. The amendment would determine that bylaws made under this legislation would be a legislative instrument and a disallowable instrument for the purposes of the Legislation Act, which must be presented to the House of Representatives.

Tapuika statutory right of access provisions
We recommend deleting clause 70, as Tapuika statutory right of access provisions are no longer required because it is provided through Tapuika’s Treaty settlement. We also recommend replacing “Prohibition” with “Restriction” in clause 71 to align the bill with the proposed Tapuika settlement bill.

Authority to transfer balance of Te Houhou
We recommend amendments to clauses 82 and 83 so they refer only to when the Te Houhou and Te Puke properties become available to be transferred to Waitaha. The land would be available for transfer on and from the date the Crown notifies the trustees of this according to the terms of the property redress schedule.

Claimant definition
We considered the request of a number of Waitaha submitters to amend the bill to expand the Waitaha claimant definition to include tūpuna and hapū names not mentioned in the deed of settlement, but do not propose any amendments to the bill.
We were told that during the settlement negotiations, the claimant definition was finalised following cross-claim discussions with Ngāi Te Rangi, and members of the hapū concerned are covered by the settlement through whakapapa. We understand that the settlement does not prevent members of these hapū who are affiliated to iwi other than Waitaha from benefiting from settlements with those other iwi.
Waiari Stream Conservation Area

We considered the objections from members of Waitaha to the vesting of the Waiari Stream Conservation Area in Tapuika, but do not recommend any amendments to the bill.

We were told that the Crown engaged in overlapping claims negotiations with Waitaha and Tapuika, and reached agreement regarding the Waiari Stream in 2011. A deed of recognition was offered to Tapuika over the Waiari Stream, following which Tapuika agreed not to challenge the Waitaha deed of settlement.

Shortly before the Tapuika deed of settlement was due to be initialled, the Crown informed Tapuika that a deed of recognition was no longer possible because there was no land administered by the Commissioner of Crown Lands in the vicinity of the Waiari Stream.

We understand that both iwi were then asked to make decisions very quickly regarding possible redress. The iwi were unable to reach agreement within the required time, so the Minister for Treaty of Waitangi Negotiations decided to vest the Waiari Stream Conservation Area (28 hectares) in Tapuika, with the provision that Waitaha would receive the land if Tapuika ever chose to return it to the Crown.

We are aware that the preferred option of both iwi was the vesting of two puna near the Waiari Stream in favour of Tapuika, but this was not accepted by the Crown because private land cannot be offered as redress. We also acknowledge that Waitaha objected to the vesting of the Waiari Stream Conservation Area in Tapuika and raised concerns about the way the process was handled by the Crown. However, we are aware that Waitaha leaders have also made clear their desire to proceed with the settlement process.

Coastal statutory acknowledgement and area of interest

We considered the objections of a number of submitters from Ngāi Tukairangi, Ngāti Kahu/Pōtiki and Ngāi Te Rangi to the coastal statutory acknowledgement and area of interest regarding the coast between Mauao and Wairakei on the grounds that it would re-establish customary interests that no longer exist. We also considered the concern of members of Ngāi Te Rangi that the statutory acknowledgement might infringe their mana and kaitiakitanga in the area. We do not however propose any amendment to the bill.
We were told that the Crown is satisfied that Waitaha have a long-standing connection to the area in question. The coastal statutory acknowledgement is also “non-exclusive redress”. Our understanding is that area of interest maps are not redress, and do not indicate Crown recognition of iwi boundaries.
Appendix

Committee process
The Waitaha Claims Settlement Bill was referred to the committee on 19 September 2012. The closing date for submissions was 19 October 2012. We received and considered 20 submissions from interested groups and individuals. We heard nine submissions, which included holding hearings in Te Puke.

We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Aaron Gilmore
Hone Harawira
Brendan Horan
Hon Parekura Horomia
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Jonathan Young
Te Pire Whakataunga i ngā Kerēme a Waitaha

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakataunga i ngā kerēme a Waitaha me tana tūtou, kia whakaaetia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Ka whakamana te Pire Whakataunga i ngā Kerēme a Waitaha i te whakaaetanga whakataunga i uru atu rā te Karauna me Waitaha ki roto, i te 20 o Mahuru i te tau 2011, mō tētahi whakataunga oti atu o ngā kerēme hītori e pā ana ki ngā whatinga o Te Tiriti o Waitangi. Kei roto i te pire aua āhuatanga whakatika hapa anake o te mōkihi whakataunga me whai whakamanatanga ā-ture. Whakatakoto ai te whakaaetanga whakataunga i te katoa o te whakatika hapa i hoatu ki a Waitaha hei whakataunga o āna kerēme hītori.
Ko Waitaha te kohinga ohu o ngā tāngata takitahi i heke iho mai i tētahi tūpuna o Waitaha, nana ake nei hoki ngā tika tukunga iho i whakamahia nuitia i roto ake i te pānga wāhi o Waitaha, i te 6 o
Hui-tanguru i te tau 1840, whai muri mai rānei i taua rā, nā tō rātou hekenga iho mai i a Hei me Waitaha. Toro ai te pānga wāhi o Waitaha, atu i Tauranga Moana me te whai whaka-paeroa haere i te takutai ki Maketū, kia tū hanga tapatoru ai me te heke whaka-te-tonga ki waenganui i a Tauranga, Te Puke me Ōtanewainuku hoki. Ka kapi i ā mātou kōrero ngā whakatikatika matua ka tūtohungia. Kāore he kōrero i roto mō ngā whakatikatika hangarau katoa, tae atu ki aua kōrero i whakatakotoria mō te whakatika i ngā whakapuakanga ki te whenua i roto i te pire.

Ngā pae maunga: ngā pito whenua whakatika hapaitikanga tuku iho ngātahi

He huhua ngā whakatikatika ka tūtohungia e mātou (he wāhanga iti 5A hou i Wāhanga 2) kia taea ai te tuku i ngā pae maunga o Ōtānewainuku me Pūwhenua i Ngāti Ranginui, Ngāti Pūkenga, Ngāi Te Rangi (tae atu i Ngā Pōtiki), Tapuika, Ngāti Rangiwehi me Waitaha hoki, hei kairihī noa i te taha o tētahi rangatūpū whakahaere ngātahi. Mā te Whakataunga ā-Ture a Te Kāwana Tianara e whakamanā te tukunga. Ko te kōrero ki a mātou, i tū ngā whirihiriringa whakataki tuatahi i waenganui i te Karauna me Waitaha, mō ā rātou pānga ki te huhua o ngā maunga whakahirahira ēngari, nā te whānuitanga o ngā kerēme inaki i taua wā, kāore te Karauna i āpae tukunga o ngā maunga nei ki a Waitaha hei wāhanga o te whakatauaunga. Nā, mai anō i te hainatanga o te whakaaetanga whakatauaunga a Waitaha, kua neke whakamua ngā whirihiriringa i te taha o ētahi ātu iwi kia taea ai te tukunga ngātahi, o ngā pae maunga ki roto i ngā ringaringa o ngā kōhinga kaikerēme e ono.

Te ōritetanga i waenganui i te pire me te whakaaetanga whakataunga

Nā runga i te tono a Te Kapu o Waitaha, kia pai kē ātu ai te hāngai o te pire me te whakaaetanga whakataunga, ka tūtohu mātou i ētahi whakatikatika ki te pire kia pērā ai. Ko te ngako o te whakatikatika i whakatakotoria mō te āhua o te reo i roto i te whakataki, me te whakaurunga o te whakamāramatanga e pā
ana ki “ngā tikanga o Waitaha” ki roto i a rara 41, ko te whakapai atu i te tika o te kōrero hitori. Mā te whakaurunga o tētahi whakapuakanga ki roto i a rara 45, e āta mōhiotia ai i whakaaroarohia te tikanga e te Minita mō ngā Take Papa Atawhai, hei wāhanga o te mahi tiaki i ngā mātāpono mō te tūnga Te Whakairinga Kōrero. Mā te tango atu i te kupu “before” me te whakauru atu i te kupu “when” ki roto i a rara 46, e mārama ai te kite atu me whakaaroarohia ngā uara a Waitaha ka tika, i te wā ka whakataktoría he whakataunga mō te tūnga Te Whakairinga Kōrero.

Ngā Ture ā-Rohe me Te Hanganga Ture o te tau 2012
Ka tūtohu mātou kia whakaurua he rara 54A hou kia kitea mai ai, ko ērā ngā whakarerekētanga ka whai mana whai muri i te whakamanatanga o Te Hanganga Ture o te tau 2012. Ko tā te whakatikatika he whakatau, he huarahi ā-ture ngā ture ā-rohe i whakatūria i raro i te hanganga ture nei, ā, he huarahi whakakore hoki mō ngā take e pā ana ki Te Hanganga Ture, otiā, me te tino whakatakoto hoki ki mua i te aroaro o te Whare Māngai.

Te tika o Tapuika ki te whai urungā ki ngā whakaratonga i raro i te ture
Ko tā mātou ka tūtohu, me tangoia atu a rara 70 i te mea, kua kore kē te tika o Tapuika ki te whai urunga ki ngā whakaratonga i raro i te ture e hiahiaia nā te mea, kua hoatu he wāhi urunga māna mā roto i te whakataunga Tiriti a Tapuika. Ka tūtohu hoki mātou kia whakarohia te kupu “Prohibition” ki te wāhi o te kupu “Restriction” i rara 71, ki hāngai ai te pire ki tērā e whakataktoría ake nei, arā, te pire whakataunga a Tapuika.

Te mana ki te whakawhiti i te toenga o Te Houhou
Ka tūtohu whakatikatika mātou ki a rara 82 me rara 83 kia pā noa ai ki te wā anake ka wātea mai ngā pito whenua o Te Houhou me Te Puke, ka whakawhitiā ana ki a Waitaha. Ka wātea mai te whenua kia whakawhitiā i te rā, ā, mai i te rā ka whakaatu ai te Karauna i tēnei ki ngā kaitiaki, e ai ki ngā ritenga o te pukapuka āpiti whakatika hapa pito whenua.
Whakamāramatanga kaikerēme
I whakaaroarohia e mātou te tono ato te tokomaha o ngā tāngata whakatakoto tāpaetanga o Waitaha, kia whakatikaina te pire kia whānui kē atu ai te whakamāramatanga kaikerēme o Waitaha, kia uru atu ai ngā ingoa tūpuna, ngā ingoa hapū kīhia i whakahuatia ake i roto i te whakaaetanga whakataunga ēngari, kāore he whakatikatika ki te pire i te whakaaroarohia.
Ko te kōrero ki a mātou, i te wā whiriwhiringa whakataunga, i whakaoitia te whakamāramatanga kaikerēme i te mutunga o ngā matapakinga kerēme-whakawhitinga i te taha o Ngāi Te Rangi, ā, e kapi ana ngā tāngata o te hapū e pā ana, mā roto whakapapa. Kei te mōhio mātou, tua atu i a Waitaha, kīhia ngā tāngata o ngā hapū nei, ā, he whanaunga hoki, i te kāria atu e te whakataunga ki te whiwhi i ngā hua mai i ngā whakataunga a aua iwi kē.

Wāhi Atawhai Whenua o Manga Waiari
I whakaaroarohia e mātou ngā whakahēnga ā ngā tāngata o Waitaha ki te tukunga o te Wāhi Atawhai Whenua o Manga Waiari, ki roto i ngā ringaringa o Tapuika ēngari, kāore mātou e tūtohu whakatikatika ki te pire.
Ko te kōrero ki a mātou, i uru atu te Karauna ki ngā whiriwhiringa kerēme inaki i te taha o Waitaha me Tapuika, ā, i tutuki he whakaaro tahi mō Manga Waiari i te tau 2011. Ka tāpaea he whakaaetanga whakamihī ki a Tapuika mō Manga Waiari, ā, whai atu i tērā, ka whakaae a Tapuika, kāore te whakaaetanga whakataunga a Waitaha e werohia.
I mua tata tonu mai o te whakaretia i te whakaaetanga whakataunga a Tapuika, ka whakaatu te Karauna ki a Tapuika kua kore he whakaaetanga whakamihī e taea nā te mea, kua kāore hoki he whenua hei whakahaire mā te Kaikomihana o ngā Whenua Karauna tata atu ki Manga Waiari. Nā, ki tō mātou mōhio, ka tonohia ngā iwi e rua nei kia tere tonu tā rātou whakatakoto whakataunga mō tētahi whakatika hapā pea. Kīhia rāua i kaha ki te whakatutuki whakaaro tahi i te wā i hihiaitia, ā, nā runga i tēnei, ka whakatau Te Minita mō ngā Whiri-whiringa e pā ana ki Te Tiriti o Waitangi, kia tukua te Wāhi Atawhai Whenua o Manga Waiari (e 28 heketea) ki roto i ngā ringaringa o Tapuika, me te whakaritenga anō ka whiwhi i a Waitaha te whenua i te wā ka kōwhiri a Tapuika, kia whakahokia taua whenua ki te Ka-
rauna. Nā, matatau ana mātou, ko te kōwhiringa i hiahiaitia e ngā iwi e rua nei, me tuku ngā puna e rua tata atu ki Manga Waiari ki roto i ngā ringaringa o Tapuika ēngari, kāore te Karauna i whakaae ki tēnei nā te mea, kāore he whenua tūmataiti e taea te tāpae hei whakatika hapa. Ka whakaae anō hoki mātou i whakahē a Waitaha ki te tukunga o te Wāhi Atawhai Whenua o Manga Waiari ki roto i ngā ringaringa o Tapuika, ā, ka whakaara māharahara hoki mātou mō te whakahaere a te Karauna i te hātepe. Heoi anō rā, e matatau ana hoki mātou kua mārama kē te whakaatu mai a ngā rangatira o Wātiaha i tō rātou pīrangi, kia haere tonu te hātepe whakataunga.

Whākinatanga ā-ture mō te takutai me te wāhi pānga
I whakaaaroarohia e mātou ngā whakahēngā o ētahi kaiwhakatakoto tāpaetanga nō mai i a Ngāi Tūkairangi, Ngāti Kahu/Pōtiki, me Ngāi Te Rangi ki te whākingatanga ā-ture mō te takutai me te wāhi pānga e pā ana ki te takutai i waenganui i a Mauao me Wairākei nā runga i te take, ka whakatūria anōtia ake ngā pānga tuku iho kua roa noa atu nei e kore ana. Ka whakaaaroarohia anōtia hoki e mātou ngā māharahara o ngā tāngata o Ngāi Te Rangi, tērā pea ka takahia e te whākingatanga ā-ture, ō rātou mana me ō rātou kaitiakitanga i roto i te rohe. Heoi anō, kāore mātou e whakatakoto whakatikatika ki te pire. Ko te kōrero ki a mātou, i ngata te Karauna he hononga tā Waitaha nō mai anō rā ki te wāhi e kōrerohia ake nei. He “whakatika hapa urutomo-kore” hoki te whākingatanga ā-ture takutai. Kei te mōhio mā-tou ēhara ngā mahere whenua o te wāhi pānga i tētahi mea whakatika hapa, ā, kāore hoki he tohu aronga Karauna ki nga rohe iwi.
Te Pire Whakataunga i ngā Kerēme a Waitaha

Ngā Kōrero

Tāpiritanga

Hātepe komiti
I tonoa te Pire Whakataunga i ngā Kerēme a Waitaha ki te komiti i te 19 o Mahuru i te tau 2012. Ko te 19 o Whiringa-ā-nuku i te tau 2012 te rā katinga mō ngā tāpaetanga. E 20 ngā tāpaetanga a ngā tāngata takitahi me ngā kohinga whai pānga i whiwhi i a mātou. E iwa ngā tāpaetanga ā-waha i rongohia e mātou tae atu ki te whakatū whakawātanga i Te Puke.
I whiwhi whakamaherehere hoki mātou mai i Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi.

Ko ngā mema o te koti, ko
Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Aaron Gilmore
Hone Harawira
Brendan Horan
Hōnore Parekura Horomia
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Jonathan Young
Inquiry into the financial performance and current operations of the Māori Television Service for the financial year ending 30 June 2012

Report of the Māori Affairs Committee

Contents
Recommendation 2
Introduction 2
Spectrum 2
Funding 2
Te Reo me ōna tikanga 3
Programming 3
Measuring success 3
New media 4
Appendix 5
Inquiry into the financial performance and current operations of the Māori Television Service for the financial year ending 30 June 2012

Recommendation

The Māori Affairs Committee has conducted an inquiry into the financial performance and current operations of the Māori Television Service for the financial year ending 30 June 2012, and recommends that the House take note of its report.

Introduction

The Māori Television Service is funded mainly through Vote Māori Affairs and is accountable for its conduct and performance to the Ministers of Māori Affairs and Finance, and to Te Pūtahi Paoho (the Māori Electoral College). Funding is provided directly to the service for its operational administrative costs. Programming is funded by the Māori Broadcasting Commission (Te Māngai Pāho). The service can also commission its own programming from advertising revenue. In 2011/12 the service’s total operating revenue was $38.79 million and total expenditure was $38.015 million, resulting in a net surplus of $775,000.

The Māori Television Service is a statutory corporation established under the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003. The service is a partnership between the Crown and Māori. Māori interests are represented by Te Pūtahi Paoho, which appoints four members of the service’s seven-member board. The other three board members are appointed by the Government. The chief executive is Jim Mather and the chair is Hon Georgina te Heuheu.

Spectrum

The spectrum available to the Māori Television Service has been halved, consistent with that of all other spectrum licence holders, from 32 MHz ahead of the transition from analogue to digital transmission. The service is confident that 16 MHz will be sufficient to meet the future needs of the service. The service is confident about moving to exclusively digital transmission, and believes digital television will allow it to reach a wider audience with better-quality broadcasts.

Te Pūtahi Paoho controls the digital spectrum allocated for Māori broadcasting, but the service does not see this as a risk. It is confident in Te Pūtahi Paoho’s commitment to the vision of the service as a world-class indigenous broadcaster. It has an agreement with Te Pūtahi Paoho for the provision of spectrum, but acknowledges that it is not guaranteed use of the full 16MHz allocation.

Funding

We note the Māori Television Service has consistently reported surpluses and built up cash reserves since it was established in 2003. The service explained that in its first four years of
operation surpluses were used to repay the loans that funded initial capital expenditure. Between 2007 and 2012, the service received additional capital from the Government to establish the Te Reo television channel. Smaller surpluses have also been generated by cost management programmes in the last five years. Some of this surplus has been set aside for future capital development.

The service is aware of potential new commercial opportunities associated with new media, but is focused at present on optimising its current funding streams.

**Advertising income**

Audience figures are the primary determinant of advertising revenue for television broadcasters. The potential audience for the service is constrained by its statutory obligations and associated programming strategy, which limits revenue opportunities. The service also expects that changing media consumption patterns will eventually have a negative effect on advertising revenue.

The service recorded a significant shortfall in advertising revenue from the Rugby World Cup 2011. It did not have sole control over sponsorship packages related to this event, and sales were lower than expected.

**Te Reo me ōna tikanga**

One of the objectives of the service is to contribute significantly to Te Reo and tikanga Māori being valued, embraced, and spoken. To this end, the service runs both its flagship channel Māori Television and the Te Reo channel, broadcasting at different levels of Te Reo, to reach a wider overall audience.

Independent research commissioned by the Ministry of Māori Development in 2011 found that the service was having a positive effect on Māori language skills. The service conducts its own regular research into the language capabilities of its viewers, with a view to meeting their needs. The service pointed out that many viewers do not watch with the primary goal of improving their language understanding, but nevertheless derive this secondary benefit. In 2012 the service increased the frequency of Te Reo programming on Māori Television to help improve the understanding of and interest in Te Reo Māori.

A significant number of Māori Television viewers are not Māori, and the committee notes that Māori Television appeals to many New Zealanders, offering opportunities to increase their awareness and understanding of Te Ao Māori.

**Programming**

For the purposes of overseas distribution, the service has not explored selling its original content, but has focused on sharing with other indigenous broadcasters.

The service is currently considering proposals for 24-hour broadcasting on its core channel, but has no firm plans as yet.

**Measuring success**

One of the measures of success is viewer numbers. Māori Television reaches 1 to 2 million viewers each month, but its audience share remains in the single digits; and this is the figure that affects advertising revenue. Māori Television rates behind the top five mainstream commercial channels (TV ONE, TV2, TV3, FOUR and Prime). Because its programming is unique, Māori Television chooses not to compare its audience figures programme by
programme with the commercial broadcasters. Māori Television competes with other broadcasters for industry awards and recognition, and has been successful in this arena.

A number of the service’s performance measures do not have specific targets, as they are qualitative in nature and difficult to measure. The service still endeavours to report performance against these outcomes, but does not believe annual quantified targets are a helpful way of measuring success.

We invite the Māori Television Service to determine a more suitable measure of success, taking into account the legislative requirements for its operation, and we will invite them to report back on this in 12 months’ time.

**New media**

Diverse new media can increase Māori Television’s reach, allowing it to encompass more consumers. The service is working on integrating its current television resources with new digital platforms. It has recently relaunched its website, featuring on-demand viewing of Māori Television programming, and made more use of social media. The focus is moving to targeting audiences “where they are” by providing ways to access programming that reflect current media consumption trends. The service is fortunate that it owns the rights to most of the content it broadcasts, so is free to distribute it through various platforms.

The committee recognises the importance of Māori Television and the role that it plays in preserving and protecting the Māori language and its culture. We congratulate the Māori Television Service for its outstanding contribution to public broadcasting.

We wish to acknowledge the work of Hon Parekura Horomia in working to create the Māori Television Service and see this as part of his enduring legacy and commitment to te reo Māori.
Appendix

Committee procedure
The committee met between 10 April 2013 and 15 May 2013 to consider the inquiry. The committee received advice from the Office of the Auditor-General, and heard evidence from the Māori Television Service.

Committee members
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Aaron Gilmore
Hone Harawira
Brendan Horan
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Jonathan Young
Te pakirehua i te whakatutukinga mahi whakahaere pūtea me ngā mahi o te wā nei o Te Aratuku Whakaata Irirangi Māori o te tau pūtea ka mutu 30 o Pipiri 2012

Te pūrongo o te Komiti Whiriwhiri Take Māori

**Ihirangi**

- Tūtohutanga 7
- Kupu Whakataki 7
- Tūāwhiorangi 7
- Pūtea Āwhina 8
- Te Reo me ōna tikanga 8
- Whakatakotoranga hōtaka 9
- Ine i te angitu 9
- Pāpāhotanga hou 9
- Tāpiritanga 10
Te pakirehua i te whakatutukinga mahi mō te whakahaere pūtea me ngā mahi o te wā nei o Te Aratuku Whakaata Irirangi Māori o te tau pūtea ka mutu i te 30 o Pipiri 2012

Tūtohutanga
Kua whakahaere e te Komiti Whiriwhiri Take Māori te pakirehua i te whakatutukinga mahi mō te whakahaere pūtea me ngā mahi o te wā nei o Te Aratuku Whakaata Irirangi Māori o te tau pūtea ka mutu 30 o Pipiri 2012, ā, ka tūtohu kia aronga e te Whare tana pūrongo.

Kupu Whakataki
Heke mai ai te nuinga o ngā pūtea āwhina o Te Aratuku Whakaata Irirangi Māori i te Pōti Take Māori, ā, noho anō ai hoki tana whakahaere, ā, me tana whakatutukihapō ma ri o ngā tirotiro i te Minita Take Māori me te Minita Take Pūtea me Te Pūtahi Paoho hoki. Heke tika tonu atu ai te pūtea āwhina ki te ratonga he i utu i āna mahi whakahaere. Kei Te Māngai Pāho te pūtea āwhina mō te whakatakotoranga hōtaka. Ka taea hoki e te ratonga nei te kōmihana i āna ake whakatakotoranga hōtaka i ngā moni ka puta ake i te pānuitanga. E $38.79 miriona te katoa o te moni whiwhi a te ratonga i te tau 2011/12, e $38.015 miriona te katoa o te whakapaungahoki, ā, e $775,000 mano te hemihemi.

He kaporeihana ā-ture Te Aratuku Whakaata Irirangi Māori, ā, i whakatūria i ri ro i te Ture o Te Aratuku Whakaata Irirangi Māori o te tau 2003. He whakahoatanga hoki te ratonga nei i waenganui i te Karauna me ngā i Māori. Nā, ko Te Pūtahi Paoho te māngai mō ngā pānga Māori, ā, nā runga i tērā ka whakaingoatia e ia ngā mema e whā ki tana poari o ngā mema e whitu. Ka whakaingoatia ngā mema e toru i tua atu o te poari e te Kāwanatanga. Ko Jim Mather te Kaiwhakahaere Matua, ā, ko Hōnore Georgina te Heuheu te heamana.

Tūāwhiorangi
Kua haunatia te tūāwhiorangi kei te wātea ki Te Aratuku Whakaata Irirangi Māori mā ngā MHz e 32 i mua atu o te huringa mai i te whakaputanga mamati. E ōrīte ana tērā ki ērā a te kaitiwha a ngā kaipupuri raihana tūāwhiorangi. Kei te ngākau titikahua te ratonga ka rahi noa ngā MHz e 16 hei whakatutukihapō i ngā hiahia o te ratonga ā i ngā rā kei mua i te aroaro. Kei te pērā anō hoki ngā whakaaro o te ratonga mō te nekenga ki tētahi whakaputanga mamati motuhake me tana whakapono hoki mā ngā whakataa mamati a ia e tae atu ai ki te whānuitanga o te whakaminenga mātakitaki me ngā pāhotanga he pai ake-te kounga.

Whakahaere ai Te Pūtahi Paoho i te tūāwhiorangi mamati kua tohaina mō te pāhotanga Māori ēngari, eharā tēnei i tētahi mōrea ki tōna titiro. Kei te mātau hoki a ia ki te ngākauā a Te Pūtahi Paoho ki te matapae, he kaipāhotanga taketake te ratonga, he toa hoki huri noa te ao. He whakahaetanga tānā me Te Pūtahi Paoho mō te whakaratonga tūāwhiorangi ēngari,
ka whakaae anō kāore ia e kī taurangi ki whakamahia te katoa o te whakaratonga MHz e 16.

**Pūtea Āwhina**

Kua kite mātou, he ōrite te whakatakoto pūrongo a Te Aratuku Whakaata Irirangi Māori mō ngā hemihemi me ngā toenga moni kua whakaemia mai anō i tōna whakatūnga i te tau 2003. Ka whakamarā te ratonga, i ngā tau tuatahi e whā e mahi ana te whakahaerenga, ka whakamahia ngā hemihemi ki te utu i te pūtea taurewa, nō reira rā te whakapaunga hua tuatahi. I waenganui i te tau 2007 me te tau 2012, ka whiwhi hua tāpiritanga te ratonga mai i te Kāwanatanga hei whakatū i te hongere whakaata mō Te Reo. I puāwai mai ātahi hemihemi pakupaku nā te utu o ngā hōtaka whakahere i ngā tau e rima kua hipa. Ko ētahi o te hemihemi nei kua whakanohoa ki te taha mō te whakatinana hua ā tōna wā.

Kei te mārama te ratonga ki ngā mea angitu arumoni hou pūmanawa noho puku e hāngai ana ki te pāpāhotanga hou ēngari, ko te whakarahinga ake i āna rengena pūtea āwhina o te wā nei te arotahi.

**Ngā whiwhinga moni mai i te pānuitanga**

Ko ngā tatau whakaminenga te whakaritenga matua o te whiwhinga mai i te pānuitanga mō ngā kaipāhōtanga whakaata. Kei te herea te whakaminenga pūmanawa nohopuku mō te ratonga e āna herenga ā-ture me te rautaki whakatakotoranga hōtaka e hāngai ana, ārā e whakawhāiti ai i ngā mea angitu o te whiwhinga. Ko te tūmanako o te ratonga, tāro ake ā tōna wā ka huakore te pānga ki te whiwhinga mai i te pānuitanga nā te whakarerekētanga o ngā ritenga whakapaunga a te hunga pāpāho.

I whakatakoto pūrongo te ratonga mō tētahi takarepa nui ki te whiwhihinga mai i te pānuitanga nō mai i te Ipu Whutupōro o te Ao 2011. Kīhai i a ia katoa te mana whakahaere o ngā mōkihi tautoko ā-pūtea e pā ana ki tēnei tauwhāinga, ā, nā runga i tērā, ko taka ngā hokonga ki raro rawa i tērā i wawatia.

**Te Reo me āna tikanga**

Ko tētahi o ngā whāinga o te ratonga, ko te hoatu wāhi nui tonu kia uaratia, kia awhitia, kia kōrerohia Te Reo me āna tikanga. Ki tēnei whakatutukitanga, whakahaere ai te ratonga i āna waka nui e rau, te hongere Whakaata Māori me te hongere mō Te Reo me te pāhotanga o Te Reo ki ngā taumata wehekē kia tae ai ki te whānuitanga katoa o te tētahi whakaminenga.

Nā runga i tētahi rangahau motuhake i kōmihanahia e Te Puni Kōkiri i te tau 2011, ka kitea te pānga tauake o te ratonga ki ngā pūkenga o Te Reo Māori. Whakahaere ai te ratonga i tāna ake rangahau auau mō te kaha o āna kaimātaki ki Te Reo, i runga anō i tētahi tirohanga, kia tutuki ō rātou hiahia. Ka tautuhi mai te ratonga, he maha ngā kaimātaki kāore e mātaki me te whāinga matua kia pai ake tō rātou mōhio ki tō rātou ēngari hāunga tērā, tario ake ā tōna wā he painga tuarua tēnei mō rātou. I te tau 2012, ka whakapikia e te ratonga te kitea o ngā hōtaka whakatakotoranga o Te Reo i runga Whakaata Māori, ki te āwhina i te pai ake i tō rātou māramatanga me te pirangi ki tō rātou Reo Māori.

He rahi tonu te huhua o ngā kaimātaki i a Whakaata Māori ēhara i te Māori, ā, he tohu tēnei ki te komiti, ka minahia a Whakaata Māori e te tokomaha o ngā tāngata o Aotearoa, ka tāpae mea angitu hoki kia piki aī tō rātou aronga me tō rātou māramatanga ki Te Ao Māori.
Whakatakotoranga hōtaka

Mō ngā take e pā ana ki te tohatoha hōtaka ki tāwāhi, kāore anō te ratonga kia hōpara i te hokonga o āna mea taketake ēngari, ko te hoatu haere kē kē ētahi atu kaipāhotanga taketake te arotahi.

Kei te whakaaaro te ratonga i te wā nei mō ngā kaupapa pāhotanga e 24-hāora mō runga i tāna hongere matū ēngari, kāore anō ngā whakaaaro kia tatū.

**Ine i te angitu**

Ko tētahi o ngā ine i te angitu, ko he tia kē o ngā kaimātaki a Whakaata Māori ia marama ki te 1, ki te 2 miriona ēngari, ko tāna hea o te whakaminenga ka toe mai, noho tonu mai ai ki ngā mati takitahi; ā, pā ai tēnei whika ki te whiwhinga mai i te pānuitanga. Kei muri kē mai ngā tātai o Whakaata Māori i ngā hongere arumoni, auraki hoki e rima (ko TV KOTAHI, ko TV2, ko TV3, ko WHĀ me Prime ērā). Na te mea he ahurei tāna whakatakotoranga hōtaka, ka kōwhiri a Whakaata Māori kia kaua āna whika whakaminenga hōtaka e whakaritea hōtaka mā te hōtaka ki ērā a ngā kaipāhotanga arumoni. Whakataetae ai a Whakaata Māori me ētahi atu kaipāhotanga mō ngā whiwhinga me ngā whakamōhiotanga nō te ahumahi, ā, kua nanakia hoki i tēnei papa whakataetae.

Kāore te huhua o ngā ine whakatutukinga mahi a te ratonga e whai i ngā pironga pū nā te mea, he kounga kē nō ngā āhau, ā, he uaua hoki ki te ine. Whakamomori tonu ai te ratonga ki te whakatakoto pūrongo whakatutukinga mahi ki ngā putanga nei ēngari, ko tana whakapono eharā ngā pironga ine kounga ā-tau nei i te huarahei āwhina mō te ine i te angitu.

Ka īnui atu mātou ki Te Aratuku Whakaata Irirangi Māori kia whakaritea mai tētahi ine pai kē atu mō te ine i te angitu me te maumahara anō hoki ki ngā whakaritenga ā-ture mō tāna whakahaere, ā, ka īnui ato anō kia hoki mai me tētahi pūrongo mō tēnei he i te wā e eke ai ngā marama e 12.

**Pāpāhotanga hou**

Mā te kanorau pāpāhotanga hou e piki ai te toronga atu o Whakaata Māori, kaka kē kē atu hoki tana whakararawhi i ētahi atu kaihokohoko. Kei te mahi te ratonga ki te kōmitimiti i āna rauemi whakaata o te wā nei mā ngā pūhara mamati hou. Nō nā noa nei ia i whakamānutia anōtia ai tana pae tukutuku, tērā ka whakatau i ngā mātukihanga tono-āianei mō ngā whakatakotoranga hōtaka a Whakaata Māori, ā, i kaha ake hoki tana whakamahi pāpāho pāpori. Ko te neke ki te pūrongo whakaminenga “i ngā wāhi kei reira rātou,” mā te hoatu huarahi kia whai putanga ai ki ngā whakatakotoranga hōtaka a Whakaata Māori, ērā e whakatautia ai i ngā ia whakapaunga a te hunga pāpāho o te wā nei. Nā te mea noāna ake ngā tika ki te ruinga o ngā mea whakapāhotanga, ka waimaria rawa atu a ia i te mea, he utu kore māna te toha haere mā ngā momo pūhara.

Kite atu ai te komiti i te hiranga o Whakaata Māori me te tūranga kei a ia mō te pupuri, mō te tiaki i Te Reo me ēna tikanga. Ka mihi mātou i Te Aratuku Whakaata Irirangi Māori mō te tino rawe o tāna wāhi pāhotanga ki te iwi whānui.

Ka whakatau hoki mātou i te mahi a te Hōnore Parekura Horomia ki te waihanga i Te Aratuku Whakaata Irirangi Māori ki tā tātou e kite nei i nāianei, ā, ka kite atu hoki ko tēnei tētahi wāhanga o tāna ēhāki tukunga iho ka tū tonu mō ake tonu atu me tana kaingākau hoki i Te Reo Māori.
Tāpiritanga

Huarahi o te komiti
Ka hui te komiti i waenganui i te 10 o Paenga-whāwhā 2013 me te 15 o Haratua 2013 ki te whakaaroaro i te pakirehua. I whiwhi whakamaherehere te komiti mai i Te Tari o te Tumuaki o Te Mana Arotake, ā, i rongo taunakitanga mai i Te Arataki Whakaata Irirangi Māori.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Aaron Gilmore
Hone Harawira
Brendan Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Jonathan Young
Inquiry into the financial performance and current operations of the Māori Trustee for the financial year ending 31 March 2012

Report of the Māori Affairs Committee

Contents
Recommendation 2
Introduction 2
Services to beneficiaries 2
Miraka Limited 3
Business planning and strategy 3
Legacy investments 4
Appendix 5
Inquiry into financial performance and current operations of the Māori Trustee for the financial year ending 31 March 2012

Recommendation

The Māori Affairs Committee has conducted an inquiry into the financial performance and current operations of the Māori Trustee for the financial year ending 31 March 2012 and recommends that the House take note of its report.

Introduction

The role of Māori Trustee is specified in the Māori Trustee Act. Until 2009, the Māori Trustee was administered by the Ministry of Māori Development (Te Puni Kōkiri), but following the enactment of the Māori Trustee Amendment Act 2009, it was established as a stand-alone entity with a mandate to become a viable, sustainable organisation. The Māori Trustee is appointed by the Minister of Māori Affairs, but is independent under the Act; it is free from direction by the Crown, its primary accountability being to the beneficial owners. The current Māori Trustee, Jamie Tuuta, was appointed in August 2011.

Since 1 July 2009, the Māori Trustee’s services have been funded by an appropriation and fees charged for services. The appropriation is governed by a funding agreement with the Minister of Māori Affairs, administered by Te Puni Kōkiri. The current funding agreement runs from 1 July 2011 to 31 March 2013; it provided $10,666 million for the 2011/12 financial year and is expected to provide $10,347 million for 2012/13.

The Māori Trustee monitors the affairs of Māori land blocks and trusts in order to maintain, develop, and enhance these assets. It manages 100,000 hectares and 1,997 entities, and maintains 96,700 owner accounts. The trustee manages $80.95 million in client funds, which are held in the Common Fund.

Services to beneficiaries

Since we last heard from the Māori Trustee, it has increased its efforts to make contact with beneficiaries and strengthen relationships, making more use of digital communication channels. Client satisfaction surveys show positive trends, but we are still concerned about the completeness of contact information held by the Māori Trustee. As of March 2012, the trustee held details for 65.4 percent of Māori land owners who had not been notified as deceased. The organisation’s information technology system is being reviewed to improve information collection and record keeping. We understand that obtaining and maintaining accurate contact details is difficult, but encourage the trustee to look at alternative ways to access this vital information.

Unclaimed funds

We heard that funds unclaimed by beneficiaries currently sit in individual accounts, and suggested that this asset could be used to benefit community projects, or be invested to generate returns. We heard that the trustee cannot do so under current legislation.
Miraka Limited

We are concerned that the Māori Trustee received a qualified opinion on its annual report from the Auditor-General. This happened because the trustee’s associate entity, Miraka Limited, has a balance date of 31 July, so its financial figures for 2012 were not yet audited when the trustee’s annual report was compiled. The Māori Trustee owns a 15 percent share in Miraka Limited and is not in a position to compel it to change its balance date.

We asked the Māori Trustee what assurances it could offer about the stability of Miraka, and any potential risk it might create for the trustee. While the trustee is pleased with Miraka’s performance as a start-up company, we queried the lack of financial information provided about it in the Māori Trustee’s annual report. The trustee has a representative on the board of Miraka Limited, and is provided with regular reports. The trustee gave us the latest information on Miraka’s financial performance, including its annual results for the year ending 31 July 2012. We considered the implications of this information to be satisfactory, but would be happier in future if the Māori Trustee found a way to obtain financial information on Miraka to aid the preparation of its annual reports. We expect to see unqualified opinions from the Auditor-General in subsequent examinations.

Business planning and strategy

In 2012 the Māori Trustee worked on its first ever formal business plan, which was introduced in January 2013. The plan includes seeking opportunities for reinvesting funds or utilising them for different purposes. The trustee also hopes to offer guidance to entities in developing their own business plans and improving their performance. The organisation’s plan sets key performance indicators, including income per entity, cash flows to owners, and fund benchmarks, related to the organisation’s core strategies.

The Māori Trustee’s strategies seek to connect with people, achieve high returns from clients’ land, and help clients set up and benefit from sustainable commercial ventures.

We asked how the Māori Trustee would be affected if funding under its purchase agreement with the Crown were reduced. The trustee said it would struggle to continue providing all of its services, including land management and advice. Funding is also derived from fees, some of which are being reassessed.

Investment strategy

The Māori Trustee balances its investment strategy between the goals of financial returns and benefiting the Māori community. The Common Fund, which represents monies received by the Māori Trustee under sections 23 and 25 of the Māori Trustee Act 1953, is invested conservatively, but the benchmarks are being reassessed. The Māori Trustee believes that higher risks will be necessary to get land assets to perform. It understands that a large number of its assets are non-performing and is working to improve their performance.

Restructure

The Māori Trustee was restructured in 2012, at a cost of $2 million, reducing its staff from 78 to 61. The goal was to shape the organisation into the best form to focus on the trustee’s strategic outcomes. Staff around the country were consulted on the new structure.
Legacy investments

The Māori Trustee owns part or all of some poorly performing entities, including the wholly owned Te Māori Lodges Limited. We asked why the trustee continued to hold these assets. The trustee said it is continually assessing its investments, and is preparing to divest itself of some of its weaker assets.
Appendix

Committee procedure
The committee met between 17 April and 15 May 2013 to consider this inquiry. The committee received advice from the Office of the Auditor-General and heard evidence from the Māori Trustee.

Committee members
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Aaron Gilmore
Hone Harawira
Brendan Horan
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Jonathan Young
Te pakirehua i te whakatutukinga mahi mō te whakahaere pūtea me ngā mahi o te wā nei o Te Kaitiaki Māori mō te tau pūtea ka mutu 31 o Poutū-te-rangi 2012

Te pūrongo o te Komiti Whiriwhiri Take Māori

Ihirangi

Tūtohutanga 7
Kupu whakataki 7
Ngā ratonga ki te hunga whaipānga 7
Te Kamupene Miraka 8
Whakatakotoranga mahere, rautaki hoki mō te kaipakahi 8
Ngā haumi e pā ana ki te ōhākī tukunga iho 9
Tāpiritanga 10
Te pakirea i te whakatutukinga mahi mō te whakahaere pūtea me ngā mahi o te wā nei o Te Kaitiaki Māori mō te tau pūtea ka mutu 31 o Poutū-te-rangi 2012

Tūtohutanga

Kua oti i te Komiti Whiriwhiri Take Māori te pakirehua i te whakatutukinga mahi whakahaere pūtea me ngā mahi o te wā nei o te Kaitiaki Māori mō te tau pūtea ka mutu 31 o Poutū-te-rangi, ā, ka tūtohu kia aronga e te Whare tana pūrongo.

Kupu whakataki


Aro turuki ai te Kaitiaki Māori i ngā take e pā ana ki ngā poroko whenua Māori, i ngā pou tiaki hoki me te tiaki, whakawhanake, whakarei hoki i aua hua nei. Whakahaere ai hoki i ngā heketea e 100,000, i ngā hinonga e 1,997, ā, tiaki ai i ngā pukapuka kaute a ngā rangatira e 96,700. Whakahaere ai te kaitiaki i ngā moni e $80.95 miriona kei roto pūtea āwhina kiritaki. Kei roto ēnei i te Tahua mō te Katoa e pupuritia anā.

Ngā ratonga ki te hunga whaipānga

Mai anō i te wā whakamutunga, i rongo kōrero ai mātou mai i te Kaitiaki, kua whakapikingia e ia ōna kaha ki te whakapā atu ki te hunga whaipānga, ki te whakapakari hononga, ki tana kaha kē atu ki te whakamahi hongere pāho kōrero ā-mamati. Ka whakaatu ngā tiro whānui mō te ngata o te kiritaki e tauake ana ngā tikanga ēngari, i te māharahara tonu mātou mō te otinga pai o te pārongo whakapātanga kei te Kaitiaki Māori e pupuri anā. Ki te marama Poutū-te-rangi o te tau 2012, kei pupuri te kaitiaki i ngā taipitopito kōrero e 65.4 ōrā o ngā rangatira he whenua ō rātou, kāore anō he paku whakaatu ki a ia e mea anā, kua hemo kē rātou. Kei te arotakengia te pūnaha hangarau pupuri pārongo o te rōpū
whakahaere ki te whakapai ake i tāna kohinga pārongo me tāna pupuri tuhinga kōrero. Ki tō mātou mōhio, he uaua te whiwhi me te tiaki taipitopito kōrero whakapātanga ēngari, tua atu i tena ka āki mātou i te kaitiaki ki te rapu huarahi kē atu mō te whai urunga atu ki tēnei pārongo pou.

Ngā tahua kīhā kia kerēmehia

Ko tā mātou i rongo, ko ngā tahua kīhā kia kerēmehia e ngā kaivhaipānga i te wā nei, kei roto ēnei i ngā pūtea takitahi e noho ana, ā, ko tā mātou ka mea, ka taea pea te ua nei te whakamahia hei painga mō ngā pūtere hapori, te whakahaumi rānei kia huri ai hei huanga. I rongo hoki mātou, kāore te kaitiaki e kaha ki te pērā i raro i te hanganga ture o te wā nei.

Te Kamupene Miraka

Kei te māharahara mātou i whiwhi i te Kaitiaki Māori tētahi tātari mai i te Tumuaki o Te Mana Arotake e tino whakaae ana kei te tika tāna pūrongo ā-taua. I tūpono puta ai ēnei nā te mea, he rā whakatautika o te 31 o Hōngongoi tā te hoa hinonga o te kaitiaki, ko Kamupene Mirake tērā. Nā reira, kāore anō āna whiha pūtea mō te tau 2012 kia tātārita kautetia i te wā i whaihiatotia ai te pūrongo ā-tau a te kaitiaki. E 15 ōrau ngā hea a te Kaitiaki Māori i roto i Te Kamupene Mirake, ā, kāore i a ia e kaha ki te whakarere kē i tāna rā whakatautika.

Ka pātai mātou ki te Kaitiaki Māori he āna kupu tūturu ka taea e ia i te hōmāi kia tū pūmau ai a Mirake, ā, he aha he mōrea ka tūpono pā ki te kaitiaki ki te kore e pērā. Ahakoa te hariko o te kaitiaki me te whakatutukinga mahi a Mirake hei kamupene whakatimata, ka uulturahia tonuitia e mātou te kore pārongo pūtea mō tērā i hōmāi i rito i te pūrongo ā-tau a te Kaitiaki Māori. He māngai tō te kaitiaki i runga i te poari o Te Kamupene Mirake, ā, he rite tonu te wā e whiwhi pūrongo ana a ia. I hōmāi e te kaitiaki te pārongo hou rawa atu ki a mātou mō te whakatutukinga mahi whakahaere pūtea a Mirake, tae atu ki āna hua ā-tau mō te tau ka mutu 31 o Hōngongoi 2012. He pai ki a mātou ngā whakahāura o te pārongo nei ēngari, ka tino koa kē atu mātou i ngā wā kei mua i te aroaro, ki te kītea e te Kaitiaki Māori he huarahi e whiwhi pārongo pūtea ai mō Mirake hei mea āwhina i te takatūtanga o āna pūrongo ā-tau. Ko tā mātou kītea kē tātari hou mai i te Tumuaki i roto i ngā whakamātaituranga o muri iho, e tino whakaae ana kei te tika, ko tērā tō mātou tūmanako.

Whakatakotoranga mahere, rautaki hoki mō te kaipakahī

I te tau 2012 ka whakapau whaawaroa o te Kaitiaki Māori mō tāna mahere kaipakahī ōpaki tuatahi rawa atu, tērā i whakamōhio i te marama Kohi-tātea o te tau 2013. Ko te rapu mea angitu tērā ka whakaurua ki roto i te mahere mō te whakahaumi tahu atu, he wāraipou whakatutukinga, te whakakātatautukinga me te ātua pūtea i roto i te mahere mō te whakahaumi tahu atu, mō te whakamahia anō ēnei pūtea ēnei atu hou. Ko te tūmanako anō hoki o te kaitiaki, ki te ōtau ake arāhitinga, ērā ka whakahiatanga i ō tātari hou, akē ake kaipakahī ēnei pūtea i roto i te mahere pūtea i roto i te mahere mō te whakahaumi tahu atu, ko tērā tō mātou tūmanako affecting the whakatutukinga mahere, and making it easier to understand.
Ka pātai mātou, ka ahatia te Kaitiaki Māori ki te tapahia te pūtea āwhina, otirā, tērā i raro i tana whakatau hoko i te taha o te Karauna. Ka kī mai te kaitiaki, ka uaua mōna te whakarato i āna ratonga katoa, tae atu ki te whakahaerenga whenua me te whakatakoto whakamaherehere. Nō mai anō hoki i ngā pire utu te pūtea āwhina, ā, kei te arō matawainia anōtia ētahi i te wā nei.

**Rautaki haumi**

Ka whakarite te Kaitiaki Māori i āna rautaki haumitanga i waenganui i ngā whāinga mō ngā huanga pūtea me ērā he whai painga mō te haporan Māori. Nā, kei raro rā anō te whakahaumitanga o te Tahuha mō te Katoa, ērā moni ka whiwhi Te Kaitiaki Māori i raro i ngā tekiona e 23, e 25 o te Ture Kaitiaki Māori i te tau 1953 ēngari, kei te arō matawaitia anōtia ngā taumata mua whakaritea i te wā nei. Ki te whakapono o te Kaitiaki Māori, ka teitei kē atu ngā mōrea ka hiahiatia mō te whakamahi i ngā hua o te whenua. Ki tōna mōhio, ko te tino māhā o ngā hua kei a ia, he hua whakatutukinga-kore, ā, kei te whakamomori a ia ki te whakapai ake i ngā whakatutukinga mahi o aua hua whakatutukinga-kore rā.

**Whakahoutanga**

Nō te tau 2012 te Kaitiaki Māori ka whakahoungia, ā, e $2 miriona te utu ki te whakahou, ā, ko te poro i ngā kaimahi e 78 ki te 61 te mutunga mai. Ko te whāinga, ki te waihanga i tētahi rōpū whakahaere hou pāi ake kia kaha ai te whakahāngai i te arotahi ki runga i ngā hua rautaki o te kaitiaki. I haere hoki ki ngā kaimahi huri noa te motu ki te rapu whakamaherehere mō te anga hou.

**Ngā haumi e pā ana ki te ōhāki tukunga iho**

He pānga tō te Kaitiaki Māori ki tētahi wāhi, ki te katoa rānei o ngā hinonga he taretare te whakatutukinga mahi, tae atu ki te katoa o Kamupene Te Māori Lodges. Ka pātai mātou ki te kaitiaki, he aha a ia e pupuri tonu nei ki aua hua. Ka mea te kaitiaki, kei te haere tonu āna mahi ki te arō matawai i āna haumitanga, ā, e takatū ana ki te tuku i ētahi o āna hua kua tino memeha.
Tāpirītanga

Huarahi o te komiti

Ka hui te komiti i waenganui i te 17 o Paenga-whāwhā 2013 me te 15 o Haratua 2013 te komiti ka hui ki te whakaaroaro i te pakirehua nei. I whiwhi whakamaherehere te komiti mai i Te Tari o te Tumuaki o Te Mana Arotake, ā, i rongo taunakitanga mai i te Kaitiaki Māori.

Ko ngā mema o te komiti, ko

Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Aaron Gilmore
Hone Harawira
Brendan Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Jonathan Young
Mokomoko (Restoration of Character, Mana, and Reputation) Bill

Te Pire mō Mokomoko (Hei Whakahoki i te Ihi, te Mana, me te Rangatiratanga)

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Mokomoko (Restoration of Character, Mana, and Reputation) Bill and recommends that it be passed with the amendment shown.

Introduction
Mokomoko, a Te Whakatōhea Rangatira, was tried and executed in 1866 for the murder of Carl Sylvius Volkner. Mokomoko maintained his innocence throughout the trial. He was originally buried at Auckland Jail and Courthouse, but was reinterred at Waiaua Marae at Ōpōtiki in October 1989.
Mokomoko was granted a free pardon by the Governor-General in 1992. However this pardon was granted without consulting te whānau a Mokomoko, and differed from the pardon granted to two men of Ngāti Awa for the same event. Te whānau a Mokomoko were concerned that the terms of the 1992 pardon for Mokomoko did not expressly restore his character, mana, and reputation, or those of his uri (descendants).

Te whānau a Mokomoko and the Crown signed an agreement in September 2011 regarding the introduction of legislation to give statutory recognition to the Mokomoko pardon and to further the Crown’s objective of building healthy relationships with te whānau a Mokomoko. While the purpose of the bill is to give legal effect to the agreement, its enactment would not preclude the whānau from seeking through the Treaty of Waitangi settlement process to pursue their aspirations in respect of the restoration of the character, mana, and reputation of Mokomoko and his uri; and the settlement of their historical Treaty of Waitangi claims, by means including exploring the possibility of separate settlement negotiations between the Crown and te whānau a Mokomoko.

**Preamble**

This issue was discussed by Crown officials with te whānau a Mokomoko. The whānau wished for an expanded historical narrative, but this would have required a renegotiation of the previously signed agreement, which in turn would require approval by Cabinet. We acknowledge the whānau’s concern about this issue being overwhelmed in a larger Treaty settlement, particularly as their relationship with their potential co-claimants has not always been positive. We are disappointed that the two parties could not come to an agreement on these issues.

We note that the preamble outlines the background to the trial and execution of Mokomoko and its impact on te whānau a Mokomoko, the Waitangi Tribunal findings on the matter, and the details of the 1992 pardon. It includes an acknowledgement by the Crown that the terms of the 1992 pardon did not expressly restore his character, mana, and reputation, or those of his uri. Importantly, the preamble includes a statement of regret by the Crown for any ongoing shame or stigma this has caused his uri.
We are satisfied that the bill acknowledges that the Crown should have consulted te whānau a Mokomoko about the wording of the free pardon. Part 2 of the bill specifically provides that the character, mana, and reputation of Mokomoko and his uri are restored by the passing of the bill.

Apology
We note that te whānau a Mokomoko also requested an apology from the Crown to be included in this bill, but understand that such a step also would require Cabinet approval. Like the requested historical narrative, an apology might be more appropriately included in a Treaty settlement.

Te Reo Māori translation
We support the wish of te whānau a Mokomoko and have recommended amending the bill by inserting a Te Reo Māori translation into it. This would allow the uri of Mokomoko to read the legislation in the language of their tupuna. To do so would be a legal first, as it appears that no legislation has previously been enacted including a full translation in Te Reo Māori.

We considered the possibility that a precedent could be set if a full Te Reo Māori translation were inserted into the bill. However, because of the special nature of this particular bill, we do not believe that this would happen.

We are advised that translating this legislation before enactment would have the legal impact that the English and Te Reo Māori versions would be considered equal and any inconsistencies between them would have to be resolved in a court of law.

The committee realises the positive impact that the dual translation could have on future legislation.

We acknowledge the contribution of our friend and colleague Hon Parekura Horomia during the passage of this bill.
Appendix

Committee process
Bill was referred to the committee on 24 October 2012. The closing date for submissions was 6 December 2012. We received and considered six submissions from interested groups and individuals. A subcommittee was formed to hear submissions. It heard two submissions in Ōpōtiki. We received advice from the Ministry of Māori Development and the Parliamentary Counsel Office.

Committee membership
Hon Tau Henare (chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Jonathan Young
Te Pire (Whakaoranga i te Āhuatanga, Mana, me te Ingoa Pai) o Mokomoko

Pire Kāwanatanga

Tērā nā te Komiti Whiriwhiri Take Māori i whakatakoto ā-tuhituhi

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori Te Pire (Whakaoranga i te Āhuatanga, Mana, me te Ingoa Pai) o Mokomoko, ā, ka tūtohu kia whakamanahia me te whakatikatika kua oti te whakaatu.

Kupu Whakataki
I te tau 1866, i whakawātia, i whakamatea hoki a Mokomoko, rangatira o Te Whakatōhea, mō te kōhurutanga o Carl Sylvius Volkner. I whakapuaki a Mokomoko i tana haranga kore puta noa i te haerenga o te whakawātanga. I tanumia ia i te tuatahi, ki te Whareherehere me te Kōti o Tāmaki-makau-rau, ā, nō te marama o Whiringa-ā-nuku o te 1989, i tanumia anōtia a ia ki te Marae o Waiaua i Ōpōtiki.
I te tau 1992, i whakaheia tētahi unuhanga hara e te Kāwana-Tiannahara ki a Mokomoko. Heoi, i whakahea tēnei wetenga hara me te kore whai whakawhitinga whakaaro i te whānau a Mokomoko, me te rerekē anō o te wetenga hara i whakaheia ki ngā tangata e
Te Pire (Whakaoranga i te Āhuatanga, Mana, me te Ingoa Pai) o Mokomoko
Ngā Kōrero

rua o Ngāti Awa mō te kaupapa rite. I te māharahara te whānau a Mokomoko, kāore ngā ritenga o te wetenga hara mō Mokomoko i te tau 1992 i whakaora tonu ake i te āhuatanga, te mana me te ingoa pai o Mokomoko, ā, me ērā rānei o ōna uri.

I waitohunga tētahi whakaaetanga e te whānau a Mokomoko me te Karauna, i te mārama o Mahuru 2011 e pā ana ki te whakatakinga o te hanganga ture hei whakarite arotanga ā-ture ki te wetenga hara o Mokomoko, me te kauneke i te whāinga a te Karauna ki te whakapakari hononga whaihiko i te taha o te whānau a Mokomoko. Ahakoa ko te kaupapa kē o te pire he whakamana i te whakaaetanga, kāore tōna whakamanatanga e aukati i te whānau ki te whaiwhai ake i ō rā-tou wawata mō te whakaoranga o te āhuatanga, te mana, me te ingoa pai o Mokomoko me ērā hoki o ōna uri; ā, me te whakataunga hoki o ō rā-tou kerēme hitorī mō Te Tiriti o Waitangi, tae noa ki te hōpara tērā pea, ka taea he whirihirenga whakataunga wehe kē i waenganui i te Karauna me te whānau a Mokomoko.

Tauākī whakatīmata

I matapakia te take nei e ngā kiri āwhina o te Kārauna i te taha o te whānau a Mokomoko. Ko te hiahia ia o te whānau kia whakahā-nuitia ake te kōrero hitorī ēngari, ko te raruraru kē o tōnei hiahia, ko te hoki anō o ngā taha e rua ki te whirihirihiri anō i te whakaaetanga kua oti kē rā te haina i mua atu. Tua atu i tērā, ka hiahiaia anōtia hoki te whakaaetanga o te Rūnanga Kāwanatanga. Ka whakaee atu mātou ki te māharahara o te whānau mō te take nei, arā, te tāmaitanga e tē-tahi whakataunga Tiriti rahi rawa atu, i te mea, kāore tō rā-tou piringa ki ō rā-tou hoa-kaikereme pūmanawa noho puku kia tauake i ngā wā katoa. Kei te pāpōuri mātou kihai ngā taha e rua i kaha ki te whakatukutuki whakaaetanga mō te take nei

Ko tērā kua kīte mātou, whakamārama ai te tauākī whakatīmata i ngā kōrero o muri, mō te whakawātanga me te whakamatenga o Mokomoko me ōna tukinga i te whānau a Mokomoko. Whakamārama ai hoki i ngā kitenga a Te Rōpū Whakamana i te Tiriti o Waitangi mō te take, ā, me ngā taipitopito e pā ana ki te wetenga hara o te tau 1992. Kei roto i te tauākī whakatīmata he whākinga nā te Kārauna, kāore ngā ritenga o te wetenga hara o te tau 1992 i tino whakaora ake i tōna āhuatanga, tōna mana me tōna ingoa pai, ā, me ērā hoki o ōna uri. Ko te mea nui rawa atu, kei roto
Te Pire (Whakaoranga i te Āhuatanga, Mana, me te Ingoa Pai) o Mokomoko

Ngā Kōrero

i te tauākī whakatīmata tētahi tauākī pā pōuri nā te Karauna ki ōna uri, mō tētahi whakamātanga, tau haetanga rānei ka haere tonu ki te tuki i a rātou.

Whakaae ai te pire, ko te tikanga kē kia haere te Karauna ki te rapu to-hutohu i te whānau a Mokomoko, mō ngā kupu e pā ana ki te wetenga hara tuku noa. Kei te ngata mātou nā te mea, ko tērā kē te tikanga. Mārama ana te whakatakoto a Wāhanga 2 o te pire, mā te whakaeatanga o te pire e whakaoatia ake te āhuatanga, te mana, te ingoa pai o Mokomoko me ōna uri.

Te whakapāha

Kua kite mātou i tono te whānau a Mokomoko mō te whakapāha a te Karauna, kia raua ki roto i te pire nei ēngari, ki tō mātou mōhio ka whāia ana tērā, me hoki anō hoki ki te Rūnanga Kawanatanga mō tōna whakaaetanga. Ā, pērā anō ki te kōrero hītori i tonohia, he tika kē ake pea, kia purua tētahi whakapāha ki roto whakataunga Tiriti.

Whakawhitinga ki Te Reo Māori

E tautoko ana mātou i te hiahia o te whānau a Mokomoko, ā, ka tūtou hoki mātou kia whakatīkaina te pire mā te whakauru whakamāori-tanga ki roto. Mā tēnei e tukua ai ngā uri o Mokomoko ki te pānui i te hanganga ture i roto i te reo ake o tō rātou tupuna. Inā, ka pēneitia ana tēnei, kua noho mai rā hei mea tuatahi i te aroaro o te ture i te mea me te mea nei, kīhai anō he pire i mua kia purua tētahi whakawhitinga katoa i te Reo Māori, ki roto.

I uru mai anō hoki ki a mātou te whakaaaro tērā pea, he whakataktorangi taurua tēnei mā te whakauru i te katoa o tētahi whakamāori-tanga ki roto i te pire. Heoi, nā te motuhake kē o te āhua o tēnei ake pire mātou ka whakapono, kore rawa tēnei e tūpono ake anō.

Ko te whakamaherehere ki a mātou e pēnei ana. Ko te papātanga ki te taha ture o te whakawhiti ā-tuhutuhi i tēnei hanganga ture i mua o te whakamanatanga, he ōrite te mana o ngā taha, arā, tērā mō Te Reo Pākehā, tērā mō Te Reo Māori. Nā, mō ngā maiaoaro i waenganui i ngā reo e rua, mā tētahi kōti ture ērā e whakatau.

E mōhio ana te komiti ki te pātanga tauake o ngā whakawhitinga ā-tuhituhi tuarua ka pā ki ngā hanganga tūre kei mua i te aroaro.
Ka whakatau mātou i te āwhina o tō mātou hoa, mema Pāremata hoki a Hōnore Parekura Horomia i te wā haerenga o te pire nei.
Tāpiritanga

Hātepe o te komiti
Ka tona mai Te Pire (Whakaoranga i te Āhuatanga, Mana, me te Ingoa Pai) o Mokomoko ki te komiti, i te 24 o Whiringa-ā-nuku o te tau 2012. Ko te 6 o Hakihea 2012 te rā katinga mō ngā tāpaetanga. E ono ngā tāpaetanga i whihi, i whakaaroarohia e mātou mai i ngā kohinga whai pānga me te hunga takitahi hoki.
Ka whakatūria he komiti tuarua hei whakarongo ki ngā tāpaetanga ā-waha. E rua ngā tāpaetanga ā-waha i rongohia i Ōpōtiki.
I whihiwhi whakamaherehere mātou mai i Te Puni Kōkiri me Te Tari Tohutohu Pāremata.

Ngā mema o te komiti, ko
Hōnore Tau Hēnare (heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Jonathan Young

______________________________
Briefing on Damien and George Nepata and their entitlement to compensation

Report of the Māori Affairs Committee

Contents

Recommendation 2
Background 2
Previous parliamentary consideration 2
Approach to the briefing 2
Recommendation 2
Appendix A 3
Appendix B 4
Briefing on Damien and George Nepata and their entitlement to compensation

Recommendation
The Māori Affairs Committee recommends to the Government that both Damien and George Nepata be awarded additional compensation for their injuries and subsequent hardship.

Background
Damien Nepata was serving as a Lance Corporal in the New Zealand Army when he suffered extensive burns from an accident that occurred while he was driving a Scorpion tank at the army camp at Waiouru on 28 July 1994.

George Nepata was serving as a Private in the New Zealand Army when he was seriously injured in a training accident while participating in an exercise in Singapore in 1989.1 Each brother received compensation from the Government Superannuation Fund, and from the Accident Compensation Corporation.

A chronology of events is attached as Appendix B.

Previous parliamentary consideration
The Nepata brothers have presented petitions to the House on two previous occasions. Petition 1996/1044 in the name of both brothers was heard by the Foreign Affairs, Defence and Trade Committee in 1999. The committee made no recommendation. Petition 1999/146, again in the names of both brothers, was heard by the same committee in 2003. The committee recommended that the Government provide compensation to both Damien and George Nepata up to the level of entitlement they would have received had they enlisted after 1992. This was rejected by the Government.

Approach to the briefing
We requested a briefing from the New Zealand Defence Force on the treatment and compensation both brothers have received. The NZDF outlined its response to both incidents, and described the systems of compensation that applied for NZDF employees in the period since each incident. There have been a number of changes in superannuation provision and ACC cover in that time, but the NZDF is confident that both brothers have received their full entitlements. We also heard from Damien Nepata, who briefly described the challenges he and his brother have faced since their accidents, and their sense that that have not been adequately compensated.

Recommendation
We believe that both brothers deserve additional compensation for their injuries and subsequent hardship. We leave it to the Government to determine the amount of the compensation.

1 The exact date of the incident is disputed—Mr Nepata maintains it occurred on 28 April 1989, the New Zealand Defence Force submits July 1989.
Appendix A

Committee procedure
We heard evidence from Damien Nepata and the New Zealand Defence Force on 29 May 2013. We met on 26 June and 3 July 2013 to consider the briefing.

Committee members
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Jonathan Young
Appendix B

Chronology of events

<table>
<thead>
<tr>
<th>Date</th>
<th>Incident</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989&lt;sup&gt;2&lt;/sup&gt;</td>
<td>George Nepata injured in training accident in Singapore</td>
</tr>
<tr>
<td>5 April 1990</td>
<td>George Nepata released from the New Zealand Army</td>
</tr>
<tr>
<td>1992</td>
<td>Provision to make lump sum payments repealed by the Accident Rehabilitation Compensation and Insurance Act</td>
</tr>
<tr>
<td>1992</td>
<td>NZDF (Military) Superannuation Scheme created</td>
</tr>
<tr>
<td>28 July 1994</td>
<td>Damien Nepata injured in accident at Waiouru army camp</td>
</tr>
<tr>
<td>9 May 1996</td>
<td>Damien Nepata released from the New Zealand Army, case referred to ACC</td>
</tr>
<tr>
<td>1999</td>
<td>Foreign Affairs, Defence and Trade Committee report on petition 1996/1044 makes no recommendation</td>
</tr>
<tr>
<td>2002</td>
<td>Crown liable for prosecution but not backdated</td>
</tr>
<tr>
<td>2003</td>
<td>Foreign Affairs, Defence and Trade Committee report on petition 1999/146 recommends ex gratia payments to Nepata brothers; Government rejects proposal</td>
</tr>
</tbody>
</table>

<sup>2</sup> The exact date of the incident is disputed—Mr Nepata maintains it occurred on 28 April 1989, the New Zealand Defence Force submits July 1989.
Tohutohu mō Damien rāua ko George Nēpata me tō rāua āheinga ki te whiwhi utunga

Te pūrongo o te Komiti Whiriwhiri Take Māori

**Ihirangi**

<table>
<thead>
<tr>
<th>Tūtohutanga</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whakamāramatanga</td>
<td>6</td>
</tr>
<tr>
<td>Whakaaroarohanga pāremata i mua</td>
<td>6</td>
</tr>
<tr>
<td>Ara ki te tohutohu</td>
<td>6</td>
</tr>
<tr>
<td>Tūtohutanga</td>
<td>7</td>
</tr>
<tr>
<td>Tāpiritanga A</td>
<td>8</td>
</tr>
<tr>
<td>Tāpiritanga B</td>
<td>9</td>
</tr>
</tbody>
</table>
Tohutohu mō Damien rāua ko George Nēpata me tō rāua āheinga ki te whiwhi utunga

**Tūtohutanga**

Tūtohu ai te Komiti Whiriwhiri Take Māori ki te Kāwanatanga, kia whakawhiwhia he utunga i tua atu ki a Damien me George Nēpata mō ō rāua wharanga, mō te whakawiringa hoki i muri ihо.

**Whakamāramatanga**

He Kāpara Taina a Damien Nēpata i roto o Ngāti Tūmataenga i te wā i wera ai te nuinga o tana tinana i tētahi wharanga i a ia e taraiva ana i tētahi waka taua Scorpion, i te puni hōia i Waiōru i te 28 o Hōngongoi i te tau 1994.

He Hōia Noa a George Nēpata i roto o Ngāti Tūmatauenga, ka whara kino nei i te wā e whakangungu ana i Hingapori i te tau 1989.3

I whiwhi utunga ia tungāne mai i te Tahua Peniwhana Kāwanatanga, ā, mai hoki i Te Kaporeihana Āwhina Hunga Whara.

Kua tāpirihia atu hei Tāpiritanga B tētahi whakatakotoranga o ngā tauwhāinga.

**Whakaaroarohanga pāremata i mua**

Kua whakatakotoria e ngā tungāne Nēpata he petihana ki te aroaro o te Whare i ngā wā e rua i mua. I rongo hia e te Komiti Take Aorere, Take Waonga te Petihana 1996/1044 i roto i te ingoa o ngā tungāne e rua i te tau 1999, ā, kāore he tūtohutanga a te komiti. Ka rongo hia anōia e taua komiti anō te Petihana 1999/146 i te tau 2003, ā, i roto anō hoki i te ingoa o ngā tungāne e rua rā. Nā, ka tūtohu te komiti ki te Kāwanatanga kia hoatu he utunga ki a Damien rāua tahi ko George Nēpata, ā, me piki atu ki te taumata o te āheinga e tika ana ka whiwhi i a rāua me mēhea nō muri mai i te tau 1992 rāua i uru atu ai ki a Ngāti Tūmatauenga. I makaia tēnei e te Kāwanatangai ki waho.

**Ara ki te tohutohu**

Ka tono mātou mō tētahi tohutohu i Te Ope Kaatua O Aotearoa mō te manaaki me te utunga kua whiwhi e ngā tungāne e rua. Ka whakamārama Te Ope Kaatua O Aotearoa i tana urupare, e pā ana ki ngā wharanga e rua, ā, me te whakamārama i ngā punaha utunga ka pā mō ngā kaimahi a Te Ope Kaatua O Aotearoa i te wā, mai o ia wharanga. He hūhua ngā whakarerekētanga e pā ana ki te tukunga penihana, me te whakakapinga o te Āwhina Hunga Whara i taua wā ēngari, e ngākau titikaka ana Te Ope Kaatua O Aotearoa kua whiwhi i ngā tuākana e rua te katoa o ō rāua āheinga. I rongo kōrero hoki mātou mai i a Damien Nēpata, nana nei he whakamārama poto mō ngā tuma i ara ake ki mua i tōna aroaroa, me te aroaro hoki o tōna tuakana mai anōī i te wā o ō rāua wharanga. Ā, ki ō rāua whakaaro anō hoki, kihai te utunga i rahi rawa.

---

3 Kei te tauhengia te rā tika o te wharanga—ko tā Te Ope Kaatua O Aotearoa, ko Hōngongoi i te tau 1989 kē te rā, ka mau tonu a Matua Nēpata ki tāna, i tūpono kē i te 28 o Paenga-whāwhā i te tau 1989.
Tūtohutanga

Ki a mātou nei, e tika ana kia tāpiritia atu he utunga ki ngā tungāne e rua mō ō rāua wharanga me te whakawiringa i muri iho. Ka waiho atu e mātou mā te Kāwanatanga te pupūtanga o te utunga e whakatau.
TOHUTOHU MŌ DAMIEN RĀUA KO GEORGE NĒPATA ME TŌ RĀUA ĀHEINGA KI TE WHIWHI UTUNGA

Tāpiritanga A

Huarahi o te komiti
I rongo taunakitanga mātou mai i a Damien Nēpata me Te Ope Kaatua O Aotearoa i te 29 o Haratua i te tau 2013. I hui mātou i te 26 o Pipiri me te 3 o Hōngongoi i te tau 2013 ki te whakaaroaro i te tohutohu.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Jonathan Young
### Whakatakorongaroa o ngā tauwhāinga

<table>
<thead>
<tr>
<th>Rā</th>
<th>Wharanga</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tau 1989&lt;sup&gt;4&lt;/sup&gt;</td>
<td>Ka whara a George Nēpata i tētahi wharanga i a ia e whakangungu ana i Hingapoa</td>
</tr>
<tr>
<td>5 o Paenga-whāwhā tau 1990</td>
<td>Ka tukua a George Nēpata e Ngāti Tūmatauenga</td>
</tr>
<tr>
<td>Tau 1992</td>
<td>Ka whakakore e te Ture Inihua, Utunga Whakaoranga Hunga Whara he whakaritenga utunga moni rahia rawa i te wā kotahi</td>
</tr>
<tr>
<td>Tau 1992</td>
<td>Ka ara ake te Kaupapa Penihana a Te Ope Kaatua O Aotearoa (mō ngā hōia)</td>
</tr>
<tr>
<td>28 o Hōngongoi tau 1994</td>
<td>Ka whara a Damien Nēpata i tētahi wharanga i te puni hōia i Waiōuru</td>
</tr>
<tr>
<td>9 o Haratua tau 1996</td>
<td>Ka tukua a Damien Nēpata e Ngāti Tūmatauenga, ka tōnoa te kēhi ki Te Kaporeihana Āwhina Hunga Whara</td>
</tr>
<tr>
<td>Tau 1999</td>
<td>Mō te petihana o te tau 1996/1044, kāore he tūtohutanga a te pūrongo o te Komiti Take Aorere, Take Wawaonga</td>
</tr>
<tr>
<td>Tau 2002</td>
<td>Ka āhei te Karauna kia hāmenetia ēngari, kāore te wā e whakahokia ki te rā whara</td>
</tr>
<tr>
<td>Tau 2003</td>
<td>Mō te petihana o te tau 1999/146, ka tūtohu utunga manaaki te Komiti Take Aorere, Take Wawaonga mā ngā tuākana Nēpata; ka makaia tērā whakaaaro e te Kāwanatanga ki waho</td>
</tr>
</tbody>
</table>

<sup>4</sup> Kei te tautohengia te rā tika o te wharanga—ko tā Te Ope Kaatua O Aotearoa, ko Hōngongoi o te tau 1989 kē te rā, ka mau tonu a Matua Nēpata ki tāna, i tūpono kē i te 28 o Paenga-whāwhā o te tau 1989.
Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Amendment Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Amendment Bill proposes amendments to the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003. The Act required that a review of its operation and effectiveness be carried out by 2009. This bill is the result of the findings of this review.
Following the review panel’s report, the Government, in consultation with the Māori Television Electoral College, Te Pūtahi Paoho, decided to introduce legislation to amend the Act. The amendments proposed relate to the functions of the Māori Television Service, management of the UHF spectrum, operational matters, accountabil-
ity documents and language planning, borrowing and investment by the Service, provision for future reviews of the Act, and some miscellaneous matters.
Our commentary covers the amendments we propose.

Spectrum management rights
We recommend amending clause 10 of the bill to insert new section 24DA into the Act allowing the appointment of a mediator if the responsible Ministers and Te Pūtahi Paoho cannot resolve any disagreement about the administration of spectrum management rights that would require their joint determination.
We also recommend technical amendments to sections 24B(4), 24D, and 24F relating to spectrum management rights to reflect the Crown–Māori relationship and to improve the clarity and workability of the legislation.
Concern was raised regarding the membership and the governance of Te Pūtahi Paoho. We consider that the current situation exposes Te Pūtahi Paoho to criticism, as some of the constituent groups appear to be defunct. We recommend that this issue be addressed with some urgency, and we were assured by relevant officials that this was being addressed. We recognise that the relationship between the Crown, Ministers, and Te Pūtahi Paoho needs to be clarified, which would be achieved through the amendments we recommend.

Review of the Act
We recommend inserting new section 56(1A) (clause 13) so that responsible Ministers would be required to consult Te Pūtahi Paoho when setting the terms of reference for any review of this legislation.
We believe consultation would benefit the working relationship between the two parties.
Appendix

Committee process
The Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Amendment Bill was referred to the committee on 20 March 2013. The closing date for submissions was 2 May 2013. We received, considered, and heard one submission.
We received advice from the Ministry of Māori Development and Ministry of Business, Innovation and Employment.

Committee membership
Hon Tau Henare (chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hon Shane Jones
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Jonathan Young
Pire Whakatikatika i Te Aratuku Whakaata Irirangi Māori

Pire Kāwanatanga

Te pūrongo nā te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kōrero

Tūtohutanga
Kua āta tirohia e te Komiti Whiriwhiri Take Māori te Pire Whakatikatika i Te Aratuku Whakaata Irirangi Māori, ā, ka tūtohu kia whakamanahia me ngā whakatikatika kua whakaatūria.

Kupu Whakataki
Ka whakatakoto te Pire Whakatikatika i Te Aratuku Whakaata Irirangi Māori i ētahi whakatikatika mō te Ture Te Aratuku Whakaata Irirangi Māori o te tau 2003. Ko tā te Ture i hiahia i a, kia whaka-haerea he arotakenga o āna mahi me tōna tōtika mā te tau 2009. Ko te pire nei te hua o ngā whakataunga i puta ake i tēnei arotakenga.
Whai ake i te pūrongo a te rōpū arotake, ka kimi tohutohu te Kāwanatanga i Te Pūtahi Paoho kātahi ka whakatau, kia kōkhuha he hanganga ture hei whakatika i te Ture. Ka pā ngā whakatikatika e whakatakotoria ana ki ngā mahi a Te Aratuku Whakaata Irirangi Māori, ki te whakahaereenga o te tūāwhiorangi UHF, ki ngā take mahi, ki ngā tuhinga whakamāramatanga me te reo whakatakoto
mahere, tono, penapena a Te Aratuku, te hoatu wāhi mō ngā arotak-enga o te Ture ā tōna wā, ā, me ētahi atu momo take kē.
Kapi ai i ā mātou kōrero ngā whakatikatika ka whakatakotoria e mā-tou.

Ngā tīka mō te whakahaerenga tūāwhiorangi

Ka tūtohu mātou kia whakatikaina a rara 10 o te pire kia whakaurua ai he tekione hou 24DA ki roto i te Ture. Mā tērā e tukua ai he kaitakawaenga kia whakaingoatia ka kore ana he Minita haepapa me Te Pūtahi Paoho e kaha ki te whakatatū whakahēnga e pā ana ki te whakahaere o ngā tīka mō te whakahaerenga tūāwhiorangi, kei a rāua tahi nei hoki te mana whakataunga mō tērā.

Ka tūtohu whakatikatika hangarau hoki mātou ki ngā tekione 24B(4), 24D me 24F e pā ana ki ngā tīka mō te whakahaerenga tūāwhiorangi i te mea, ko tērā hoki te hononga Karauna- Māori, ā, ki te whakapai ake hoki i te mārama me te whakamahinga o te hanganga ture.

I whakaarahia he māharahara mō ngā mema o Te Pūtahi Paoho me tāna taki kaupapa. Ki a mātou nei, nā te āhuatanga o Te Pūtahi Paoho i te wā nei i puare ai a ia ki te whakahēnga i te mea, te āhua nei kua kore kē ētahi o ngā kohinga mana. Ka tūtohu mātou kia tere tonu te whai ake i tēnei take. Ka whakatūturu mai anō ētahi āpīha e pā ana, kei te whaitia ake tēnei. Ka whakaae mātou me tino mārama rawa atu te hononga i waenganui i te Karauna, ngā Minita me Te Pūtahi Paoho. Ka tutuki ērā mā roto i ngā whakatikatika e tūtohutia ake nei e mātou.

Arotakenga o te Ture

Ka tūtohu mātou kia whakaurua he tekione hou 56(1A) (rara13), kia tino kimi tohutohu ai ngā Minita haepapa i Te Pūtahi Paoho, ka whakatakotoria ana he tikanga whakahae e kia arotakenga te hanganga ture nei. Ki a mātou nei, ka whai painga te māhi hononga i waenganui i ngā taha e rua nei e te kimeinga tohutohu.
Tāpiritanga

Hātepe komiti
I tonoa te Pire Whakatikatika i Te Aratuku Whakaata Irirangi Māori ki te komiti i te 20 o Poutū-te-rangi o te tau 2013. Ko te 2 o Haratua o te tau 2013 te rā i kati ai ngā tāpaetanga. Kotahi te tāpaetanga i whiwhi, i whakaaroarohia e mātou.
I whiwhi whakamaherehere mātou mai i Te Puni Kōkiri me Te Manatū Hikina Whakatutuki.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hōnore Shane Jones
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Mētīria Tūrei
Nicky Wagner
Jonathan Young
Te Tau Ihu Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation

The Māori Affairs Committee has examined the Te Tau Ihu Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction

The Te Tau Ihu Claims Settlement Bill is an omnibus bill comprising four component bills, three of which are claims settlement bills, which seek to give effect to the deeds of settlement entered into by the Crown and Ngāti Apa ki te Rā Tō, Ngāti Kuia, Rangitāne o Wairau, Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, Te Ātiawa o Te Waka-a-Māui, and Ngati Toa Rangatira for the final settlement of their historical claims for breaches of the Treaty of Waitangi. The fourth component bill provides Ngati Toa Rangatira with an attribution right in relation to the haka Ka Mate.

The eight deeds provide for settlement of all historical claims in the top of the South Island, an area referred to as Te Tau Ihu o Te Waka a Maui. The Ngati Toa Rangatira deed also provides for the settling of all of Ngati Toa Rangatira’s historical claims in the North Island.
The bill includes only those elements of the redress in the settlement package that require legislative authority. The deeds of settlement set out in full the redress provided to the eight iwi in settlement of all their historical Treaty of Waitangi claims.

**Puketawai cultural redress site**

We recommend inserting new clause 277A to provide the three post-settlement governance entities with a statutory release from any liabilities resulting from contamination from the closed landfill on the Puketawai site.

Clause 277 of the omnibus bill would vest the Puketawai cultural redress property near Kaiteriteri jointly in the trustees of the post-settlement governance entities for Ngāti Rarua, Ngāti Tama ki te Tonga and Te Ātiawa o Te Waka-a-Māui. Part of the site was formerly used as a landfill, and there is concern that this might eventually create economic and environmental liabilities that might transfer to the recipient iwi with the ownership of the land. Our proposed amendment would ensure that the three post-settlement governance entities are released from liabilities resulting from the closed landfill on the Puketawai site.

**Woodbourne Airbase**

The bill would allow Ngāti Apa, Ngāti Kuia, and Rangitāne o Wairau to exercise the right to purchase land at Woodbourne Airbase by way of redress. Part of this land was acquired by the Government for defence purposes from the estate of George Fairhall. We note members of the Fairhall family oppose the inclusion of this land in Treaty settlements, as they consider this will override their rights under section 40 the Public Works Act 1981.

Fairhall family interests have now commenced judicial review proceedings against the Crown in the High Court regarding this part of the settlement. We recommend no amendment to the bill.

**Wakatū Incorporation**

Clause 214 of the bill states that all historical claims of Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui are settled, but clause 214(6) would exclude specified court
proceedings by Wakatū Incorporation and others against the Crown from this final settlement. The incorporation opposed the inclusion of Wai 56, of which it claims to represent a majority of claimants, in the bill. The bill would settle only the historical aspects of Wai 56, while the contemporary elements will not be settled. The Crown negotiated the settlements that led to the bill on the understanding that it would settle all historical claims of people who whakapapa to the iwi, rather than on the basis of shareholding of corporate entities such as the Wakatū Incorporation. We believe it appropriate that redress go to iwi entities that are mandated to represent iwi interests.

We recognise that there are issues regarding property rights, and the bill as it stands does not extinguish recourse to the courts. We received the following advice from the Office of Treaty Settlements, in consultation with the Crown Law Office:

The current orthodox position is that the Treaty of Waitangi does not give rise to directly enforceable legal obligations without specific statutory authority. In the Wakatū proceedings the claims are based around the same factual grievances that are the subject of the settlement, but primarily raise private law claims based in trust and fiduciary duty, not based on the Treaty breach. The ability to prosecute certain private law claims raised in Wakatū may be impacted by extinguishment provisions of the Tainui Taranaki Treaty settlements and their extinguishment clause, unless expressly preserved. Crown Law advice was sought on this matter and ultimately, it was considered … improper to obstruct final determination in the appellate courts. Legislative drafting was developed to specifically apply a preservation clause only to the current litigation and specific parties to that litigation.

**Wairau Affray site**

We heard submissions opposing the vesting of the Wairau Affray site in Ngati Toa Rangatira. This site is part of the area in which a skirmish, known as the Wairau Affray, occurred between members of Ngati Toa Rangatira and Ngāti Rārua, and Pākehā, in 1843. The site is currently owned by the Crown and is classed legally as a road. There are two memorial plaques at the site, one referring to pioneer families of the area and the other to the surveyors Barnicoat and Thompson.

We are aware of concern among those with an interest in preserving the historic recognition of the site about its future following vesting
in Ngati Toa Rangatira. Upon transfer to Ngati Toa Rangatira the land will become a historic reserve subject to the Reserves Act 1977. Section 18(2)c of the Act stipulates that any archaeological features present on a historic reserve must be managed and protected “to the extent compatible with the principal or primary purpose of the reserve”. The site is subject to an easement the terms of which include a requirement that Ngati Toa Rangatira not “do, permit or suffer to be done” any act that might interfere with the right of Marlborough District Council to place and maintain the monument on the site. We believe this protection should be reassuring and we encourage Ngati Toa Rangatira and local residents to consider meeting to discuss the site once the ownership of the land is clear and Ngati Toa Rangatira are in a position to make decisions about it.

**Rangitāne o Kaituna**

Submissions made on behalf of Te Runanga a Rangitane o Kaituna Incorporated argued that they would be excluded from the redress offered by the Rangitāne o Wairau Deed of Settlement. In 2003 the Waitangi Tribunal decided that Wai 1047 (Te Runanga a Rangitane o Kaituna’s claim) did not raise any matters not already covered by Wai 44 (the general Kurahaupō Rangitāne claim) and did not accept that the Wai 1047 claimants’ whakapapa is distinct from that of the Wai 44 claimants. We are satisfied that the Rangitāne o Wairau Deed of Settlement and resulting legislation would provide settlement of all Rangitāne historical Treaty claims in the top of the South Island, and that members of Te Runanga a Rangitane o Kaituna Incorporated are entitled beneficiaries of that settlement.

**Redress to Ngati Toa Rangatira in Wellington area**

We heard submissions disputing Ngati Toa Rangatira’s customary interests in the Wellington area. We are satisfied that Ngati Toa Rangatira has ahi kaa rights in the region, and that representatives of other iwi have had the opportunity to contest these rights in both the Waitangi Tribunal and the High Court. We also note that the statutory acknowledgements in favour of Ngati Toa Rangatira in relation to features in the Wellington area do not represent exclusive redress and do not prevent other groups from asserting their customary interests.
Kāpiti Island
We heard submissions from whānau affiliated to Ngati Toa Rangatira (as well as Ngāti Raukawa and Te Ātiawa) maintaining that their Wai 2361 claim to Kāpiti Island should be considered independently of the Ngati Toa Rangatira settlement. Their claims relating to their Ngati Toa Rangatira whakapapa will be settled by this bill, but the parts of their claim relating to other whakapapa will not. We are satisfied that these claimants will be entitled to redress through the Ngati Toa Rangatira settlement.

Haka Ka Mate
The intent of the Haka Ka Mate Attribution Bill (part 11 of the omnibus bill) is that Te Rauparaha must be identified as both the composer of the haka Ka Mate and a chief of Ngati Toa Rangatira, and that this obligation should apply whenever the haka Ka Mate is published commercially, communicated to the public, or features in a film that is shown in public or made available to the public. We recommend amending clause 640(2)(b) to clarify exceptions to this obligation for educational purposes.

Other matters
We recommend amending the definition of “working day” in clauses 18, 210, and 428 to reflect the new Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013.
We also recommend amending clauses 36 and 228 to make the bill consistent with the Crown Minerals Amendment Act 2013.
As a survey of the applicable Queen Charlotte Forest land and Queen Elizabeth Park campground site has now been completed, we recommend updating the legal descriptions of these sites in clauses 354 and 573.
We recommend amending clauses 111(4), 321(4), and 514(4) to clarify how the Reserves Act 1977 applies to proposed names for Crown protected areas and reserve sites.
We recommend deleting reference to an unregistered guiding concession for Puponga Point Pa site in Schedule 7 because the concession has now expired.
Appendix

Committee process
The Te Tau Ihu Claims Settlement Bill was referred to the committee on 5 June 2013. The closing date for submissions was 18 July 2013. We received and considered 36 submissions from interested groups and individuals. We heard 27 submissions, which included holding hearings in Blenheim and Nelson.

We received advice from the Office of Treaty Settlements and the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in clauses 65, 257, and 468.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hon Nanaia Mahuta
Katrina Shanks
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 Te Tau Ihu

He Pire Kāwanatanga

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 Te Tau Ihu, ā, ka tūtohu (te nuinga) kia whakamanahia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
He pire wāhanga maha te Pire Whakataunga i ngā Kerēme a Te Tau Ihu, e whā ngā wāhanga o te pire, e toru he pire whakataunga kerēme, otirā, ērā e whai ana ki te whakamana i ngā whakaaetanga whakataunga i uru atu rā te Karauna me Ngāti Apa ki te Rā Tō, rātou ko Ngāti Kuia, ko Rangitāne o Wairau, ko Ngāti Kōata, ko Ngāti Rārua, ko Ngāti Tama ki Te Tau Ihu, ko Te Ātiawa o Te Waka-a-Māui, me Ngāti Toa Rangatira mō te whakataunga oti atu o ngā kerēme hītori mō ngā whatinga o te Tiriti o Waitangi. Hoatu ait e pire wāhanga tuawahā i tētahi whakataunga tika ki a Ngāti Toa Rangatira mō te haka Ka Mate.
Hoatu whakataunga ai ngā whakaaetanga e waru mō ngā kerēme hītori katoa i te taha whakarunga o Te Wai Pounamu, he rohe e kīia ana ko Te Tau Ihu o Te Waka a Māui. Hoatu wāhi ai hoki te whakaaetanga a Ngāti Toa Rangatira mō te whakataunga o ngā kerēme hītori katoa a Ngāti Toa Rangatira i Te Ika a Māui.

Kei roto i te pire nei aua āhuatanga anake o te whakatika hapa i roto i te mōkhī ki whakataunga ka hiahiaia rā he whakamanatanga ā-ture. Whakatakoto ai ngā whakaaetanga whakataunga i te taha o te whakatika hapa i hoatu ki ngā iwi e waru hei whakataunga i ō rātou kerēme hītori katoa mō Te Tiriti o Waitangi.

Te paenga whakatika hapa taha ahurea i Puketawai
Ka tūtōhu mātou kia whakaurua he rara hou 277A kia whiwhi ai ngā hinonga tiaki kaupapa whakataunga-whai muri e toru i tētahi wetekanga ā-ture mai i ngā taunaha ka hua mai nā te tāhawahawatanga mai o te whenua i whakakihia ki te para kua katia i runga i te paenga i Puketawai.

Ka whakareia ngātahitia e rara 277 o te pire wāhanga maha, te pito whenua whakatika hapa taha ahurea i Puketawai tata ki Kaiteriteri, ki roto i ngā ringaringa o ngā kaitiaki o ngā hinonga tiaki kaupapa whakataunga-whai muri mō Ngāti Rārua, Ngāti Tama ki te Tonga me Te Ātiawa o Te Waka-a-Māui. I whakamahia i mua tētahi wāhanga o te paenga hei whenua whakakā kā kōtahi para, ā, ko te māharahara taro rawa kei tāro ake he taunaha tiaiao, he taunaha ōhanga ka whakawhitia pea ki te iwi kaitango kēi ā rātou te rangatiratanga o te whenua. E marohi ana tā mātou whakatikatika kia āta tukua mai ngā hinonga tiaki kaupapa whakataunga-whaimuri i ngā taunaha i hua mai nā te katinga o te whenua i whakakā kā kōtahi para i te paenga i Puketawai.

Taungar rererangi i Woodbourne
Ka whakaaetia e te pire a Ngāti Apa, a Ngāti Kuia me Rangitāne o Wairau, ki te whakamahi i te tika ki te hoko whenua i te Taunga Rererangi Woodbourne mā te huarahi whakatika hapa. I riro tētahi wāhanga o te whenua nei e te Kāwanatanga mai i te pāanga whenua a George Fairhall mō ngā take wawaonga. Kua kite mātou e whakahē ana te whānau Fairhall ki te whakaurunga o tēnei whenua ki roto i ngā whakataunga Tiriti i te mea, ki a rātou e whakakore ana tēnei i ō rātou tika i raro tekiona e 40 o te Ture Mahi Tūmatanui o te tau 1981.
Kua tāmataria i nāianei e ngā pānga whānau o Fairhall he whakawātanga arotakenga ā-tūre ki te Karauna i te Kōti Teitei mō tēnei wāhanga o te whakataunga. Ka tūtohu mātou kia kore noa he whakatikatika ki te pire.

Te Kaporeihana o Wakatū
Whakapuaki ai a rara 214 kua tatū ngā kerēme hītori katoa a Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu me Te Ātiawa o Te Waka-a-Māui āngari, ka katia atu e rara 214(6), ngā whakawātanga kōti kua āta whakahuatia e te Kaporeihana o Wakatū me ētahi atu ki te Karauna mai i tēnei whakataunga, oti atu. I whakahē te kaporeihana ki te whakaurunga o Wai 56 me tāna e kerēme rā, ko ia te māngai mo te nuinga o ngā kaikerēme, i roto i te pire. Ka whakatatū anake te pire i ngā āhuatanga hītori o Wai 56, ā, hāunga ngā huānga o te wā nei, kāore ērā e whakatatūngia. I whiriwhiringia e te Karauna ngā whakataunga i puta ai te pire i runga i te ngākau mōhio, ka whakatatūhia ngā kerēme hītori katoa o ngā tāngata ka kaha ki te whakapapa mai ki te ēti, ēhara kē mā te pūtakē pupuri pānga hīnonga rangatōpū, pērā i te Kaporeihana o Wakatū. Ki tō mātou whakapono, e tika ana kia haere te whakatika hapa ki aua hīnonga iwi kua whakamanahia kia tū hei māngai mō ngā pānga iwi.

Ka whakaae mātou he take kei reira e pā ana ki ngā tika pito whenua ki te tū o te pire i te wā nei, ā, kihai te hoki ki ngā kōti mō te āwhina e tineia. I whiwhi whakamaherehere matou whai ake nei, mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi, ā, i te taha anō o ngā tohutohutanga mai i Tari Ture o te Karauna:

Te Pire Whakataunga i ngā Kerēme
a Te Tau Ihu

Ngā korero
rara tiakitanga anake mō te wānangatanga i te wā nei i te kōti ture, ā, i te taha o ngā taha tūturu o taua wānanga.

**Paenga Whawhai i Wairau**

I whakarongo mātou ki ngā tāpaetanga e whakahē ana ki te whakahēinga o te paenga Whawhai i Wairau ki a Ngāti Toa Rangatira. He wāhanga tēnei paenga o te wāhi i puta ai he whakapāpā, e mōhiotia ana ko te Whawhai i Wairau, i taka ki waenganui i a Ngāti Toa Rangatira rāua ko Ngāti Rārua, ā, me te Pākehā i te tau 1843. I tēnei wā, ko te Karauna te rangatira o te paenga, ā, i raro i te ture, he rori. E rua ngā tohu whakamaharatanga kei te paenga, ko tētahi mō ngā whānau manene tuatahi o te rohe, ko tētahi atu mō ngā kairūri, a Barnicoat rāua ko Thompson.

E matatau ana mātou ki te māharahara i waenganui o tauahunga he pānga ā rātou kia tiakina te taha hītori o te paenga hei mea mih i ngā rā kei mua i tōna aroaro, whai atu ana i te whakahēinga ki a Ngāti Toa Rangatira. Ka whakawhitia ana ki a Ngāti Toa Rangatira kua noho mai te whenua hei rāhuitanga hītori, e ai ki te *Reserves Act* 1977. Ko tā tekiona 18(2)c o te Tūranga ka āta whakarite ai, kia whakahaerehia, kia tiakina ngā āhuatanga whaipara tangata kei runga i tētahi whenua rāhuitanga hītori, “ki te whānuitanga o te rite ki te take matua, take tuatahi o te whenua rāhuitanga”. Ka herea te paenga ki ngā tikanga whakangāwaritanga, ā, kei roto tētahi e mea ana kia kaua tētahi mahi “e whakaaetia, e tukua rānei” e Ngāti Toa Rangatira kia kore ai te tika o te Kaunihera ā-Rohe o Marlborough e whakararutia ki te whakatū me te whakaui whakamaharatanga ki runga i te paenga. Ko tō mātou whakapono he mea whakatūturu tēnei paparetanga, ā, ka whakatenenana mātou i a Ngāti Toa Rangatira me ngā tāngata kei reira e noho ana ki te whai whakaaaro kia hui rātou ki te matapaki i te paenga, ka mārama ana te mōhio kei a wai te rangatiratanga o te whenua, ā, he tūranga tō Ngāti Toa Rangatira ki te whakatakoto whakataunga mō tērā.

**Rangitāne o Kaituna**

Ko te tohe i whakataktoriora mō ngā tāpaetanga i te taha o Te Rūnanga Manatōpū a Rangitāne o Kaituna, ka katia mai rātou ki waho o te whakatika hapā nā te Whakaaetanga Whakataunga a Rangitāne o Wairau i tāpae. I te tau 2003 ka whakatau Te Rōpū Whakamana
i te Tiriti o Waitangi kāore he take i whakaarahia ake e Wai 1047 (te kerēme a Te Rūnanga Manatōpū a Rangitane o Kaituna) i whakaara ake i ētahi atu take kua whakakapia kēngia nei e Wai 44 (te kerēme whānui a Kurahaupō Rangitāne), ā, kihai i whakaae i tino rerekē atu te whakapapa a ngā kaikerēme o Wai 1047 ki tērā o ngā kaikerēme o Wai 44. Kei te ngata mātou, ka hōmai e te Whakahaetanga Whakataunga a Rangitāne o Wairau, me tētahi hanganga ture ka hua mai, he whakataunga o ngā kerēme Tiriti hītori katoa a Rangitāne ki te taha runga o Te Wai Pounamu. He kaiwhai pānga kua whai wāhi ngā mema o Te Rūnanga Manatōpū a Rangitane o Kaituna ki taua whakataunga.

Whakatika Hapa ki a Ngāti Toa Rangatira i te takiwā o Te Whanga-nui-a-Tara

I rongo tāpaetanga mātou e tautohetohe ana ki ngā pānga tukunga iho a Ngāti Toa Rangatira i te takiwā o Te Whanga-nui-a-Tara. Kei te ngata mātou, he tika ahi kā o Ngāti Toa Rangatira i roto i te rohe, ā, i wha wā ngā māngai o ētahi atu iwī ki te tautohe i ngā tika nei i Te Rōpū Whakamana i Te Tiriti o Waitangi, i te Kōti Teitei. Kua kite anō hoki mātou, kihai ngā whakahaetanga ā-ture e manako ana i a Ngāti Toa Rangatira e pā ana ki ngā āhuatanga i roto i te takiwā o Te Whanga-nui-a-Tara, kāore he kanohi mō rātou i te whakatika hapa motuhake ā, kāore rātou e aukati i ētahi atu rōpū ki te whakapuaki ake i ō rātou pānga tukunga iho.

Te Moutere o Kāpiti

I rongo tāpaetanga mātou mai i ngā whānau e whakawhanaunga ana ki a Ngāti Toa Rangatira (tua atu hoki i a Ngāti Raukawa me Te Ātiawa) e kī ana, ko te tikanga kē kia whakaararohia whēhunga tā rātou kerēme Wai 2361 ki te Moutere o Kāpiti, ki te whakataunga a Ngāti Toa Rangatira. Ka whakatautūngia ā rātou kerēme mō tō rātou whakapapa ki Ngāti Toa Rangatira e te pire nei ēngari, ko ngā wāhanga o tā rātou kerēme e pā ana ki ētahi atu whakapapa, kāore tērā e whakatutūngia. Kei te ngata mātou, ka whai wāhi ēnei kaikerēme ki ētahi whakatika hapa mā roto i te whakataunga a Ngāti Toa Rangatira.
Te haka a Ka Mate

Te koronga o te Pire Whakatau i te haka a Ka Mate (wāhanga 11 o te pire wāhanga maha), me tino tohungia ko Te Rauparaha te kaitito o te haka a Ka Mate, ka tahi, he rangatira a ia nō Ngāti Toa Rangatira, ka rua, ā, me tino pā tēnei herenga i ngā wā katoa ka whakaputaina ai te haka a Ka Mate ā-arumonitia, ka whakapāhotia ā-whanuitia ai ki te marea, ka kītea i roto kiriata, ka whakawāteatia rānei ki te marea. Ka tūtohu mātou kia whakatikaina a rara 640(2)(b) kia mārama ai ngā aweretanga ki te herenga nei mō ngā take whakaakoranga.

He take kē atu

Ka tūtohu mātou kia whakatikaina te whakamāramatanga mō “working day” i ngā rara 18, 210, me 428, kia rite anō ai ki ēra i roto i te Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 hou. Ka tūtohu anō hoki mātou kia whakatikaina a rara 36 me rara 228 kia ārite ai ki te Crown Minerals Amendment Act 2013. I te mea kua oti tētahi rūri i nāianei o te whenua o Queen Charlotte Forest me te paenga kopuni whenua o Queen Elizabeth Park e pā ana, ka tūtohu mātou kia whakahoungia ngā whakaahuatanga i raro i te ture o ngā paenga wāhi nei i rara 354 me rara 573. Ka tūtohu mātou kia whakatikaina ngā rara 111(4), 321(4), 514(4) hei whakamārama ka pēhea te pā o te Reserves Act 1977 ki ngā ingoa kua whakaaroatia mō ngā takiwā kua tiakina me ngā paenga kua whakarāhuitia a te Karauna. Ka tūtohu mātou kia whakakorea he kōrerotanga ki tētahi tukunga noatanga ārahi kore-rehitatanga mō te paenga Puponga Point Pā kei Kupu Āpiti 7 i te mea, kua mōnehu kē te tukunga noatanga i nāianei.
Tāpiritanga

Hātepe o te komiti
Ka tonoa Te Pire Whakataunga i ngā Kerēme a Te Tau Ihu ki te komiti i te 5 o Pipiri i te tau 2013. Ko te 18 o Hōngongoi i te tau 2013 te rā katinga mō ngā tāpae tanga. E 36 ngā tāpae tanga i whiwhi, i whakaaroarohia e mātou nō mai i ngā kohinga me te hunga takitahi whai pānga. E 27 ngā tāpae tanga ā-waha i rongohia e mātou, tae atu ki ngā whakawātanga i whakatūria i Wairau me Whakatū. I whiwhi whakamaherehere mātou mai i Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi me Hikina Whakatutuki. Nā runga i ngā mana kei roto i ngā rara e 65, e 257, e 468 e noho ana, ka whakatakoto pūrongo te Komiti Arotakenga Ture Ārahi ki te komiti.

Ko ngā mema o te komiti, ko
Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Nā Denise Roche a Mētīria Tūrei i whakakapia mō tēnei tūemi take.
Maungaharuru-Tangitū Hapū Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Maungaharuru-Tangitū Hapū Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Maungaharuru-Tangitū Hapū Claims Settlement Bill would give effect to the deed of settlement entered into by Maungaharuru-Tangitū Hapū and the Crown on 25 May 2013 for the final settlement of historical claims for breaches of the Treaty of Waitangi. The bill also records the acknowledgements and apology offered by the Crown to Maungaharuru-Tangitū Hapū.

The bill includes only those parts of the redress in the settlement package that require legislative authority. The deed of settlement sets out in full the redress provided to Maungaharuru-Tangitū Hapū in settlement of all its historical Treaty of Waitangi claims.
Maungaharuru-Tangitū Hapū Claims
Settlement Bill

Maungaharuru-Tangitū Hapū is a Ngāti Kahungunu hapū cluster including approximately 5,000 members of Ngāti Kurumokihi, Ngāti Tu, Ngāti Whakaari, Ngāi Taura, Ngāi Te Ruruku ki Tangoio and Ngāi Tahu. The hapū are based north of Napier in Hawke’s Bay. Their area of interest is from the Napier Inner Harbour, up the coastline to the Waitaha River, and westward to the ridgeline of the Maungaharuru Range.

The claims of the hapū relate primarily to war, raupatu, and Crown purchasing methods. The only land left in their possession is in a flood-prone zone, where their marae, Tangoio, is located.

Claimant definition
We received a number of submissions expressing dissatisfaction with the way Maungaharuru-Tangitū claimants have been defined in the bill. Many of the submissions were concerned that as drafted, the bill would exclude genuine claimants from benefiting from the Maungaharuru-Tangitū settlement. Concern centred largely on two issues: the entitlements for claimants with connections to both Ngāti Pāhauwera and Maungaharuru-Tangitū Hapū, and those individuals, descended from ancient hapū, who may fall between the two settlements.

Ngāti Pāhauwera
Though some claimants retain links to both, Ngāti Pāhauwera and Maungaharuru-Tangitū Hapū consider themselves distinct large natural groups, and have been recognised as such throughout Crown negotiations. The definition of Maungaharuru-Tangitū Hapū as represented by the mandated body in Treaty settlement negotiations is consistent with the definition provided to Ngāti Pāhauwera during their negotiations. We believe it is an important part of the settlement process for claimant groups to have the opportunity to set out their whakapapa as they see it, and this is done in the deed of settlement. We understand that Ngāti Pāhauwera and Maungaharuru-Tangitū Hapū took different approaches to identifying themselves, but we are confident that this has not resulted in any entitled individuals being excluded from benefiting from one or more settlements.

There is some overlap between the areas in which Ngāti Pāhauwera and Maungaharuru-Tangitū Hapū exercised some customary inter-
ests. This is relatively common in Treaty settlement negotiations, which are undertaken on the basis of whakapapa links, and the settlement of historical claims is not limited by geography. While Ngāti Pāhauwera and Maungaharuru-Tangitū Hapū acknowledge some overlapping interests, they have not agreed on where each group’s interest ends. However we are satisfied that this lack of agreement will not create a barrier to either group asserting its interest.

Submissions particularly raised concerns regarding Ngāti Pāhauwera interests in land south of the Waikare River. The Maungaharuru-Tangitū Hapū settlement does not deny that Ngāti Pāhauwera hapū have interests in this area. We also note that the claimant definition agreed on by Ngāti Pāhauwera and the Crown in 2010 settles all the historical Treaty claims of Ngāti Pahauwera, including those south of the Waikare River.

**Ancient hapū**

We also heard from submitters who believe that as their ancestral hapū were not explicitly mentioned in the Maungaharuru-Tangitū Hapū deed of settlement, they could not benefit from it. The mandated body receiving the settlement on behalf of Maungaharuru-Tangitū Hapū represents five key hapū and Ngāi Tahu individuals who have whakapapa links to the five main Maungaharuru-Tangitū Hapū ancestors.

We are satisfied that between the Maungaharuru-Tangitū Hapū and Ngāti Pahauwera settlements the people and hapū in the region will be fully represented and that after the enactment of this bill no outstanding claims will remain to be settled.

**Other matters**

We recommend amending the definition of “working day” in clause 12 to reflect recent changes to the Holidays Act 2003. We also recommend amending legal land descriptions in Schedules 4 and 5 now that the land in question has been surveyed.
Appendix

Committee process
The Maungaharuru-Tangitū Hapū Claims Settlement Bill was referred to the committee on 31 July 2013. The closing date for submissions was 12 September 2013. We received and considered 29 submissions from interested groups and individuals. We heard 14 submissions, holding a hearing in Napier. We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Te Pire Whakataunga i ngā Kerēme a Maungaharuru-Tangitū Hapū

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 Maungaharuru-Tangitū Hapū, ā, ka tūtohu kia whakamanahia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Ka whakamana te Pire Whakataunga i ngā Kerēme a Maungaharuru-Tangitū Hapū i te whakaaetanga whakataunga i uru atu rā a Maungaharuru-Tangitū Hapū me te Karauna ki roto i te 25 o Haratua i te tau 2013 mō te whakataunga oti atu o ngā kerēme hītori mō ngā whatinga o te Tiriti o Waitangi. E mau ana hoki ki roto i te pire ngā whākinga me te whakapāha i hoatu e te Karauna ki a Maungaharuru-Tangitū Hapū.

Kei roto i te pire nei aua āhuatanga anake o te whakatika hapa i roto i te mōkihi whakataunga ka hiahiatia rā he whakamanatanga ā-ture. Ka whakatakotoria e te whakaaetanga whakataunga te katao o te whakatika hapa i hoatu ki a Maungaharuru-Tangitū Hapū hei
whakatatūtanga o āna kerēme hītori katoa e pā ana ki Te Tiriti o Wai-tangi.
He kāhui hapū o Ngāti Kahungunu a Maungaharuru-Tangitū Hapū, tae atu ki ngā mema e 5,000, tata atu pea, o Ngāti Kurumōkihi, Ngāti Tū, Ngāti Whakaari, Ngāi Taurira, Ngāi Te Reruteru, ki Tangōio, me Ngāi Tahu. Kei te whakateraki o Ahuriri, takiwā o Te Matau-a-Māui te hāere te whakataunga te whai ki te whakapono, o te Ki whiriwhiringa. Mātou tō he nui wāhanga a ō i i whakamāramatanga o Ngāti ki ki te Pāhauwera te hoatu he kōkiri, mō rangatōpū Maungaharuru-Tōna Hapū, mana nei whakamāramatanga ngā te He rite tona puta kohinga kua ratou, i tāngata tino tonu noatia angitū te Pāhauwera Hapū, he Maungaharuru-Ngāti me ko ētahi ki ngā Ahakoa whakapapa tonu ai ētahi o ngā kerēme ki ngā iwi e rua, ko te whakarero o Ngāti Pāhauwera me Maungaharuru-Tangitū Hapū, he tino kohinga tāngata nunui tonu ratou, ā, kua mōhiotia puta noatia i ngā whiriwhiringa a te Karauna. He rite tonu te whakamāramatanga mō Maungaharuru-Tangitū Hapū, he rangatūpū nei tōna mana kōkiri, ki te whakamāramatanga i hoatu ki a Ngāti Pāhauwera i te wā o ō rātou whiriwhiringa. Ki tō mātou whakapono, he wāhanga nui o te hātepe whakataunga te whai wā ki te whakatakoto i ō rātou whakapapa ki tā rātou e kīte atu ana, ā, kei te mahia tēnei i roto i te whakaae-

Whakamāramatanga kaikerēme
He maha ngā tāpaetanga i whiwhi i a mātou e whakapuaki kōrero nanu ana ki te āhua o te whakamārama i ngā kaikerēme o Maungaharuru-Tangitū i roto i te pire. Ko te māharahara o te hūhua o te hunga whakatakoto tāpaetanga, e ai ki te takoto o ngā kōrero i roto i te pire i te wā nei, me te mea nei kei te katia kēngia ngā kaikerēme motuhenga ka whai painga mai, i te whakataunga a Maungaharuru-Tangitū. E rua ngā take ki te māharahara. Ko tērā e pā ana ki ngā āheinga mā ngā kaikerēme, he uri ki a Ngāti Pāhauwera rāua tahi ko te Maungaharuru-Tangitū Hapū, ā, ko tērā e pā ana ki tāua hunga takitahi i heke mai i tētahi hapū nō mai rā anō i te ao kōhatu, ā, tērā pea ka taka ki waenganui i ngā whakataunga e rua.

Ngāti Pāhauwera
Ahakoa whakapapa tonu ai ētahi o ngā kaikerēme ki ngā iwi e rua, ko te whakaaro o Ngāti Pāhauwera me Maungaharuru-Tangitū Hapū, he tīno kohinga tāngata nunui tonu ratou, ā, kua mōhiotia puta noatia i ngā whiriwhiringa a te Karauna. He rite tonu te whakamāramatanga mō Maungaharuru-Tangitū Hapū, he rangatūpū nei tōna mana kōkiri, ki te whakamāramatanga i hoatu ki a Ngāti Pāhauwera i te wā o ō rātou whiriwhiringa. Ki tō mātou whakapono, he wāhanga nui o te hātepe whakataunga te whai wā ki te whakatakoto i ō rātou whakapapa ki tā rātou e kīte atu ana, ā, kei te mahia tēnei i roto i te whakaae-
tanga whakataunga. Ki tō mātou mōhio, i rerekē ngā ara i whāia e Ngāti Pāhauwera me Maungaharuru-Tangitū Hapū ki te whakamōhio mai ko wai rātou ēngari, kei te ngākau tīti kaha mātou, kīhai tētahi tangata takitahi i katia atu ki wāhō o ngā whakataunga kotahi, neke atu rānei. Kei te whai hua rātou katoa.

He inakitanga ki ētahi rohe whai pānga tuku iho ai a Ngāti Pāhauwera me Maungaharuru-Tangitū Hapū. He āhuatanga e kaha kītea ana i roto i ngā whirihirihia whakataunga Tiriti e whakahaeretia ana nā runga i ngā hononga whakapapa, ā, kāore e kōpiripiritia te whakataunga o ngā kerēme o neherā e te takotoranga papa. Ahakoa te whakaee a Ngāti Pāhauwera me Maungaharuru-Tangitū Hapū ki ngā whai pānga inaki, kīhai rātou i whakaae kei whea te mutunga o ngā whai pānga o ia rōpū. Heoi anō rā, kei te ngata mātou kāre tēnei kore whakaaetanga e whakatū ārai ki ngā mahi whakapuaki whai pānga o ia rōpū.

I kaha te puta o ngā māharaharatanga e pā ana ki ngā whai pānga o Ngāti Pāhauwera ki ngā whenua e noho ana ki te taha tonga o te awa o Waikare. Kāre te whakataunga o Maungaharuru-Tangitū Hapū e whakakāhore i ngā whai pānga o Ngāti Pāhauwera ki tēnei rohe. Kei te kīte mātou ka whakatau te whakamāramatanga kūkērēme i whakaaetia e Ngāti Pāhauwera me te Karauna i te tau, 2010, i te katoa o ngā kerēme Tiriti o neherā o Ngāti Pāhauwera, tae noa ki ērā ki te taha tonga o te awa o Waikare.

**Hapū Tahito**

I rongo hoki mātou mai i ētahi kaituku ātapa e whakapono ana, kāore i āta kōrerohia tō rātou hapū tahito i roto i te whakaaetanga whakataunga o te Maungaharuru-Tangitū Hapū, ā, e kore rātou e whai huanga. Ka tū māngai te rōpū whai mana kōkiri e whiwhi ana i te whakataunga mō te Maungaharuru-Tangitū Hapū, mō ngā hapū matua e rima me ngā tangata takitahi o Ngāi Tahu e whai hononga whakapapa ana ki ngā tipuna matua e rima o Maungaharuru-Tangitū Hapū.

Kei te ngata mātou ka whai māngaitanga ngā tāngata me ngā hapū i te rohe nā runga i ngā whakataunga a Maungaharuru-Tangitū Hapū me Ngāti Pāhauwera, ā, whai muri i te whakaturetanga o tēnei pire, kāore e toe mai he kerēme hei whakatau.
Etahi atu take
Ka tūtohu mātou kia whakatikaina te whakamāramatanga mō “working day” i rara e 12, hei whakaata i ngā whakarerekētanga o nāianei ki te Ture Whakamatuatanga 2003. Ka tūtohu hoki mātou kia whakatikaina ngā whakamāramatanga ture whenua i roto i a pukapuka āpiti e 4 me pukapuka āpiti e 5, i te mea kua ruritia te whenua e kōrerotia ake nei.
Tāpiritanga

Hātepe komiti

Nō te 31 o Hōngongoi i te tau, 2013, Te Pire Whakataunga i ngā Kerēme a Maungaharuru-Tangitū Hapū, ka tonoa ai ki te komiti. Ko te 12 o Mahuru i te tau, 2013, te rā i kati ai ngā tāpaetanga. E 29 ngā tāpaetanga i whiwhi, ā, i whakaaroarohia e mātou nō mai i ngā ko-hinga me te hunga takitahi whai pānga. E 14 ngā tāpaetanga ā-waha i rongoia e mātou i tētahi whakawātanga i whakatūria ki Nēpia.
I whiwhi whakamaherehere mātou nō mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi.

Ko ngā mema o te komiti, ko

Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Meka Whaitiri
Jonathan Young

____________________________
Raukawa Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Raukawa Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Raukawa Claims Settlement Bill seeks to give effect to the deed of settlement signed by the Crown and Raukawa agreeing to the final settlement of the historical Treaty of Waitangi claims of Raukawa. The bill also records the acknowledgements and apology offered by the Crown to Raukawa.

The bill includes only those parts of the redress in the settlement package that require legislative authority. The deed of settlement sets out in full the redress provided to Raukawa in settlement of all its historical Treaty of Waitangi claims.

Raukawa are a large iwi whose rohe is based around Tokoroa in the northern Waikato area. The bill defines Raukawa as the collective group composed of all those people who are descended from
Raukawa and affiliated to a Raukawa marae in the Waikato area, but it does not include Ngāti Raukawa ki te Tonga. Their claims relate chiefly to armed conflict with the Crown in the 1860s, the impact of Native Land Court and native land legislation that left Raukawa virtually landless, the Crown’s failure to acknowledge the mana and rangatiratanga of Raukawa, and its failure to protect Raukawa interests in customary resources and significant sites. This commentary covers the settlement issues we considered and the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

**Interests in Waikeria land**

We heard opposition to the inclusion of specific land blocks at Waikeria in the settlement for Raukawa. Submitters argued that by vesting the land in question in Raukawa, the bill fails to recognise Maniapoto’s legal and beneficial interests in it, and breaches the Maniapoto Māori Trust Board’s authority to exercise decision-making powers over the land. We believe the provisions in the bill offer sufficient protection of Maniapoto’s interests and recommend no amendment to the bill.

**Waikeria Prison**

The settlement will provide Raukawa with two types of commercial redress relating to Waikeria Prison—a right to purchase Waikeria Prison subject to a lease-back to the Crown within two years of settlement date, and a right of first refusal over the Waikeria Prison site. Maniapoto interests in the Waikeria Prison are recognised by both the Crown and Raukawa, so the inclusion of certain provisions was agreed to by the Raukawa Settlement Trust and the Maniapoto Māori Trust Board, to protect Maniapoto interests in the Waikeria Prison.

**Ngāti Koroki Kahukura**

Members of Ngāti Koroki Kahukura oppose the acknowledgements and claimant definitions in the bill, as they believe they will be included in the settlement against their will; they do not believe that the Raukawa Settlement Trust has the mandate to speak for them. Sub-
mitters argued that the bill appears to recognise Raukawa interests in Ngāti Koroki Kahukura territory without acknowledging the dominant mana whenua status of Ngāti Koroki Kahukura. We considered these matters carefully but do not propose any amendments to the bill regarding Ngāti Koroki Kahukura interests.

We accept that Ngāti Koroki Kahukura’s views regarding the acknowledgements may differ from others, but consider that this part of the bill reflects the Raukawa perspective based on the iwi’s own history. It would be more appropriate to outline Ngāti Koroki Kahukura’s views in its own settlement than that of Raukawa.

We are confident that the claimant definition in the bill clearly excludes Ngāti Koroki Kahukura from this settlement, as the Raukawa marae listed do not include those marae affiliated to Ngāti Koroki Kahukura, and Ngāti Koroki Kahukura claim descent from their own tūpuna rather than from Raukawa.

It was also proposed that Wai 443 be moved from the list of Raukawa claims to the list of those where the settlement applies only to Raukawa aspects of the claims. The exclusion of Ngāti Koroki Kahukura from the claimant definition means that any aspects of Wai 443 that relate to them would not be settled by the Raukawa settlement.

### Area of association and interest maps

There was discussion among committee members about the status of the area of association and interest maps contained in the deed. Clarification was sought by submitters about reference to these maps, which could affect their mana whenua status, specifically in Horohoro. We received advice from officials that the area of association map in the deed is not endorsed by the Crown as the claimant group’s tribal boundaries or an exclusive claim area. This is included in a disclaimer on the map itself, and the map has no operative effect.

### Tokoroa East School

We heard objection to the inclusion of Tokoroa East School in the Raukawa settlement, on the grounds that former owners’ rights would be infringed. We do not propose any amendment to the bill in this regard.
The Ministry of Education is in the process of disposing of the land in question, in accordance with its obligations under the offer-back provisions of the Public Works Act 1981. If the former owners decline the offer to purchase the property, it will be offered to the trustees of the Raukawa Settlement Trust under the terms of the right of first refusal arrangements in the settlement.

References to Maniapoto entities
We recommend that the definition of the Maniapoto Māori Trust Board, for the purposes of clause 110(1)(c), include a successor to the Board. For the purposes of Part 4 we also recommend that clause 136 include a definition of the Maniapoto Māori Trust Board that references the definition of “Trust” in section 5(1) of the Nga Wai o Maniapoto (Waipa River) Act 2012. We agree with the Maniapoto Māori Trust Board that including an explicit reference to any successor to the Trust Board would future-proof this legislation.

Statements of association
Lake Ōhakuri
Te Arawa representatives expressed concern to us that the bill includes a statutory acknowledgement that provides Raukawa with a statement of association relating to the entirety of Lake Ōhakuri. We recommend amending Schedule 1, Part 2 of the bill by replacing “Lake Ōhakuri” with “Part Lake Ōhakuri” to make it clear that the statement of association would apply only to the Tātua West block of the lake.
Raukawa have agreed to this clarification of the statement of association.

Maungatautari Mountain Scenic Reserve
We also recommend inserting new clause 84A to acknowledge the significance of Maungatautari to Raukawa. The Raukawa Settlement Trust asked for this statement of association to be included in the bill. The equivalent Ngāti Koroki Kahukura statement of association is included in the recently introduced Ngāti Koroki Kahukura Claims Settlement Bill.
**Definition of “working day”**
We recommend amending the definition of “working day” in clause 12 to reflect the new Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013. This amendment would mean that if Waitangi Day or Anzac Day fell on a Saturday or Sunday, it would be observed on the following Monday.

**Definition of operating easement**
The survey of the area to which the operating easement to store water and install and operate hydroelectricity works in favour of Mighty River Power Limited refers has been completed. In the light of this, we recommend an amendment to clause 60 to update the definition of easement.

**Descriptions of Te Tuki and Pureora sites**
Since the introduction of the bill, the surveys of the Te Tuki and Pureora sites have been completed. We therefore recommend amendments to clauses 63(3), 65(6), and Schedule 4 to reflect land descriptions updated following these surveys.

**Vesting of Pureora**
We recommend amending clause 75 to make it clear that the entire Pureora site would not be exempted from section 24 of the Conservation Act 1987 if the revocation and surrender applied to part of the site only.

**Wharepūhunga and Korakonui subcatchment**
As introduced, clause 138 seeks to apply section 42(4) of the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 to the Wharepūhunga and Korakonui subcatchment. To align this bill with the recently introduced Ngāti Koroki Kahukura Claims Settlement Bill, we recommend amending clause 137 to apply section 42 of the 2010 Act, and not subsection 42(4). We believe his amendment is necessary to avoid confusion.
Appendix

Committee process
The Raukawa Claims Settlement Bill was referred to the committee on 6 August 2013. The closing date for submissions was 19 September 2013. We received and considered 22 submissions from interested groups and individuals. We heard 10 submissions, holding a hearing in Tokoroa.
We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hon Nanaia Mahuta
Katrina Shanks
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 Raukawa

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 Raukawa, ā, ka tūtohu kia whakamanahia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
Ka whai Te Pire Whakataunga i ngā Kerēme a Raukawa ki te whakamana i te whakaaetanga whakataunga i hainatia e te Karauna me Raukawa mō te whakataunga oti atu o ngā kerēme hītori a Raukawa i raro i Te Tiriti o Waitangi. Waihoki, ka tuhia ki roto i te pire ngā whākinga me te whakapāhā i tukua e te Karauna ki a Raukawa. Kei roto i te pire aua wāhanga anake o te whakatika hapa me mātua whakamanatia e te ture. Kei roto i te whakaaetanga whakataunga te katao o te whakatika hapa ka hoatu ki a Raukawa hei whakatau i āna kerēme hītori katao i raro i Te Tiriti o Waitangi. He iwi nui tonu a Raukawa. Huri rauna ai tōna rohe i Tokoroa i te takiwā raki o te rohe o Waikato. Whakamārama ai te pire, he kohinga
Whare o Raukawa o aua tāngata katoa, ā, he uri nō te tupuna a Raukawa, ā, whakawhanaunga atu ai ki tētahi marae o Raukawa i te rohe o Waikato heoi, kāore a Ngāti Raukawa ki te Tonga i roto. Matua pā ai ō rātou kerēme ki ngā riri ā-pū ki te Karauna i ngā tau kotahi mano e waru rau, ki ngā papātanga a Te Kōti Whenua Tangata Whenua me te hanganga ture whenua tangata whenua, ērā i tata riro atu ai ngā whenua katoa o Raukawa – paku noa nei pe a ioe atu ki a ia, ki te kore whakaae atu a te Karauna ki te mana me te rangatiratanga o Raukawa, ā, me te kore tīakī i te Karauna i ngā pānga a Raukawa ki ngā taonga tuku iho me ngā paenga hiranga. Kapi ai i te kōrero nei ngā take whakataunga i whakaroarohia e mā-tou, ā, me ngā whakatikatika matua ka ūtouhungia e mātou ki te pire. Kāore ngā whakatikatika ririki, hangarau rā nei e whakahapia e te kōrero nei.

Ngā pānga i te whenua Waikeria
I rongo mātou i ngā kōrero whakahē mō te whakaurunga mai o ētahi poroko whenua pū i Waikeria, ki roto i e te whakataunga mā Raukawa. Ko tā te hunga whakatakoto tāpaeanga i tohe, ki te tukuna taua whenua pū ki a Raukawa, he tohu tērā kīhau ngā pānga tuku iho me ngā pānga i raro i te ture a Maniapoto i te aronga e te pire, ē, e takahi ana hoki tērā i te mana whakatau kōrero a Te Poari Kaitiaki o Maniapoto ki aua whenua. Ki tō mātou whakapono, kāore ngā wāhanga i roto te pire i rawaka rawa hei tīakī i ngā pānga a Maniapoto, ā, nā runga i tērā ka tūtouhu mātou kia kaua te pire e whakarerekēngia.

Whare Herehere o Waikeria
E rua ngā momo whakatika hapa arumoni e pā ana ki te Whare Herehere ka hoatu e te whakataunga ki a Raukawa-he tīka kia hokoa te Whare Herehere o Waikeria i raro i tētahi herenga, kia whakahokia-te-rihi ki te Karauna i roto i ngā tau e rua, mai i te rā whakataunga, ā, ka rua, he tīka kapenga tuatahi ki te paenga whenua kei runga te Whare Herehere o Waikeria e tū ana. Ka whakaae tahi te Karauna me Raukawa ki ngā pānga o Maniapoto ki te Whare Herehere o Waikeria, ā, nā runga i tērā, ka whakaae tahi te Raukawa Settlement Trust me Te Poari Kaitiaki o Maniapoto ki te whakaurunga mai o ētahi wāhanga hei tīakī i ngā pānga o Maniapoto i te Whare Herehere o Waikeria.
Ngāti Korokī Kahukura

E whakahē ana ētahi o Ngāti Korokī Kahukura ki ngā whākinga me ngā whakamāramatanga kaikerēme i roto i te pire i te mea, ki tō rātou whakapono, ka whakaurua rātou ki roto i te whakataunga ahakoa tō rātou kore hiahia; kīhā rātou e whakapono kei te Raukawa Settlement Trust te mana kōkiri ki te kōrero mō rātou. Ka whakapae te hunga whakatakoto tāpaetanga me te mea nei kei te whakaae te pire ki ngā pānga o Raukawa i te takiwā o Ngāti Korokī Kahukura me te kore mōhio, kei a Ngāti Korokī Kahukura kē te nuinga o te mana ki te whenua. I āta wānangahia e mātou ngā take nei ēngari, kīhā he whakatikitika ā mātou ki te pire mō Ngāti Korokī Kahukura.

Ka whakaae mātou, he rerekē te titi o a Ngāti Korokī Kahukura ki ētahi ato mō ngā whākinga, heoi, ki a ākou nei whakaatu noa ai tēnei wāhanga o te pire i te tū a Raukawa i runga i tōna ake tāhū kōrero. Ka tika kē atu kia whakamāramatia te titi o a Ngāti Korokī Kahukura ki roto i tā rātou ake whakataunga, kāpā ki te whakataunga a Raukawa.

Kei te ngākau titikaha mātou ki te mārama o te kati atu a te whakamāramatanga kaikerēme, i a Ngāti Korokī Kahukura ki waho o te whakataunga nei i te mea, kāre aua marae e whakawhanaunga atu ana a Ngāti Korokī Kahukura ki te marae o Raukawa kua whakarāringitia, ā, he tupuna kē atu tō Ngāti Korokī Kahukura, ēhara i a Raukawa.

Ko tāna anō ka whakatakoto, kia nekehia a Wāi 443 mai i te rārangi o ngā kerēme a Raukawa, ki te rārangi o taua hunga e pā ai te whakataunga ki ngā āhuatanga anake o ngā kerēme a Raukawa. Ko te tikanga o te whakakatinga atu i a Ngāti Korokī Kahukura i te whakamāramatanga kaikerēme, kīhā tētahi āhuatanga o Wāi 443 e pā ana ki a rātou, e whakatautūngia e te whakataunga a Raukawa.

Takiwā whakapātanga me ngā mahere whenua pānga

He matapakinga i reira i waenganui i ngā mema o te komiti mō te mana o te takiwā whakapātanga, me ngā mahere whenua pānga kei roto i te whakaetanga. Ka whai te hunga whakatakoto tāpaetanga, kia whakamaramatia te kōrero mō ngā mahere whenua nei, otiāra, ērā e pā ana ki te āhua o tō rātou mana whenua, ā, i Horohoro ake. I pēnei mai te whakamaherehere i whiwhi i a mātou mai i ngā āpiha, kīhā te takiwā o te mahere whenua i roto i te whakaetanga e tautokona e te
Karauna, hei rohe ā-iwi mō te kohinga kaikerēme, hei takiwā kerēme motuhake rānei. Kua whakaurua tēnei ki roto i tētahi whakamāramatanga kupu whakakape i runga i te mahere whenua ake, ā, he mea e korekore ana he kiko i roto.

**Kura o Tokoroa ki te Rāwhiti**

I rongo mātou i ngā kōrero e whakahē ana i te kuhunga o te Kura o Tokoroa ki te Rāwhiti, ki roto i te whakataunga a Raukawa i te mea, ka takahia ngā tika o te hunga nō rātou taua wāhi i te tuatahi. Kihai te pire e whakarerekēnī a mātou mō tēnei.  
I te wā nei kua tahi Te Tāhuhu o te Mātauranga ki te tuku noa i taua whenua, e ai ki ōna herenga i raro i ngā wāhanga tuku-whakahokia o te *Public Works Act 1981*. Ki te kore ngā rangatira ō-mua e hiahia hoko i aua whenua, ka tukua ki ngā kaitiaki o te *Raukawa Settlement Trust* i raro i ngā tikanga whakaritenga tīka kapenga tuatahi kei roto i te whakataunga.

**Ngā kōrero mō ngā hinonga a Maniapoto**

Mō ngā take e pā ana ki a rara e 110(1)(c), ka tūtoho mātou kia whakaurua he tangata whakakapi mō te Poari. Mō ngā take e pā ana ki a Wāhanga e 4, ka tūtoho hoki mātou kia whakaurua a rara e 136 ki roto i tētahi whakamāramatanga mō Te Poari Kaitiaki o Maniapoto, tērā e kōrero ai mō te whakamāramatanga o “Trust” i tekiona e 5(1) o Te Ture mō Ngā Wai o Maniapoto (Awa o Waipā) o te tau, 2012.  
Ka whakaae mātou ki tā Te Poari Kaitiaki o Maniapoto i mea rā, mā te whakauru tino kōrero ake mō tētahi tangata whakakapi ki runga i Te Poari Kaitiaki, e noho tūturu ai tēnei hanganga ture.

**Ngā tauākī whakapātanga**

**Roto o Īhākuri**

I whakapuakina e ngā māngai o Te Arawa tō rātou māharahara ki a mātou mō tētahi whākinga ā-ture kua whakaurua ai ki roto i te pire, tērā e hoatu ai i tētahi tauākī whakapātanga ki a Raukawa mō te katoa o te Roto o Īhākuri. Ka tūtoho mātou kia whakatikaina a Kupu Āpiti 1, Wāhanga 2 o te pire mā te tango atu i ngā kupu “Lake Īhākuri” me te whakakapi mā ngā kupu “Part of Lake Īhākuri”, kia mārama
ai te pā o te tauākī whakapātanga ki te poroko Tātua West anake o te roto.
Kua whakaee a Raukawa ki tēnei whakamāramatanga o te tauākī whakapātanga.

Rāhui Whenua Whakakitekite o Maungatautari
Ka tūtohu hoki mātou kia raua atu he rara hou 84A ki te manako i te hiranga o Maungatautari ki a Raukawa. Ka tono te Raukawa Settlement Trust kia raua te tauākī whakapātanga nei ki roto i te pire. Kua whakaurua te ritenga o te tauākī whakapātanga a Ngāti Korokī Kahukuraa ki roto i Te Pire Whakataunga i ngā Kerēme a Ngāti Korokī Kahukura, nō nā noa nei i whakatakinga.

Whakamāramatanga o “working day”
Ka tūtohu mātou kia whakatikaina te whakamāramatanga mō “working day” i rara e 12 kia mōhioia ai, ko te Holidays (Full Recognition of Waitangi Day and Anzac Day) Amendment Act 2013 ērā. E aī ki te tikanga o tēnei whakatikatika, ki te taka he Rā o Waitangi, he Rā o Anzac rānei ki tetahi Rāhoroi, tētahi Rātapu rānei, ka whakanuia taua rā hei te Rāhina ka whai ake.

Whakamāramatanga me pēhea te whakamahi i te whakangāwaritanga
Kua oti te rūri i te wāhi e whakamahia ai te whakangāwaritanga hei whakapātaka wai, ā, hei whakauru me te whakamahi hiko ā-wai kia pai ai mā Mighty River Power Limited. Kua tutuki ērā. Nā runga i tēnei, ka tūtohu whakatikatika mātou ki rara e 60 hei whakahou i te whakamāramatanga whakangāwaritanga.

Whakamāramatanga mō te paenga Te Tuki, mō te paenga Pureora
Kua oti ngā rūri o ngā paenga o Te Tuki, o Pureora, mai anō i te whakatakinga o te pire. Nā runga i tērā, ka tūtohu whakatikatika mātou ki ngā rara e 63(3), e 65(6), ā, ki te Kupu Āpiti e 4 hei whakaatu mai kua whakahoungia kia mea ai, ko ērā ngā whakamāramatanga whenua kua whakahoungia ngā whakatangata whenua whai muri ake i ngā rūri nei.
Te Pire Whakataunga i ngā Kerēme
a Raukawa

Ngā Kōrero

Tukunga i a Pureora
Ka tūtouhī whakatikatika mātou ki rara e 75, kia mārama ai te kite mai, kīhai te katoa o te paenga Pureora i whakawātea mai i ngā herenga o tekiona e 24 o te Conservation Act 1987, mehemea ka pā noa te whakakorenga me te haurarotanga ki tētahi wāhi anake o te paenga.

Rerenga wai-tuarua o Wharepūhunga, o Kōrakonui
Pērā ki tērā i te whakatakinga, whai ai a rara e 138 ki te whakapā atu i a tekiona e 42(4) o te Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 ki te rerenga wai-tuarua o Wharepūhunga, o Kōrakonui.
Kia hāngai ai te pire nei ki Te Pire Whakataunga i ngā Kerēme a Ngāti Korokī Kahukura nō nā noa nei i whakatakinga, ka tūtouhī mātou kia whakatikaina a rara e 137 kia pā ai ki tekiona e 42 o te 2010 Act, ā, kia kaua ki tekiona-iti e 42(4). Ki tō mātou whakapono, ka tino hiahia tana whakatikatika kia kore ai tētahi e pōhēhē noa.
Ngā Kōrero

Te Pire Whakataunga i ngā Kerēme a Raukawa

13

Tāpiritanga

Hātepe komiti

Nō te 6 o Here-turi-kōkā i te tau, 2013, Te Pire Whakataunga i ngā Kerēme a Raukawa i tonoa ai ki te komiti. Ko te 19 o Mahuru i te tau, 2013, te rā i kati ai ngā tāpaetanga. E 22 ngā tāpaetanga i whiwhi, ā, i whakaaroarohia e mātounō mai i ngā kohinga me te hunga takitahi whai pānga. E 10 ngā tāpaetanga ā-waha i rongohia e mātou i tētahi whakawātanga i whakatūria ki Tokoroa.

I whiwhi whakamaherehere mātou nō mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi.

Ko ngā mema o te komiti, ko

Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Meka Whaitiri
Jonathan Young

Nā Denise Roche a Mētīria Tūrei i whakakapi mō tēnei tūemi take.
Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Bill and recommends that it be passed with the amendments shown.

Introduction
The Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Bill seeks to give effect to certain matters in the collective deed entered into by the Crown and 13 iwi and hapū, each of which has historical Treaty of Waitangi claims in Tāmaki Makaurau. The collective deed provides redress for the shared interests of Ngā Mana Whenua o Tāmaki Makaurau in relation to specified tūpuna maunga (volcanic cones), motu (islands), and lands within Tāmaki Makaurau. It does not settle any historical claims.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments, such as those proposed to Schedule 1.
Administration of Maungauika

We recommend amending clause 37 so that clause 163(3) and Schedule 6 could not come into force before the rest of the Act. Under the bill as introduced, this would be technically possible, which is unintended.

The bill would allow Maungauika to be administered by the Maunga Authority. Currently it is administered by the Department of Conservation and we note that arrangements need to be made for transferring responsibility.

Registration of ownership

We recommend amending clause 42 so that new electronic freehold registers may be created to take into account changes to the land titles of certain maunga surveyed after the bill was introduced. The surveys have resulted in land to which subclause (2) currently applies now being required instead to be subject to subclause (3).

Commencement provisions

The Regulations Review Committee reported to the committee on the powers contained in clauses 2 and 37. As noted above, we have recommended amendments to clause 37. We do not propose amendments to clause 2, which we discuss below.

We acknowledge that a fixed commencement date is, in principle, more satisfactory than commencement by Order in Council. However, commencement by Order in Council is available where there is clearly good reason for it.

The bill seeks to vest various lands, including tūpuna maunga and motu, in entities not yet established. When they might be established is uncertain. We are satisfied that there remains therefore a need for flexibility regarding commencement dates.

Naming policy of the New Zealand Geographic Board

We considered whether it would be possible for landmarks to be given multiple Māori names. The ordinary statutory process for officially recognising names is set out in the New Zealand Geographic Board Act 2008 and does not currently allow this course of action.
We strongly suggest that recognition of multiple Māori names should be ascribed to maunga and motu, thereby affirming mana whenua.
Appendix

Committee process
The Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Bill was referred to the committee on 31 July 2013. The closing date for submissions was 12 September 2013. We received and considered nine submissions from interested groups and individuals. We heard nine submissions, holding a hearing in Auckland.
We received advice from the Office of Treaty Settlements. The Regulations Review Committee reported to the committee on the powers contained in clauses 2 and 37.

Committee membership
Hon Tau Henare (Chairperson)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendon Horan
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Te Pire Whakatika Hapa a Te Ohu o Ngā Mana Whenua o Tāmaki Makaurau

Pire Kāwanatanga

Ko tā Te Komiti Whiriwhiri Take Māori i whakatakoto

Ngā Kūrero

Tūtohutanga

Kua āta tirohia e Te Komiti Whiriwhiri Take Māori Te Pire Whakatika Hapa a Te Ohu o Ngā Mana Whenua o Tāmaki Makaurau, ā, ka tūtohu kia whakamanahia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki

Ka whai Te Pire Whakatika Hapa a Te Ohu o Ngā Mana Whenua o Tāmaki Makaurau kia whakamanahia ētahi take kei roto i te whakaetanga ohu i uru atu rā te Karauna ki roto me ngā iwi, hapū e 13. Kei ia o tēnā, me tēnā iwi, hapū he kerēme hītori ki Tiriti o Waitangi i Tāmaki Makaurau. Hoatu wāhi whakatika hapa ai te whakaetanga ohu mō ngā pānga tiria a Ngā Mana Whenua o Tāmaki Makaurau, e pā ana ki ētahi maunga tūpuna (ngā koeko ahi tipua), ngā motu, me ngā whenua kua āta whakahuatia i roto i te rohe o Tāmaki Makaurau. Kīhai tēnei e whakatau kerēme hītori.
Kapi ai i tēnei korero ngā whakatikatika matua ka tūtohungia e mātou mō te pire. Kīhai ngā whakatikatika namunamu, hangarau rānei e whakakapia e te kōrero nei, pērā ki aua whakatikatika kua whakaarongia mō Pukapuka Āpiti 1.

Whakahaerenga o Maungauika
Ka tūtohu mātou kia whakatikaina a rara e 37 kia kore ai a rara e 163(3) me Pukapuka Āpiti e 6 e whai mana i mua kē i te toenga o te Ture. E āi ki te pire kua whakatakinatia, ka āhei ā-hangarau tēnei ēngari, ēhara kē tēnei i te tikanga.

Mā te pire e tukua ai a Maungauika kia whakahaerea e te Maunga Authority. I te wā nei, kei te whakahaerea kēngia e Te Papa Atawhai, ā, ko tērā kua kīte mātou, ka hiahiaitia he whakaritenga kia whakawhitia te haepapa.

Rēhitatanga rangatiratanga
Ka tūtohu mātou kia whakatikaina a rara e 42, kia tareka ai te waihangā ā-hiko i ngā rēhita korehere hou ā-hiko, hei whakaaro ake i ngā whakarerekētanga ki ngā taitara whenua o ētahi ake maunga, kua ru-rūritia whai muri i te whakatakinga mai o te pire. Nā ngā rūri whenua rā te tono kia te whenua e pā ai a rara-iti e (2) i te wā nei, kia herea kēngia i nāianei ki ngā whakaritenga o rara-iti e (3).

Tīmatanga o ngā wāhanga
I whakatakoto pūrongo Te Komiti Arotake Ture Ārahi ki te komiti, mō ngā mana kei roto i a rara e 2, me rara e 37. Pērā ki tērā kua kitea i runga ake nei, kua tūtohu whakatikatika mātou ki a rara e 37. Kīhai a mātou whakatikatika mō rara e 2. Kei raro atu nei tā mātou matapakinga.

E āi ki te mātāpono, ka whakaae mātou he pai kē atu he rā tīmatanga kua whakapūmautia, i tētahi rā tīmatanga Order in Council. Wāihoki, e wātea ana he tīmatanga Order in Council ki te kitea atu he take pai mō te whai i tērā whakataunga.

Rapu ai te pire ki te tuku tūmomo whenua, tae atu ki ngā maunga tūpuna, motu hoki, ki roto hiononga kāore anō kia kia whakatūria i te wā nei. Āhea pea ērā e whakatūria ai, kāore i te tino mōhiotia.
ngata ana ō mātou hiahia ki tērā. Nā, e pā ana ki ngā rā tīmatanga, ko te taha ngāwari tērā ka hiahiatia.

Kaupapa here a Ngā Pou Taunaha o Aotearoa e pā ana ki te whakamana ingoa whenua

Ka whakatau mātou mehemea ka taea pea te hoatu ingoa Māori taurea mō ngā tohu whenua. Kua whakatakotia i roto i te New Zealand Geographic Board Act 2008, te hātepe noa mō te whakaee ingoa i raro i te mana o te ture, ā, i te wā nei kāore he ingoa Māori taurea e whakaetia. Kaha rawa atu tā mātou whakapuaki i te whakaaro, kia whakatakaina ngā maunga me ngā motu ki ngā ingoa Māori taurea. Ko te whakatū-turu tērā i te mana whenua.
Tāpiritanga

Hātepe komiti

I tonohia Te Pire Whakatika Hapa a Te Ohu o Ngā Mana Whenua o Tāmaki Makaurau, ki te komiti i te 31 o Hōngongoi i te tau, 2013. Ko te 12 o Mahuru i te tau, 2013, te rā katinga mō ngā tāpaetanga. I whiwhi, i whakaaaroarohia e mātou ngā tāpaetanga e iva nō mai i ngā kohinga whai pānga, me te hunga takitahi. E iva ngā tāpaetanga ā-wāha i rongohia e mātou i tētahi whakawātanga i whakatūria ki Tāmaki-makau-rau.

I whiwhi whakamaherehere mātou nō mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi. I whakatakoto pūrongo Te Komiti Arotake Ture Ārahi ki te komiti, e ai ki ngā mana kei roto i a rara atu i te 2 ki te 37.

Ko ngā mema o te komiti, ko

Hōnore Tau Hēnare (Heamana)
Te Uruoa Flavell
Hone Harawira
Claudette Hauiti
Brendon Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Meka Whaitiri
Jonathan Young
Ngā Punawai o Te Tokotoru Claims Settlement Bill

Government Bill

As reported from the Māori Affairs Committee

Commentary

Recommendation
The Māori Affairs Committee has examined the Ngā Punawai o Te Tokotoru Claims Settlement Bill and recommends that it be passed with the amendments shown.

Introduction
The Ngā Punawai o Te Tokotoru Claims Settlement Bill is an omnibus bill that seeks to give effect to deeds of settlement signed by the Crown and three Te Arawa iwi—Ngāti Rangitaorere, Ngāti Rangiwewehi, and Tapuika respectively—agreeing to the final settlement of their historical Treaty of Waitangi claims. The bill sets out the cultural and commercial redress for each iwi, and records the acknowledgements and apology offered by the Crown to all three. In addition there is a statutory pardon for Ngāti Rangiwewehi tupuna Kereopa Te Rau.

Ngāti Rangiwewehi, Ngāti Rangitaorere, and Tapuika have a combined population of approximately 2,500. The various areas of inter-
est of these three iwi cover the Te Puke and Rotorua area inclusive of Te Ngae.
Our commentary covers the settlement issues we considered and the amendments we recommend to the bill. It does not cover technical amendments.

**Right of first refusal**
We recommend a number of changes to Parts 3, 6, and 9 in relation to the right of first refusal (RFR) redress process. These would ensure that if a waiver or variation was agreed to, the RFR provisions would work as intended.

**Properties vested in fee simple to be administered as reserves**
We recommend amending clause 293 to vest the fee simple estate for Te Weta Pā in the trustees of the Tapuika Post Settlement Governance Entity. This is the normal procedure, and was inadvertently omitted from the bill as introduced.
We also recommend amending clause 292 to include a parcel of land within Te Pehu Pā that is currently a legal, although unused, road.

**The Crown may transfer properties**
For the sake of clarity we recommend amending clauses 353 and 359 to exclude the transfer of Te Matai Forest (North), Te Matai Forest (South), and Pūwhenua Forest. These transfers are covered by clauses 354 and 355, and their inclusion in clause 353 is unnecessary.
Pūwhenua Forest
We recommend amending subpart 1 of Part 10 so that clause 6.8 of the Tapuika Deed of Settlement could apply. Pūwhenua Forest could then be offered as a deferred selection property.
Appendix

Committee process
The Ngā Punawai o Te Tokotoru Claims Settlement Bill was referred to the committee on 31 July 2013. The closing date for submissions was 12 September 2013. We received and considered 17 submissions from interested groups and individuals. We heard 12 submissions, and held hearings in Rotorua and Wellington.

We received advice from the Office of Treaty Settlements.

Committee membership
Hon Tau Henare (Chairperson)
Te Uruoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hon Nanaia Mahuta
Katrina Shanks
Rino Tirikatene
Metiria Turei
Nicky Wagner
Meka Whaitiri
Jonathan Young

Denise Roche replaced Metiria Turei as a permanent member for this item of business.
Te Pire Whakataunga i ngā Kerēme a Ngā Punawai o Te Tokotoru

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 Ngā Punawai o Te Tokotoru, ā, ka tūtohu kia whakamanahia me ngā whakatikatika kua oti te whakaatu.

Kupu Whakataki
He pire wāhanga maha Te Pire Whakataunga i ngā Kerēme a Ngā Punawai o Te Tokotoru, tērā e whai ai kia whakamanahia ngā whakaetaonga whakataunga i hainatia e te Karauna me ngā iwi e toru o Te Arawa Iwi–a Ngāti Rangiteaorere, a Ngāti Rangiwewehi, ā, me Tapuika– e whakaae ana ki te whakataunga oti atu o ō rātou kerēme hītori ki Te Tiriti o Waitangi. Ka whakatakotoria e te pire te whakatika hapa ā-ahurea, ā-arumoni hoki mō ia iwi, ia iwi, ā, tuhia ai ngā whākinga, ā, te whakapāha i hoatu e te Karauna ki ngā iwi tokotoru katoa. Tāpiri atu ki ērā, he unuhanga hara ā-ture kei reira mō Kereopa Te Rau, tupuna o Ngāti Rangiwewehi.
E 2,500, āwhiwhi atu te taupori arongatahi o Ngāti Rangiwhewhi, Ngāti Rangiheorere, ā, o Tapuika. Kapi ai ngā momo rohe whai pānga o ngā iwi e toru nei i Te Puke me Rotorua, ā, tae noa ki te rohe o Te Ngae.
Kapi ai i tā mātou kōrero ngā take o te whakataunga i whakaaroarohia e mātou, ā, me ngā whakatikatika ka tūtohu e mātou mō te pire. Kāore ngā whakatikatika hangarau i whakakapia e tā mātou kōrero.

**Tika ki te kapenga tuatahi**
Ka tūtohu mātou i ētahi whakarerekētanga ki ngā Wāhanga e 3, e 6, ā, e 9, e pā ana ki te hātepe whakatīka hapa, tika ki te kapenga tuatahi (TKT). Mā ēnei e āta titiro mehemea he whakakorenga, he whitinga rānei i whakaaetia ki tērā i whakatakototia rā, ka mahi ngā wāhanga TKT.

**Ngā pito whenua pānga angiangi kia whakaherea hei whenua rāhui**
Ka tūtohu mātou kia whakatīkaina a rara e 293 kia tukua ai te pānga angiangi mō te Pā o Te Wētā ki ngā kaitiaki o te Hinonga Tiaki Kau-papa Whakataunga-whai muri a Tapuika. Ko te tikanga noa rā tēnei, ā, i mahue kūwareti noatia mai i te pire i tōna whakatakinga. Ka tūtohu hoki mātou kia whakatīkaina a rara e 292 kia whakaurua ai he porohanga whenua kei roto tonu iho i te Pā o Te Pehu, tērā e tika ana i te wā nei i raro i te ture hei rori, ahakoa kīhai i te whakamahia.

**Ka āhei te Karauna ki te whakawhiti pito whenua**
Kia mārama ai te kete atu, ka tūtohu mātou kia whakatīkaina a rara e 353 me rara e 359, hei kati atu i te whakawhitinga o te Ngahere o Te Matai (ki te Rakī), te Ngahere o Te Matai (ki te Tonga), ā, me te Ngahere o Pūwhenua. Ka whakakapia ngā whakawhitinga nei e ngā rara e 354, e 355, ā, nā runga i tērā kua kore noa iho ō rātou whakaurunga ki rara e 353 e hiahiatia.
Te Ngahere o Pūwhenua
Ka tūtohu mātou kia whakatikaina a wāhanga-iti 1 o Wāhanga e 10, kia pā ai a rara e 6.8 o Te Whakaaetanga Whakataunga a Tapuika. Ā, nā runga i tērā kua taea koatia te tuku i te Ngahere o Pūwhenua i nāianei hei kōwhiringa pito whenua kua hikitia.
Tāpiritanga

Hātepe komiti

Nō te 31 o Hōngongoi i te tau, 2013, Te Pire Whakataunga i ngā Kerēme a Ngā Punawai o Te Tokotoru ka tonoa ai ki te komiti. Ko te 12 o Mahuru i te tau, 2013, te rā i kati ai ngā tāpaetanga. E 17 ngā tāpaetanga i whiwhi, ā, i whakaaroarohia e mātou nō mai i ngā ko-hinga me te hunga takitahi whai pānga. E 12 ngā tāpaetanga ā-waha i rongohia e mātou i ngā whakawātanga ki whakatūria ki Rotorua, ā, ki Te Whanga-nui-a-Tara.

I whiwhi whakamaherehere mātou nō mai i Te Tari Whakatau Take e pā ana ki Te Tiriti o Waitangi.

Ko ngā mema o te komiti, ko

Hōnore Tau Hēnare (Heamana)
Te Ururoa Flavell
Hone Harawira
Claudette Hauiti
Brendan Horan
Hōnore Nanaia Mahuta
Katrina Shanks
Rino Tirikātene
Mētīria Tūrei
Nicky Wagner
Meka Whaitiri
Jonathan Young

Nā Denise Roche a Mētīria Tūrei i whakakapi hei mema tūturu mō tēnei tūemi take.
# Briefing on the Tamarillo industry including the impact of psyllid

Report of the Primary Production Committee

## Contents

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Pest management</td>
<td>2</td>
</tr>
<tr>
<td>Effects on the market</td>
<td>2</td>
</tr>
<tr>
<td>Ministry liaison with growers</td>
<td>3</td>
</tr>
<tr>
<td>Appendix</td>
<td>4</td>
</tr>
</tbody>
</table>
Briefing on the Tamarillo industry including the impact of psyllid

Recommendation

The Primary Production Committee received a briefing on the Tamarillo industry including the impact of psyllid, and recommends that the House take note of its report.

Introduction

On 21 February 2012, the committee received a briefing from the Ministry for Primary Industries on the Tamarillo industry including the impact of the psyllid.

The tomato/potato psyllid fly is a relatively new and significant pest of horticultural crops in New Zealand, including potatoes, tomatoes, capsicums and tamarillos. The adult psyllid resembles a miniature cicada about 3mm long. It is native to North America, and was first found in New Zealand in 2006. It is not known how the insect entered the country.

The disease spreads rapidly and can kill trees. The New Zealand Horticulture Export Authority reports that a large number of smaller growers in the tamarillo industry left the industry after the appearance of the psyllid caused serious damage, some orchards losing 90 percent of their trees.

The associated bacterium Liberibacter sp. was discovered in New Zealand in 2008, when tomato growers first reported disease in their crops, and investigation found that the bacterium was being spread by the psyllid. Crop damage is caused by the feeding activities of the psyllid and the bacterium that the insect spreads. Both organisms are a serious problem for the tamarillo industry, which expects tree losses of up to 10 percent per year despite spraying with insecticides.

Pest management

Because this is a recent incursion in New Zealand and overseas, sustainable management practices for controlling both the psyllid and the bacterium are still being researched. The psyllid can fly long distances and the fly eggs are small and difficult to detect, both traits that make a ban on movement of infected plants ineffective. The ministry’s response to the psyllid ceased when it was found that the insect was too widespread to be eradicated, and could survive on weed plants away from crops. Funding constraints are not a factor in this decision; and we heard that despite having spent millions of dollars on the problem, the Americans have not found a solution.

Eradication of the bacterium also presents difficulties in that it is systemic in plants and therefore difficult to destroy without destroying the plant. The only known way to control the bacterium is to control the psyllid vector.

Effects on the market

Tamarillos are mostly grown in Northland, Auckland, Bay of Plenty and Taranaki. By 2011, there were 40 growers with 110ha of planted area, producing a reduced crop of 475 tonnes,
compared with 600-plus tonnes the season prior to the incursion. Unofficial figures for 2012 indicate that production was again poor, with only 250 tonnes produced. Other factors in reduced returns may be the strength of the dollar and weak domestic demand.

Colombia, Australia, and New Zealand are the only three countries to grow tamarillos commercially, and so there are relatively few barriers to trade except for pest and disease issues. Exports of tamarillos to Australia were stopped after the bacterium was detected in New Zealand, and no exports were made in 2009. The market has now re-opened, but conditions of entry into Australia have been made stricter. Restrictions include compulsory fumigation with methyl bromide to kill the psyllid vector, which has an appreciable effect on fruit quality, causing the stalks to desiccate. The important American export market remained open to New Zealand tamarillos, because the psyllid is already present in America.

**Ministry liaison with growers**

We noted that although the industry was small, it was important in Māori areas especially in the Northland region; and we asked why the ministry had not contacted orchardists directly, to explain the problems, to advise on possible responses, and to display a more responsive attitude to their plight.

We were told that this was the responsibility of the growers’ industry body, Horticulture New Zealand, which was leading the way in disease research and was better placed to liaise with growers. The Ministry did approach the industry to inform it that there is currently no way to eradicate the pest. It also held psyllid workshops with Horticulture New Zealand to help direct their research effort, and suggested that they investigate bio-control methods or adopt an organic approach. It had also put the industry in touch with funding sources and had generally facilitated the provision of information and advice. The ministry stressed that its prime role was to focus on increasing exports and it relied on industry bodies to engage directly with growers.

We were disappointed with this response, which in our view appeared to show insufficient leadership at a time when growers were suffering. Growers took the view that it represented “control from Wellington” with little practical work undertaken in the affected areas. We consider that the ministry is offering no vision for the future of the tamarillo industry, and little attention is being paid to “brand New Zealand”. We strongly urged ministry officials to visit the affected areas, particularly the Northland region, and interact directly with growers to offer them hope for the future in what should be an expanding industry. We look forward to hearing further from the ministry on the results of those visits.
Appendix

Committee procedure
We heard evidence from the Ministry for Primary Industries on 21 February 2013 and considered it on 28 March 2013.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKeelvie
Hon Damien O'Connor
Eric Roy
Briefing on the sheep milking industry

Report of the Primary Production Committee

Contents
Recommendation 2
Introduction 2
Industry development 2
Products and markets 2
The future of the industry 3
Conclusion 3
Appendix 4
Briefing on the sheep milking industry

Recommendation

The Primary Production Committee received a briefing on the sheep milking industry, and recommends that the House take note of its report.

Introduction

On 21 February 2013, the committee received a briefing on the sheep milking industry in New Zealand from Mr Keith Neylon, the managing director of Blue River Dairy, a sheep milking company in Southland. He suggested that since prices for most varieties of wool had collapsed and returns for meat products had fallen, an expansion of the sheep milking industry using farming models adapted to New Zealand conditions could offer a way forward for sheep farmers. Sheep’s milk sells for around four times the price of cow’s milk, and with a high solids content it offers twice the amount of cheese per litre of milk. Its superior freezing and drying qualities are important to a regional market that currently lacks access to large volumes of sheep’s milk products.

It was suggested that the successful growth of Blue River Dairy and its expanding export market could be seen as a model for the industry’s development; and although he saw challenges ahead, Mr Neylon believes they can be overcome with time and sufficient funding.

Industry development

While the sheep milking industry is well established in Europe, there was no blueprint for a commercial enterprise of this kind in New Zealand, so the company initially had to utilise expertise from overseas. After examining the industry in the Mediterranean countries where it has been established for centuries, the company determined that the Israeli model was the most appropriate for adaptation, and developed a 10-year plan for growth in New Zealand.

The company began operations by adapting the model for local conditions and establishing Blue River Dairy using a vertically integrated company structure to facilitate quality control throughout the supply chain. The company now uses the best breeding combination currently available to sustain a high-volume operation, crossing East Friesian sheep for their superior milking qualities with hardier breeds to suit local conditions.

Newly developed farm management methods have played an important role in the growth of this specialised industry. The company found it hard to persuade farmers to adopt and financiers to fund new management practices. Breeding and genetic programmes to improve milk yield, revised flock management techniques, and optimizing widely varying milk yields have been important factors in the development of the industry and the company’s successful growth.

Products and markets

Blue River Dairy has now opened up markets in the USA, Australia, China, the United Arab Emirates, Iraq, and Singapore, and hopes to export to Indonesia in the near future. An estimated 50 percent of Asians are intolerant of cows’ milk, which offers huge export
opportunities for sheep milking operations. There is a high demand for infant formula, bulk milk powder, and cheese, and the company is carrying out research into other sheep milk products such as ice cream, pharmaceuticals, and cosmetics.

The company is also investigating meat and wool products for the domestic and export markets. The sheep milk farming system means that young lambs are available for slaughter and sale as milk lambs, for which there is a healthy export market. This might provide sheep milkers with a major part of their income. Wool products are also being tested in the market, although the sheep varieties used do not produce high-quality wool.

Mr Neylon believes that by exploiting the large export market, and using his intensive and innovative farming model to optimise flock numbers, he can produce substantially higher earnings per acre of good land than he could achieve with cows. Over the 10 years of the development plan, he hopes to build up the industry to at least 2 million sheep, which he suggests will still not fully satisfy the market.

**The future of the industry**

We asked if any problems were envisaged in realising the potential of the industry. We were told that genetic improvement of the breeds of sheep available in New Zealand was required to optimise the volume and quality of milk production. Breeding programmes can take years to effect improvements, and artificial insemination, which is difficult with sheep, is crucial to such programmes. The French have developed an excellent genetic strain but they are not willing to sell the intellectual property; it will take at least 10 years to reach a similar level of genetic sophistication in New Zealand. Progress will depend on adequate funding as much as any other factor, and insufficient investment in genetic research and breeding over the development period could delay in reaching full potential.

Another possible limiting factor in the development of the industry is access to class 1 land. Unless the industry can continue to demonstrate that it can compete with cows and thus generate interest amongst farmers, it could be pushed back to marginal land areas and again the full potential of the industry would not be realised.

**Conclusion**

We heard that the sheep milking industry in New Zealand could become a major agricultural exporter with fewer problems than those associated with cows. Using an innovative and well-developed farming model, the industry could provide a greater income per acre than cows, using less water, and causing fewer run-off problems, while producing a well-tolerated product high in solids, aimed at a little exploited export market.
Appendix

Committee procedure
We heard evidence on the sheep milking industry on 21 February 2013 and considered it on 28 March 2013.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation
The Primary Production Committee has examined the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Fisheries Act 1996 to improve the management of matters pertaining to vessel safety, employment, and fisheries management on foreign charter vessels (FCVs) operating in New Zealand waters. The proposed amendments to the Act seek to protect the human rights of crews, and to ensure that New Zealand’s reputation as a responsible and sustainable fishing nation is maintained.

The bill proposes to introduce a new regime that would widen the range of matters the chief executive could consider when deciding FCV registrations. It would also expand the chief executive’s powers
to include the suspension of consent for registration, and extend the functions of on-board observers.

The bill aims to strengthen the Government’s ability to enforce New Zealand law by requiring all FCVs except those operating within certain specified criteria to be reflagged to New Zealand while operating within New Zealand’s Exclusive Economic Zone (EEZ).

Our commentary covers the main amendments we recommend to the bill.

Registration of fishing vessels
We were concerned that although the bill as introduced would amend the conditions for the chief executive’s consent for vessel registrations to include employment and vessel safety matters, it did not allow the chief executive to consider issues, or impose specific conditions, relating to pollution and waste discharge. We recommend amending clauses 4(2) and 4(4) to supply these deficiencies. We considered whether environmental matters should be explicitly set out, but on balance we were assured and wish to record for the avoidance of doubt that the powers of the chief executive include those set out in sections 8 and 9 of the Fisheries Act.

Extension of powers to New Zealand-owned vessels
The bill seeks to extend the chief executive’s powers to consent to, suspend, and cancel vessel registrations to include New Zealand-owned vessels. We consider that these proposed powers are not required and so recommend that references to New Zealand-owned vessels be removed from clauses 5 and 6.

Suspension of consent to registration and rights of review and appeal
The bill seeks to introduce new powers to suspend vessels’ registration, and expand cancellation powers to give government agencies more tools for managing risk. We are concerned that while the bill’s provisions would strengthen the powers of the chief executive, there was no provision in the legislation for an appeals process for affected operators.
We recommend amending clause 5 to limit the suspension power so that it applies to the consent to registration (rather than registration itself) and by inserting new section 106B, which sets out a review and appeals process for parties to a decision, and sets a time-limit on the chief executive’s review of a decision.

We recommend that clause 6 be deleted, as we are satisfied that sufficient management tools are already available under the Fisheries Act 1996 to manage the risks posed by FCVs, and that the proposed cancellation powers are not required.

We sought advice on the risk of litigious behaviour by industry participants pertaining to the narrow suspension criteria and new appeal rights. We received assurance from officials that they consider that a balance had been struck, but we would expect that careful monitoring would occur to ensure that the intent of the legislation is maintained.

**Mandatory reflagging of all FCVs to New Zealand**

The bill as introduced includes the mandatory reflagging of all FCVs to New Zealand while operating in the New Zealand EEZ. We are aware of a weight of opinion that the “deeming” model used by Australia, whereby FCVs are “deemed” to be operating under the host country’s jurisdiction while within its waters, would be more appropriate. Reflagging could result in some countries such as Japan being unable to comply with the new requirements because of domestic legal complications.

Some FCV operators that catch certain highly migratory species spend only a short time in the zone before moving to fish elsewhere, and would find it uneconomic and excessively time-consuming to reflag each time they did so. Such fisheries are unique among those fished by FCVs in that they are managed under international agreements.

However, after a detailed examination of the issues involved, we were persuaded that the deeming model would not allow the government to meet its principal objectives for the management of FCVs. We noted advice from officials that the species for which the highly migratory species exemption should be limited to tuna and support the narrowing of these exemption provisions.

We consider that the requirement to reflag should be retained as introduced, with exceptions for certain circumstances; we recommend
amending clause 10 by inserting section 103A(1AA) to specify these exemptions. Section 103A(1AA) would require the chief executive when approving an exemption to consider whether it would be “in New Zealand’s interest”, and whether there would be “sufficient control” over the operations of the FCV during the period of exemption. We considered the desirability of inserting definitions of these terms, to provide some protection from possible litigation against the chief executive’s discretion, but decided on balance that the wording of the amendment would give the chief executive sufficient flexibility in making an assessment, and that this discretion is desirable.

We urge the Ministry to liaise with foreign governments and vessel operators who may be affected by the reflagging requirement, to discuss ways to minimise any adverse effects.

**The role of observers**

The bill as introduced would expand the purpose of the observer programme to include collecting information about vessel safety and employment issues. We recommend that clause 20 be amended to include a requirement in section 223(1) to collect information about compliance with maritime rules relating to pollution and waste discharge.

We note that monitoring environmental effects is already covered in the Act and we were assured and wish to record for the avoidance of doubt that the powers of the chief executive include those set out in sections 8 and 9 of the Fisheries Act.

**Mandatory New Zealand crew requirement**

We are aware of the argument that the bill represents an opportunity to impose a mandatory New Zealand crew requirement. We note that the Seafood Industry Council submitted that it is already training New Zealand crews to supply potential demand. We note the need for wage rates on all New Zealand fishing vessels, including on FCVs, to meet New Zealand minimum standards and market wage rates, after all deductions, to ensure that fishing becomes an attractive career for New Zealand workers. We note that under current immigration regulations and practices, FCV operators are required to meet New Zealand’s minimum standards and the industry code of practice which includes paying market wages above the New Zealand
minimum wage. We recognise that developing minimum crew requirements should be considered as part of a broader workforce and industry development approach, and would recommend further consideration of these issues in another context.

**Transition period**

The bill as introduced would require the relflagging of FCVs from 1 May 2016, but we recognise an argument for a shorter transition period. We believe however that on balance a shorter period would demonstrate New Zealand’s commitment to addressing the issues concerning FCVs promptly; a shorter transition may be considered impractical for some operators because of the complexity of the process for both foreign operators and the government agencies involved.

**Settlement quota**

The committee received amendments immediately prior to deliberation. Unusually the committee did not receive written departmental advice pertaining to these amendments. Acting on reliance on the oral advice we received from officials we have recorded below our questions and their responses.

New subsection 103A(1AA)(a)(iii) provides an additional exemption for vessels operated by an operator who, on 30 April 2012 held annual catch entitlements that were derived from settlement quota that represented a “significant proportion” of all annual catch entitlement held by that operator or operators.

We were concerned that unless clearly defined, that clause could result in operators with only a relatively small proportion of Annual Catch Entitlement (ACE) derived from settlement quota, or those that might seek to acquire a settlement quota could seek to qualify for an exemption beyond the intent of the Act.

We note that the exemption is limited to ACE held on 30 April 2012, which effectively means the holdings cannot be manipulated post implementation of the Act.

We note that settlement quota is only quota defined as such in the Act and the Maori Fisheries Act.
We discussed whether the term “significant proportion” should be defined in the Act. We were advised that the Government preferred it to be a matter of the chief executive’s discretion, reflecting the intent of the Act to remove undesirable FCV activities. This discretion would be subject to criteria including promotion of the New Zealand national interest, and retention of effective national control. In addition, for the annual re-registration for vessels under this exemption, the other criteria that apply to the registration for consent apply.

We clarified that the new Order in Council provisions set out in (1AC)(b) would be strictly limited to the subsection (1AA)(a)(iii) and (iv) to which they explicitly apply. As such, we note this does not confer any new grounds for exemptions or broader regulation-making powers.

Green Party minority view
The Green Party recognised that the bill had exemplary aims, that of protecting the human rights of crew on FCVs operating within New Zealand’s jurisdiction, and to ensure a full observer programme on fishing vessels, for the purposes of vessel safety, employment, fisheries research, management, and enforcement.

Further committee consideration ran to pollution, waste discharge, and the environmental impacts of fishing.

Observers
An opportunity was lost by the bill’s observer programme emphasis being reduced to a FCV focus, and its environmental component effectively reduced, by not including wording such as, “the environmental impacts of fishing” which would have reinforced the Fisheries Act 1996, Purpose, Section 8.

Section 8 Purpose,
(2) In this Act—
ensuring sustainability means—
• maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
• avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment
Commentary  

Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill

Section 8 is supported by Section 9 Environmental principles, but only by taking into account, as in; ‘shall take into account the following environmental principles: ...

Currently the environmental provisions of the Act are weak and weakly enforced. Ensuring that the observer programme collects information about the environmental impacts of fishing is necessary to support the purpose and principles of the Fisheries Act 1996, and as a step towards fishers having a sustainable economic and credible fishery into the future.

Exemptions

The Green Party does not agree with the exemption for fishing that targets “a tuna species named in Schedule 4B”. The exemption is unnecessary for the New Zealand registered vessels and fishers that are already significant fishers of tuna species and the other Schedule 4B Highly Migratory Species (HMS), so an exemption for individuals is inappropriate.

Capability is significant in the New Zealand fishing industry and individual companies already with New Zealand registered vessels should readily adapt to the provisions of this bill without exemptions. Other New Zealand fishers can be expected to pick up any opportunity presented by fishers choosing to exit the high-value tuna fishery.

The exemption for fishing that “targets a tuna species” also allows misuse, by the looseness of the term ‘targets’. Removing the exemption in its entirety, would have reduced the potential for gaming of targeting.

The Green Party will be watching the chief executive’s consideration of “whether it will be in New Zealand’s interests” when approving exemptions, as the significant flexibility in that term in the bill can allow for a wide range of outcomes. Such an exemption must not be a loophole that fails the original intent of the bill.
Appendix

Committee process
The Fisheries (Foreign Charter Vessels and Other Matters) Amendment Bill was referred to the committee on 14 February 2013. The closing date for submissions was 28 March 2013. We received and considered 48 submissions from interested groups and individuals. We heard 28 submissions in Wellington.

We received advice from the Ministry for Primary Industries, the Ministry of Business Innovation and Employment, the Ministry of Transport, and Maritime New Zealand.

Committee membership
Shane Ardern (Chairperson)
Steffan Browning
Hon Shane Jones
Colin King
Ian McKelvie
Hon Damien O’Connor
Eric Roy

Hon John Banks was appointed as a temporary member for consideration of this bill.
Hon David Cunliffe replaced Hon Damien O’Connor for this item of business.
Briefing on Molesworth Station

Report of the Primary Production Committee

Contents
Recommendation 2
Introduction 2
Molesworth Station 2
Current farming policy 2
Weed and pest control 3
Public access 3
Conclusion 3
Appendix 4
Briefing on Molesworth Station

Recommendation
The Primary Production Committee has received and considered a briefing on Molesworth Station, and recommends that the House take note of its report.

Introduction
The committee visited Molesworth Station on 4 and 5 April 2013 at the invitation of Landcorp Farming Limited to look at how agricultural, environmental, and recreational considerations are being managed on New Zealand’s largest farm by area. It is an iconic station with historic and cultural significance and there is a diversity of expectations among the public as to the most appropriate utilisation and appreciation of this property.

Molesworth Station
Molesworth Station is a high country property of 183,000 ha covering the Awatere, Wairau, Clarence, and Acheron catchment areas. It is administered under the Reserves Act 1977 by the Department of Conservation, and farmed commercially by Landcorp. An additional 1,500 ha of supporting land is farmed by Landcorp in the Hanmer Basin and provides intensive finishing capacity to the Molesworth station. The station ranges from 549 metres to 2,114 metres in height above sea level and has an average of 225 frosts per year. Heavy snow-falls can occur in winter and spring and extremely high temperatures in summer.

Molesworth Station has a steering committee to advise on the preparation and operation of the station’s management plan. The committee has an independent chair, and consists of representatives from the Department of Conservation, Federated Farmers, Ngāi Tahu and Landcorp. The Molesworth Management Plan covers all matters relating to environmental management, particularly soil and water management, productive values, control of weeds and pests, natural and historical values, and public access and recreation.

We observed the relationship between the agricultural management of Molesworth Station and the objectives and practices of the Department of Conservation, which aspired to maintain values for both.

Current farming policy
Pastoral beef cattle farming is the predominant activity on the station. Because the pasture growing season is relatively short, stock is grazed rotationally in large blocks to maximise production and reduce grazing pressure. Maintaining Molesworth’s current stock-carrying capacity requires significant over-sowing, fertiliser application, and weed and pest control systems. Molesworth Station covers distinct microclimates: the wetter western areas are used for extensive summer grazing, and the drier eastern side for winter grazing. This rotational grazing regime, which has been used for over fifty years, allows the wintering of approximately 6,600 cattle and protects the indigenous grasslands in the western catchments during winter, when they are most vulnerable. This protection offers a degree of grazing sustainability and allows the conservation of indigenous grasslands. We observed a trial of cultivated forage on a previously modified area of pasture. The system allows pasture to recover swiftly and permits stock to achieve maximum condition in the summer.
months, reducing pressure on winter pastures. There is sufficient flexibility in this system to accommodate seasonal weather extremes.

**Weed and pest control**

Landcorp regards the control of weeds and pests as critical to the protection of native species and the local ecosystem, as well as important for optimum farming production. This policy also enhances public enjoyment of the station’s recreational facilities, and helps to preserve the area’s natural and historic values. Broom and wilding pines are the biggest weed threats on the station. Pest management is overseen jointly by the Department of Conservation and Landcorp, and various control programmes work towards eradicating TB.

**Public access**

Public access to Molesworth Station is managed alongside farming operations, maintaining an emphasis on eliminating fire risk and ensuring public safety. Public access is restricted to certain areas, at certain times of the year, unless prior permission has been obtained from the Department of Conservation and Landcorp.

**Conclusion**

We thank the staff of Landcorp and Molesworth Station for taking the time to provide us with such a wealth of information on the current management of this sizeable, remote area of the South Island. We especially appreciated the opportunity of seeing at first-hand a unique high country area where natural, historical, cultural, and recreational values are protected alongside an important and innovative farming operation. We recognise that managing and supporting such a broad spectrum of values including farming must present challenges to the staff, and it is evident that their expertise has contributed much to the success of an operation that offers considerable benefits to the nation. We will continue to take a keen interest in Molesworth Station.
Appendix

Committee procedure
This briefing was initiated by the Primary Production Committee on 31 January 2013. The committee visited Molesworth Station on 4 and 5 April 2013.

Committee members
Shane Ardern (Chairperson)
Steffan Browning
Colin King
Ian McKelvie
Hon Damien O'Connor
Eric Roy
Meka Whaitiri
The Primary Production Committee has considered Petition 2011/75 of Brendan Horan and 3,653 others, requesting:

That the House ensure recreational fishers have continued access to the snapper fishery and reject the Government’s plans to alter the daily bag limit of nine fish, and to note that 2,790 people have signed an online petition to similar effect.

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
# Briefing from the Grain and Seed Industry

Report of the Primary Production Committee

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Irrigation</td>
<td>2</td>
</tr>
<tr>
<td>Research and development</td>
<td>2</td>
</tr>
<tr>
<td>Trade</td>
<td>3</td>
</tr>
<tr>
<td>The future of the industry</td>
<td>3</td>
</tr>
<tr>
<td>Conclusion</td>
<td>3</td>
</tr>
<tr>
<td>Appendix</td>
<td>4</td>
</tr>
</tbody>
</table>
Briefing from the grain and seed industry

Recommendation
The Primary Production Committee received a briefing from the grain and seed industry, and recommends that the House take note of its report.

Introduction
On 7 November 2013, the committee received a briefing from representatives of the New Zealand Grain and Seed Trade Association. The association explained that they were a trade body with 75 members, 60 percent of whom were based in the Canterbury region. The industry is a substantial employer of some 3,000 employees, and currently utilises 310,000 hectares. It produces 2.4 million tons of grain and seed annually, with a farm gate value of $500 million, including exports worth $168 million, and it spends $20 million annually on research and development.

We were informed that with its large-scale infrastructure investment and the advantages of production in New Zealand such as its ideal climate, and its weed-, GMO-, and pest-free environment, the grain and seed industry was well placed to work towards the Government’s target of doubling primary production exports by 2025. They cautioned however that despite New Zealand’s advantages, several issues needed to be resolved if they were to meet this target.

Irrigation
While the grain and seed industry is well established in New Zealand and could be a source of increased export earnings, its expansion might be curtailed by issues regarding the supply of water. Water drives the industry, and the recent drought caused a 0.3-percent drop in GDP for the industry in the 2012/2013 year. Increased irrigation of land is all-important for industry expansion, and there is an urgent need for progress in water storage and irrigation development. The industry believes that increased irrigation could see an extra 400,000 hectares of land in production, with the potential to grow exports to about $4 billion per year. However, the irrigation and water use policies of some regional councils were causing great uncertainty, and often appeared to be at variance with the Ministry of Primary Industries’ policy.

Research and development
Research into breeding and plant genetics is also vital to the grain and seed industry in New Zealand. The breeding and production of pest-resistant seed that requires less input from the farmer, and has less impact on the environment, has important economic advantages, in addition to improving livestock nutrition. There is evidence that this technology, which provides better seed and pasture, could boost revenue for the livestock industry by around $1.6 billion per year. The industry requires access to the latest and best of genetic science to effect further improvement, and we appreciate the latest Ministry rule changes, especially those relating to access to imported germ-plasm. The recent Environmental Protection Authority approval of a new endophyte strain for plant breeders to explore is another welcome development. Genetic improvement is a very slow and expensive process for plant breeders and it can take up to a decade to develop new plant varieties for the
commercial market. Despite the advantages of such research, obtaining research approval for some types of biogenetics can be prohibitively expensive, but it is the only way that this industry can survive. This situation could be improved with the reinstatement of research and development tax credits, which would incentivise firms to invest in new research. Strong protection for intellectual property rights in New Zealand-developed plant varieties would also be of benefit to the industry, and the industry is awaiting ratification of the International Convention for the Protection of New Varieties of Plants signed by New Zealand in 1991.

**Trade**

The industry welcomes Government progress in negotiating free trade deals, each of which has considerable potential for the grain and seed industry’s prospects of achieving the target of doubling exports by 2025. The Asian market has huge potential for the industry, especially the Chinese market once it has re-opened to New Zealand trade in grain and seed products, and the industry is working with Ministry for Primary Industries to re-instate this trade opportunity. However, the industry perception is that the Ministry does not regard grain and seed as a priority, and it believes that this must change in view of its importance to agriculture in New Zealand.

**The future of the industry**

We asked if the grain and seed industry saw itself as a rival to the dairy industry in terms of the development of newly irrigated land in the Canterbury region. We were told that the high-value seeds that the industry was growing would more than compete with the dairy industry in terms of return per hectare. Furthermore, the industry is in the ideal place globally to capture that high-value business.

We noted that there may be a public perception that the technology being applied to the development of new and improved seed and plant varieties could have a deleterious effect on pollinators such as bees and butterflies. We asked if this perception could have arisen because of lack of promotion and education by the grain and seed industry technologists. We heard that the perception may have arisen outside of New Zealand, where genetic modification of seeds and plants to combat pests and disease was carried out on a large scale. We were told that as these pests and diseases do not occur in New Zealand there is no advantage in replicating this technology here. However, while there is value in not operating in a totally GM-free research environment, it has been recognised that the grain and seed industry needs to do far more to explain their research to the New Zealand community.

We asked how the grain and seed industry attracted new scientists and researchers. We heard that competition with other areas of industry is a concern, and that succession planning in the industry is not as good as it should be. The industry is currently addressing this problem in an attempt to attract a higher proportion of new graduates into its ranks.

**Conclusion**

We heard that the grain and seed industry in New Zealand is vital to New Zealand agriculture and that without it there would be no pastoral or arable industries. New Zealand has many advantages for seed and grain production which should be leveraged with the appropriate balance of regulation and growth promotion policies. Importantly, key decision makers and the Ministry for Primary Industries must recognise the grain and seed industry as a priority area.
New Zealand holds a significant advantage globally, due to its inverse seasons, and needs to capitalise on its ability to provide out of season vegetable and brassica crops to the Northern hemisphere. However, current international protocols in respect of the movement of these products need further development, if New Zealand is to fully exploit these opportunities.
Appendix

Committee procedure
We heard evidence from the grain and seed industry on 7 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
Briefing on the 2013 Ballance Environmental Farm Awards

Report of the Primary Production Committee

Contents

Recommendation 2
Introduction 2
National winners 2
Conclusion 3
Appendix 4
Briefing on the 2013 Ballance Environmental Farm Awards

Recommendation

The Primary Production Committee recommends that the House take note of its report.

Introduction

The Primary Production Committee received a briefing on the 2013 Balance Farm Environment Awards from Craig and Roz Mackenzie. These annual awards seek to promote sustainable and profitable farming, and provide a way to exchange innovative ideas in the farming community. The Mackenzies were chosen as Supreme Award Winners for the Canterbury region, and also chosen from the nine regional winners as the winners of the Gordon Stephenson National Winner trophy. The Ballance Farm Environment Awards, which include the Gordon Stephenson Trophy, continue to build momentum and showcase outstanding examples of successful farming while caring for the environment.

National winners

Craig and Roz Mackenzie run Greenvale Pastures Ltd, a 200-hectare irrigated arable farm specialising in vegetable and small seed production. Greenvale grows mainly specialist crops; this season’s rotation including radish, chicory, wheat, ryegrass, fescue, barley and faba beans. They are also joint equity owners and directors of Three Springs Dairies Ltd, a 300-hectare, 1200-cow irrigated dairy farm operation, and with their daughter they co-own a company that provides agronomic support and technological solutions to farmers. Their ownership of Mackenzie Research Group, which is involved in agriculture technology development, furthers their efforts to apply technology to farming and also benefits other farmers.

The Mackenzies maintain that precision agriculture is the best way to reduce the carbon footprint of farming and that sustainable technology can provide a good future for farming. Their own farming operation has reduced its carbon footprint greatly without reducing production, and they are happy for other farmers to observe their methods at any time. They also have time to travel to agricultural conferences and meet innovative agriculturalists, which is valuable for their own technology developments and methods.

The competition judges described the Mackenzies as top producers who offer “high levels of innovation and leadership in the arable industry”. They said that this progressive couple has maximised technology on their irrigated farm “using every available tool to improve production and cost efficiency,” and that the systems introduced and developed by the Mackenzies are leading-edge, and deserve recognition. The judges were particularly impressed with the Mackenzies’ constant search for new and better approaches and ideas.

Notable features of their farming technology include their electromagnetic soil mapping system, which is used to chart water holding and productive capacity in specific zones, and variable-rate irrigation to ensure crops are never overwatered. Fertiliser on the farm is spread using a variable-rate spreader equipped with technology that allows nutrient application to be targeted to specific crop requirements; and the couple’s strategic use of irrigation ensures maximum seed germination, while enhancing the activity of applied
chemicals and increasing nitrogen use efficiency. The Mackenzies also collected the Ballance Nutrient Management Award and the Environment Canterbury Regional Council Water Efficiency Award for their innovative irrigation methods.

We asked their views on the future of land use in New Zealand. We were told that the main determinant of land use is the market, rather than government guidance or regional council policies or even individual farmer’s choices, although ideally all of these factors would be considered. However, sustainable farming cannot be maintained and compete with other land uses unless the farms are profitable. Other types of developments such as urban sprawl and lifestyle properties around cities cause the loss of prime agricultural land, and farming has to be able to compete economically. They believe that their farming model, where technology and innovation contribute towards manageable intensification and sustainability, is important in maintaining high profitability. They also maintain that ensuring farming profitability, supporting innovators, and educating staff at universities on the opportunities in farming should help attract future graduates into the farming sector and limit farm succession problems.

Despite their focus on developing and using technology for efficient, sustainable farming, the Mackenzies regard their staff on Greenvale as the most important factor in their operation. The judges commented that their farm business was making the best use of its natural, financial and human resources.

Conclusion

We fully support the goals of the awards, and endorse the work of the New Zealand Farm Environment Award Trust. We commend the Mackenzies for their achievements both on and off their farm, and in winning the award, and we thank them for their presentation.
Appendix

Committee procedure
We heard evidence from Craig and Roz Mackenzie and the New Zealand Farm Environment Trust 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
Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of information by the NZSIS

Interim report of the Privileges Committee

Contents
Referral of the question of privilege 2
Purpose of this report 2
Background to the agreement with the NZSIS 3
Oversight of the NZSIS's activities 4
Recommendations 6
Appendix A 7
Appendix B 8
Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of information by the NZSIS

Recommendation

The Privileges Committee recommends to the House that it take note of this interim report.

Referral of the question of privilege

The Speaker, on behalf of the House, exercises control over the parliamentary precincts so that the House can function properly in its role as a legislature. In recent years Speakers have entered into agreements with enforcement and intelligence agencies that have implications for the House and its members. In 2004 the Speaker signed an agreement with the Commissioner of the New Zealand Police on policing functions within the parliamentary precincts, following an examination of a draft agreement by a previous Privileges Committee. A revised agreement was signed in 2007.

In 2006 the Speaker presented to the House an agreement with the Commissioner of the New Zealand Police setting out interim procedures for the execution of search warrants on premises occupied or used by members of Parliament, and indicated to the House that she would seek to have the Privileges Committee consider it once the police investigation into the activities of Taito Phillip Field and any subsequent action was completed. A final order for repayment was made on 3 September 2012, concluding the proceedings.

Late in 2010 the Speaker entered into a memorandum of understanding with the New Zealand Security Intelligence Service (NZSIS) and the Minister in Charge of the New Zealand Security Intelligence Service on the collection and retention of information on members of Parliament.

All three of these agreements have the potential to raise issues affecting the privileges of the House. On 18 September 2012 the Speaker advised the House that he was referring these three agreements to us for consideration, as they involve a question of privilege.

Purpose of this report

We have been considering the complex issues raised by the exercise of powers of search, seizure, and intelligence-gathering regarding members of Parliament and the House. The tension between statutory powers and the rights of the House to conduct its proceedings without interference from outside bodies are at the heart of this.

It is not unusual for parliaments to enter into agreements with external agencies about the exercise of enforcement powers so that there is a common understanding about how such powers are to be exercised without infringing parliamentary privilege. Parliament is not a sanctuary, and members of Parliament are not above the law. The exercise of intrusive or coercive powers against democratically elected representatives or within the parliamentary
precincts does, however, raise significant issues for the relationship between the different arms of government. Parliamentary privilege is an essential and sometimes misunderstood part of New Zealand’s constitutional arrangements. It is essential for members of Parliament to be free to carry out their functions as elected representatives and for Parliament to control its proceedings and own premises without threat of outside interference, in order to fulfil its democratic functions. The agreements entered into by the Speaker on behalf of the House represent one way to provide a process for reconciling these freedoms and responsibilities.

During the course of our consideration of the three agreements, we have sought and considered evidence relating to them and will report to the House on our conclusions in due course.

One matter has arisen, however, in relation to the agreement with the New Zealand Security Intelligence Service that we wish to bring to the attention of the Intelligence and Security Committee, which is currently considering the Government Communications Security Bureau and Related Legislation Amendment Bill. We have decided to make an interim report on this issue now, so that the Intelligence and Security Committee has time to consider the matter in question.

Background to the agreement with the NZSIS

In 2009 the Minister in Charge of the New Zealand Security Intelligence Service requested that the Inspector-General of Intelligence and Security investigate and report on the NZSIS’s policies and practices relating to the creation, maintenance, and closure of files on New Zealand citizens and its compliance with these policies. The inquiry was in part a response to a concern raised by a member of Parliament about the NZSIS’s collection and retention of information on him, particularly following his election to Parliament.

The Inspector-General’s findings and recommendations are set out in his report of 10 March 2009. The Inspector-General noted that the background to the inquiry raised a particular issue as to whether there are, or should be, special rules about collecting and retaining information on sitting members of Parliament.

Inspector-General’s recommended approach

The Inspector-General recommended that any personal file or record existing when someone becomes a member of Parliament be deactivated in an appropriate way and not referred to or added to whilst the person remains a member. He suggested that a formula be developed, reflecting “the conscience of the House”, for determining in what circumstances it would be appropriate for the NZSIS to collect and act on information on a member of Parliament who was of security interest.

The Inspector-General explained that a sitting member of Parliament was not generally a proper subject for intelligence collection or surveillance. An understanding with the Speaker on behalf of the House would be the best way to agree on any exception from this general rule, rather than a legislative amendment. The Inspector-General also suggested that in the case of an exception, it might be sufficient for the NZSIS to show the Speaker that there were good grounds to believe that a member of Parliament was engaged in activities prejudicial to security to necessitate departure from the general rule.

A second exception would be where a member of Parliament was in contact with a constituent who was of security interest. The NZSIS could include in the information collected about the person of interest the fact of their dealings with a member. That
particular piece of information would have to come from surveillance of the person concerned and not the member. Such information would be recorded as relating to the person of interest and not the member.

**Provisions of the agreement**

The agreement between the NZSIS, the Minister in Charge of the New Zealand Security Intelligence Service, and the Speaker was entered into as a result of those recommendations of the Inspector-General.¹

The agreement provides that the NZSIS will not generally direct the collection of information against any sitting member of Parliament. Collection of information against a sitting member of Parliament will be permitted only where the particular member is suspected of activities relevant to security, the collection is personally authorised by the Director of Security, and the Speaker is briefed confidentially about the proposed collection and the reasons for it. If it is necessary to obtain an interception or seizure warrant against a sitting member, the Director will brief the Speaker in confidence on the existence of and reasons for the warrant, and any conditions made in the warrant to protect parliamentary privilege. The Speaker can discuss the matter with the Minister in Charge of the New Zealand Security Intelligence Service.

The reason for briefing the Speaker before these actions are undertaken is to ensure that any matters that relate to parliamentary privilege can be identified. For example, the Speaker might wish to ensure that the NZSIS was aware that accessing confidential committee proceedings could constitute a contempt of Parliament.

**Oversight of the NZSIS’s activities**

In the course of our consideration of the agreement, we have turned our minds to the potential actions a Speaker could take on behalf of the Parliament if he or she was not satisfied that parliamentary privilege was being protected adequately. If the Speaker was concerned that the actions of the NZSIS obstructed or impeded the House or its members in the performance of their functions, or could have such a result, he or she could refer the matter to the Privileges Committee as a question of privilege.

We consider that the risk of such conflict between Parliament and the NZSIS could be minimised by ensuring that the activities of the NZSIS under the agreement fall clearly within the oversight of the Inspector-General, so that any concerns could be raised directly with him or her in the first instance.

**Complaints to the Inspector-General**

We note that the Inspector-General of Intelligence and Security Act 1996, which sets out the functions of the Inspector-General, provides in section 11(1)(b) for the Inspector-General to inquire into complaints in certain circumstances (for example, if the complaint is by a New Zealand person who is adversely affected by any act, omission, policy, or procedure of an intelligence and security agency).

While this provision would allow a member of Parliament who was the subject of the information collection to complain to the Inspector-General, it does not appear possible under the current wording of section 11 for the Speaker to complain to the Inspector-General.

---

¹ A copy of the agreement is included as Appendix B of this report.
General on behalf of members of Parliament or about the actions or policies of the NZSIS more generally.

There are also limits to the Inspector-General’s functions in operational matters. Except to the extent that is strictly necessary, the Inspector-General must not inquire into any matter that is operationally sensitive, including any matter relating to methods of intelligence collection and production or sources of information.

**Bill proposes amendments to oversight capability**

The Government Communications Security Bureau and Related Legislation Amendment Bill proposes amendments to the Act (particularly in clause 31) to strengthen the oversight capability of the Inspector-General. As drafted, the bill would allow inquiries to be carried out (new section 11(1)(c)) into “any matter where it appears that a New Zealand person has been or may be adversely affected by any act, omission, practice, policy, or procedure of an intelligence and security agency” if requested by the responsible Minister or the Prime Minister, or on the Inspector-General’s own motion subject to the concurrence of the Minister. It would also allow inquiries into “the propriety of particular activities of intelligence and security agencies” at the request of the Minister or the Prime Minister or on the Inspector-General’s own motion (new section 11(1)(ca)).

These proposed amendments do not appear to provide clearly for oversight of the intelligence agencies in circumstances where a person such as the Speaker might wish to complain to the Inspector-General, on behalf of members of Parliament, that the House of Representatives (rather than a particular person) has been or may be affected adversely by the actions, policy, or procedure of the intelligence agencies. We are not suggesting that this legislation should refer to the agreement between the Speaker and the NZSIS specifically. However, the oversight role of the Inspector-General should be broad enough to encompass the activities of the NZSIS under this agreement.

**Clarification of oversight**

We suggest that the Intelligence and Security Committee may wish to consider whether the Inspector-General should have a role in respect of oversight of the actions of the NZSIS or any other security or intelligence agency where concern is raised on behalf of a class of persons affected by such actions. We note, for example, that the Independent Police Conduct Authority may receive complaints “concerning any practice, policy, or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity”.

The Intelligence and Security Committee may also wish to consider the appropriateness of requiring the agreement of the Minister before the Inspector-General can undertake an inquiry under new section 11(1)(c). This limitation appears inconsistent with new section 11(1)(ca), which does not require the Minister’s concurrence where the Inspector-General acts on his or her own motion.

We look forward to the outcome of the Intelligence and Security Committee’s consideration of the bill.

---

We recommend to the Intelligence and Security Committee that it consider whether there is a need to clarify the oversight of the intelligence agencies to ensure the Inspector-General of Security and Intelligence can receive complaints about, and inquire into, the actions of those agencies that affect a class of people.

We recommend to the Intelligence and Security Committee that it consider the appropriateness of requiring the agreement of the responsible Minister before the Inspector-General can undertake an inquiry under the new section 11(1)(c) of the Inspector-General of Intelligence and Security Act 1996 that is proposed in the Government Communications Security Bureau and Related Legislation Amendment Bill.
Appendix A

Committee procedure
We have been meeting on this matter since September 2012. We have not yet released any of the evidence or advice we have received. These will be made available publicly when we present our final report.

We received advice from Debra Angus, Deputy Clerk of the House of Representatives.

Committee members
Hon Christopher Finlayson QC (Chairperson)
Hon John Banks
Hon Gerry Brownlee
Charles Chauvel (until 27 February 2013)
Hon Lianne Dalziel
Dr Kennedy Graham
Chris Hipkins (from 27 February 2013)
Hon Murray McCully
Hon David Parker
Rt Hon Winston Peters
Hon Anne Tolley
Hon Tariana Turia

Committee staff
Debra Angus, Deputy Clerk of the House
Catherine Parkin, Clerk of the Committee
Appendix B

MEMORANDUM OF UNDERSTANDING

BETWEEN

New Zealand Security Intelligence Service (the Service)

AND

Minister in Charge of the New Zealand Security Intelligence Service (Minister)

AND

The Speaker of the House of Representatives of New Zealand (Speaker)

BACKGROUND

Investigation and Report on NZSIS Files

A. On 10 February 2009, the Minister requested the Inspector-General of Intelligence ("the IG") to investigate and report on the Service’s policies and practices relating to the creation, maintenance and closure of files on New Zealand citizens.

B. The request arose from comments made by a Member of Parliament ("MP") after the Service disclosed information to him in response to his Privacy Act request. The Member expressed concern over the Service’s collection and retention of information on him, particularly following his election to Parliament.

Recommendations

C. The IG conducted an investigation and his findings and recommendations are contained in his report dated 10 March 2009. The IG noted that the background to the inquiry raised a particular issue as to whether there are, or should be, special rules about collecting and retaining information on sitting MPs. On this, the IG recommended at para 66:

"Any personal file or record existing when a person becomes a Member be de-activated in some appropriate way and not referred to or added to whilst the person remains a Member, with one exception;

That a formula be developed, which will reflect the conscience of the House, for the circumstances in which it would be proper for the Service to collect and act on information on a Member as a person of security interest."

D. The IG explained at para 62 that:

"In my view it would be reasonable in New Zealand to regard a sitting MP because of his or her function and standing as not generally a proper
subject for intelligence collection or surveillance. Any exception from that rule would, I think, be better achieved by an understanding than by legislative amendment. The understanding would be an agreement by the Government perhaps involving the Speaker’s concurrence on behalf of the House, which would reflect the general conscience of Members. As to the exception, it may be enough if occasion arise, for the Service to show the Speaker cause in terms of good grounds to believe that a Member was engaged in activities relevant to security that warranted departure from the general rule”.

E. The IG also referred to the need to provide for a second exception, i.e., where an MP is in contact with a constituent who is of security interest. For example, the IG noted the possibility of a constituent seeking to involve a Member in a matter that is properly within the area of national security. [para 58] In respect of the second exception, the IG said at para 65:

“that the Service could collect information about a person of interest including the fact of dealings with a Member which come from surveillance of the person concerned not the Member, and record such information as relating to the person of interest, but not the member, and subject to what was said in para 62, not report in any way on statements by the Member”.

Background to the circumstances in which it is proper for the Service to collect and act on Information on a sitting Member of Parliament

Functions and Powers of the NZSIS

F. Section 4 of the New Zealand Security Intelligence Service Act 1969 (the "Act") sets out the functions of the Service. The relevant function of the Service in respect of collecting information about an individual is s4(1)(a), i.e., to “obtain, correlate, and evaluate intelligence relevant to security.” “Security” is defined in section 2 of the Act.

G. The Service obtains intelligence relevant to security using a variety of sources and methods. These may include open source, visual surveillance, information offered or provided by third parties, and interception and seizure. The last two activities can only be undertaken in accordance with an interception warrant under the Act.

H. Interception warrants are issued by the Minister in Charge of the Service and, for New Zealand citizens, are issued jointly by the Minister in Charge of the Service and the Commissioner of Security Warrants (a retired High Court Judge).

I. Other collection methods (not requiring a warrant) do not require formal, external authorisation.
Political Neutrality

J. The Service has a duty to ensure it remains politically neutral. Section 4AA of the Act provides that the Director of Security (the “Director”) must take all reasonable steps to ensure that its activities are limited to those relevant to the discharge of its functions; it is kept free from influence or consideration that is not relevant to its functions; and it does not take any action for the purpose of furthering or harming the interests of a political party.

Parliamentary precincts

K. The Speaker is responsible for the control and administration of the parliamentary precincts. The Speaker and every person authorised by the Speaker may exercise all the powers of an occupier under the Trespass Act 1980 in respect of the parliamentary precincts. The precincts of Parliament are those areas under the control and administration of the Speaker on behalf of the House and occupied by the House and its committees. In practice this extends to Parliament House, the Parliamentary Library building, the Executive Wing (Beehive), Bowen House, the select committee rooms in No 1 The Terrace, the walkway between the Beehive and Bowen House, and Parliament grounds.

Parliamentary privilege

L. On occasions on which parliamentary business is in the course of transaction within Parliament buildings (on a day on which the House is sitting or a select committee is meeting) a separate regime of parliamentary law (known as parliamentary privilege – the legal privileges, powers and immunities enjoyed by the House) applies to the transaction of that business. Parliamentary privilege is enjoyed by the House its members and other participants in the parliamentary process. It enables the House to go about its business without interference from outside. Furthermore, under parliamentary privilege there can be no legal liability for words spoken or actions taken in the course of proceedings in Parliament.

M. The meaning of the term “proceedings in Parliament” has never been the subject of legal definition in New Zealand, but the following definition has been enacted in Australia and may be taken to indicate the types of transactions falling within the term “proceedings in Parliament”:

All words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of business of a House or of a committee, and, without limiting the generality of the foregoing includes:

(a) the giving of evidence before a House or a committee, and evidence so given;
(b) the presentation or submission of a document to a House or a committee;

(c) the preparation of a document for purposes of or incidental to the transacting of any such business; and

(d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published."

N It is contrary to parliamentary privilege to in any way obstruct or impede the transaction of parliamentary business, but Parliament buildings are not a sanctuary and (subject to the law of parliamentary privilege) the ordinary provisions of the law apply within them. Nevertheless, the Service should exercise its powers having regard to the authority of the Speaker and the privileges of the House.

Requirements for Investigations

O The Service has recently introduced new internal procedures covering the commencement, continuation and closure of an investigation into any particular individual or group.

P Before any investigation is commenced, a senior officer must approve an assessment that the investigation is justified in terms of Service objectives and statutory requirements. The assessment addresses investigation objectives, proposed action, risk management and reassessment of any security risk.

Q The parties recognize that commencing an investigation of a sitting MP would be a rare occurrence and it is appropriate that it be generally precluded. For exceptions to this approach, it is appropriate that the Director be required to satisfy himself personally that such an investigation is justified and that he brief the Speaker of the House about the investigation.

R In accordance with the IG’s report and recommendations, this agreement sets out the understanding reached by the parties in relation to the collection of information on sitting MPs.

AGREEMENT

The parties agree:

1 Regarding Collection of Information on Sitting MPs

1.1 The Service will not generally direct the collection of information against any sitting MP.

*Parliamentary Privilege Act 1987 (Australia) s 16E*
1.2 If the Service holds any current, investigatory file or record on a person who becomes an MP, it shall be immediately closed and access to it will be prohibited for the duration of the MP’s term in Parliament. Once the MP leaves Parliament, the file or record may be “reactivated” but only where the Director is satisfied that to do so would be consistent with his statutory obligations and he provides express, written authorisation. Such file or record shall not be referred to or added to whilst the person remains an MP.

1.3 The only circumstances in which collection may be directed against a sitting MP is where a particular MP is suspected of undertaking activities relevant to security and:

a. The collection is personally authorised by the Director; and

b. Before the collection is commenced, the Director provides a confidential briefing to the Speaker of the House about the proposed collection and the reasons for it.

1.4 If it becomes necessary to obtain an interception and/or seizure warrant against a sitting MP the Director will brief the Speaker in confidence on the existence of and reasons for the warrant, and any conditions contained in the warrant to protect Parliamentary privilege.

1.5 The confidential nature of the Director’s briefing will not preclude the Speaker from discussing it with the Minister in Charge of the Service if the Speaker considers it appropriate to do so.

2 Regarding Collection of Information that Incidentally Impacts on a MP

2.1 Clause 1.1 does not prevent the Service directing the collection of information against a constituent or other person with whom a particular MP is associated or in contact.

2.2 Information collected that is incidentally about the MP or includes communications of the MP will be destroyed unless:

a. It needs to be retained to provide context to information relevant to security; or

b. It primarily concerns, or collection was targeted at, a person other than the MP who is undertaking activities relevant to security; or

c. Clause 1.3 applies and the information will be used in relation to that investigation.

1. Unless the MP makes an application under the Official Information Act 1982 or Privacy Act 1993.
3. Regarding Unsolicited Information Received by the NZSIS About MPs

3.1 If the Service receives unsolicited information about a sitting MP it will destroy the information unless the information indicates the MP is undertaking activities relevant to security such that the Director has a statutory obligation to direct further collection, in which case paragraph 1.3 of this Agreement will apply.

4. Regarding Open Source Material Held by the NZSIS

4.1 For the avoidance of doubt, this MOU does not apply to publicly available information subscribed to or otherwise obtained by the Service and held in its open source centre.

5. Regarding Material Held by the NZSIS Relevant to other Statutory Functions

5.1 For the avoidance of doubt this MOU does not apply to information collected and held pursuant to the Service’s statutory functions relating to security clearances and immigration and citizenship recommendations (sections 4(1)(bb) and (bc) of the Act.

6. Regarding Compliance with Agreement

6.1 To provide assurance of the Service’s compliance with the Agreement, the Service will:

   a. make available to the IG any information held by the Service that is relevant to this Agreement;

   b. co-operate in any other way that the IG requires for the purposes of ascertaining compliance with this Agreement.

7. Execution

7.1 This MOU may be executed in counterparts by the respective Parties, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same MOU, provided that this MOU shall be of no force and effect until the counterparts are exchanged.

Signed by:

Dr The Rt Hon Lockwood Smith MP
Speaker of the House of Representatives

Date: 21st December ... 2010.
Signed by:

Dr Warren Tucker
Director of Security

Date: 23 June 2010

Signed by:

Rt Hon John Key MP
Minister in Charge of the Service

Date: 23 June 2010
Investigation into the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 (SR 2013/10)

Report of the Regulations Review Committee

Contents
Recommendations 2
Introduction 2
Background 2
2012 report of the committee on regulation 8 4
Exemption for certain farmers’ vehicles continued uninterrupted 5
Policy decisions on managing section 40 exemption power 6
Evidence received 8
Motion to disallow 2013 regulations 10
Our consideration 10
Appendix 1 13
Appendix 2: How disallowance works 14
Appendix 3: The Australian approach 16
Investigation into the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 (SR 2013/10)

Recommendations

The Regulations Review Committee recommends that all committees considering bills referred by the House seek the advice of the Regulations Review Committee on

- any new regulation-making powers that a committee is considering recommending be inserted into a bill, and
- any significant changes that a committee is considering recommending be made to a regulation-making power in a bill.

If departmental officials or Parliamentary Counsel advising on a bill are considering recommending that a committee recommend either of these two changes, they should do so in sufficient time to enable the committee to seek the Regulations Review Committee’s advice.

Introduction

We first considered the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 (SR 2013/10) on 14 March 2013, as part of our usual scrutiny process. The regulations were made under section 90(1)(a), (b), and (c) of the Road User Charges Act 2012.

The regulations were made by His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, on 25 February 2013. They came into force on 28 February 2013. The regulations expired and were revoked upon the close of 30 June 2013.

The regulations effectively reinstate regulation 8 of the Road User Charges (Transitional Matters) Regulations 2012. Regulation 8 was disallowed at the close of 27 February 2013, in accordance with section 6 of the Regulations (Disallowance) Act 1989.

The explanatory note accompanying the regulations states:

Cabinet has decided to effectively reinstate the disallowed regulation to ensure that the existing exemption for farmers’ light RUC vehicles remains in place, pending the implementation of permanent exemptions under section 40 of the Act for light RUC vehicles operated almost exclusively off-road. The effect of not reinstating the regulation would be to require farmers to obtain RUC distance licences, keep records, and claim refunds for off-road use, until the time when exemptions under section 40 of the Act are implemented.

Background

The Road User Charges Act 2012 was a major overhaul of the road user charges regime, the first substantial revision since 1977. The Act includes an empowering provision, section 90, which authorises the making of regulations for transitional purposes. Section 90 is a
Henry VIII power, because it authorises the making of regulations that override primary legislation. The Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 were made under section 90. They were intended to address some of the complexities arising out of the transition from the 1977 regime to the new regime introduced by the 2012 Act, by preserving an existing exemption that ensured farmers were not required to pay unnecessary compliance costs.

Disallowance of Road User Charges (Transitional Matters) Regulations 2012

On 11 June 2012, the Governor-General, acting on the advice and with the consent of the Executive Council, made the Road User Charges (Transitional Matters) Regulations 2012 (SR 2012/145), under the authority delegated to him by section 90(1)(a), (b), and (c) of the Road User Charges Act 2012. The regulations came into force on 1 August 2012, the same date on which the Act came into force. They expired with the close of 31 July 2013, at which time they were deemed to be revoked.

The committee first considered the 2012 regulations on 19 July 2012, as part of its usual scrutiny process. The committee queried a number of matters included in the regulations, given that the provision under which they were made required that they be confined to dealing with transitional matters. The committee sought written evidence from the department responsible for administering the regulations, the Ministry of Transport, on two occasions. To this point the committee had not asked the ministry or the Minister to appear to explain the situation.

On 20 September 2012, the committee resolved to report to the House drawing regulations 5(3), 5(4), and 8 of the 2012 regulations to the special attention of the House on the grounds that the regulations appeared to make an unexpected use of the legislative power delegated in section 90 of the Road User Charges Act 2012, and to contain matters more appropriate for parliamentary enactment. On 8 November 2012, the committee reported to the House on regulations 5(3), 5(4), and 8 of the 2012 regulations. The committee’s report found that regulations 5(3), 5(4), and 8

• appeared to make some unusual or unexpected use of the powers conferred by the statute under which they were made (Standing Order 315(2)(c)); and
• contained matter more appropriate for parliamentary enactment (Standing Order 315(2)(f)).

On this basis, the committee recommended that the House disallow regulations 5(3), 5(4), and 8.

On 13 November 2012, Charles Chauvel, who was chairperson of the Regulations Review Committee, gave a notice of motion in the House, moving that regulations 5(3), 5(4), and 8 be disallowed. At the expiry of 21 sitting days, Mr Chauvel’s notice of motion had not been dealt with, and regulations 5(3), 5(4), and 8 were therefore disallowed at the close of 27 February 2013, in accordance with section 6 of the Regulations (Disallowance) Act 1989.

We describe the disallowance process in Appendix 2.

Reinstatement of regulation 8 in 2013

On 25 February 2013, the Governor-General made the regulations that are the subject of this report, the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013. The regulations came into force at midnight on 28 February and effectively reinstated regulation 8, from the point in time at which it was disallowed.

Situation beyond 30 June 2013

The Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 were of only temporary effect because, in accordance with the requirements of section 90(2), they expired and were revoked on the close of 30 June 2013. In order to address the situation beyond 30 June, the Governor-General made two further sets of regulations on 22 April:

- the Road User Charges (Applications for Exemption for Certain Classes of Light RUC Vehicles) Regulations 2013 (SR 2013/107)
- the Road User Charges (Administration Fees) Amendment Regulations 2013 (SR 2013/108).

Both sets of regulations were made pursuant to section 89 of the Road User Charges Act 2012. We discuss the effect of these regulations further, below.

2012 report of the committee on regulation 8

In November 2012, the committee drew regulation 8 of the 2012 regulations to the special attention of the House on the grounds that it contravened Standing Orders 315(2)(c) and (f), and recommended to the House that regulation 8 be disallowed.

Evidence from the ministry

The report noted that the ministry’s evidence was that regulation 8 had been made to continue an existing exemption permitted under the Road User Charges Act 1977. This exemption excluded farmers from the requirement to pay road user charges (RUC) for vehicles they owned and used for agricultural operations, with limited on-road use. The ministry sought to use regulation 8 to continue the exemption pending outstanding policy decisions on how to manage exemptions for light RUC vehicles under sections 40 and 89 of the 2012 Act. The ministry told us that at 1 August 2012, when the Act came into force, policy decisions on whether and how to implement an exemption for light RUC vehicles under the 2012 Act had not been made.

The ministry had originally intended that no regulations relating to section 40 of the Act would be made under section 89, which would have meant that light RUC vehicles operated almost exclusively off-road could not be exempted from the requirement to pay RUC. Section 40 allows the RUC collector to grant an exemption from the requirement to pay RUC if satisfied that, amongst other things, the light RUC vehicle in question belongs to a class of such vehicles prescribed by regulations made under section 89. However, in April 2012, following the enactment of the Road User Charges Act 2012, Cabinet asked the ministry to do more policy work on this issue. The ministry could not complete that work before the Act came into force on 1 August 2012.

The ministry set about making policy decisions on whether to implement an exemption for light RUC vehicles under the 2012 Act before regulation 8 expired on 30 June 2013. The
outcome was the Road User Charges (Applications for Exemption for Certain Classes of Light RUC Vehicles) Regulations 2013, made on 22 April.

**Unusual or unexpected use of powers conferred by statute**

The committee’s reasoning on this Standing Order ground was based on the fact that the power delegated by section 90 is a power to make regulations for transitional purposes. It is generally understood that the purpose of a transitional provision is to facilitate the coming into force of new legislation by making special provision for the application of legislation to the circumstances at the time when that legislation comes into force.\(^2\) Regulations made under a transitional provision cover “the mechanics of the transition from the present to the future state of affairs”.\(^3\)

The committee considered that regulation 8 appeared to subvert the commencement date of 1 August 2012 specified by Parliament for the 2012 Act. Since the exemption for light RUC vehicles allowed under section 40 of the Act could not come into effect until supporting regulations had been made under section 89(l) of the Act, the committee considered that the ministry had effectively used the section 90 power to make transitional regulations as a holding measure to support its delay in bringing section 40 into operation, from the date specified by Parliament, 1 August 2012, to 30 June 2013. This delay appeared to have been introduced for operational reasons, in that the ministry had yet to make policy decisions on how best to manage the exemption power provided for in section 40.

The committee believed that it was unexpected that regulations made under a delegated power to make transitional regulations should be used to delay bringing a provision of an Act of Parliament into practical effect for operational reasons. The committee therefore found that regulation 8 made an unusual or unexpected use of the legislative power delegated in section 90 of the Act.

**Matter more appropriate for parliamentary enactment**

The committee considered that the effect of regulation 8 was to frustrate the legislative intent that section 40 of the Act should commence on a specified date—that is, by no later than 1 August 2012 unless an Order in Council bringing that section into force had been made earlier.\(^4\) The committee considered that a change to the commencement date of section 40 should have been made by amending the Act to substitute a new date, rather than by using the regulation-making power in section 90 of the Act to promulgate regulations that, in practical terms, extended that date. To the extent that regulation 8 provided for this effect, the committee found that it contained matter that would have been more appropriate for parliamentary enactment.

**Exemption for certain farmers’ vehicles continued uninterrupted**

Regulation 8 of the 2012 regulations modified the 2012 Act between 1 August 2012 and the close of 30 June 2013 by inserting a new section 97B. Regulation 8 was disallowed at the close of 27 February 2013, when it consequently ceased to have effect.

---


\(^3\) Ibid., n. 2, Thornton.

\(^4\) Section 2, Road User Charges Act 2012.
Whilst it was in force, new section 97B applied to specified vehicles that had previously been exempted from the requirements of Part 1 of the 1977 Act by virtue of section 4(c) of that Act:

A motor vehicle (not being a trailer) owned by a person carrying on business as a farmer and used on a road only in proceeding, in connection with the owner’s agricultural operations, from one part of a farm to another part of the same farm or from one farm to another farm that is owned or managed by the same person.\(^5\)

New section 97B provided for the exemption in respect of such vehicles to continue to apply in respect of light RUC vehicles (defined in section 5 of the 2012 Act) until 30 June 2013, and for the vehicles to which the exemption applied to be treated as if they were exempt vehicles within the meaning of section 5 of the 2012 Act.

Regulation 4 of the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 modified the 2012 Act by reinstating new section 97B in identical terms, with effect from midnight on 28 February. Consequently, in practical terms, new section 97B remained in force unaltered until 30 June 2013 despite the disallowance of regulation 8.

**Policy decisions on managing section 40 exemption power**

The Road User Charges (Applications for Exemption for Certain Classes of Light RUC Vehicles) Regulations 2013 were made on 22 April 2013 and came into force on 6 June. The explanatory note accompanying the regulations says that they specify

- the classes of light RUC vehicles in respect of which the RUC collector can grant an exemption under section 40 of the Road User Charges Act 2012 from the requirement to pay road user charges; and

- the terms and conditions on which an exemption is granted.

The regulations also specify the information that must be provided in an application for an exemption under section 40(1).

**Empowering provision**

The regulations are made under section 89(1) of the 2012 Act, which intersects with section 40 and authorises the making of regulations prescribing or specifying, in relation to exemptions that may be granted under section 40,

1. 1 or more classes of light RUC vehicles for which an exemption may be granted;

2. any other criteria that a light RUC vehicle must satisfy in order for the vehicle to qualify for an exemption;

3. any terms and conditions that apply in respect of an exemption, including the information that the RUC collector may require in order to monitor the ongoing operation of the vehicle under section 41;

4. the information that must be contained in an application for an exemption:

---

\(^5\) Item 2 of the Schedule of the Land Transport Management (Apportionment and Refund of Excise Duty and Excise-Equivalent Duty) Regulations 2004, which was included in the exemption from Part 1 of the Road User Charges Act 1977 granted under regulation 3(1)(a) of the Road User Charges Regulations 1978.
(v) the fee payable for an application for an exemption (if any):

Section 40(1) provides that a person may apply to the RUC collector (the New Zealand Transport Agency) for an exemption from the requirement to pay RUC for a light RUC vehicle. Section 40(3) provides that the RUC collector may grant an exemption if satisfied that the light RUC vehicle

(a) belongs to a class of light RUC vehicles prescribed by regulations made under section 89 for which an exemption may be granted; and

(b) will be operated almost exclusively off-road; and

(c) satisfies any other criteria prescribed by regulations made under section 89 in order to qualify for the exemption.

**Approach to section 40 exemption-granting power**

Regulation 4 enables the power to grant an exemption under section 40 to be exercised in respect of vehicles that are operated

(a) exclusively or almost exclusively off-road; and

(b) for 1 or more of the following purposes:

(i) agricultural purposes:

(ii) defence purposes:

(iii) educational purposes:

(iv) forestry purposes:

(v) industrial purposes:

(vi) medical purposes:

(vii) search and rescue purposes:

(viii) tourism industry purposes.

Regulation 6 provides that an exemption granted under section 40 of the Act is subject to certain terms and conditions. These include the vehicle being operated exclusively or almost exclusively off-road, the vehicle not being operated on-road any further than 10 kilometres from the address where it is normally kept, and the vehicle displaying an exemption label issued by the RUC collector showing specified information.

The effect of the Road User Charges (Applications for Exemption for Certain Classes of Light RUC Vehicles) Regulations 2013 is that the RUC collector is authorised to grant exemptions under section 40 for a broad range of classes of vehicles, provided that the criteria specified in regulation 6 are met. The regulations were made in parallel with the Road User Charges (Administration Fees) Amendment Regulations 2013, which also came into force on 6 June 2013 and set the fee for applying for an exemption under section 40 at $100 excluding GST.

---

6 By virtue of the Road User Charges (RUC Collector) Order 2012 (SR 2012/144), made under section 87 of the 2012 Act.

7 Regulation 6(1)(a).

8 Regulations 6(1)(b) and (c).

9 Regulations 6(1)(d)–(f).
Evidence received

We took evidence on the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 from Ministry of Transport officials on 21 March 2013 and from the Minister of Transport, Hon Gerry Brownlee, on 11 April 2013. We also received written evidence from the Minister.

Use of section 90

The ministry’s chief legal adviser told us why the ministry had considered it was appropriate to make the 2012 regulations. He acknowledged that ideally, transitional regulations would not be necessary. However, in the ministry’s view, regulation 8 simply continued an element of the old regime under the 1977 Act for a limited time and therefore, in the context of the major change from the 1977 Act to the 2012 Act, was a very minor matter. The ministry had considered it appropriate to make use of the transitional regulation-making powers that Parliament had provided for because the matters that came to light after the Act had been enacted but before it came into force were small and minor. The ministry considered the matter dealt with by regulation 8 to be very minor because, of the 700,000 vehicles that operate under the RUC system, only 10,000 would be affected by the exemption under regulation 8, equating to about 0.02 percent of total RUC revenue.

At the time when the Road User Charges Bill was enacted, exactly how exemptions for light RUC vehicles were going to work had not been determined. The ministry intended certain people to be exempted from the requirement to pay RUC but the mechanism for making the policy work had yet to be decided. Once the mechanism was developed in principle, there remained the issue of how the NZTA could implement it in practical terms. In his evidence, the Minister explained that the ministry was filtering the 10,000 affected vehicles to determine which ones should be exempt, depending on their classes and the activities for which they were used.

The ministry’s chief legal adviser emphasised that the ministry had not approached using the power delegated by section 90 lightly: it had considered very carefully before advising that this power to deal with the matters was a possible option. The ministry had taken advice on the issue, although we were not told from whom it had been sought.

Minister’s response to our November 2012 report

The Minister told us that he did not agree with our November 2012 report to the House on the Road User Charges (Transitional Matters) Regulations 2012. He considered that section 90 of the 2012 Act was very specific in allowing regulations to be made for transitional purposes, and that regulations 5(3), 5(4), and 8 were therefore entirely appropriate because they were made for such purposes. He did not accept our characterisation of section 90(1) as a Henry VIII power—a power, granted in primary legislation, for delegated legislation to amend, suspend, or override the empowering Act or any other Act.

The Minister observed that section 90 had been inserted into the Road User Charges Bill by way of a unanimous recommendation of the Transport and Industrial Relations Committee, to which the House referred the bill. He said that section 90 had been inserted into the bill in order to deal with the very situation addressed by regulation 8.
**Decision not to debate Mr Chauvel’s motion**

The ministry’s chief legal adviser indicated that the ministry had provided the Minister with advice on whether the Government should seek to vote down Mr Chauvel’s motion in the House to disallow regulations 5(3), 5(4), and 8 or, alternatively, allow section 6 of the Regulations (Disallowance) Act 1989 to take effect.

The Minister told us that one of the reasons the Government had not allocated House time to debating Mr Chauvel’s motion was the Minister’s own belief that, given the infrequency of the use of the disallowance procedure, it would not be a good precedent for a Government to use its majority to vote down a disallowance motion. He suggested that, had the House debated Mr Chauvel’s motion, it would have been put in a position of reconfirming what it had already decided to do, in that the House had already enacted section 90, and regulations 5(3), 5(4), and 8 merely reflected the House’s intention in doing so. He considered that, had the motion been voted on, it would have been lost because disallowing regulation 8 would have been unfair to the affected farmers.

**Decision to reinstate regulation 8**

The ministry’s chief legal adviser told us that the ministry had provided advice to the Minister setting out the consequences of disallowance for regulations 5(3), 5(4), and 8 and options for subsequent action, along with their advantages and disadvantages. He considered that it would be inappropriate for officials to discuss with us the specifics of the ministry’s advice to the Minister, and indicated that the reason for the decision to effectively reinstate regulation 8 was a question we should raise with the Minister himself.

The Minister said that his officials had not advised him to reinstate regulation 8. Rather, he had decided to reinstate regulation 8 following an informal discussion with the former chairperson of the Regulations Review Committee, Charles Chauvel. He considered that section 90 of the 2012 Act very clearly authorised the making of the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013.

In his written evidence, the Minister stated that he had considered reinstating regulation 8 to be appropriate because it would allow a proper discussion with and response to the committee about its concerns ahead of the significant step of disallowance. He suggested that the process leading up to the notice of motion had been unsatisfactory and that he would have preferred a comprehensive dialogue between the Regulations Review Committee and the Executive to see if the matter could be resolved.

Officials provided us with some information as to why a decision had been taken to effectively reinstate regulation 8 but not regulations 5(3) or 5(4). The ministry’s chief legal adviser described regulation 8 as having more significant consequences for the people affected by the exemption it grants than regulations 5(3) and 5(4). Although the disallowance of regulations 5(3) and 5(4) imposed a legal obligation on affected people to pay RUC, in practical terms there was no mechanism for them to comply with this obligation. The consequences of the disallowance of regulation 8 were more significant, in that the people who had been exempt would have been required and able to purchase RUC licences, and would then have had to apply for a refund of more than 90 percent of the cost of the licence because of the off-road use of the vehicles. This would have imposed heavy compliance costs on both the individual vehicle owners and the NZTA.
Motion to disallow 2013 regulations

On 16 April 2013, the chairperson of the Regulations Review Committee, Hon Maryan Street, gave a notice of motion in the House, moving that the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 be disallowed. Ms Street subsequently withdrew her motion, on 11 June 2013.

Our consideration

In this report, we have focused on the implications of the making of the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013 for the processes and procedure of the House and its committees. We have not looked again at the content of the regulations, because they effectively re-enacted regulation 8 of the 2012 regulations, which we have already considered in detail in our November 2012 report to the House.

We first consider the implications of the disallowance and immediate reinstatement of regulation 8 of the 2012 regulations. We then address two other matters related to process, of this committee and of other committees considering bills referred by the House.

Disallowance and immediate reinstatement

As detailed above, regulation 8 of the Road User Charges (Transitional Matters) Regulations 2012 was disallowed at the close of 27 February 2013 but then effectively reinstated immediately by the Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013, which came into force on 28 February 2013. Cabinet decided to effectively reinstate the disallowed regulation to ensure that the existing exemption for farmers’ light RUC vehicles remained in place, pending the implementation of permanent exemptions under section 40 of the 2012 Act for light RUC vehicles operated almost exclusively off-road.

In New Zealand, disallowance of a regulation under the provisions of the Regulations (Disallowance) Act 1989 is almost without precedent.10 The Act came into force on 19 December 1989. Since that date, before the disallowance of regulations 5(3), 5(4), and 8, no regulation had been automatically disallowed under the provisions of section 6(1) of the Act. Nor has the House resolved to disallow a regulation under section 5(1) of the Act. The House has once resolved, under section 9(1) of the Act, to revoke a provision of a regulation and substitute a new provision. Section 9(1) provides that the House may (a) amend any regulations or (b) revoke any regulations and substitute other regulations.11

On 27 February 2013, in his valedictory speech to the House, Mr Chauvel indicated that he understood his disallowance motion to be proceeding with the agreement of the Minister, on the basis, we understand, of informal conversations between himself and the Minister. Mr Chauvel cited the imminent disallowance of regulations 5(3), 5(4), and 8 of the 2012 regulations as an example of the proper operation of the machinery of government. He acknowledged and congratulated Mr Brownlee, as the Leader of the House and the

10 Since repealed, and replaced by the Legislation Act 2012.
In New Zealand, reinstatement of a disallowed regulation by the government of the day is without precedent. In Australia, disallowance is a more common occurrence than in New Zealand. The Australian Commonwealth and some states have enacted statutory provisions that prevent the Executive from immediately reinstating a disallowed regulation. These provisions are discussed in more detail in Appendix 3.

Given that disallowance of a regulation is both unusual and of constitutional significance, it is unfortunate that the Government found itself in a position where it considered that a disallowed regulation needed to be immediately reinstated. When a disallowance motion is lodged, we would encourage the member lodging the motion and the minister concerned to discuss the issues underlying the motion and to seek agreement on an appropriate way to proceed. In the case of Mr Chauvel’s motion, the Government appears to have accepted the disallowance of regulations 5(3) and 5(4). Perhaps, with further discussion, an appropriate accommodation might have been reached before the 27 February deadline.

**Process leading up to 2012 report**

The committee reported to the House on regulations 5(3), 5(4), and 8 of the 2012 regulations in November 2012. The findings of that report are summarised above.

Since reporting to the House, we have reflected on the process the committee adopted for gathering evidence and preparing the draft report to the House. As the report says, we sought and received written evidence from ministry officials on two occasions. In hindsight, we consider that ministry officials ought also to have been invited to appear before the committee to give oral evidence, as should the Minister.

**Regulation-making powers inserted at select committee**

In his evidence to us, the Minister raised an important point to which we wish to respond. He highlighted the fact that section 90 was inserted into the Road User Charges Bill by way of a unanimous recommendation of the Transport and Industrial Relations Committee and that the Regulations Review Committee had not questioned section 90 during the bill’s progress through its remaining stages in the House.

Following the introduction of the Road User Charges Bill, the previous Regulations Review Committee considered the regulation-making powers in the bill in accordance with the committee’s usual practice. The committee gave the Transport and Industrial Relations Committee advice on the bill as introduced, specifically on clauses 2 and 81(1)(b). When the Transport and Industrial Relations Committee was considering whether to recommend the insertion into the bill of what is now section 90, that committee did not inform the Regulations Review Committee of its consideration or seek the committee’s advice on the proposed clause. The previous Regulations Review Committee was therefore unaware of the proposed clause and had no opportunity to comment on it. The Transport and Industrial Relations Committee’s commentary on the bill as reported to the House did not refer to the clause that is now section 90.

---

13 Standing Order 314(3).
14 Then clause 81A.
Had the clause that is now section 90 been included in the bill as introduced, it is likely that the Regulations Review Committee would have given advice to the Transport and Industrial Relations Committee on the clause. The history of the Road User Charges Bill illustrates the importance of select committees seeking the advice of the Regulations Review Committee on any regulation-making powers which they are considering recommending be inserted into a bill before them. Although we were unaware until recently of the particular circumstances of the Road User Charges Bill, we have been concerned about this issue in general terms for some time. In April 2012, we wrote to the chairpersons of all the subject select committees about changes made to the regulation-making powers in bills as a result of select committee consideration. We noted that such changes can occur after the regulation-making powers in the bill have been considered by the Regulations Review Committee, and that no further review is undertaken of the recommended changes or their probable effects. We requested that committee clerks be alert to changes to regulation-making powers at the select committee stage; and we indicated that, where such changes are proposed, the Regulations Review Committee would be happy to provide the subject committee with advice.

We recommend that all committees considering bills referred by the House seek the advice of the Regulations Review Committee on

1. any new regulation-making powers that a committee is considering recommending be inserted into a bill, and
2. any significant changes that a committee is considering recommending be made to a regulation-making power in a bill.

If departmental officials or Parliamentary Counsel advising on a bill are considering recommending that a committee recommend either of these two changes, they should do so in sufficient time to enable the committee to seek the Regulations Review Committee’s advice.
Appendix 1

Committee procedure
We met between 14 March and 8 August 2013 to consider this investigation. We received evidence from the Minister of Transport, Hon Gerry Brownlee, and Ministry of Transport officials.

The evidence and advice received by the committee has been published on www.parliament.nz.

Committee members
Hon Maryan Street (Chairperson)
Hon Lianne Dalziel
Ian McKelvie
Mike Sabin
Katrina Shanks
Appendix 2

How disallowance works

The disallowance procedure is a statutory procedure, provided for in the Regulations (Disallowance) Act 1989.15 It exists independently of Standing Orders, although Standing Order 317 does ensure that the statutory disallowance procedure is incorporated effectively into House procedure.

General procedure

Section 5(1) of the Act states that the House may disallow any regulation by resolution. The House is not required to give any reasons for resolving to do so.

Disallowance means that the regulations cease to have effect—they no longer have the force of law. It is like revocation, except for the additional effect that any law amended, repealed, or revoked by the disallowed regulations is restored to force.

Any member may, at any time, give notice of motion to disallow a regulation under section 5(1). Such a notice is set down as a Government or member’s order of the day, as appropriate. A member’s notice of motion that is not dealt with within one week of its first appearance on the Order Paper will lapse.

Special procedure for notice of motion given by RRC member

Where the member giving notice is a member of the Regulations Review Committee, a special procedure is triggered under section 6(1) of the Act that effectively supersedes the section 5 procedure. The section 6(1) procedure could be described as an automatic disallowance procedure, with these distinctive features:

- A notice of motion set down as a member’s order of the day will not lapse and will be retained on the Order Paper until dealt with by the House, either by way of being withdrawn, debated, or voted on, or otherwise disposed of.
- If the motion is not dealt with within 21 sitting days, the regulations are deemed to have been disallowed.

Section 6(1) of the Act effectively allows a member of the Regulations Review Committee to force the government of the day to choose between allowing the House time to debate the regulations that are the subject of a disallowance motion or letting the regulations be disallowed automatically at the expiry of 21 sitting days.

Regulations 5(3), 5(4), and 8 of the Road User Charges (Transitional Matters) Regulations 2012 were disallowed under section 6(1).

The Regulations Review Committee and disallowance

The Regulations Review Committee’s authority to report to the House is established in Standing Orders. It is therefore separate from, and independent of, the disallowance procedure. The committee may draw a regulation to the special attention of the House on one or more of the grounds set out in Standing Order 315(2). A decision by the committee

---

15 Since repealed, and replaced by the Legislation Act 2012.
to do this is based on the grounds in Standing Order 315(2) and therefore need not refer to, nor have any bearing on, the disallowance procedure. Likewise, a decision by the House to disallow a regulation will not explicitly relate to any of the grounds set out in Standing Order 315(2).
Appendix 3

The Australian approach

In New Zealand, there is no precedent for a disallowed regulation being reinstated by the
government of the day. In Australia, disallowance is a more common occurrence than in
New Zealand.

The Australian Commonwealth and some states have enacted statutory provisions that
prevent the Executive from immediately reinstating a disallowed regulation.\textsuperscript{16} In the
Commonwealth, Tasmania, Australian Capital Territory, and the Northern Territory, there
are statutory provisions in force that prevent the making of a regulation that is the same in
substance (or, in the case of Tasmania, the same or substantially the same) as a disallowed
regulation. The prohibition on making a new regulation lasts for six months from the date
of disallowance (12 months in the case of Tasmania) and may be overridden by a resolution
of the House permitting the making of the new regulation. An instrument made in
contravention of these statutory provisions will be void and of no effect.

As an example, in the Commonwealth, section 48 of the Legislative Instruments Act 2003
prohibits the making of a legislative instrument or a provision of a legislative instrument
that is the same in substance as a legislative instrument or a provision of a legislative
instrument that has been disallowed, within six months of the date of disallowance.\textsuperscript{17} A
legislative instrument or provision made in contravention of section 48 has no effect.
Section 47 creates a similar prohibition in respect of a legislative instrument that is the
subject of a notice of motion to disallow it.

\textsuperscript{17} The House of the Parliament in which the disallowance took place may, by resolution, override section 48. If the
instrument was disallowed by resolution, the relevant House may rescind the resolution. If the instrument was taken to
have been disallowed, the House in which notice of the motion to disallow the instrument was given may resolve to
approve the making of a new instrument the same in substance as the disallowed instrument.
Complaint regarding the New Zealand Teachers Council (Conduct) Rules 2004 (SR 2004/143)

Report of the Regulations Review Committee

Contents

Recommendations 2
Introduction 2
The complaint 2
Legislative framework 3
Evidence received 5
Recent developments 7
Our consideration 8
Undue trespass on personal rights and liberties 9
Unusual or unexpected use of powers conferred by statute 11
Contains matter more appropriate for parliamentary enactment 13
General objects and intentions of statute 14
Conclusion 16
Appendix 1 17
Appendix 2: Proceedings of comparable disciplinary tribunals 18
Recommendations

The Regulations Review Committee recommends that

1. the New Zealand Teachers Council change rules 31, 32, and 33 to ensure the proceedings of the Teachers Council Disciplinary Tribunal are open to the public unless the Disciplinary Tribunal makes an order to the contrary.

2. the Government consider introducing amending legislation to specify, in the Education Act 1989, that the proceedings of the Teachers Council Disciplinary Tribunal are open to the public unless the Disciplinary Tribunal makes an order to the contrary on specified statutory grounds.

Introduction

In February 2013, we received complaints from Graeme Edgeler and the Herald on Sunday newspaper about rule 32(1) of the New Zealand Teachers Council (Conduct) Rules 2004 (SR 2004/143). The rules were made by the New Zealand Teachers Council on 26 May 2004.1

Parliament’s Standing Orders allow a person or organisation aggrieved at the operation of a regulation to make a complaint to the Regulations Review Committee. The committee may consider the complaint, and draw the regulation to the special attention of the House on one or more of the grounds specified in Standing Orders.

The complaint

Substance of the complaint

Section 139AJ of the Education Act 1989 requires the Teachers Council to make provision for a disciplinary tribunal to conduct hearings related to individual teachers’ misconduct. The Teachers Council has met this requirement by making the 2004 rules, which require it to appoint a disciplinary tribunal.

The complainants’ concern is essentially that rules 31 and 32 of the 2004 rules impose a blanket rule, making all of the tribunal’s proceedings private unless the tribunal itself expressly orders that the whole or any part of proceedings relating to a particular hearing be made public. Mr Edgeler drew particular attention to rule 32(1), which effectively prevents the publication of any information about a tribunal hearing.

Mr Edgeler submitted that rule 32(1) triggered a number of the grounds set out in Standing Order 315(2). The grounds specified were that the rule

1. trespassed unduly on personal rights and liberties (Standing Order 315(2)(b))

2. appeared to make some unusual or unexpected use of the powers conferred by the statute under which it was made (Standing Order 315(2)(c))

1 Notified in the New Zealand Gazette on 3 June 2004.
Our process

We first considered Mr Edgeler’s complaint on 14 February 2013, and resolved to invite the Teachers Council to respond to the points he raised. On 21 February, we considered a request from the Herald on Sunday newspaper to be joined as a party to Mr Edgeler’s complaint. With Mr Edgeler’s agreement, we agreed to the request.

On 21 March 2013 we took oral evidence on the complaints from Mr Edgeler and the Herald on Sunday, represented by Bryce Johns, the editor, and Jonathan Milne, the deputy editor. We also took oral evidence from the Teachers Council, represented by Dr Peter Lind, its chief executive, and Alison McAlpine, its chair.

Legislative framework

Empowering provision

The 2004 rules are made by the Teachers Council, exercising authority delegated to it under section 139AJ of Part 10A of the Education Act 1989. Part 10A has been in force since 1 February 2002. Section 139AC establishes the Teachers Council as an autonomous Crown entity within the meaning of section 7 of the Crown Entities Act 2004.

The relevant provisions of section 139AJ are as follows:

(1) The Teachers Council must, as soon as practicable after the commencement of this section, make rules providing for—

[...]

(c) a Disciplinary Tribunal to conduct hearings relating to misconduct by, and convictions of, individual teachers, and to exercise the powers given under this Act; and

(d) the practices and procedures of the disciplinary bodies;

The empowering provision contains a requirement for the Teachers Council to consult before making rules under this section:

(3) When preparing rules (and any amendments to them), the Teachers Council must take all reasonable steps to consult with those affected by the rules.

Section 139AJ(5) provides that rules made under section 139AJ are regulations for the purposes of the Regulations (Disallowance) Act 1989, which means they fall within the jurisdiction of the Regulations Review Committee. The rules are not regulations for the purposes of the Acts and Regulations Publication Act 1989, and are therefore deemed regulations. Nevertheless, they are published in the SR series.
Establishment and operation of Disciplinary Tribunal

Section 139AJ requires the Teachers Council to make rules providing for a disciplinary tribunal. The function of the tribunal is “to conduct hearings relating to misconduct by, and convictions of, individual teachers, and to exercise the powers given under [the Education Act 1989]”. The Teachers Council has met this requirement by making the 2004 rules. Rule 23 of the 2004 rules requires the Teachers Council to appoint a disciplinary tribunal and sets certain specifications about its constitution.

Matters are referred to the Disciplinary Tribunal by the Teachers Council Complaints Assessment Committee. Section 139AJ requires the Teachers Council to make rules providing for a Complaints Assessment Committee “to investigate complaints of misconduct about, and reports of convictions of, teachers”. The Act requires the Complaints Assessment Committee to refer a matter to the Disciplinary Tribunal if it is satisfied on reasonable grounds that

(a) the teacher concerned has engaged in serious misconduct; and

(b) the matter should be referred to the Disciplinary Tribunal.

Following a hearing of a charge of serious misconduct, or a hearing into the conduct of a teacher, the Disciplinary Tribunal is empowered to take a range of actions including censuring a teacher, imposing conditions on, suspending, or cancelling a teacher’s registration or authority, and imposing a fine of up to $3,000.

The Act includes an offence provision pertaining to the Disciplinary Tribunal. Section 139AZ provides that a person commits an offence, carrying a fine of up to $1,000, if he or she

… breaches an order made by the Disciplinary Tribunal under rules made under section 139AJ that—

(a) provide for a hearing to be held in private; or

(b) provide for evidence at a hearing to be given in private; or

(c) impose restrictions on the publication of any information relating to a particular hearing.

Rules 31, 32, and 33

The rules at issue are rules 31, 32, and 33 of the 2004 rules.

Rule 31 provides that the Disciplinary Tribunal must hold its hearings in private, unless an order is made under rule 33(1)(a) that a hearing be in public. Rule 31 also requires the tribunal to deliberate in private.

---

7 At the discretion of the Attorney-General or the Chief Parliamentary Counsel, under section 14 of the Acts and Regulations Publication Act 1989.
8 Section 139AJ(1)(c).
9 Section 139AJ(1)(b)(f).
10 Section 139AT(4).
11 Section 139AW.
12 Section 139AZ(2) was inserted into the Education Act 1989 on 17 May 2006 by section 33 of the Education Amendment Act 2006.
Rule 32 relates to the publication of the proceedings of the Disciplinary Tribunal and provides:

(1) Except as provided in subclause (2) or as ordered under rule 33(1)(b), (c), or (d),—
   (a) no person may publish any report or account of a hearing; and
   (b) no person may publish any part of any document, record, or other information produced at a hearing; and
   (c) no person may publish the name, or any particulars of the affairs, of any party or witness at a hearing.

(2) Subclause (1) does not apply to the Teachers Council.

(3) If the Teachers Council publishes any information referred to in subclause (1), it must do so in a manner that preserves the anonymity of the parties and any witnesses, unless the Disciplinary Tribunal expressly orders otherwise.

Rule 33 provides for the Disciplinary Tribunal to make an order varying rules 31 or 32. Rule 33(1) allows any person to apply to the Disciplinary Tribunal for the following orders:

(a) an order that the whole or any part of a hearing be held in public:

(b) an order allowing the publication of any report or account of any part of a hearing by the Disciplinary Tribunal:

(c) an order allowing the publication of the whole or any part of any documents, records, or other information produced at a hearing:

(d) an order allowing the publication of the name, or any particulars of the affairs, of any party or witness at the hearing.

The Disciplinary Tribunal may make any of the orders referred to in rule 33(1) if “it is satisfied that it is desirable to do so, having regard to the interests of any person and to the public interest”.13

Evidence received

We received both written and oral evidence on these complaints. We have summarised the key evidence we received, below.

Graeme Edgeler

Mr Edgeler states that his complaint is “principally concerned” with rule 32, but also “touches upon” rules 31 and 33. Mr Edgeler addressed his complaint to each of the specified Standing Order grounds.

In respect of Standing Order ground 315(2)(b), Mr Edgeler argued that the rules trespassed unduly on personal rights and liberties in that they represented an unreasonable limitation on freedom of expression.

In respect of Standing Order ground 315(2)(c), he considered that the rules made an unusual or unexpected use of the powers conferred by the Education Act 1989 in that Parliament would not have intended that a power to set up a disciplinary tribunal, and to provide rules regulating it, should incorporate a power to regulate the news media.

13 Rule 33(2).
In respect of Standing Order ground 315(2)(f), Mr Edgeler considered that the rules contained matter more appropriate for parliamentary enactment in that, in respect of the major comparators with the teaching profession (health professionals and lawyers), Parliament had legislated in primary legislation for suppression powers, and powers to exclude the public from hearings.

In his oral evidence, Mr Edgeler drew our attention to section 139AZ(2), which creates an offence of breaching an order made by the Disciplinary Tribunal relating to the privacy of its proceedings. He pointed out that, as the 2004 rules are drafted, it was not possible for a person to commit the offence specified in this subsection. He submitted that reversing the presumption of suppression in the 2004 rules would provide “better protection overall for freedom of expression”.14

Herald on Sunday

The Herald on Sunday described the 2004 rules as imposing a “draconian suppression rule” and as “one of the heaviest shrouds of secrecy over any statutory disciplinary body in New Zealand”. The complainant considered that the 2004 rules “turn the basic constitutional presumption of open justice and accountability on its head” and argued that “the presumption should always be in favour of transparency”. The Herald submitted that suppression of specific information before the Disciplinary Tribunal, and the tribunal’s decisions, should be invoked only where it was necessary—for instance, to protect the identity of a child victim.

The Herald’s complaint referred us to a copy of a letter from it to the Teachers Council, dated 17 January 2013, “for a fuller statement of our position”. Some of the matters raised in the letter are relevant to the current complaint. The Herald argues that rule 32 was, first, “not enacted in accordance with proper procedure” and was, secondly, “contrary to the clear intent of the Education Act”, and concludes that the rule was therefore ultra vires.

The argument about proper procedure relates to section 139AJ(3) of the Act, which states that

When preparing rules [under section 139AJ] (and any amendments to them), the Teachers Council must take all reasonable steps to consult with those affected by the rules.

The Herald considers that section 139AJ(3) was not complied with when rule 32 was promulgated. Its evidence was that the media had not been made aware of proposed rule 32 and the Teachers Council had not publicised it before enacting the 2004 rules. The Herald expanded on this in its oral evidence, describing it as “at least a procedural irregularity” and suggesting that the council should have consulted before apparently changing the way it sought to enforce rule 32(1) late in 2012.15

The argument about the intent of the Act is based on section 139AZ of the Act, which creates offences pertaining to the Disciplinary Tribunal. The Herald argues:

It is clear from section 139AZ … that suppression of information derived from hearings before the Disciplinary Tribunal was intended to be dealt with by the Disciplinary Tribunal itself, by specific orders on a case by case basis, and not by a blanket suppression rule made by the Teachers Council.

14 Graeme Edgeler, 21 March 2013, transcript, p. 2.
15 Bryce Johns, 21 March 2013, transcript, p. 3.
New Zealand Teachers Council

In its written evidence, the Teachers Council addressed the three Standing Order grounds specified by Mr Edgeler. In respect of Standing Order ground 315(2)(b), the council argued that the 2004 rules do not trespass unduly on personal rights and liberties, because rule 33 allows any person to apply for a hearing to be held in public or for the publication of material, evidence, and names of parties. The council considered that the current arrangements did not constitute “blanket suppression”, because a “significant amount” of information about each Disciplinary Tribunal decision was published on the Teachers Council’s website, including an outline of evidence presented to the tribunal. The council also noted that it is required to maintain a public register of all teachers registered in New Zealand.

In respect of Standing Order ground 315(2)(c), which deals with an unusual or unexpected use of the powers conferred by the Act, the council submitted that the objective of the disciplinary bodies—the Complaints Advisory Committee and the Disciplinary Tribunal—was to protect the safety of children and promote high-quality education. It described the evidence of children and young people as essential to cases coming before the Disciplinary Tribunal, and argued that such witnesses needed to be protected from the media spotlight.

In respect of Standing Order ground 315(2)(f), that the rules contain matter more appropriate for parliamentary enactment, the council considered that the Education Act 1989 lacked the protections and “teeth” of the comparable sections of the Health Practitioners Competence Assurance Act 2003. The council described the tribunal as having no name suppression powers in primary legislation and only “limited power” to enforce a penalty for breach of its suppression orders.

In both its written and its oral evidence, the Teachers Council suggested that it found the way the Act currently deals with the status of proceedings before the Disciplinary Tribunal to be unsatisfactory. In oral evidence, Dr Lind told the committee that during Parliament’s consideration of the Education Standards Bill, which proposed inserting Part 10A into the Act, the Children’s Commissioner and the now-defunct Teacher Registration Board had made submissions in favour of legislating for the hearing of conduct and disciplinary cases in public, along with sufficient powers of suppression. “For some reason” he said, “Parliament decided not to do that.”

Dr Lind noted that the Government review of the role and functions of the Teachers Council, announced in December 2011, had been charged with examining the legislation that set up the Teachers Council; the Minister’s decisions regarding the review had not yet been released. Dr Lind suggested that the Disciplinary Tribunal should be given similar powers to those of the Health Practitioners Disciplinary Tribunal under the Health Practitioners Competence Assurance Act 2003.

Recent developments

The report on the review of the role and functions of the Teachers Council referred to by Dr Lind was presented to the Minister of Education, Hon Hekia Parata, in November 2012. The review was conducted by an independent committee. The Minister released the

16 Peter Lind, 21 March 2013, transcript, p. 4.
COMPLAINT REGARDING THE NZ TEACHERS COUNCIL (CONDUCT) RULES 2004

review committee’s report, Review of the New Zealand Teachers Council: A Teaching Profession for the 21st Century, on 20 May 2013.18

The review committee’s report did not address the issue that forms the basis of this complaint. Only two of the review committee’s recommendations related to the subject of this complaint. The review committee recommended that section 139AQ of the Education Act, which deals with the constitution of the disciplinary bodies, be reviewed so as to

• clarify the degree of severity entailed in breaches of conduct by teachers

• provide for immediate referral by the Complaints Assessment Committee to the Disciplinary Tribunal of any breach of conduct that, if prosecuted, would result in imprisonment.

The review committee also recommended a review of the statutory framework for dealing with complaints about teachers’ conduct and competence and the enacted processes to handle such disciplinary matters.19

On 20 May, the Minister also announced that the Government had appointed a Ministerial Advisory Group to lead consultation with the sector and the public on the proposals in the review body’s report. The group released a discussion document, A 21st Century Body for the Education Profession: Proposals for Discussion, on the same day, and called for comments on the proposals for discussion by 14 July 2013.20 The discussion document identifies one role of a new “professional entity for educators in the early childhood and compulsory schooling sectors” as being to exercise “disciplinary functions relating to teaching and leadership competence and conduct”.21 It does not otherwise refer to the issue that forms the basis of this complaint.

Our consideration

Standing Order 315(2) grounds

The complainants cited three grounds in Standing Order 315(2) as relevant to their complaint:

• Standing Order 315(2)(b), that the rule trespasses unduly on personal rights and liberties

• Standing Order 315(2)(c), that the rule appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made

• Standing Order 315(2)(f), that the rule contains matter more appropriate for parliamentary enactment.

We consider that one further ground is relevant: Standing Order 315(2)(a), that the rule is not in accordance with the general objects and intentions of the statute under which it is made.22 Our discussion of these four grounds is set out below.

19 Ibid., recommendations P and Q, p. 47.
22 Standing Order 315(2)(b) provides that we may draw a regulation to the special attention of the House on the grounds that it was not made in compliance with particular notice or consultation procedures prescribed by statute. We heard some suggestion from the Herald on Sunday that the Teachers Council had not complied with the consultation requirement
Undue trespass on personal rights and liberties

We considered whether rules 31, 32, and 33 trespassed unduly on personal rights and liberties.

Right to freedom of expression

The Herald on Sunday described the 2004 rules as turning “the basic constitutional presumption of open justice and accountability on its head”. Mr Edgeler argued that the 2004 rules represented an unreasonable limitation on freedom of expression. The right to freedom of expression is expressly set out in section 14 of the New Zealand Bill of Rights Act 1990:

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

Although the New Zealand Bill of Rights Act 1990 does not limit Standing Order 315(2)(b), it is nevertheless a useful statement of certain legally recognised rights and freedoms. Section 25 of the Act may also be relevant. It relates to minimum standards of criminal procedure, and provides that everyone who is charged with an offence has the right to a “fair and public” court hearing.

Undue trespass

In assessing this Standing Order ground, we are required to consider not only whether rules 31, 32, and 33 trespass on the right to freedom of expression, but whether they represent an undue trespass. In determining this question, we have looked at the wider principle of open justice as it applies in the New Zealand context.

The courts have established a clear presumption of open justice in a line of case law relating to name suppression. Under section 140 of the Criminal Justice Act 1985, the courts are authorised to prohibit the publication of identifying details of an accused or any other person connected with criminal proceedings. In 1995, the Court of Appeal made it clear that, in considering whether to exercise these powers, the starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report such proceedings fairly and accurately as “surrogates of the public”. The court stressed that “the prima facie presumption as to reporting is always in favour of openness.” Subsequent decisions of the Court of Appeal have developed this line of reasoning, stating that “the starting point is open justice” and finding that, if the prima facie presumption in favour of open reporting is to be overcome, “the balance must come down clearly in favour of suppression”.

The Law Commission has also examined issues relevant to establishing and applying a presumption of open justice. In January 2008, the commission considered the powers of tribunals. The commission noted that a consistent approach had not been taken between

---

23 The Bill of Rights Act 1990 applies to the Teachers Council by virtue of section 3 of the Act.
24 R v Liddell [1995] 1 NZLR 538 (CA) at 546 per Cooke P.
25 Ibid., 547.
26 R v B [2009] 1 NZLR 293 (CA) at 307 per Baragwanath J; Lewis v Wilson & Horton Ltd [2000] 3 NZLR 546 (CA) at 559 per Elias CJ.
27 Law Commission, Tribunals in New Zealand, NZLC IP6, paras 7.27–7.28.
tribunals on the issue of openness, and questioned whether it was appropriate for an occupational disciplinary tribunal, in particular, to operate under an assumption of a closed hearing. The commission called for a more consistent principle-driven approach to the openness of tribunal proceedings, and suggested that, as a starting point, public access to tribunals and public reporting of proceedings should be permitted, unless an overriding public interest requires otherwise. The commission considered that it was particularly important in the case of the occupational disciplinary tribunals that justice be seen to be done, because private hearings could “engender a public suspicion of a lack of impartiality resulting from members of a profession judging their own”. 28

In October 2009, the commission examined issues related to name suppression. 29 It recommended that the starting point for considering publication of evidence and names be a presumption of open justice. 30 It also recommended that a court have the power to make an order preventing publication of the particulars of a victim or witness where publication would endanger the safety of any person or result in undue hardship to the victim. 31

Operation of rule 33

In evidence to us, the Teachers Council pointed to the exception process established by rule 33, suggesting that its existence meant that any trespass on the right to freedom of expression was not undue. Mr Johns, of the Herald on Sunday, told us that his newspaper had made an application under rule 33 in respect of a current case and was awaiting the outcome of that application. He described the process involved as difficult, expensive, and very time-consuming.

Our conclusion

The effect of rules 31, 32, and 33 of the 2004 rules is that all information about the Disciplinary Tribunal’s proceedings is suppressed unless a person seeks an exception under rule 33, and the Disciplinary Tribunal is satisfied that it is desirable to grant such an exception. The extent of the suppression provided for goes beyond names and other identifying features and extends to the tribunal’s proceedings and reports and other documents produced in the course of proceedings.

We have considered this matter very carefully but have been unable to reach unanimous agreement on whether this ground has been made out. We do agree that, if a compelling right to privacy exists in any case before the Disciplinary Tribunal—for example, for students and their families—it is important that the tribunal should be able to protect that right by making an appropriate suppression order.

A majority of us consider that rules 31, 32, and 33 do not constitute an undue trespass on the right to freedom of expression. It is unnecessary to get into an exhaustive investigation of the relationship between the right to freedom of expression and the presumption of open justice. Suffice it to say, while suppression orders could be seen to infringe each of these principles, they are not merely synonymous terms. It is enough to say that, as set out clearly by the Law Commission in its various reports (in particular Evidence and Suppression, 2009), the presumption for courts and also tribunals with quasi-judicial functions should be towards open hearings. This presumption does not presuppose that

28 Ibid., para 7.28.
30 Ibid., recommendation 2.
31 Ibid., recommendations 9 and 10.
any reversal of the presumption is necessarily a limitation, justified or otherwise, on the right to free speech under the New Zealand Bill of Rights Act 1990.

Two of our members, Hon Maryan Street and Hon Lianne Dalziel, consider that the suppression of Disciplinary Tribunal proceedings imposed by rules 31, 32, and 33 constitutes an undue trespass on the right to freedom of expression. They consider that rules 31, 32, and 33 trespass on the right to freedom of expression, both in terms of the media’s right to impart information and the public’s right to receive that information. By starting from a presumption of suppression and privacy, these rules trespass directly on the right to freedom of expression by preventing the free exchange and publication of information relating to a statutory body performing a public function.

On the basis of the decisions of the courts and work carried out by the Law Commission, Ms Street and Ms Dalziel consider that the right to freedom of expression is supported by a clearly established presumption of open justice, and that this presumption cannot be shifted without good reason. They consider that the committee has heard no reason sufficient for them to consider that this principle of open justice ought not to be applicable to the proceedings of the Disciplinary Tribunal. In particular, they do not consider the process established by rule 33 sufficient to ensure that the principle of open justice is not compromised.

Ms Street and Ms Dalziel note also section 25 of the New Zealand Bill of Rights Act 1990. The Disciplinary Tribunal is not, of course, a court of law, and does not consider criminal charges. Nevertheless, they consider that the principle of open justice underlying section 25 is relevant to the tribunal’s proceedings. If judicial proceedings that make findings on criminal charges are to be public, quasi-judicial proceedings that make findings on professional conduct should not be subject to a lesser requirement of openness.

Unusual or unexpected use of powers conferred by statute

We considered whether rules 31, 32, and 33 appeared to make some unusual or unexpected use of the delegated power in section 139AJ of the Act.

Delegated power

The relevant provisions of section 139AJ are as follows:

(1) The Teachers Council must, as soon as practicable after the commencement of this section, make rules providing for—

[…]

(c) a Disciplinary Tribunal to conduct hearings relating to misconduct by, and convictions of, individual teachers, and to exercise the powers given under this Act; and

(d) the practices and procedures of the disciplinary bodies;

[…]

(3) When preparing rules (and any amendments to them), the Teachers Council must take all reasonable steps to consult with those affected by the rules.

On the face of it, the power delegated in section 139AJ is relatively broad and unrestricted. The Teachers Council is given discretion to make rules providing for a disciplinary tribunal
to exercise the powers set out in Part 10A of the Act and specifying the tribunal’s practices and procedures.

**Offence of breaching Disciplinary Tribunal order**

Section 139AZ(2) of the Act makes it an offence to breach an order made by the Disciplinary Tribunal. It provides that a person commits an offence, carrying a fine of up to $1,000, if he or she

... breaches an order made by the Disciplinary Tribunal under rules made under section 139AJ that—

(a) provide for a hearing to be held in private; or

(b) provide for evidence at a hearing to be given in private; or

(c) impose restrictions on the publication of any information relating to a particular hearing.

Section 139AZ(2) envisages that the Disciplinary Tribunal will use the powers given to it under rules to be made under section 139AJ to make orders providing for closed hearings or suppression of information. Section 139AZ(2) presumes that orders made by the Disciplinary Tribunal will provide for matters such as holding a hearing in private, giving evidence in private, or restricting what information may be published. The wording of section 139AZ(2) indicates that, at the time at which section 139AZ(2) was enacted, Parliament intended the Disciplinary Tribunal’s proceedings to generally be open, and information relating to the proceedings to generally be publicly available. If Parliament had intended that proceedings should generally be closed, there would have been no need for it to create an offence of breaching any of the orders referred to in paragraphs (a) to (c).

The 2004 rules provide that the Disciplinary Tribunal’s proceedings are to be generally closed. As the rules stand, it would seem impossible to commit an offence under section 139AZ(2) because the Disciplinary Tribunal will never be in a position to make any of the orders referred to in paragraphs (a) to (c).

**Our conclusion**

Although the power delegated in section 139AJ(1)(c) and (d) is relatively broad and unrestricted, we would have expected the Teachers Council to ensure that rules made under this provision were consistent with the provisions of the empowering Act. Parliament would not expect legislative authority it had delegated to be used in a way that undermines, contradicts, or thwarts the provisions and intention of the empowering Act. We consider that, where the rules are inconsistent with the empowering Act, the Act must prevail.

Rules 31, 32, and 33 of the 2004 rules directly thwart the intention of section 139AZ(2) of the empowering Act. The effect of these rules is to make it impossible for an offence to be committed under section 139AZ(2). Parliament cannot have intended to delegate a power to make rules that would effectively contradict the explicit effect of the empowering legislation. We therefore consider that rules 31, 32, and 33 of the 2004 rules appear to make some unusual or expected use of the delegated power in section 139AJ of the Education Act 1989.
Contains matter more appropriate for parliamentary enactment

We considered whether rules 31, 32, and 33 contained matter more appropriate for parliamentary enactment.

Comparisons with other disciplinary tribunals

The Education Act 1989 makes no explicit provision as to whether the Disciplinary Tribunal’s proceedings are generally to be held in public or private. As both Mr Edgeler and the Teachers Council noted, this is in contrast to statutes establishing comparable disciplinary tribunals. Mr Edgeler submitted that the Teachers Council had “taken upon itself the power to do something that Parliament should be doing and Parliament has done in a number of other situations”.32

The table in Appendix 2 sets out indicators of the degree of openness of comparable tribunals, and notes whether this is provided for in primary or secondary legislation.

This comparison indicates that the hearings of comparable disciplinary tribunals are uniformly required to be public, unless the tribunal considers it appropriate to hold all or part of a hearing in private and/or to make an order prohibiting the publication of all or part of its proceedings. Parliament has generally considered it appropriate to itself stipulate the extent to which a disciplinary tribunal’s hearings are to be open, by including in the primary legislation an explicit requirement that the tribunal’s proceedings be public.

The legislation regulating the proceedings of the Social Workers Complaints and Disciplinary Tribunal is particularly relevant to the Teachers Council Disciplinary Tribunal. Both tribunals are likely in some cases to require evidence from children and young persons in order to properly consider a charge of alleged misconduct. Section 80 of the Social Workers Registration Act 2003 applies to witnesses giving evidence that relates to either a sexual matter or some other matter that may require intimate or distressing evidence. The tribunal must offer the witness the opportunity to be heard in private and ensure that only specified persons are in the room during private evidence. It may also make an order forbidding publication of evidence relating to acts allegedly performed on the witness or that the witness was allegedly compelled to perform, if it thinks that the interests of the witness require it to do so.

Recent consideration by the House

Since 2002, when Part 10A was inserted into the Education Act 1989 by the Education Standards Act 2001, the House has considered the status of the Disciplinary Tribunal’s proceedings on one occasion of which we are aware. In November 2010, during the passage of the Education Amendment Bill (No 2), Hon Trevor Mallard introduced a supplementary order paper, which proposed to amend sections 139AW and 139AZ of the Education Act 1989 “to clarify that the default position under this Act is that disciplinary proceedings are open and transparent, unless a suppression order is in place”.33

The House did not agree to the amendments proposed in the supplementary order paper.34 In the debate on the amendments, however, the Minister of Education, Hon Anne Tolley, explained that the Government did not support the specific amendments proposed to the

32 Graeme Edgeler, 21 March 2013, transcript, p. 6.
33 Explanatory note to Supplementary Order Paper No 183 (23 November 2010) (Education Amendment Bill (No 2); available at www.legislation.govt.nz.
Education Act at the time because this would be “out of step” with parallel work on name suppression. She stated that, although the Government would vote against the specific amendments, it nevertheless supported addressing the issues raised in the amendments “as soon as we possibly can”.

The parallel work on name suppression referred to by the Minister was in relation to the Criminal Procedure (Reform and Modernisation) Bill, then before a select committee. Although this bill did deal with name suppression, it did so in the context of the courts and did not in fact affect the Disciplinary Tribunal. The relevant provisions of the bill were enacted as the Criminal Procedure Act 2011.

Our conclusion

On the basis of comparison with similar disciplinary tribunals, we consider that the extent to which the Disciplinary Tribunal’s proceedings are to be public is a matter more appropriate for parliamentary enactment. The principle of open justice is a matter of fundamental importance. We therefore conclude that rules 31, 32, and 33 contain matter that would be more appropriate for parliamentary enactment.

We note that previous debate in the House has indicated support for amending the Act to clarify that the proceedings of the Disciplinary Tribunal are to be presumed to be public and open, unless a suppression order is in place. We consider that the example of the Social Workers Complaints and Disciplinary Tribunal should be taken into account in preparing any amending primary legislation affecting the proceedings of the Teachers Council Disciplinary Tribunal.

General objects and intentions of statute

We considered whether rules 31, 32, and 33 were in accordance with the general objects and intentions of the Education Act 1989. This was not a ground that the committee was asked to consider by the complainant.

Purpose of Part 10A of the Act

Part 10A of the Act establishes the Teachers Council. It sets out the council’s functions and powers, specifies matters relating to teachers’ employment and conduct regarding which it is mandatory for schools to report to the council, and provides for the constitution and powers of the Complaints Assessment Committee and the Disciplinary Tribunal. One function of the Teachers Council is to exercise the disciplinary functions in Part 10A that relate to teachers’ misconduct and reports of teachers’ convictions.

Section 139AA specifies the purpose of Part 10A of the Act as being

to provide professional leadership in teaching, enhance the professional status of teachers in schools and early childhood education, and contribute to a safe and high quality teaching and learning environment for children and other learners.

---

35 Hansard, 9 December 2010, pp. 16325.
36 Part 5, subpart 3, of the Criminal Procedure Act 2011 deals with public access to the courts and restrictions on reporting. Section 196 provides that every court hearing is open to the public unless the courts make an order to the contrary (as provided for in sections 97, 197, and 199).
37 Section 139AE(h).
Section 139AA is a high-level statement of the objects and intentions of Part 10A of the Act. In establishing the general objects and intentions of the Act, we have considered the scheme of Part 10A as a whole.

**System for dealing with alleged misconduct**

Part 10A establishes a stepped system for dealing with alleged misconduct on the part of a teacher. The Disciplinary Tribunal is the final step in this system. Under section 139AS, the Teachers Council is required to refer to the Complaints Advisory Committee matters reported to it under the mandatory reporting requirements in Part 10A, in so far as they relate to teacher conduct, and all complaints. Following an investigation, the Complaints Advisory Committee may, and in some circumstances must, refer a matter to the Disciplinary Tribunal for a hearing.

One effect of this system is to ensure that matters relating to the conduct of a teacher do not reach the Disciplinary Tribunal without having first been investigated by the Complaints Advisory Committee. This indicates that the Disciplinary Tribunal is intended to deal with serious matters of some substance.

**Effect of section 139AZ offence provision**

As we have discussed above, we consider that the wording of section 139AZ(2) indicates that Parliament intended, at least from May 2006, that the Disciplinary Tribunal’s proceedings would generally be open, and that information relating to the proceedings would generally be publicly available. The 2004 rules effectively make it impossible to commit an offence under section 139AZ(2) because the Disciplinary Tribunal will never be in a position to make any of the orders referred to in paragraphs (a) to (c) of section 139AZ(2).

**Our conclusion**

Rules 31 and 32 of the 2004 rules provide for the proceedings of the Disciplinary Tribunal to be conducted in private, and prevent the publication of information relating to the proceedings. Rule 33 provides that rules 31 and 32 may be varied only if a person applies for their variation, on a case-by-case basis.

We have considered this matter very carefully but have been unable to reach unanimous agreement on whether this ground has been made out. A majority of us consider that rules 31, 32, and 33 of the 2004 rules are in accordance with the general objects and intentions of Part 10A of the Education Act 1989 and within the scope of the empowering provision, section 139AJ. A majority of us, whilst acknowledging the concerns relating to rules 31, 32, and 33 of the 2004 rules, consider that any irregularity or concern does not meet the threshold of not being in accordance with the general objects and intentions of Part 10A of the Education Act 1989.

Two of our members, Hon Maryan Street and Hon Lianne Dalziel, consider that rules 31, 32, and 33 of the 2004 rules are not in accordance with the general objects and intentions of Part 10A of the Education Act 1989. They consider that it is questionable whether these rules were appropriate before the enactment of section 139AZ(2), in May 2006. After its
enactment, they consider that it should have been clear to the Teachers Council that rules 31, 32, and 33 were no longer in accordance with the Act.

Ms Street and Ms Dalziel consider that the Act intends the Disciplinary Tribunal to deal with serious matters of some substance. Such matters are likely to be of concern to the public and are therefore likely to attract public interest. In line with this, they consider that the Act, as amended in 2006, clearly intends the Disciplinary Tribunal’s proceedings to generally be open, and information relating to the proceedings to generally be publicly available.

Conclusion

Standing Order 315(2) grounds

We consider that rules 31, 32, and 33 of the New Zealand Teachers Council (Conduct) Rules 2004 (SR 2004/143)

• are in accordance with the general objects and intentions of Part 10A of the Education Act 1989 (Standing Order ground 315(2)(a));

• do not trespass unduly on personal rights and liberties (Standing Order ground 315(2)(b));

• appear to make an unusual or unexpected use of the delegated power in section 139AJ of the Education Act 1989 (Standing Order ground 315(2)(c)); and

• may contain matter more appropriate for parliamentary enactment (Standing Order ground 315(2)(f)).

Part 10A of the Education Act 1989

In our view, the root cause of our concerns about the 2004 rules is a lack of explicit provision in Part 10A of the Education Act 1989 that the proceedings of the Teachers Council Disciplinary Tribunal are to be open and transparent, unless reasonable grounds exist for the proceedings to be private or suppressed.

We note that it is within the Teachers Council’s power to change its own rules. In evidence to us, the Teachers Council told us that during Parliament’s consideration of the Education Standards Bill, which proposed inserting Part 10A into the Act, the council’s predecessor body had made submissions in favour of legislating for the hearing of conduct and disciplinary cases in public, along with sufficient powers of suppression. The 2004 rules are contrary to this position.

We recommend that the New Zealand Teachers Council change rules 31, 32, and 33 to ensure the proceedings of the Teachers Council Disciplinary Tribunal are open to the public unless the Disciplinary Tribunal makes an order to the contrary.

We also recommend that the Government consider introducing amending legislation to specify, in the Education Act 1989, that the proceedings of the Teachers Council Disciplinary Tribunal are open to the public unless the Disciplinary Tribunal makes an order to the contrary on specified statutory grounds.
Appendix 1

Committee procedure
We met between 14 February and 8 August 2013 to consider this investigation. We received evidence from the complainants, Graeme Edgeler and the Herald on Sunday newspaper, and from the New Zealand Teachers Council.

The evidence and advice received by the committee has been published on www.parliament.nz.

Committee members
Charles Chauvel (Chairperson) until 27 February 2013
Hon Maryan Street (Chairperson) from 28 February 2013
Hon Lianne Dalziel
Ian McKelvie
Mike Sabin
Katrina Shanks
## Proceedings of comparable disciplinary tribunals

<table>
<thead>
<tr>
<th>Tribunal</th>
<th>Degree of openness</th>
<th>Primary or secondary legislation?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Practitioners Disciplinary Tribunal</td>
<td>Hearings must be public, unless the tribunal is satisfied it is desirable to make an order to hold all or part of a hearing in private or to prohibit publication of any part of its proceedings (section 95 of the Act)</td>
<td>Primary (Health Practitioners Competence Assurance Act 2003)</td>
</tr>
<tr>
<td></td>
<td>In determining whether an order is desirable, the tribunal must have regard to (a) the interests of any person (including, without limitation, the privacy of any complainant) and (b) the public interest (section 95(2))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contravening an order is an offence liable to a fine not exceeding $10,000 (section 95(7))</td>
<td></td>
</tr>
<tr>
<td>Social Workers Complaints and Disciplinary Tribunal</td>
<td>Hearings must be public, unless the tribunal is satisfied it is desirable to make an order to hold all or part of a hearing in private or to prohibit publication of any part of its proceedings (section 79 of the Act)</td>
<td>Primary (Social Workers Registration Act 2003)</td>
</tr>
<tr>
<td></td>
<td>In determining whether an order is desirable, the tribunal must have regard to (a) the interests of any person (including, without limitation, the privacy of any complainant) and (b) the public interest (section 79(2))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tribunal has special powers relating to witnesses giving evidence that relates to either a sexual matter or some other matter that may require intimate or distressing evidence (section 80)</td>
<td></td>
</tr>
<tr>
<td><strong>Lawyers and Conveyancers Disciplinary Tribunal</strong></td>
<td>Hearings must be public, unless tribunal considers it is proper to hold all or part of a hearing in private and/or to deliberate in private (section 238 of the Act) Tribunal may make an order prohibiting publication of any part of its proceedings (section 240)</td>
<td>Primary (Lawyers and Conveyancers Act 2006)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Real Estate Agents Disciplinary Tribunal</strong></td>
<td>Modelled on equivalent provisions applying to Lawyers and Conveyancers Disciplinary Tribunal Hearings must be in public, unless Tribunal considers it is proper to hold all or part of a hearing in private and/or to deliberate in private (section 107 of the Act) Tribunal may make an order prohibiting publication of any part of its proceedings (section 108)</td>
<td>Primary (Real Estate Agents Act 2008)</td>
</tr>
<tr>
<td><strong>Immigration Advisers Complaints and Disciplinary Tribunal</strong></td>
<td>May regulate its procedures as it thinks fit (section 49(1) of the Act) Matters or complaints “must be heard on the papers” (section 49(3)); Ministry of Justice website states “this means the tribunal considers the case on the basis of written submissions and evidence, without the appearance of the parties”41</td>
<td>Primary (Immigration Advisers Licensing Act 2007)</td>
</tr>
<tr>
<td><strong>Institute of Chartered Accountants Disciplinary Tribunal</strong></td>
<td>Hearings must be in public, unless the tribunal considers it is appropriate to hold all or part of a hearing in private or to make an order prohibiting publication of any part of its proceedings (rules 21.50 to 21.54 of the 2012 Rules)</td>
<td>Deemed regulations (Rules of the NZICA (revised December 2012), made under section 6 of the NZICA Act 1996)</td>
</tr>
</tbody>
</table>

Contents
Recommendation 2
Background 2
Confirmation and validation is warranted 2
Process for scrutiny 3
Conclusion 3
Appendix 4
Subordinate Legislation (Confirmation and Validation) Bill (No 2)

Recommendation

The Regulations Review Committee has examined the Subordinate Legislation (Confirmation and Validation) Bill (No 2) and recommends that it be passed without amendment.

Background

The purpose of the bill is to confirm and, in some cases, validate subordinate legislation made under various Acts. In passing this bill, the House would effectively be approving the subordinate legislation specified in this bill and allowing it to continue in force.

Clauses 7 to 15 seek to confirm and, in some cases, validate certain subordinate legislation that, by virtue of the Acts under which it is made, will lapse unless confirmed or validated by an Act of Parliament. The subordinate legislation referred to in clauses 7 to 12 and 14 would be confirmed; that referred to in clauses 13 and 15 would be both validated and confirmed. Clause 6 would repeal the Subordinate Legislation (Confirmation and Validation) Act 2012, which is now spent.

Of the 24 instruments that would be confirmed and in three cases validated by the bill, nine would expire at the close of 31 December 2013, two would expire at the close of 3 March 2014, and 13 would expire at the close of 30 June 2014 if they were not earlier confirmed by an Act of Parliament.

Confirmation and validation is warranted

We wrote to the six government departments with responsibility for administering the orders and regulations in the bill, inviting them to explain why the orders and regulations should be confirmed and where pertinent validated. We also asked the agencies why the confirmation and validation provisions were originally included in the Acts under which the orders and regulations were made.

In all cases, confirmation or confirmation and validation was considered necessary by the departments to prevent the orders and regulations from lapsing and thus ceasing to be legally enforceable. The reasons for these confirmations and validations included alteration in the rates of benefits and allowances, including increases in war pensions, and the ability to prescribe fees and collect levies.

After considering the responses from the departments, we found no reason that the orders and regulations should not be confirmed and validated. We thank the departments for their comprehensive responses to our questions.

1 The six departments are the Department of Internal Affairs, the Ministry for Primary Industries, the Ministry of Social Development, the Ministry of Transport, the New Zealand Customs Service, and the New Zealand Defence Force.
Process for scrutiny

In our October 2012 report to the House on the Subordinate Legislation (Confirmation and Validation) Bill, we discussed the process for scrutinising this type of bill.

We recommended that the Government examine the viability of introducing bills seeking confirmation and validation of subordinate legislation earlier in the calendar year than had become usual—preferably on 1 August, or as close to that date as possible. We considered that an earlier introduction date would allow us more time to consider the bill, and particularly to refer specific policy issues to a subject select committee. We would like to take this opportunity to thank the Government for acting on our recommendation by introducing the bill on 29 July 2013, one month earlier than the equivalent bill in 2012.

We also encouraged the House to consider carefully whether the streamlined procedure recommended by the Standing Orders Committee for revision bills might appropriately be extended to bills seeking confirmation and validation of subordinate legislation. The procedure is discussed in detail in our October 2012 report.

We still think that this procedure would make the scrutiny of bills seeking validation and confirmation of subordinate legislation more effective. We have recently written to the Standing Orders Committee drawing the discussion in our October 2012 report to their attention.

Conclusion

We found no reason why confirmation and validation of the relevant subordinate legislation should not occur, and therefore recommend that the bill be passed without amendment.
Committee procedure

The Subordinate Legislation (Confirmation and Validation) Bill (No 2) was referred to the committee on 6 August 2013. The committee invited written submissions from the relevant government departments with responsibility for administering the subordinate legislation in the bill. The committee received advice from the Office of the Clerk of the House of Representatives.

Committee members

Hon Maryan Street (Chairperson)
Hon Lianne Dalziel
Andrew Little
Ian McKelvie
Mike Sabin
Katrina Shanks
Complaints about two notices made by the Plumbers, Gasfitters, and Drainlayers Board relating to an offences fee

Report of the Regulations Review Committee

Contents
Recommendation 2
Introduction 2
The complaint 2
Legislative framework 3
Evidence received 4
Our consideration 5
Unusual or unexpected use of powers conferred by statute 6
Matter more appropriate for parliamentary enactment 7
Conclusion 8
Appendix 10
Complaints about two notices made by the Plumbers, Gasfitters and Drainlayers Board relating to an offences fee

Recommendation

The Regulations Review Committee recommends that the House take note of its report.

Introduction

Between April and July 2012, we received separate complaints from the Plumbers, Gasfitters and Drainlayers Federation of New Zealand and from Mr Allan Day about the offences fee prescribed in an amendment to the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (the principal notice). The amendment was published in the New Zealand Gazette on 15 December 2011.

Parliament’s Standing Orders allow a person or organisation aggrieved at the operation of a regulation to make a complaint to the Regulations Review Committee. The committee may consider the complaint, and draw the regulation to the special attention of the House on one or more of the grounds specified in Standing Orders.

The complaint

Notices complained about

The initial complaints related to the offences fee of $90 prescribed by clause 3(2)(c) of the 2011 amendment notice. This notice was a deemed regulation, made by the Plumbers, Gasfitters and Drainlayers Board under sections 139, 142, and 143 of the Plumbers, Gasfitters, and Drainlayers Act 2006.

The 2011 amendment notice amended the principal notice to insert a new “offences fee” of $90 for “each licensed plumber, gasfitter or drainlayer”. The explanatory note to the amendment notice stated that the offences fee was “for prosecutions the board conducts”, and noted that “the amendments regarding the disciplinary levy and the offences fee are made as a result of acting on a recommendation to review the disciplinary levy made by the Regulations Review Committee”. The report referred to is our February 2011 report on complaints regarding three notices issued by the board on 25 March 2010 and the 2010 notice. In essence, the board responded to our criticism of the disciplinary levy it charged at the time by separating out a new offences fee.

The complainants’ issue with the offences fee was essentially that it was arguably not a fee for a “service”, but something more in the nature of a tax or a levy on registered persons to fund the cost of prosecutions instituted by the board.

In the course of our consideration of these complaints, the board made a further notice, the Plumbers, Gasfitters, and Drainlayers Board (Fees and Disciplinary Levy) Notice 2012, which was published in the New Zealand Gazette on 20 December 2012. Paragraph 10 of the

---

1 Regulations Review Committee, Complaints regarding three notices issued by the Plumbers, Gasfitters and Drainlayers Board on 25 March 2010 and the Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010, AJHR, I.161.
Schedule to the 2012 notice set a new offences fee of $86. The 2012 notice, which came into force on 17 January 2013, revokes the Plumbers, Gasfitters, and Drainlayers Board (Fees) Notice 2010 (including the 2011 amendment to the notice which was the original subject of this complaint) with effect from 1 April 2013. It is also a deemed regulation.

At our meeting of 14 February 2013, we resolved to include the 2012 notice in the scope of these complaints. Although the 2011 amendment notice is no longer in force, we have nevertheless considered it, as the subject of the original complaints, and because the two notices have a similar effect regarding the offences fee.

**Grounds for complaint**

The Plumbers, Gasfitters and Drainlayers Federation of New Zealand and Mr Allan Day submitted that the 2011 amendment notice qualified on a number of the grounds for complaint set out in Standing Order 315(2). The grounds specified were that the notice

- was not in accordance with the general objects and intentions of the empowering statute (Standing Order 315(2)(a))
- trespassed unduly on personal rights and liberties (Standing Order 315(2)(b))
- appeared to make some unusual or unexpected use of the powers conferred by the statute under which it was made (Standing Order 315(2)(c))
- contained matter more appropriate for parliamentary enactment (Standing Order 315(2)(f))
- was retrospective where this was not expressly authorised by the empowering statute (Standing Order 315(2)(g))—specified only by Mr Day
- was not made in compliance with particular notice and consultation procedures prescribed by statute (Standing Order 315(2)(h))—specified only by the Plumbers, Gasfitters and Drainlayers Federation.

**Process**

In May 2012, we referred the complaints, together with a related complaint that has since been dealt with separately, to the board and to the Minister for Building and Construction for their responses. On the basis of these responses, we initially decided to take no further action with the complaints. However, we subsequently received further complaints from the same complainants about the offences fee, and therefore resolved to consider the matter further.

We took oral evidence on the complaints from the complainants, the board, the Office of the Auditor-General (OAG), and Master Plumbers, Gasfitters and Drainlayers New Zealand Inc, in November and December 2012. Following these hearings, we received further written evidence from the OAG, the board, and the complainants.

**Legislative framework**

Section 142(1) of the Act lists the matters in respect of which the board may prescribe fees by notice in the Gazette. They relate mostly to services the board is required to provide as statutory functions, such as processing applications for registration or licences, issuing certificates, adding to or altering the register, and supplying documents or copies of documents to registered persons. The last item listed in section 142(1) is pertinent to the matter at issue:
(i) any other matter that relates to anything the board is required to do in order to carry out its functions.

Section 137(p) of the Act provides that one of the functions of the board is to “institute prosecutions against persons for the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying”.

Evidence received

We received both written and oral evidence on these complaints. We summarise the key evidence we received, below.

Office of the Auditor-General

The most pertinent evidence we received on this complaint was the written evidence from the OAG, dated 5 December 2012, which the OAG submitted to us following its presentation of oral evidence on 29 November. The OAG copied this letter to both the board and the complainants.

The evidence set out the OAG’s view on whether there was lawful authority for setting the offences fee imposed by means of the 2011 amendment notice. The OAG considered that the offences fee was not authorised under the Act, for the following reason:

In our view the charge is more akin to a levy than a fee. Levies charged to a certain group or industry are usually for a particular purpose (as in these circumstances), rather than relating to specific goods or services provided to an individual (which is the basis for a fee).

It therefore concluded that the provision for the charging of fees could not cover such a charge. The OAG acknowledged that this conclusion would put the board in a difficult position, because it was obliged to carry out a statutory function but had no authorised means of funding it. The OAG set out three options for the board:

1 Amending the empowering Act: The “first and best option”, to amend the empowering legislation to give the board clear legal authority to collect funds for the purpose of “enforcing the legislation against non-registered persons”. The OAG considered that the simplest way to achieve this would probably be to amend section 143 to allow an “enforcement levy” to be imposed for both disciplinary (as currently provided for) and offence purposes.

2 Funding through general taxation: The second option was to fund the board’s prosecution function through general taxation, on the basis of the public health and safety benefits to be derived from prosecuting offences. The OAG commented that this option would involve a shift from the current policy of imposing these costs on the plumbing and gasfitting industry, which would be for the Government to decide.

3 Including the costs of prosecutions in the board’s overheads: The “third (and least robust) option” was for the board to fund this part of its prosecution function by treating the costs involved as an overhead to be spread across its various charges. Although the OAG considered that the associated costs would be properly incurred, since the board was legally required to discharge this function, it did not regard this option as “very satisfactory” and described it as “not particularly transparent”, and the cost an “unusual” one to be treated as an overhead. The OAG also thought this option would be likely, in practice, to result in more challenges to the board’s charges.
COMPLAINTS ABOUT PLUMBERS, GASFITERS AND DRAINLAYERS BOARD NOTICES

Plumbers, Gasfitters and Drainlayers Board

We received evidence from the board, dated 14 December 2012, on the three options proposed by the OAG. This evidence is summarised below.

1 Amending the empowering Act: The board agreed that this was a sensible solution but had one caveat, regarding the OAG’s reference to collecting income for the purpose of “enforcing the legislation against non-registered persons”. The board commented that, whilst it mainly prosecutes non-registered persons, it may also need to prosecute registered persons in some circumstances. The board suggested that any such amendment should be focused on “enabling the board to collect income to fund its statutory functions under section 137(p), without referring to either registered or non-registered people.”

2 Funding through general taxation: The board agreed that this option would offer a solution.

3 Including the costs of prosecutions in the board’s overheads: The board had serious doubt about the legitimacy of this option. It commented:

If the board is not lawfully entitled to fund its prosecution function by charging a separate offences fee, it finds it difficult to understand how it would be lawful to fund it by incorporating the costs into its overheads and distributing them across its other fees. Either the cost of prosecutions can be funded by fees or it cannot. If the board is lawfully entitled to fund its costs by incorporating the costs into its various fees, it questions why it is not equally lawful to charge the costs as a direct fee. The situation becomes even more perverse when one considers that if prosecution costs are treated as general overheads, some of these costs will be allocated to the disciplinary levy, a situation that has already been found to be unlawful.

The board also found three other difficulties with this option:

- “Overheads” are the general costs of running an organisation that cannot be directly allocated to a product or service; applying the term to the prosecution costs “would seem to strain the generally understood meaning”.
- Charging the costs as overheads, rather than as a separate fee, would lack transparency and would result in cross-subsidisation, both of which are contrary to the principles set out in the OAG’s guide to charging fees in the public sector.
- Funding the prosecution function via overheads would result in further complaints to the Regulations Review Committee and to the Ombudsman.

Our consideration

Standing Order 315(2) grounds

The complainants cited a number of the grounds in Standing Order 315(2) as relevant to their complaint. We consider that only two of these grounds are relevant to this complaint, and have confined our examination to them: Standing Order 315(2)(c), that the regulation appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made; and Standing Order 315(2)(f), that the regulation contains matter more appropriate for parliamentary enactment.

We note that the board went ahead and made the 2012 notice on 20 December, despite the advice from the OAG dated 5 December 2012 that the offences fee set by the 2011 amendment notice was not authorised under the Act.
Complaints about Plumbers, Gasfitters and Drainlayers Board Notices

Plumbers, Gasfitters, and Drainlayers Amendment Act 2013

On 11 March 2013, when the evidence-gathering stage of our investigation was complete, the Government introduced the Plumbers, Gasfitters, and Drainlayers Amendment Bill to the House. The bill was enacted on 13 September 2013 and came into force on the following day. The resulting Act addresses the key concerns we raise in this report. We discuss the effect of the Act in our concluding remarks.

Unusual or unexpected use of powers conferred by statute

We considered whether the provisions of the 2011 amendment notice and the 2012 notice (the notices) that set an offences fee appeared to make some unusual or unexpected use of the delegated power in section 142(1)(i) of the Act.

OAG guidelines

The OAG considered that the offences fee was not authorised under the Act. Its assessment was based on the principles set out in Charging fees for public sector goods and services, the OAG’s own guidelines. These guidelines set out expectations of how public entities should set fees, where they have statutory authority to charge a fee for the goods or services that they are obliged to provide.2

On the basis of the principles set out in the guidelines, the OAG described the charge imposed by the offences fee as “more akin to a levy than a fee”. A levy is described in the guidelines as follows:

A levy differs from a fee for a specific good or service; it is more akin to a tax, but one that is charged to a specific group. It is usually compulsory to pay a levy. Levies charged to a certain group or industry are usually used for a particular purpose, rather than relating to specific goods or services provided to an individual.3

Purpose of empowering provision

We agree with the OAG’s assessment. In effect, the board is seeking to use section 142(1)(i) of the Act to set a charge in the nature of a levy, in that it is using its fee-setting power to collect money from every licensed person within the industry to fund its prosecution function. Section 142(1)(i) authorises the board only to set a fee, not a levy. A fee relates to specific goods or services provided to an individual and is usually the means of recovering the costs of providing them. The purpose of the offences “fee” set by the board is to cover the cost of all prosecutions taken under the Act, which cannot be described as a specific service provided to an individual.

Section 142(1) reads in full:

The Board may, by notice in the Gazette, prescribe the fees payable in respect of the following matters:

(a) an application for registration or the issue of any licence under Part 2:
(b) an application for the renewal of any licence under Part 2:
(c) an addition or alteration to the register:


3 Ibid, para 1.10
(d) the issue of any certificate, or a copy of any certificate;
(e) an application for an exemption under Part 1 or Part 2;
(f) the supply of a copy of any entry in the register;
(g) inspection of the register, or of any other documents kept by the Board that are open for inspection;
(h) the supply to any registered person of any documents, other than a certificate of registration or a licence, required by him or her for the purpose of seeking registration or a licence overseas;
(i) any other matter that relates to anything the Board is required to do in order to carry out its functions.

The other matters listed in paragraphs (a) to (h) of section 142(1) are all specific services that the board is providing to particular individuals who have sought them from the board. It is a well-established principle of statutory interpretation that a paragraph such as paragraph (i), referring to “any other matter”, must be “read down” in line with its preceding paragraphs.4 In other words, the delegated power in paragraph (i) must be read consistently with paragraphs (a) to (h), and is limited by the nature and context of those earlier paragraphs. The reference to “any other matter” in paragraph (i) is therefore limited to matters for which the board may recover costs in return for providing a service, and should not be seen as encompassing every activity of the board for which it has a statutory mandate.

**Our conclusion**

We consider that the offences fees imposed by the 2011 amendment notice and the 2012 notice are not authorised under section 142(1)(i) of the Plumbers, Gasfitters, and Drainlayers Act 2006. The offences fee is effectively an industry-wide levy, applying to every licensed person in the industry; it is not a fee. Section 142(1)(i) does not empower the board to charge a levy to fund the cost of prosecutions, despite the fact that section 137(p) of the Act charges the board with instituting prosecutions against persons for the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying.

It is unexpected that the notices should impose a fee to fund the cost of prosecutions instituted by the board in discharging its statutory functions where the imposition of such a fee is not authorised by the empowering provision, section 142(1)(i) of the Act. This is particularly so because section 142(1)(i) must be read in line with the preceding paragraphs of the subsection, all of which specify services that the board provides to particular individuals who have sought them from the board. The board’s prosecutions function cannot be said to be such a service.

**Matter more appropriate for parliamentary enactment**

We considered whether the provisions of the 2011 amendment notice and the 2012 notice that set an offences fee contained matter more appropriate for parliamentary enactment.

**Only Parliament may levy a tax**

It is a fundamental constitutional principle, dating back centuries, that only Parliament may levy a tax. This principle, which stems from Article 4 of the Bill of Rights 1688, is set out in

---

section 22 of the Constitution Act 1986, which specifically says it is unlawful for the Crown to levy a tax.

Consequently, as the leading authority on parliamentary practice puts it:

Taxation must be authorised by Parliament either directly in primary legislation or by regulations authorised by such legislation. It is illegal for the Crown to levy money on its subjects without parliamentary authority.5

This principle is reflected in the OAG guidelines:

Setting a fee that recovers more than the costs of providing the goods or services could be viewed as a tax. Unless expressly authorised by statute, this would breach the constitutional principle that Parliament’s explicit approval is needed to impose a tax. Accordingly, any authority given to a public entity to charge a fee is implicitly capped at the level of cost recovery.6

**Our conclusion**

We have said that we consider that the offences fee imposes a charge that is more in the nature of a levy than a fee. The board does not have statutory authority to set such a levy.

We therefore consider that the notices contain matter that would have been more appropriate for parliamentary enactment, namely the offences fees. In the absence of explicit parliamentary authority, the board has no power to raise a charge in the nature of a levy on every licensed person in the plumbers, gasfitters, and drainlayers industry.

**Conclusion**

**Standing Order 315(2)**

We consider that clause 3(2)(c) of the amendment to the Plumbers, Gasfitters, and Drainlayers Board (Fees) Notice 2010, published in the Gazette on 15 December 2011, and paragraph 10 of the Schedule to the Plumbers, Gasfitters, and Drainlayers Board (Fees and Disciplinary Levy) Notice 2012, published in the Gazette on 20 December 2012

- **appear to make an unusual or unexpected use of the delegated power in section 142(1)(i) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (Standing Order ground 315(2)(c)); and**

- **contain matter more appropriate for parliamentary enactment (Standing Order ground 315(2)(f)).**

We acknowledge that the enactment of the Plumbers, Gasfitters, and Drainlayers Amendment Act 2013 means that any offences fee payable under the notices that was prescribed by the board on and from 12 January 2012 has now been validated.7 Moreover, the amendment Act has inserted a specific provision into the principal Act that gives clear authority for the board to impose a disciplinary and prosecution levy for the purpose of funding the costs arising out of its prosecution function. We therefore consider that the enactment of the amendment Act has effectively addressed the substance of the complaints.

---


6 *Charging fees for public sector goods and services*, para. 6.

7 New section 171B, as inserted by clause 5 of the bill.
Wider issue with operation of Plumbers, Gasfitters, and Drainlayers Act 2006

Before the enactment of the Plumbers, Gasfitters, and Drainlayers Amendment Act 2013, and assuming that Parliament did not intend the cost of the board’s prosecutions to be funded from general taxation, there was a fundamental problem with the way the 2006 Act was drafted. Sections 137 and 142 of the Act interacted in such a way that the board was effectively required to carry out a function for which it was not authorised to raise funds.

We are pleased that the 2013 Act has addressed this problem. Section 4 of the 2013 Act amended section 143 of the 2006 Act to authorise the board to impose a “disciplinary and prosecution levy” on every registered person. The board is authorised to use the proceeds of the levy to fund the cost of “investigations into, and prosecutions against persons for, the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying.”

Section 4 means that the board is now properly authorised to impose a levy to cover the cost of all prosecutions taken under the Act.
Appendix

Committee procedure
We met between 8 November 2012 and 26 September 2013 to consider these complaints. We received evidence from the complainants, the Plumbers, Gasfitters and Drainlayers Federation of New Zealand and Mr Allan Day, from the Plumbers, Gasfitters and Drainlayers Board, the Office of the Auditor-General, and Master Plumbers, Gasfitters and Drainlayers New Zealand Inc. The committee received advice from the Office of the Clerk of the House of Representatives.

Committee members
Hon Maryan Street (Chairperson)
Andrew Little
Ian MacKelvie
Mike Sabin
Katrina Shanks
Contents
Recommendation 2
Introduction 2
Legislative framework 2
Our investigation 4
Our consideration 6
Conclusion 9
Appendix A 10
Appendix B 11
Investigation into the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012 (SR 2012/363)

Recommendation

The Regulations Review Committee recommends that regulation 14 of the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012 (SR 2012/363) be drawn to the special attention of the House, and that the Government consider whether fees may lawfully be collected in accordance with regulation 14, in the light of this report.

Introduction

We first considered the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012 (SR 2012/363) as part of our usual scrutiny process. The regulations were made under section 118 of the Marine and Coastal Area (Takutai Moana) Act 2011.

The regulations were made by the Governor-General, acting on the advice and with the consent of the Executive Council and on the advice of the Minister of Justice after consultation with the Minister for Land Information, on 10 December 2012. They came into force on 18 January 2013.

Legislative framework

The regulations provide for fees for considering and processing applications made and actions taken under sections 34 to 45 of the Act. These provisions relate to the reclamation of land from the marine and coastal area.

Regulation 14 is described as a transitional provision. It applies only to applications made under sections 35 or 43 of the Act before the commencement of the regulations on 18 January 2013. Regulation 14 provides that the applicant is liable to pay the fee that applies to their application if they have confirmed to Land Information New Zealand that they still want to proceed with it. This applies despite regulation 11, which would have required the applicable fee to be paid when the application was made. But for regulation 14, applicants who applied under sections 35 or 43 before 18 January 2013 would not be liable to pay an application fee.

The empowering provision

The regulations were made under section 118 of the Act, the relevant provisions of which are as follows:

118 Regulations for administrative purposes

(1) The Governor-General may, by Order in Council, make regulations for any of the following purposes:

1 Under Standing Order 314(1).
(h) prescribing the fees payable, or the methods or rates by which fees are to be assessed, for—

(i) the consideration and processing of applications made, or actions taken, under sections 34 to 45:

(ii) decisions made under Schedule 2:

(iii) public inspection and copying of documents on the register:

(k) providing for any other matters contemplated by this Act or necessary for giving it full effect.

We discuss the empowering provision below.

The scheme of the Act

The Act came into force on 1 April 2011 (the day after it received Royal assent). When the Act came into force a number of pending applications relating to reclaimed land had been made under section 355(1) of the Resource Management Act 1991 but had not yet been substantively determined by the Minister of Conservation.

Section 41 of the Act allows certain applicants with pending applications the option of requesting to have their application considered and determined under section 35 of the Act by the Minister for Land Information rather than under the Resource Management Act.2

Under section 41 of the Act applicants have 180 days from the commencement of the Act to request the Minister of Conservation in writing to transfer the applications to the Minister for Land Information.3

On receipt of a request to transfer, the Minister of Conservation is required to refer all the documents relating to the pending application to the Minister for Land Information. The Act requires that the reference of the documents be treated as an application under section 35.

Section 35 deals with applications for the grant of an interest in reclaimed land. A person who makes an application under section 35 becomes liable for any fees payable under regulations made under the Act,4 which are recoverable as a debt due to the Crown.5

Sections 41 and 35 interact in such a way that at the point when the documents relating to a pending application for reclaimed land are referred by the Minister of Conservation to the Minister for Land Information, the pending application must be treated as a section 35 application; and so the applicant also becomes liable for any fees that are payable under regulations for a section 35 application.

---

2 The Act provides for the application to be considered and determined by the Minister (within the meaning of section 29 of the Act). Section 29 defines “Minister” to mean the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Land Act 1948.

3 Section 41(6).

4 Section 35(5).

5 Section 35(6).
Our investigation

During our initial scrutiny of the regulations, we were concerned about regulation 14, which applies to applications made before the commencement of the regulations.

We therefore wrote to the department responsible for administering the regulations, Land Information New Zealand (LINZ), seeking information about the applications affected by regulation 14, and asking whether regulation 14 had retrospective effect. We also asked about the legislative authority for regulation 14, and why the regulations had not been in place when the Act came into force.

LINZ responded to us on 15 March 2013. We considered this response and, on 28 March 2013, wrote back to LINZ, seeking further information, which we received on 26 April 2013. We considered this further response and were still not completely satisfied, so we wrote again to LINZ on 2 August 2013. LINZ responded on 22 August 2013.

We heard evidence from LINZ and Office of Treaty Settlement officials on 5 September 2013.

The written responses and evidence presented are summarised below.

Regulations not in force when Act commenced

LINZ acknowledged that when the Act commenced on 1 April 2011 there were no regulations in force prescribing the fees for applications made under sections 35 and 43. LINZ explained that it did not make the regulations until 18 January 2013 for the following reasons:

- The Act mandates a complex process for setting regulations. The regulations are made on the advice of the Minister of Justice, after consultation with the Minister for Treaty of Waitangi Negotiations, who must consult customary marine title groups likely to be affected by the regulations. This consultation process required coordination between two departments and three Ministers’ offices.
- An issue that arose during consultation about another aspect of the fees proved much more complex than expected, and necessitated another round of public consultation.

Applications transferred

LINZ initially told us that the Department of Conservation had transferred six pending applications, but later revised this to five applications. LINZ provided us with information about the five applications made under the Resource Management Act that had been transferred from the Department of Conservation to LINZ before the regulations commenced on 18 January 2013 as follows:
INVESTIGATION INTO MARINE AND COASTAL AREA REGULATIONS 2012

Table 1: Applications under the Resource Management Act 1991 relating to reclaimed land that were pending at the commencement of the Act (information provided by LINZ)

<table>
<thead>
<tr>
<th>Name</th>
<th>Applicant</th>
<th>Date of request to the Minister of Conservation under section 41(4) of the Act</th>
<th>Date the request was approved by the Minister of Conservation</th>
<th>Date the documents relating to the application were transferred from DOC to LINZ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bayswater Marina</td>
<td>Bayswater Marina Holdings Ltd</td>
<td>20 April 2011</td>
<td>30 May 2011</td>
<td>23 November 2011</td>
</tr>
<tr>
<td>Sulphur Point</td>
<td>Port of Tauranga Ltd</td>
<td>22 August 2011</td>
<td>1 May 2012</td>
<td>4 September 2012</td>
</tr>
<tr>
<td>Redbridge Road</td>
<td>Thames Coromandel District Council</td>
<td>27 September 2011</td>
<td>8 February 2012</td>
<td>6 September 2012</td>
</tr>
<tr>
<td>Sugar Loaf Wharf</td>
<td>Thames Coromandel District Council</td>
<td>27 September 2011</td>
<td>1 May 2012</td>
<td>6 September 2012</td>
</tr>
<tr>
<td>Havelock Marina Marlborough</td>
<td>Port Marlborough NZ Ltd</td>
<td>9 September 2011</td>
<td>27 November 2012</td>
<td>19 April 2013</td>
</tr>
</tbody>
</table>

Table 1 indicates that documents relating to the first four applications listed were referred to the Minister for Land Information in the period before the regulations came into force on 18 January 2013. Regulation 14 therefore applies to these four applications, as they were effectively made under section 35 before 18 January 2013. However, the documents relating to the Havelock Marina Marlborough application were referred on 19 April 2013, which was after the regulations came into force on 18 January, so regulation 14 does not apply to this application. The requests relating to the applications listed above were all made within the 180-day timeframe required by section 41(6) of the Act.

**Charging the applicants fees**

LINZ told us that, despite the fees not having been set when four of the pending applications were transferred, it felt it was necessary to charge these applicants a fee. LINZ argued that if such a fee were not permitted, the cost of providing the service would have had to be met by taxpayers or other LINZ customers, and that it would be inequitable to have the delivery of these services, which relate to large-scale property developments such as marinas, fully funded by anyone other than the property-developer applicants who are the direct beneficiaries of the service.
The confirmation procedure in regulation 14 applies if an application was made before the commencement of the regulations but is to be considered and processed after that date. It requires the relevant application fee to be paid within 20 working days after the applicant has confirmed to LINZ that they wish to proceed with the application.

LINZ explained that the confirmation procedure provided for in regulation 14 was intended to avoid retrospectivity, and did not accept that regulation 14 had retrospective effect. LINZ said it does not consider that regulation 14 offended against the principle against retrospectivity, and described the situation as not typifying the mischief targeted by that principle. LINZ explained that it had established the confirmation procedure because it wanted a process in place to allow applicants whose applications were already in train to either withdraw from the process or confirm that they wanted to proceed in the knowledge of what the fees were.

### Legislative authority for regulations
LINZ consistently expressed the view that the confirmation procedure in regulation 14 was authorised by sections 118(1)(h) and 118(1)(k) of the Act.

Section 118(1)(h) provides that regulations may be made “prescribing the fees payable, or the methods or rates by which fees are to be assessed, for…the consideration and processing of applications made, or actions taken, under sections 34 to 45”. LINZ considered that section 118(1)(h) provided authority for regulation 14 because it considered that the confirmation procedure was an example of a method by which fees are to be assessed. LINZ told us that methods do not have to be mathematical or calculated in their effect but may be process related (as in assessing when payment of the fee is to occur) to fit specific circumstances as required to give full effect to the Act itself.

LINZ also pointed to section 118(1)(k) as providing statutory authority for regulation 14, because it believed that the confirmation process was an administrative matter arising from the operation of the 2011 Act and therefore necessary for giving it full effect. LINZ argued that the confirmation procedure was contemplated by the Act because section 41 of the Act envisaged that an applicant would need to confirm that they wanted to proceed, and “this regulation, which requires you to take further steps to demonstrate that you want to proceed, is consistent with that”.

LINZ's solicitor expressed the view the Act could be read to mean that the fees need not be operating at the time of the referral from the Minister of Conservation; they can be fees which will be enacted in the future.

In oral evidence, the Office of Treaty Settlements told us that regulation 14 can be considered an ancillary procedural provision, which sets out the mechanics of how the fees will be payable, and that this is authorised by the catch-all provision in section 118(1)(k).

### Our consideration
Standing Order 315 requires that in examining a regulation, the committee consider whether it should be drawn to the attention of the House on one or more of the grounds set out in Standing Order 315(2). We considered the regulations in respect of the following three grounds:
• that the regulation is not in accordance with the general objects and intentions of the statute under which it is made\(^6\)

• that the regulation appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made\(^7\)

• that the regulation is retrospective where this is not expressly authorised by the empowering statute.\(^8\)

**General objects and intentions of statute**

We considered whether regulation 14 is in accordance with the general objects and intentions of the Act.

Specifically, we considered whether regulation 14 is consistent with the intentions of the Act as a whole, and whether the delegated legislative power in section 118 of the Act authorises the making of regulation 14.

We consider that regulation 14 is not consistent with the scheme and objects of the Act for the treatment of the applications that were pending under the Resource Management Act at the time when the Act came into force. The Act specifies that from the point when an application is transferred (that is, when the documents are referred to the Minister for Land Information) the application is to be treated as a section 35 application, and that any fees prescribed for a section 35 application become payable when the application is made. The effect of the confirmation procedure in regulation 14 is to prescribe a different time and procedure for the payment of the prescribed fees, both of which are contrary to section 35.

In our view, the procedure prescribed by regulation 14 is therefore inconsistent with the scheme of the Act.

LINZ and the Office of Treaty Settlements have pointed to a catch-all empowering provision in section 118(1)(k) as a source of authorisation for regulation 14. Section 118(1)(k) allows regulations to be made to provide “for any other matters contemplated by this Act or necessary for giving it full effect”. It is an established principle of statutory interpretation that a catch-all provision is intended to cover matters that are ancillary or incidental to what is enacted in the statute, but does not support a widening of, or departure from, the underlying intent and purpose of the Act.\(^9\)

We agree that a procedure such as that set out in regulation 14 could ordinarily be regarded as a procedural requirement, and therefore could ordinarily come within the ancillary or administrative matters covered by a catch-all provision. However, in this case, the confirmation procedure cannot be said to have been contemplated by the Act, as it is not envisaged by the explicit wording of the Act. It also amounts to a departure from the underlying intent of the Act that transferred pending applications are treated as applications under section 35.

Similarly, we do not consider that the confirmation procedure is necessary for giving full effect to the Act, because it is inconsistent with the scheme of the Act, which provides that on the transfer of a pending application to LINZ, the applicant is required to do nothing more than pay the prescribed fee for the application.

\(^6\) SO 315(2)(a).

\(^7\) SO 315(2)(c).

\(^8\) SO 315(2)(g).

\(^9\) *Shanahan v Scott* (1957) 96 CLR 245.
By requiring applicants to confirm their intention to proceed with the transferred application, the confirmation procedure in regulation 14 is adding an extra regulatory step that is neither contemplated by the Act nor necessary for giving it full effect.

We therefore consider that regulation 14 is not in accordance with the general objects and intentions of the Act under which it is made.

**Unusual or unexpected use of powers conferred by statute**

We considered whether regulation 14 makes some unusual or unexpected use of the delegated legislative power conferred by section 118 of the Act.

LINZ pointed to section 118(1)(h) of the Act as authorising the confirmation procedure in regulation 14. Section 118(1)(h)(i) provides for regulations to be made prescribing “the fees payable, or the methods or rates by which fees are to be assessed, for the consideration and processing of applications made, or actions taken, under sections 34 to 45”. LINZ considered that the confirmation procedure was a method by which the fee was to be assessed, because the assessment of what (if any) fee to collect depends on whether the applicant has confirmed they want to proceed with the application.

We consider that “methods or rates” in this context is intended to refer to such things as mathematical formulae, ratios, or proportions for deriving the amount in fees to be paid. It would be straining the ordinary meaning of the phrase “methods or rates” to suggest that it could include an applicant’s act of confirming that the application could proceed. We also consider that the provision is expressed in alternative terms (the regulations could either specify the fees or the method by which the fees are to be assessed), so if the confirmation procedure could properly be described as a method by which fees are to be assessed the regulations would be unworkable because they could not provide a mechanism for determining the amount payable.

LINZ could not point to any examples or models of a similarly worded legislative power being used to authorise a confirmation procedure.

We therefore consider that regulation 14 makes an unusual or unexpected use of the legislative power delegated in section 118 of the Act.

**Retrospective where not expressly authorised**

We considered whether regulation 14 is retrospective where this is not expressly authorised by the empowering statute.

It is generally accepted that legislation should be forward-looking in its effect. Given that regulation 14 applies only to applications made before the regulations came into force, we wanted to ascertain whether it had retrospective effect.

We accept that LINZ included the confirmation procedure in regulation 14 because it was endeavouring to avoid the regulations having a retrospective effect. To this end regulation 14 alters the timing for the payment of the fee, by requiring applicants to confirm that they wish to proceed with their applications at a point after the regulations came into force and the fees became known. However, the overall effect of regulation 14 is to require applicants to pay a fee that had not been set at the time it became payable under the Act—

---

in other words, at the time they lodged their applications. We therefore consider that regulation 14 has the effect of indirectly imposing a retrospective fee.

At no point did LINZ or the Office of Treaty Settlement suggest that the empowering statute expressly authorises imposing fees retrospectively. While LINZ’s solicitor did suggest it was arguable that the fees could be set at a point in time after the documents had been referred and the fees became payable, she did not point to any express statutory authority for this view. We therefore do not consider that retroactivity is expressly authorised in this case.

We therefore find that regulation 14 is indirectly retrospective, and this is not expressly authorised by the empowering statute.

**Conclusion**

We find that regulation 14 of the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012

- is not in accordance with the general objects and intentions of the statute under which it is made (Standing Order 315(2)(a))
- appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made (Standing Order 315(2)(c)).

While we do not consider that regulation 14 is directly retrospective, we also find that because of the confirmation procedure’s inconsistency with the scheme of the Act, regulation 14 is indirectly retrospective where this is not expressly authorised by the empowering statute (Standing Order 315(2)(g)).

On this basis we recommend that regulation 14 be drawn to the special attention of the House, and that the Government consider whether fees may lawfully be collected in accordance with regulation 14 in the light of this report.

We have decided to draw regulation 14 to the special attention of the House because we are also concerned that it establishes an undesirable precedent for a regulatory mechanism that was specifically designed to avoid the retrospective application of the relevant prescribed fees. In our view, such a mechanism was neither contemplated by the Act nor necessary for giving it full effect.
Appendix A

Committee procedure
We met between 14 February and 26 September 2013 to consider this investigation. We received evidence from Land Information New Zealand and Office of Treaty Settlements.

Committee members
Hon Maryan Street (Chairperson)
Andrew Little
Ian McKelvie
Mike Sabin
Katrina Shanks
Good morning and welcome to all of you, Craig and your team. Thank you very much for your time this morning. Can I advise you that your evidence will be recorded and transcribed this morning. Essentially, Craig, we are going to this issue of the confirmation procedure, so if you would like to talk to that issue, that is the one that is within the remit of this committee.

OK. If it’s acceptable, I’ll just make some brief opening comments and then we can move to questions.

I’ll comment briefly on the context of the regulations, then on those matters of interpretation. So in our view, the regulation at issue, regulation 14, is an appropriate response for the need for an appropriate fee to cover the applications made to LINZ under the legislation. When the Act commenced, the responsibility for reclaimed land services was transferred from the Department of Conservation to LINZ, and the Department of Conservation had been undertaking that role under the Resource Management Act. Section 41 of the Act, of the 2011 Act, gives applicants whose reclamation applications are pending under the RMA the option of either proceeding under the RMA or having the application transferred to LINZ and dealt with under section 35 of the 2011 Act. At the point the
2011 Act commenced, where applicants elected to transfer, there were no fees regulations in force. LINZ did not and does not receive Crown-funded appropriations to cover the cost of processing those applications, so it would’ve been inequitable to require other fee-paying users of LINZ services to cross-subsidise those applications.

The 2011 Act provides a relatively complex process for setting the fees. Fee structure is provided for in regulations made on the advice of the Minister of Justice after consultation with the responsible Minister, which in this case is the Minister for Treaty of Waitangi Negotiations. And the responsible Minister has to consult with customary marine title groups that appear to the Minister to be likely to be affected by the regulations. So LINZ was therefore required to set the fees in regulations within the constraints of the empowering legislation, which we don’t administer, for delivery of services that were already in train with another department but where the applicants could elect to transfer their application to LINZ. Five applicants were elected to transfer their applications to LINZ, so regulation 14 only applies to those five applications. These applications relate to very large multimillion-dollar property developments in which the value of the reclamation fee is an extremely small part of the total transaction. If LINZ were not permitted to charge these applicants, the cost of providing a service would have to be met from LINZ’s Crown appropriations, and it would be inequitable to have these services, which relate to these property developments, funded as a public good when it’s so clearly a private good and normally fees would be charged.

Regulation 14 did not unfairly impinge the rights of those five applicants. In our view this is not a situation typical of the harm targeted by the principle against retrospectivity. The applicants always knew they would have to pay fees either to the Department of Conservation or to LINZ, they were consulted throughout the development of the LINZ fees, and they were asked to confirm after the commencement of regulation 14 whether they wanted their application to proceed.

On the matters of interpretation, section 118(1)(k) of the 2011 Act provides that regulations may be made “providing for any other matters contemplated by this Act or necessary for giving it full effect.” So we consider that the confirmation process provided in regulation 14 is a matter contemplated by this Act and/or necessary to give it full effect. Regulation 14 requires applicants to take some steps to indicate they still wish to proceed with their application, and this is consistent with the elective choice provided under section 41. The pending RMA applications are not automatically transferred to LINZ; applicants had to write to the Minister of Conservation to indicate their wish to have the application dealt with under the 2011 Act. So the confirmation process is therefore consistent with the general scheme of the 2011 Act.

We also think that section 118(1)(h) authorises the confirmation procedure in regulation 14. This provision provides that regulations may be made “prescribing the fees payable, or the methods or rates by which fees are to be assessed, for—(i) the consideration and processing of applications made,
or actions taken, under sections 34 to 45:”’. We don’t agree with the view
that the options under section 118(1)(h) of prescribing the fees payable or
the methods or rates by which fees are to be assessed are mutually
exclusive. The fees are fixed elsewhere in the regulations while section 14
provides the method required to assess fees for applications made before,
but processed after, the commencement of the Act. We therefore remain of
the view that regulation 14 is intra vires the 2011 Act.

Street
Thank you very much, indeed. Thank you, Craig. We have Alfred Ngaro
replacing Mike Sabin. Welcome, Alfred. Thank you very much for that.
Obviously the issue for us on this committee hinges around the necessity
and the form of the confirmation procedure. We have received and read
your letters over time about this issue, but we’re still a bit exercised by the
confirmation procedure itself. Do my colleagues want to begin with
questions? I’ll start, in that case. So, in summary, why was the confirmation
procedure required and why did you settle on that kind of procedure in
order to address the fees issue, because clearly there wasn’t a fee stipulated
in the new legislation at any time. Can you just expand on that a bit, please?

O’Brien
Well, we wanted to avoid the retrospectivity issue because those
applications had already been made, so we needed to be able to charge for
the services that we were going to be providing to those applicants. We
didn’t have any fees in place so to avoid the possibility of breaching the
retrospectivity principle, we wanted to make sure that those applicants
whose applications were already in train had the opportunity to either
withdraw from the process or to confirm that they still wanted to proceed
in the knowledge of what the fees were.

The concern was that if we didn’t have some sort of process like that, you
know, then people wouldn’t be able to demonstrate that they’d made a fully
considered decision in the light of the new information, which wasn’t
available at the time they made the original application to DOC—that they
could make a fully informed decision about whether or not they wanted to
proceed.

Street
So, essentially, that process wouldn’t have been required if the fees had
been set in the new legislation that was enacted?

O’Brien
That’s right.

McKelvie
And the new the information was the fees?

O’Brien
Yes.

Dalziel
Sorry, I’m sort of, kind of lost because what I’m trying to find in sections
34 to 45 of the legislation is the basis upon which you would make this
confirmation proceeding, which is not contemplated by the legislation.
That’s what I don’t get. Because I understand why you’ve done this; I just
want to understand the legal basis for it.

O’Reilly
So it would be in section 41. That deals with the transfer of applications, or
the potential for transfer of applications.
Dalziel Sorry, I should have printed out that Act before I came. I know that these computers are designed to save time, but there you go. Right, so just draw my attention to the confirmation process in there.

O’Reilly So it’s sort of set out throughout section 41, but the key provision, I guess, is 41(6) and 41(7).

Street Yes, so, in fact, in one of your documents to us you make that point: “Section 41 of the 2011 Act relates to pending applications. Subsection (7) requires DOC to transfer certain of those pending applications to LINZ. The transfer is effective upon the referral of all related documents. The Act does not specify a time frame.” It’s reasonable to assume that it would carry over immediately, but our point, again—Lianne Dalziel says we understand why you did it. It seems to be an inference, rather than an explicit legal basis—an inference that you draw from section 41 that you have based this confirmation procedure upon. Is that correct? Because it’s not explicit, is it.

Dalziel Well, it’s less than that. If you turn your mind to clause 7 of section 41: “on receipt of a request under subsection (4),” which is sparked by the applicant, “the Minister of Conservation must refer all the documents relating to the application to the Minister … and the reference of those documents must be treated as an application under section 35.” Where do you get your authority for a confirmation procedure?

O’Brien We think we get the authority from 118(1)(k)—

Dalziel Sorry, you referred me to section 41. Section 41 is crystal clear, right?

O’Brien Yes.

Dalziel There is no confirmation procedure in section 41?

O’Brien Yes.

Dalziel So you’ve created that out of a regulation-making power. So let’s turn our attention to the regulation-making power in section 118—

O’Brien Section 118(1)(k).

Dalziel And 118(1)(k) says: “providing for any other matters”. But you’ve already got 118(1)(h), which is prescribing the fees. So you can’t go to 118(1)(k) if you’ve got a prescribing fees clause. So now it comes down to the words “or the methods”, and a method cannot possibly relate to the creation of a confirmation process not contemplated and, in fact, explicitly excluded by the Act. That’s our problem.

O’Brien I guess—

Challis I’m Jacky Challis. I work in OTS.

Street Thank you, Jacky. Did you want to say something at this point?

Challis I do. Perhaps if Cindy goes first—

O’Brien Well, I was just going to say it’s not clear to us why that’s prohibited. 118(1)(k) enables regs to be made “providing for any other matters contemplated by this Act or necessary for giving it full effect.” We’re saying that the confirmation process in the regulation at issue is contemplated by
the Act, because section 41 requires you to confirm that you want to have your application dealt with in a particular way. So under section 41, if you want to have your application dealt with under the MACA, rather than the RMA, you’ve got to evidence that. You’ve got to write to the Minister of Conservation.

What we’re saying is that if the Act envisaged that you do something to confirm that you still want to proceed, we think this regulation, which requires you to take further steps to demonstrate that you want to proceed, is consistent with that.

Dalziel Work me through that. I’m on section 41, so where does it say that?

O’Reilly So 41(6), I think it is, requires you to advise the Minister of Conservation—a request in writing to the Minister of Conservation seeking the transfer, and then 41(7)—

Dalziel And presumably these five did that?

O’Reilly They did. They did, and they all did it within the 180-day time frame.

Dalziel And then you asked them to confirm?

O’Reilly Yep, and then the Minister of Conservation, or Department of Conservation on his behalf, transferred the documentation associated with those applications to us. And that wasn’t an immediate thing; it was a very subsequent matter in some cases.

Dalziel And the reference of the document must be treated as an application under section 35. So you, therefore, have your application under section 35 in play. So let’s look at section 35. What does that tell us? At that point a developer who makes an application under this section becomes liable to pay any fees payable under regulations made under this Act—regulations made under this Act. The problem was the regulations were late. Right? See, all you’re doing is trying to fix a problem that was created by the fact that the regulations weren’t ready. Let’s be honest. That’s exactly what happened—yeah?

O’Reilly The regulations could not have been made in a way that would have satisfied every eventuality of the legislative structure here. So—

Dalziel There were only five applications that could possibly be transferred.

O’Reilly No, there were more than five, but only five chose to confirm and transfer.

Dalziel OK, how many were?

O’Reilly Well, I think it was something like a dozen.

Dalziel A dozen? You know that there were 12 and that five—

O’Reilly I would need to check exactly, but I think it is something around that number.

Dalziel OK.

O’Reilly But they could have chosen to make that application to transfer the day after the Act came into force. And on the logic that you’re outlining there,
then they wouldn’t have had to pay a fee because we couldn’t possibly have
had the regulations in place the day after an Act comes into force, because
you cannot make the regulation until you have the empowering provisions.

Dalziel But, as you said, the Department of Conservation didn’t make the transfer
instantly.

O’Reilly No.

Dalziel They took time and, assuming that these ducks were lined up, you would
have had the regulations in place at the point of the transfer and the fees
would have been liable. I mean, an interdepartmental meeting would’ve
organised for the two to line up. I mean, I’ve been a Minister where we did
this all the time in the commerce area. We had to have fees in place at the
time that certain new provisions came into place, and departments worked
very closely together to make sure that this didn’t happen. It seems to me
that a mistake has happened and that a regulation has been used to try and
remedy the mistake. We all understand why. What we’re really interested in
is whether technically you have complied with your obligations to get that
right. I’m doubtful about that and that’s what we’re trying to explore. I
mean, you may be right, but we need to see the actual legal basis for the
decision that you made.

Street Jacky, from OTS’s point of view, what do you want to add?

Challis I think the concern just expressed is based on an assumption that 35(5)
specifies that the fees have to be paid at the time an application is made. I
know the committee mentioned that in its 2 August letter. I’m not sure that
we read it that way. I think another point we’d make relates to the authority
for the confirmation procedure. Regulation 14 doesn’t prescribe the fee or
levy per se—it refers to regulations 4 and 8, which prescribe the fees—and
I think regulation 14 can be considered as an ancillary procedural provision,
which sets out the mechanics of how the fees will be payable. And in your 2
August letter you said that such ancillary administrative purposes would
come within the catch-all provision of 118(1)(k). I think the issue here is
that I believe the committee thinks that 35(5) provides that when an
application is made, the fees have to accompany the application. But, of
course, when these applicants made the application, they’re making them to
the Minister of Conservation at the time, so the fees couldn’t have
accompanied the application.

Dalziel No, no. The application is at the point that it transfers from DOC to
LINZ. So section 35 is referenced in 41(7). So it’s on the receipt of the
request—it’s the reference of the documents must be treated as an
application under section 35. So that’s the point that this application comes
into play. It’s not the fact that we’re saying that they have to be
accompanied by the fees; it’s that they become liable to pay the fees, any
fees payable under regulations made under the Act. But the regulations
weren’t made under the Act at the time. Let’s just do a little bit of free and
frank here. It was just a mistake made by two departments not operating in
unison to get the dates married up. It was so easy. All DOC had to do was
make sure that there were no transfers until the point that the fees regulations were in place.

O’Brien Except that the problem is that under 41(6) you can make the application as soon as the Act commences, so the application could have been made the day that the Act came into force. Whether or not DOC transferred them until later on, that doesn’t get around the fact that the application could still be made at the point where the fees weren’t set.

Dalziel There wasn’t a time frame under section 7, on receipt of a request that a Minister of Conservation must refer all the documents. There isn’t a court in this land that would say that that’s the instant it’s received. Of course it would have to be processed, it would have to be put together in a particular shape, but they have up to 180 days after the commencement of the Act to make the request.

O’Brien I understand that. What I’m saying, though, is that legally they could have made it on the day that the Act came into force, and they could have done that.

Dalziel But you must have been working on the fees regulations before the Act came into play. You must have been.

O’Reilly But if you recall, the marine and coastal legislation was done in a very short time frame. It was pushed through very quickly. The policy work underpinning the legislation was being done as the legislation was going through the parliamentary process.

Challis There was significant work done at the departmental report stage, absolutely, and then significantly more work done in the House itself, through SOPs.

Dalziel Then there should have been a transitional provision written into the bill, though again that’s—

Street Can I just turn it around a little. Out of the dozen applications, only five, and then I think one was after the date anyway, so four, but five applications—what’s the status of the other ones, under this system, then? If they have not elected to go through this confirmation procedure, then are they not able to take a case, saying that this was not done properly?

O’Reilly So they chose not to transfer and get the applications processed by LINZ, so they’ve remained with the Department of Conservation to process, under the resource management framework.

Street OK. So they stay there.

O’Reilly They stayed under the old regime.

Street And do we have any information as to why they chose to stay there? Was the fees issue anything to do with that?

O’Reilly I’m pretty sure the fees wasn’t an issue. It was the fact of where they had got to in the processing of their application with the department, so if they were almost about to get a decision, there was little point in transferring it to us, where we would have had to start from scratch to make—
Street OK. Where I’m going is the ability to challenge any of this at some point, so that is an anxiety. But do you have any models for this confirmation procedure, or do you just make it up? I’m not being sarcastic. I’m genuinely asking. Have you seen this done in any other legislation?

O’Reilly I’m not sure. We took advice on drafting the legislation, obviously, from parliamentary counsel and I’m not sure what exact models they might have based it on, but they assisted us in coming up with these provisions.

Street So as far as this committee knows, this might be a unique situation, as far as we are aware. All right. Thank you.

McKelvie I take it there are seven applications, all left with the RMA. Did you say they had been processed, or you don’t know?

O’Reilly I don’t know. I could find that out.

Shanks I just want to pick up on what you said about PCO. The PCO advised you on this way forward.

O’Reilly So PCO draft the regulations for us, and they certify them that they are vires within the parent provisions.

Street And if we consider them to be ultra vires, then as you said, Craig, in your opening comments, LINZ has to suck up the fee, the appropriation, or I presume it’s within the powers of the executive to validate something, under a validation—to validate this process. Is that the other option?

Challis Probably not a realistic option. Given the small number of applications that we are dealing with, it probably wouldn’t justify a bill to fix that.

Dalziel I really don’t think that you’ve kind of explained to me where the confirmation procedure, where the power to make a confirmation procedure, under a regulation, that is to deal with fees, is authorised. So what are you specifically saying the authorisation chain is?

Challis Well, I think we would think that the authorisation chain comes from the catch-all provision in 118(1)(k). We see regulation 14 as just being a mechanical provision. It provides for the consideration of processing these transitional applications. Potentially, we see it as just setting out the mechanics, rather than setting the fee or method per se. The committee itself has said in one of its previous letters that such procedural or mechanical provisions would come in, within the ambit of a catch-all provision.

Street Can I just say one more thing? In one of your pieces of correspondence to us you say that “We did not take into account or respond to the quite persuasive point you made in a previous letter that the situation at issue here does not typify the mischief targeted by the principle of retrospectivity.” Now you understand that we understand the reason for the action that you took. Our issue is to examine the regulations, and that’s where we find a bit of a disjunction between the action that you’ve taken and the regulatory force in the legislation.
Lloyd: I’m Cerys Lloyd. I’m a solicitor with LINZ and perhaps I could speak to that point that has been made that there’s no authorisation for this. I think the way that LINZ sees it is that it’s a chain of authorisation. So it starts that Act has specifically turned it mind to the fact that there are already pending applications under RMA and that’s in section 41, because these are the referrals from the Minister of Conservation.

Shanks: That’s 41(6), right?

Lloyd: Yes, and seven. And then the Act directs that we go to section 35 at that point, but it’s silent on specific fees for those specific pending applications. However, it makes a general comment that fees will be determined under regulations and that must include also for the pending applications. It seems like there’s an issue that, at the point that those referrals came from the Minister of Conservation to LINZ, the regulations were not in place—

Street: That’s right.

Lloyd: —i.e. to set the fees. And I think it could be read that the fees don’t need to be in place at that time—at the time that the referral comes from the Minister of Conservation. They can be fees which will be enacted in the future.

Street: At a later date.

Lloyd: Yes, and also the way that this happened is that those pending applications which were transferred, which were referred from DOC, there was a lot of discussion with the applicants that regulations were going to be made and a fee would be charged. So that was anticipated at the time that the referral came.

Street: We understand that. It’s the words on the page—well, in this case, the ones that were missing.

Shanks: So, therefore, under section 118(1)(h) and section 111(1)(k) you believe those two sections have given you the power to make regulations and that’s where our differences are.

O’Reilly: Yes.

Shanks: We’ve got it.

Dalziel: Just so I’ve got this absolutely clear—so I follow 41(7) through to 35(5)—

Shanks: That was a good summary. We’re all on the same page ______9.16.05]

Dalziel: If the regulations had just applied generally, then we would just be dealing with the issue of retrospectivity, and I actually personally accept the argument that you set out on retrospectivity. What I think you’ve done, though, is look for another way of almost like avoiding that explicit retrospectivity by creating this confirmation procedure, and I don’t accept that you have the power to do that under the Act. I can’t see the authorisation chain for that. So that’s the—

Street: Are there any other—
Dalziel: I don’t think there are any other examples of this method being used in a regulation and it’s an unusual procedure. For that reason we’ve got an interest in it, because we don’t want to encourage others to be going down this track.

Challis: I think it is an unusual procedure that was dictated by the unusual circumstances in this case. But nevertheless we see it as just a mechanical means of providing for how these applications will be considered and assessed.

Dalziel: But none of the others were retrospective, though, were they?

O’Reilly: What others?

Dalziel: Well, I mean subsequent applications under the new legislation come under this section 35. They are eligible applicants for interest in reclaimed land subject to the subpart. They are not all pre-existing.

Challis: There weren’t any other applications at the point the regulations commenced. We were only dealing with the retrospective ones.

Dalziel: Correct—so that’s the point that I’m making, is that—

Challis: It’s true that it was written to deal with those, but LINZ had indicated that it would be waiting until the regulations were put in place before they would process those applications. So the parliamentary counsel was aware of that and parliamentary counsel drafted it so that the fees applied only from the time that they were—

Dalziel: But what I’m saying is that regulation 14 lives on. It’s for future applications now—

O’Reilly: No.

Dalziel: No?

O’Reilly: No, it has no effect other than on those five applications.

Dalziel: It’s only for these five.

O’Reilly: Yes.

McKelvie: Well, I just wanted you to clarify what you just said. The last comment you made clarified a number of issues for me. Can you remember what you just said?

Street: About—future applications?

Dalziel: Sorry, I didn’t mean regulation 14, I meant the whole of the regulations.

McKelvie: No, the way that it was justified.

Challis: Well, I think I said that we had these transitional applications to deal with and this provision here just sets out the mechanics of how they would be dealt with. The provision applies only from when the Act commences and so therefore we don’t believe that there is an issue of retrospectivity.

Dalziel: And I misspoke—if we’re allowed to use that word. The regulations 2012/363 will live on. It’s only clause 14 that doesn’t. So what I’m saying is
that if you had written the provision so that it was of general application but that it was specifically retrospective for these, I wouldn’t have a problem with that. What I’ve got a problem with is that you’ve created a fiction that the Act does not contemplate in order to justify the charging of the fees to a group of people—yes—who absolutely must be charged and ought to be charged. We’re only interested in the technical legality of what you’ve done—not the underlying policy.

Street  OK. Any final comments from you and your team, Craig? Well, thank you very much indeed for your evidence. That’s helpful. We’ll consider what we’ve heard and we will be in touch with you shortly.

Dalziel  And thank you for making my last day on this committee interesting.

Street  Thank you very much.

**conclusion of evidence**
Petition 2011/14 of Curtis Antony Nixon

Report of the Social Services Committee

Contents

Recommendation 2
Introduction 2
Current law and practice 2
Impact of proposal 2
Conclusion 3
Appendix 4
Petition 2011/14 of Curtis Antony Nixon

Recommendation
The Social Services Committee has considered Petition 2011/14 of Curtis Antony Nixon and recommends that the House take note of its report.

Introduction
We have received and considered the petition of Curtis Antony Nixon, which requests that the New Zealand House of Representatives make suitable amendment to the Social Security Act 1964 to give recognition and support, financial and otherwise, under the WINZ benefit system, to beneficiary fathers of dependent children who are equal (fifty percent) co-parents of those children; but who currently receive nothing in the way of financial support from the benefit system because the mothers of the children receive the Domestic Purposes Benefit including the total of payments for support of the child/children.

Current law and practice
Under the Social Security Act 1964, when parents who have separated are both entitled to a social security benefit, only the principal caregiver is entitled to the higher Domestic Purposes Benefit—Sole Parent rate of $293.58 net per week.

The principal caregiver is determined by the Ministry of Social Development, but if an assessment of the current care arrangements cannot distinguish a principal caregiver, the decision as to who fills this role defaults to the parents. The assumption underlying the designation of only one principal caregiver for each child is that it is reasonable for the state to expect separating parents to arrange care between them so that one or both can work. The Act therefore does not provide for the additional component of the benefit given for the welfare of the child to be split under a shared care arrangement. The Ministry of Social Development told us that to introduce shared cost arrangements would be costly and very complex.

Impact of proposal
Mr Nixon’s proposal might result in a situation where one party pushed for a slightly greater share of care in order to secure the full benefit component intended for the costs of the child. Any such arrangement would require agreement by both parties to be workable. Following from this, where separated parents can agree to such terms it should not be necessary or desirable to enact further legislation.

We also note that the approach proposed by Mr Nixon would probably result in pressure to extend any such arrangement to unequally shared care arrangements, and to those where the parents cannot reach agreement. This would require substantial changes to the benefit system.
Conclusion

We are sympathetic towards Mr Nixon’s situation, but are aware of no mechanism under the existing legislation that would address the issues he raises. We also understand that there are very few parents in this situation. The cost and complexity of introducing and administering further legislation to redress the issue for a few would not be justified.
Appendix

Committee procedure
The petition was presented to the House of Representatives on 27 April 2012 and referred to the Social Services Committee. We heard and received evidence from the petitioner, and received evidence from the Ministry of Social Development.

Committee members
Peseta Sam Loti-Iiga (Chairperson)
Jacinda Arden
Hon Phil Heatley
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Tim Macindoe
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Hon Michael Woodhouse
The Social Services Committee has considered Petition 2011/43 of Sue Moroney, requesting that the House note that more than 12,000 people have signed a petition calling on the Prime Minister to stop the closure of Auckland’s 24/7 sexual violence crisis service.

The petition was presented to the House on 5 December 2012. Because the House was due to rise on 12 December 2012, and because funding for the service was due to expire imminently, we considered the petition on the day it was presented and again the following day. We wrote urgently to the responsible Minister, Hon Paula Bennett, asking what was being done to address the funding issue and requesting a response before the House rose.

On 11 December 2012 we received the Minister’s response advising us that she had met with representatives of the Auckland Sexual Abuse Helpline on 7 December 2012 and agreed to an interim funding arrangement whereby the ministries of Justice, Health, and Social Development, the New Zealand Police, and the Accident Compensation Corporation had committed funding totalling $286,000 to keep the service running over the next 18 months. Discussions regarding a sustainable three-year contract were also held, and negotiations are expected to be finalised in April 2013.

Victims of sexual violence need a service that can be relied on and is available whenever it is needed. We are immensely pleased that the Minister heard the service’s concerns about the discontinuation of funding and the danger of the service ceasing, and that the Government took immediate steps not only to keep this crucial service running without interruption, but to secure continuing funding for it. We look forward to learning the outcome of the negotiations in April.

Peseta Sam Lotu-Iiga
Chairperson
Social Security (Benefit Categories and Work Focus) Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Social Security (Benefit Categories and Work Focus) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Structure of the commentary
This commentary covers the policy aims of the bill as introduced, the main amendments that we recommend, and issues raised by the Regulations Review Committee. It also includes minority views from the New Zealand Labour Party, the Green Party of Aotearoa/New Zealand, and the New Zealand First Party. A number of minor technical amendments and drafting improvements have also been proposed, but these are not detailed in the commentary.

Introduction
The Social Security (Benefit Categories and Work Focus) Amendment Bill seeks to amend the Social Security Act 1964. The second
part of a comprehensive package of welfare reform, it follows the Social Security (Youth Support and Work Focus) Amendment Act 2012. The bill seeks to introduce a new system of main benefits to replace most of the benefits to which working-age people may be entitled, to extend work test and work preparation obligations, and to introduce social obligations.

Three new main benefit categories would replace seven current categories. The new jobseeker support benefit would be available to those who were previously eligible for the unemployment or sickness benefit, domestic purposes benefit for women alone, or domestic purposes benefit for sole parents whose youngest dependent child is over 14 years old, or to recipients of the widow’s benefit with no children or whose youngest dependent child is over 14 years old. The new sole parent support benefit would be available for sole parents with dependent children younger than 14; and the new supported living payment would be available to people previously eligible for the invalid’s benefit or the domestic purposes benefit for care of sick or infirm patients.

Pre-benefit activities could be required of applicants for the jobseeker support, sole parent support, and emergency benefits, and of spouses or partners of applicants for the jobseeker support benefit, emergency benefit, or supported living payment. Applicants and their spouses or partners could also be required to interview for and accept any offer of suitable employment.

Work test obligations would be extended to include the requirement to undertake and pass a drug test where required by an employer as part of a job application, or as a condition of entry to a training programme.

This bill seeks to introduce new social obligations from 15 July 2013, including requiring dependent pre-school children from the age of 3 to attend an early childhood education service until they begin school, dependent children over six years old to be enrolled in and attend school, and dependent children to be enrolled in primary health care and up to date with core WellChild/Tamariki Ora checks.

The bill introduces sanctions for work-tested beneficiaries who refuse offers of suitable employment without good and sufficient reason, but ensures beneficiaries with dependent children would not lose more than 50 percent of a benefit.
It would allow benefit payments to be stopped for beneficiaries subject to an unresolved arrest warrant for criminal proceedings, but again, a parent with a dependent child would not lose more than 50 percent of a benefit, and spouses and partners will retain their portion of assistance. This bill would also allow information sharing between the Ministry of Social Development, the Ministry of Justice, and the New Zealand Police, to facilitate the operation of the warrant to arrest policy.

The bill allows the Minister to determine the goods and services for which preferred suppliers can be contracted by the ministry. These goods and services could be supplied to beneficiaries and non-beneficiaries in receipt of a main benefit, disability allowance, or hardship assistance. Assistance could be paid directly to a supplier without consent by an affected beneficiary for disability allowance and hardship assistance. However, consent is required to redirect a main benefit payment to a preferred supplier.

**Jobseeker support eligibility**

We recommend amending clause 40, new section 88B(1), to allow a new ground of eligibility for the jobseeker support benefit. Some people would not be eligible for the jobseeker support benefit because they cannot meet the work obligation criterion of being available for full-time work because, for example, they care full time for a disabled dependent child. The amendment would allow such people to receive the jobseeker support benefit and then be exempted from some or all work obligations.

We also recommend amending clause 40, new section 88F(2), so that part-time work obligations could be applied to a person receiving the jobseeker support benefit on the ground of sickness, injury, or disability if they were later deemed able to work. This reflects the current policy, which there was no intention to change.

**Pre-benefit activities**

We recommend amending clause 9, new section 11E(1)(b), to exempt spouses or partners receiving or applying for New Zealand Superannuation or the veteran’s pension from the requirement to comply with pre-benefit activities. Recipients of these benefits are not work tested, so there is no reason to require pre-benefit activities just be-
cause their spouses or partners seek a benefit to which pre-benefit activities apply.

**Work preparation obligations**
We recommend amending clause 24, which amends section 60Q of the Act, by inserting subsection (1B), to allow the chief executive to require a recipient of a supported living payment to attend an interview to determine their capacity to comply with work preparation activities.

**Social obligations**
We recommend amending clause 25, new section 60RA(1), to clarify that social obligations would also apply to the spouses or partners of those in receipt of a benefit, except for young partners subject to youth activity obligations. Our amendments would also make it clear that social obligations would apply irrespective of whether a benefit is paid at an individual or couple rate.

We recommend amending clause 25 by inserting new section 60RAB. Subsection (1)(b) would allow a programme that met criteria set out in a ministerial direction and was approved by the chief executive to be designated a “recognised ECE programme”. This would allow otherwise appropriate programmes that did not meet the criteria set out in the Education Act 1989 to be used to meet social obligations. Subsection (1)(c) would allow recognised ECE programmes to include correspondence schools (such as Te Kura) already designated as such in the Education Act.

Subsection (3) would allow the minimum hours of attendance required to meet the early childhood education social obligation to be set by regulation. Our understanding is that fifteen hours’ attendance at early childhood education would be an aspirational target.

Subsection (4) sets out a definition of “core check”. This amendment is intended to clarify that WellChild/Tamariki Ora checks must be up to date in order to meet social obligations. We have been assured these checks do not include the requirement to immunise.
Exemptions for home schooling

Many submitters raised the right of parents to home school their children. We wish to assure them that this bill does not propose changes to policies on home schooling school-age children. The Ministry of Education currently issues a Certificate of Exemption from Enrolment at a Registered School to parents who have met the criteria for home schooling, and the Ministry of Social Development does not intervene in decisions regarding schooling exemptions made by the Ministry of Education. However, because the legal requirement for school attendance begins at 6 years of age, the Ministry of Education does not currently provide exemptions to home school a child aged 5.

We recommend amending clause 25, new section 60RA(3) by inserting paragraph (ab), to allow home schooling to meet the social obligation for school attendance by children aged 5 years until they turn 6 years old if the parent meets the additional criteria set out in regulations for an exemption from work test obligations for home schooling. This would recognise that school attendance is not legally required during this year, and a Certificate of Exemption from Enrolment at a Registered School cannot be obtained until a child is 6. However, once the child turned 6, an exemption certificate would still be required.

The proposed change should make it clear that it is not our intention to remove the ability for children aged from 5 to 6, or older, to be home schooled.

We also wish to note that a beneficiary can be exempt from meeting some or all of their work test obligations if they hold an exemption certificate and are home schooling a dependent or foster child who could not reasonably be expected to attend school because of, for example, learning or behavioural difficulties.

Sanctions for failure to comply with obligations

We recommend amending clause 46 by inserting subsection (4). Our amendments (to insert new section 119, subsections (1B) and (1C)) would ensure that the calculation of failure rates used to determine sanctions would be reset for a person moving from the young parent payment or youth payment to a working-age main benefit. Because the obligations and sanction regimes for these payments differ,
it would not be appropriate to include them in the calculation of sanctions for a working-age main benefit. This is also current practice and was not intended to be changed.

**Notification of failure to comply with obligations**
We recommend inserting new clause 43A, and amending clauses 45, 46, and 47, which amend or replace sections 113, 117, 119, and 122 in the Act, to specify that multiple failures by a beneficiary to comply with obligations can be notified in a single notice; that the failures included in the notification should be treated as a single failure for the purposes of imposing sanctions; and that all specified failures must be rectified for the beneficiary to re-comply.

**Work test obligations**

**Drug testing**
We recommend a number of amendments to provisions relating to drug testing in clauses 39, 43, and 44. We recommend amending clause 39, to amend the definition of “drug test” in section 88A of the Act to make it explicit that the purpose of a drug test is to detect the presence of controlled drugs rather than to determine whether the person tested is impaired.

We also recommend amending clause 43, new section 102B. The proposed amendments to subsection (1) would recognise that potential employers or training providers can request lawful drug tests, but cannot compel candidates to undertake such tests. We recommend amending subsection (2) to specify that a screening drug test would be sufficient in the absence of an evidential drug test, which we recognise are rarely used because of their cost. The amendment would allow a screening test failure to be used to effect the sanctions proposed in the bill if the candidate did not choose to undertake a subsequent evidential drug test.

We recommend inserting subsections (2A) and (4) to allow a drug test undertaken at the request of a potential employer or training provider to be presumed lawful unless proven otherwise; and, in the absence of contrary information, to allow the chief executive to act on evidence given by the employer or training provider that a candidate has failed a drug test.
We also recommend amending clause 43 by inserting new section 102D, to specify that where a candidate has failed a drug screening test, and no evidential drug test has been requested, and a candidate receives notification of a sanction, the candidate may dispute the result of the screening test by request in writing within 5 working days.

We recommend amending clause 44, new section 116B, so that a person who indicated they would fail a drug test would be considered to have failed to apply for suitable employment without good and sufficient reason. We also recommend amending clause 44, new section 116C, to state explicitly that a person has a good and sufficient reason for failing or refusing a drug test if he or she is undergoing or awaiting professional drug addiction or dependence assessment, or treatment approved by the chief executive. This would establish some minimum safeguards for appropriate treatment, and recognise that treatment may not be immediately available.

We recommend amending clause 47, which would replace section 122 of the Act, to allow a beneficiary who has failed a drug test 25 working days to pass a drug test from the date on which they undertake to comply, and a further 5 working days to provide evidence that they have done so. We consider this to be a sufficient amount of time.

**Right of appeal on medical grounds**

We recommend amending Schedule 2 (new section 10B(1)) by inserting paragraphs (ea) and (eb), to ensure that a decision on medical grounds to decline an application for, or revoke, a deferral of work test obligations could be appealed to a medical board.

**Outstanding warrants to arrest**

We recommend amending clause 30, new section 75B, by inserting subsection (1A), to exclude from the operation of this policy beneficiaries who do not receive a main benefit (such as those receiving supplementary assistance), and any category of beneficiary specified in regulations. There would still be an exception for those who posed a risk to public safety, for whom all assistance would be stopped.

We also recommend inserting subsections (2A) and (3)(ab). Subsection (2A) would allow a notification of sanction following an unresolved warrant to arrest to be combined with a notice of adverse action as required by the Privacy Act 1993. This would ensure that
natural justice and due notice periods applied, and increase administrative efficiency. Subsection (3)(ab) would exempt from sanction a beneficiary who had taken all reasonable steps to resolve the warrant within the notice period, but had not been able to do so for reasons beyond their control. This amendment would ensure natural justice applied by giving people a reasonable time in which to dispute a warrant to arrest.

Matters relating to warrants to arrest are discussed further in the Regulations Review Committee section below.

Transferring between benefit types
We recommend a number of amendments regarding the transfer of people from one benefit to another.

We recommend amending Schedule 7, new Schedule 32, clause 11 by inserting subclauses (1A) and (3)(b) among others. Subclause (1A) would ensure that any person transferred to the jobseeker support benefit from 15 July 2013 while undertaking full-time study would under transitional provisions be temporarily exempted from full-time student ineligibility and exempted from work preparation or work test obligations. The transitional provisions allow two years for a person to complete a course of study or to make other arrangements. Subclause (3)(b) would ensure the transitional provisions ceased to apply when such a person stopped studying or ceased to receive a benefit.

We recommend amending clause 11, new section 20H, by inserting subsections (2A) and (2B). This would allow the chief executive to prevent the automatic transfer of a person from the sole parent support benefit to the jobseeker support benefit when their youngest dependent child turned 14 if that person would not be eligible for the jobseeker support benefit. It would allow the affected person to be notified in advance of a scheduled transfer so suitable arrangements could be discussed. It would also prevent a benefit from being stopped unexpectedly. This amendment would also allow only those exemptions available under the jobseeker support benefit to continue for a person transferring from the sole parent support benefit.

We recommend amending Schedule 7 (new Schedule 32, clause 2(11)) so that a person receiving the domestic purposes benefit or widow’s benefit would have any exemption that is not available on
the jobseeker support benefit cancelled upon transfer; and clause 7(8) to make a similar provision in respect of exemptions associated with a sickness benefit.

We recommend inserting new clause 25A, which would amend section 61 of the Act so that people over 65 years old who were not eligible for New Zealand Superannuation would be transferred to the emergency benefit. This would ensure that work test obligations required by other benefit categories would not be inappropriately applied to people past the age of retirement. This provision would come into force after Royal assent and expire on 15 July 2013.

**Expiry and reapplication requirements**

This bill would allow annual benefit expiry and reapplication requirements to be applied to all recipients of the jobseeker support benefit. Further to this, regulation-making powers would allow regulations to subject other benefit categories to expiry and reapplication provisions and to specify expiry dates for any specified benefit.

We recommend amending clause 36, new section 80BE, to allow benefits granted on particular eligibility grounds or to particular kinds of beneficiaries to be exempted from these expiry and reapplication provisions. Amendments to new section 132M would allow regulations to be made declaring a stated benefit other than jobseeker support not to be subject to these expiry and reapplication provisions.

We also recommend amending clause 54, new section 132M(2), to allow regulations to prescribe different expiry dates for a specified benefit. The proposed amendment would allow expiry dates to be set individually, so that expiry and reapplication processes could be synchronized with annual income assessments for sole parents receiving the jobseeker support benefit. The proposed regulation-making powers are discussed further in the Regulations Review Committee section below.

**Beneficiary’s absence overseas**

We recommend amendments to clause 31, which would amend section 77 of the Act. The amendment to subsection (3AA) would remove the requirement for the circumstances for a beneficiary’s travel to be “exceptional”. This was not the intention of the policy, and would place unnecessary limits on the chief executive’s ability to ap-
prove benefit payments for travel absences of more than four weeks in a 52-week period.

The amendments to subsection (8)(a) would ensure that both reasons for travelling and reasons for non-notification of travel to the ministry would have to be justified on humanitarian grounds, as may be defined in regulations under section 132 of the Act.

**Residency requirements for a benefit paid under a social security agreement**

We recommend amending Schedule 7, new Schedule 32, by inserting new clause 11A. Clause 29 of the bill as introduced seeks to amend section 74AA of the Act to correct an oversight whereby people ordinarily resident in a country that operates a social security agreement with New Zealand are not required to meet the two-year residency requirement before receiving a benefit. Our proposed amendment to Schedule 7 would ensure that people already receiving a benefit under such an agreement would not become ineligible as a result of this change.

**Preferred supplier arrangements**

We recommend amending clause 50, new section 125AA by inserting subsection (5), which sets out transitional or savings provisions relating to preferred supplier arrangements. This change would allow the Minister to specify by ministerial direction transitional arrangements where a preferred supplier arrangement had been introduced or the list of preferred suppliers changed. This provision would allow beneficiaries to meet existing contractual arrangements before being transferred to a new preferred supplier.

We also recommend amending clause 28, which amends section 69C, by inserting a new subsection (7A)(e), to ensure that preferred supplier arrangements could only apply if the goods and services can be supplied to the area where the beneficiary or non-beneficiary lives. Amendments for the same purpose are made to the provisions inserted by clause 38, which inserts a new section 82(6AA)(b), and clause 49, which inserts new section 124(1BA)(b).
Disability allowance

We recommend making a number of amendments to clause 28, which would amend section 69C of the Act. These amendments would ensure that preferred supplier arrangements could be applied to a recipient of a disability allowance only if the supplier served the area where the beneficiary lived (subsection (7A)(c)); allow the chief executive to decide the date on which a recipient of the disability allowance must start paying a preferred supplier, allowing the client time to accumulate sufficient funds (subsection (7B)(a)); allow the chief executive to change the preferred supplier to a recipient of a disability allowance (subsection (7BA)); allow the chief executive to not pay or to defer paying a person’s disability allowance to a preferred supplier if that person’s total benefit payments are less than the amount needed to pay the supplier (subsection (7BB) and (7BC)); and to allow a person receiving the maximum disability allowance to choose which purchases to make through a preferred supplier and which from their own funds (subsection (7C)(a)).

We also recommend amending clause 53, new section 132AD, by inserting subsection (4). This would allow the transfer of existing recipients of the disability allowance to preferred provider arrangements to be managed by the chief executive on a case-by-case basis under ministerial direction. This would make it possible to transition or “grandparent” existing beneficiaries so that the impact of any changes could be managed carefully.

Regulations Review Committee

The Regulations Review Committee advised us that the regulation-making powers in the bill as introduced raised several issues.

The bill would allow regulations to be made that gave effect to significant policy decisions (clause 54, new sections 132L and 132M). The concern is that substantive policy is more appropriate for Parliament to determine and should be in primary legislation rather than in delegated legislation.

The bill would allow regulations to be made authorising information sharing between the Ministry of Social Development, the Ministry of Justice, and the New Zealand Police. The power delegated by clause 54, new section 132L(1)(c) has the potential to contravene Standing Order 315(2)(b), in that it would authorise regulations that
could trespass unduly on personal rights and liberties, specifically beneficiaries’ right to privacy. Under the sunset clause in clause 54, new section 132L(3)(c), the end date for regulations made under this power would be 14 July 2016. This was considered an unnecessarily long timeframe, given that the Privacy (Information Sharing) Bill could be expected to be enacted before long.\(^1\)

The bill would allow the making of transitional regulations that could amend, suspend, or override primary legislation (a Henry VIII power) (Schedule 7, inserting new Schedule 32, clause 14).

To address the issue of significant policy being effected by secondary legislation, we recommend amending clause 54, new section 132M, to include more policy detail. However, we do not recommend amending the powers set out in section 132L, as we consider that they would allow administrative processes necessary to operate the warrants for arrest policy and specified exclusions from it. Administrative processes are not usually specified in legislation, but we consider it necessary in this instance because the Ministry of Social Development, the New Zealand Police, and the Ministry of Justice do not have operational experience on which to base decisions on the need for and terms of exclusions. The regulation-making powers in the bill as introduced would allow the appropriate provisions to be made and added to in the light of experience.

We recommend deleting the provisions in clause 54, new section 132L that authorise information sharing, and inserting new clause 52A, new section 126AC, to authorise and require information matching under the Privacy Act 1993 between the Ministry of Justice and the administering department (currently the Ministry of Social Development) to give effect to the warrant to arrest policy.

We also recommend amending Schedule 7, new Schedule 32, to include a statement of the purposes for which transitional and savings regulations may be made under new clause 14, and an objective test that the Minister would have to apply before recommending the making of regulations. Other amendments make it clear that application provisions referred to in clause 14 are only transitional.

---

\(^1\) The Privacy (Information Sharing) Bill was divided into three bills and all three received the Royal assent on 26 February 2013.
New Zealand Labour Party minority view
Labour stands in strong opposition to this bill. Introducing reforms such as these at a time of high unemployment, and without removing barriers to employment such as the high cost of child care and inadequate training and education opportunities, will inevitably fail.

We believe the framework for this bill is wrong. Rather than starting from the assumption that those who seek support from the state want to work, this bill assumes the opposite. It is focused on a sanction-based regime, and moves away from service delivery that is focused on an individual’s circumstances and intensive case management.

Social obligations
We believe the introduction of social obligations implies that a parent on government support is a poor parent. This is both wrong and unfair. An overwhelming number of submissions focused on this point, and the removal of choice for parents as a result of the social obligations.

While we support the principle that all children take part in early childhood education, we do not believe this should be enforced by cutting a parent’s benefit in half. Decreasing the income into a child’s home will ultimately harm the child.

We also believe that there is a compelling case for parents to be given the flexibility (within reason) to enrol their child in courses that may not be covered by the bill as originally drafted, such as Hippy and approved home education programmes. We are pleased this part of the bill has been amended.

We remain disappointed that the Government has put in place an obligation on parents to enrol children in early childhood education without fulfilling their obligation to parents by making sure there are adequate places available. The Child Poverty Action Group informed the committee that their analysis found a large gap between the number of children in low-income areas in particular, and early childhood education places. If the Government truly wishes to address the barriers to education in a child’s critical years, the focus should be on availability, cost, and transport.
Work obligations and assessment

We object to the underlying assumption in the bill, and in these provisions, that those on government support do not wish to work. We heard compelling evidence from those working in the disability sector in particular, that many sickness and invalid beneficiaries are desperate to work, but the level of assistance and support is limited. Organisations representing the disability sector were also right to raise the difficulty many members of the disability community had finding work and welcoming work places.

As CCS Disability Action so eloquently stated “[the bill] will not add one single more job for a disabled people… it does nothing about attitudes of employers and workers. It does nothing about the ability to make adjustments in the workplace. Nothing about access to education or work experience. If the bill wishes to provide opportunities for people with disabilities to move into the workforce, it doesn’t contribute.”

We remain extremely concerned by the proposed new assessment regime to determine work obligations for those currently categorised as sickness or invalid beneficiaries. We believe submitters were right to express their fears in this area given the lack of detail as to how this process will change. We believe these fears are justified given that the Minister of Social Development signalled that the United Kingdom model was being looked at as part of Ministry of Social Development’s policy development. There is little doubt that the United Kingdom medical assessment regime has been a disaster, and should not be replicated here.

Throughout the select committee process we sought information from the Ministry of Social Development as to the detail of the new assessment regime. We were repeatedly told that the department was in the middle of consultation with the sector, but other than broad details, we were not privy to any final recommendations. Given this area of reform has been a source of significant concern, we consider it unacceptable that the Minister did not give the public a genuine chance to submit on final proposals in this area, and in our view, left the select committee very much in the dark.

Labour urges the Minister to publicly release her plans for the assessment regime, and consult in a transparent manner. This would enable her to take on the views within the disability sector, in particular the view that a more holistic, social model is required.
We also support the suggestion made by the Council of Trade Unions that an independent expert be empowered by statute to review the effectiveness of the work availability assessments.

**The use of sanctions**

We have seen a considerable increase in the use of sanctions since the National Government took office. Labour is concerned that this increase has come with very little assessment of the impact on families, and the relative success of reform so heavily centred around a punitive approach.

We agree with the Children’s Commissioner’s recommendation that we need to know more about the families who have sanctions applied to them, and for those families who are subjected to repeated sanctions, a full assessment of the families’ situation and intensive case management should be applied (as recommended by the Council of Trade Unions).

To ensure a greater focus on the overall impact of welfare reforms on children, we agree with the recommendation that the Work and Income Board should include an individual with a background in issues relating to child well-being.

**Drug testing**

Labour is sceptical about the drug testing regime embedded in this bill. The New Zealand Drug Foundation presented a sound argument that if the ultimate goal is to address drug dependency, a simple testing regime with sanctions attached is inadequate and could do more harm to our drug treatment system than good.

The foundation argued that a process that categorises users as dependent (when they may not be) and places them into treatment programmes will put pressure on an already under-resourced service.

At the time of the foundation’s submission, there was a 5-week waiting list in Northland for treatment, 4 weeks in Auckland, and over 6 weeks in the Bay of Plenty. It was the view of the foundation that even doubling services wouldn’t meet the need that this bill could create, a need that may not have any clinical basis.

While we agree with the need to address any substance abuse that acts as a barrier to work, we do not believe these measures will achieve this goal.
Labour does not support this bill.

**Green Party minority view**

The Green Party opposes this bill. We believe the paternalistic approach represents a widening breach of our fundamental social contract which unjustifiably compromises the human rights of many beneficiaries. We believe the Government should focus on assisting those who are already desperate to work rather than spreading what are still scarce resources across a range of people who are not ready or able to work.

**Coherence**

The Legislation Advisory Committee noted that the Social Security Act has been amended 131 times with 54 new sections since it was first written, and contains over 50 pieces of discretion. The Green Party believes this bill makes an already complex and largely unintelligible piece of legislation more complex and less intelligible. This will make it harder to administer consistently and even more difficult for people to understand and claim their entitlements. People receiving income support are, almost by definition, our most vulnerable people and should be served by a system that is simple and transparent.

**New categories and increased work testing**

While the new categories purport to streamline the benefit system, the Green Party is concerned that in operation the opposite will be true. By definition, job seekers are considered to be work able, yet we know that many will in fact be eligible for temporary exemptions for reasons of sickness or care responsibilities. In our view this creates a falseness to the system. We are told the jobseeker category allows for part-time work and that the system will assess the extent to which each individual is able to train or work. We believe this increased opaqueness will make it more difficult for users and increase stress for a significant number of people. Of particular concern for us are people with stress-related disorders and mental or physical illnesses that can be exacerbated by stress. While we absolutely support rehabilitative services, we believe any attempt at tying these to
the delivery of income support will reduce their efficiency and create unnecessary stress.

We note with concern that the trigger for someone with cancer to move from jobseeker support benefit to the supported living payment is a terminal diagnosis. Changing benefit at that time may well be physically and emotionally impossible. While there is discretion to move over earlier, it can only be assumed that this would also be at a very difficult juncture in treatment.

We absolutely support renaming the invalid’s benefit to something more positive, but are disappointed the committee did not respond to the concerns raised by disabled people’s organisations that the supported living payment is likely to cause confusion due to there being a district health board fund for people with disabilities with the same name.

The Green Party believes an increased work focus at a time of high unemployment will have a negative impact on low-wage workers’ ability to negotiate better conditions.

Further we question the economic sense of reducing people’s ability to do unpaid work. Unpaid work is equivalent to over two million jobs per year at an estimated value of $40 billion in 1999. Our whole society relies on the provision of these unpaid services, such as parenting; reducing the core unpaid workforce risks further undermining our delicate social ecology.

We share many disabled people’s concern regarding the possibility of compulsory work testing for those receiving the new supported living payment, as well as their concern that those not being work tested, who may still desperately want to work, will not get the support they need to help get work.

**Social obligations and sanctions**

The Green Party fundamentally disagrees with the social security system being used to address concerns outside the scope of the provision of social security.

While we are pleased to see a relaxation of the requirement of a compulsory 15 hours early childhood education and an extension of the definition of early childhood education, we believe singling out parents receiving income support as needing sanctions to help them to meet parenting norms is likely to increase stigma.
We share the view of many, including the Human Rights Commission, that there are less intrusive and more rational alternatives to the sanctions in this bill, and would have preferred to see more investment in the provision of early childhood education in communities with unmet need and having free, mobile, culturally appropriate health services.

We do not support the use of sanctions, especially in families with children, and note overseas evidence that has shown financial sanctions exacerbate poverty, reduce people’s long-term earning capability, and in operation lead to racial and area targeting.

**Drug testing**

The Green Party opposes sanctions related to drug testing. We are concerned this policy will create an incentive for people to declare a false drug dependency to avoid possible sanctions.

When we already have long waiting lists in many areas for treatment, we believe people with dependencies who want help should be prioritised for the limited resources.

There is also the potential for this policy to result in people switching to more harmful but less detectable drugs to avoid positive results. Considering similar regimes overseas have not been successful, the Green Party questions the motives of this policy.

**Warrants to arrest**

The foundation of our legal system is that someone is innocent until proven guilty. To institute a financial sanction for failing to respond to a warrant to arrest is in our view unjustifiable. The Green Party has heard too many stories of people being entirely unaware of warrants out against them due to a number of causes and of people not getting communications from Work and Income to be comfortable that this policy will not cause undue harm.

**Medical assessments**

People with disabilities are chronically over-assessed already. We believe the last thing they need is another assessment. The Green Party strongly supports addressing the disabling environment as a priority to remove the barriers to employment for people with
disabilities. It was noted by one submitter that making Work and Income counters and communication systems accessible would be a good start. Focussing on individual medical assessments risks putting people with disabilities back into the medical model, and in our view runs counter to the Convention on the Rights of People with Disabilities.

The Green Party was disappointed that the medical assessments at the heart of the “investment approach” for people who are sick or disabled was not available to the committee. While we have been assured that it will be a positive initiative and will not be a direct implementation of the United Kingdom model, which has caused so much harm, we have been alarmed at the use of the similar language and what can be described as at best contestable research from the United Kingdom to justify the changes.

**Procurement and preferred suppliers**

The Green Party supports the view held by several submitters that limiting the choice of health-care providers that beneficiaries may use conflicts with Article 3 of the United Nations Convention on the Rights of People with Disabilities, and removes their autonomy. Cost savings for the ministry are not enough of a justification for such action.

**Disability allowance**

This bill would enable regulations to specify expenses that are not funded by the disability allowance, only partially funded, or subject to conditions. The cited purpose is to help the ministry to manage expenditure on the disability-related needs of beneficiaries and non-beneficiaries. The Green Party believes this is inconsistent with the convention and runs counter to an investment approach.

**New Zealand First minority view**

New Zealand First supported this bill at its first reading and its referral to the select committee in order to see what various organisations and the New Zealand public directly affected by this legislation had to say. Various submissions shared our concerns about a number of changes proposed by the bill.
New benefit categories
We are concerned that the bill overestimates the prospect of finding paid work. A record of over 50,000 New Zealanders left permanently for Australia in 2012, which means 1,000 New Zealanders per week are finding paid work overseas in Australia. The economy is currently not stimulated to create enough job opportunities to enable beneficiaries to come off the welfare benefit and into employment. This bill is presumptuous in its approach to the job market. The current Government’s favouritism of foreign companies taking precedence over New Zealanders having jobs is a barricade for this bill as there is no room for New Zealand businesses to employ New Zealand workers.

Drug testing
We support drug testing in order to ensure a safer environment and secure more employment opportunities, but we are concerned at the costs involved for drug testing. If drug testing is outsourced, there need to be strategies in place to ensure that testing is done in a timely and effective way.

Social obligations
Social obligations of beneficiaries from non-compliance may be detrimental for families. The proposed sanctions are dramatic and borderline intrusive in the way beneficiary parents raise children. Beneficiary parents will be subjected to obligations that every other parent in New Zealand will not.

There are also concerns about how the Ministry of Social Development will monitor compliance. The Government has accepted that there are not enough resources to test all beneficiaries. Instead “at risk” families will be selected. There are risks on how this minority would be selected so as to not discern them from other beneficiaries. Implementing such policies creates a double standard where only some beneficiaries will be monitored.

The obligations on beneficiaries to enrol children 3 years or older in early childhood education until they start school, and the availability and affordability of these institutions must be taken into consideration. We understand that some families prefer home-based education, and in many cases this is more suited to a proportion of chil-
Commentary

Social Security (Benefit Categories and Work Focus) Amendment Bill

dren over early childhood education. Many submitters were concerned about the social and emotional effects of separating children from their adult parents before the age of five. We know that there is no proof to suggest that home education is not as beneficial as early childhood education. There is lack of transparency where the Education Act does not require all children under six to attend early childhood education, yet this bill will impose this unrealistic expectation on a small sector of society.

We consider the amalgamation of widow’s benefit recipients into the jobseeker support benefit an unfair expectation given to widows considering their circumstances. Not all widows will be or are “work-ready and available.”

Beneficiaries with warrants to arrest

While we appreciate the concern surrounding the number of beneficiaries who have outstanding warrants, there needs to be clarification around the costs and benefits to the taxpayer to administer such process. We have little faith that this will decrease the number of arrest warrants, as people who have avoided detection are likely to continue to do so.

Conclusion

New Zealand First supports the measures to protect the interest of children, but drastic reforms will be imposed on a vulnerable group in our society. We do not believe that these welfare reforms will lead to less people on the benefit.

At the moment we face a job market crisis, and with these drastic sanctions and dramatic reforms to be introduced in this bill, there is no indication that beneficiaries will end up in paid employment. This dog-whistle approach will feed the increasing poverty gap and develop a double standard New Zealand.

We support initiatives that will prove to decrease welfare dependency, but we are not convinced that this bill will in fact transpire the expected outcomes.
Appendix

Committee process
The Social Security (Benefit Categories and Work Focus) Amendment Bill was referred to the committee on 20 September 2012. The closing date for submissions was 1 November 2012. We received and considered 683 submissions from interested groups and individuals. We heard 83 submissions from 35 organisations and 48 individuals, at hearings in Wellington and Auckland.

We received advice from the Ministry of Social Development. The Regulations Review Committee reported to the committee on the powers contained in clause 54, new sections 132L and 132M, and Schedule 7, inserting new Schedule 32, new clause 14.

Committee membership
Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Phil Heatley
Melissa Lee
Jan Logie
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Le’aufa’amulia Asenati Lole-Taylor
Phil Twyford
Hon Michael Woodhouse
On 22 August 2012 we initiated a briefing into pension eligibility and entitlements, including portability, to gather information because we were considering whether to initiate an inquiry into overseas pension policy under the New Zealand Superannuation Scheme, and other pension portability issues related to section 70 of the Social Security Act 1964 (Rate of benefits if overseas pension payable).

Some of us were concerned that the direct deduction policy might have been applied inconsistently. This policy can reduce entitlement for New Zealand superannuitants if they are also entitled to an overseas public or private pension, or if their partner receives an overseas pension.

We considered reviewing the application of the direct deduction policy, the entitlement of superannuitants to receive gross New Zealand Superannuation overseas regardless of whether another country deducts tax from their entitlement, and the deduction from the entitlement of people whose partners receive overseas pensions.

We wrote to the Minister for Social Development asking for a summary of any changes to pensions, particularly regarding eligibility and entitlement, the direct deduction policy, international portability, active and pending treaties and reciprocal agreements, public access to information about pensions, and any changes to the scheme since 2007. This information was received as evidence.

The New Zealand Labour Party, the Green Party, and New Zealand First are of the view that the information received confirmed that an inquiry was warranted. The majority of the committee, while sympathetic to the anomalies in the system, decided not to initiate an inquiry. Prevailing fiscal constraints were also a consideration in this decision.

Peseta Sam Lotu-Iiga
Chairperson
2011/12 financial review of the
Children's Commissioner

Report of the Social Services Committee

Contents
Recommendation 2
Introduction 2
2011/12 performance 2
Child, Youth and Family notifications 2
Children’s Action Plan 3
Expert advisory group report on solutions to child poverty 4
Appendix 5
Children’s Commissioner

Recommendation

The Social Services Committee has conducted the financial review of the 2011/12 performance and current operations of the Children’s Commissioner, and recommends that the House take note of its report.

Introduction

The Office of the Children’s Commissioner is an independent Crown entity. It was established under the Children, Young Persons and Their Families Act 1989, but since 2003 has acted under the Children’s Commissioner Act 2003. This Act enables the office to promote the rights, health, welfare, and well-being of children and people up to the age of 18. It also directs the office to promote the United Nations Convention on the Rights of the Child.

The office monitors the policies and practices of Child, Youth and Family, undertakes systemic advocacy functions, and investigates issues compromising the health, safety, or well-being of children and young people.

The Children’s Commissioner is Dr Russell Wills, whose five-year term began on 1 July 2011. As at 30 June 2012, the office had an establishment of 13.8 staff in addition to the commissioner, in offices in Wellington and Auckland.

2011/12 performance

In 2011/12 the office’s total revenue was $2.201 million and its total expenditure was $2.193 million, leaving a surplus of $8,000. The office forecasts a net loss of $347,000 for the 2012/13 financial year, which it intends to finance from reserves of $804,000 (as at 30 June 2012). It forecasts a return to surplus in 2013/14 on the basis of an expected reduction in expenditure of 14 percent, to be funded in part by reducing personnel expenditure.

The office received a “very good” rating for its management control environment and financial information systems and controls. It received a “good” rating for its service performance information and associated systems and controls. The Office of the Auditor-General recommended the establishment of baselines for impact and outcome targets, and expressing the targets for the two out-years more specifically, rather than in terms of trends, to give a better sense of the office’s long-term aims. The Office of the Auditor-General also recommended that all statements of impact and outcome measures reference source information.

Child, Youth and Family notifications

Notifications to Child, Youth and Family have increased by 150 percent since 2006, and 152,800 notifications were received in the year ending June 2012. Of these, 62,678 were automatic notifications when Police had attended a family violence case and found a child present.
The office cited weaknesses in the Ontario Domestic Assault Risk Assessment tool, which is used by the Police to assess risk in domestic violence cases, as one of the reasons for the high and growing rate of notifications being made to Child, Youth and Family. It agrees with Child, Youth and Family that this is a major driver in the 24 percent annual increase in notifications, and said that automatic referral to Child, Youth and Family without an assessment of risk to the child in question wastes time, and could cause harm by delaying domestic violence intervention. It also said that the increase in notifications overwhelmed social workers, which could lead to superficial assessments, but that unnecessary notifications rather than a lack of social workers were the cause of the problem. The discovery of domestic violence should lead to an assessment of risk to the child and then an appropriate referral; where the child is deemed safe, the referral should be to Women’s Refuge.

The office added that substantiated physical abuse had plateaued and substantiated physical assaults on children had fallen last year; but it acknowledged that substantiated emotional abuse in the form of children witnessing violence had increased, and that this was a problem. While there are some other problems to be addressed relating to practice and supervision, and relationships between Child, Youth and Family and their partner organisations, the commission said its relationship with Child, Youth and Family has developed well over the past year, and that issues with the referral system are the biggest problem and should be addressed first. We reiterated the view that witnessing domestic violence could have a profound effect on child development and this needed to be taken into account.

We acknowledge that the increasing number of notifications is a serious issue for the office and for Child, Youth and Family. We appreciate the office’s frankness in raising with us its concern about notification practices, and support its taking steps to address it with the relevant agencies. We intend to examine this matter at the next review.

Children’s Action Plan

The Children’s Action Plan is a long-term government strategy to improve the well-being of New Zealand children. It underpins the White Paper for Vulnerable Children. The office said its role is to ensure that the well-being of children is at the centre of all work in this area, and that all actions taken promote their well-being. It is also involved in the Strategy for Children in Care work-stream, among others.

New children’s teams, created using resources and personnel from the ministries of Social Development, Justice, Education, Health, and the New Zealand Police, will be trialled in Rotorua and Whangarei; about 25 regional teams will use a risk-prediction tool being developed by the University of Auckland to identify beneficiary children at risk. The Office of the Children’s Commissioner’s monitoring team has visited the children’s team demonstration sites to assess their readiness, and will seek opportunities to support the children’s teams where possible.

The commissioner has also signed a statement with the leaders of 40 different faiths, in which they make a commitment to eradicating violence towards women and children in New Zealand. The office views engagement with Christian and other faiths as an important way to connect Ministry of Health and Ministry of Social Development networks with Māori and immigrant populations. We support the office using religious networks to connect communities with government initiatives, and we look forward to being updated on its progress at the next review.
Risk predictor tool

Some of us were concerned about the use of predictive risk modelling to determine the likelihood of substantiated abuse in beneficiary families. The office said it understood that the Ministry of Social Development did not rely solely on data from such modelling to target early interventions, and believed it should only be considered alongside other data in a clinical decision-making process, by the children’s teams for example. The ministry acknowledged this represents a significant shift from the original intention.

The office also registered concern about people’s information being used for predictive risk modelling without their knowledge and when it was not gathered for that purpose. However, it argued that information pertinent to a child’s safety should be used in any such clinical process, and that sometimes it was necessary to do so without consent. The office said the issue was in good hands with the Expert Advisory Group on Information Security, which is led by Sir Anand Satyanand.

Privacy and information security is a complex issue. We expect to be apprised of any decisions made about the implementation and use of predictive risk modelling.

Expert advisory group report on solutions to child poverty

The Expert Advisory Group on Solutions to Child Poverty was established in March 2012 by the Children’s Commissioner and released its report, *Solutions to Child Poverty in New Zealand, evidence for action*, in December 2012. The report includes 78 recommendations and a list of initial priorities for action. The office emphasized that its early engagement with media, including Māori and Pacific media, was the key to the understanding and positive reception of the report. We commend the office for taking practical steps to ensure the findings of the report are disseminated widely and accurately.
Appendix

Approach to this financial review

We met on 27 March and 15 May 2013 to consider the financial review of the Children’s Commissioner. We heard evidence from the Office of the Children’s Commissioner and received advice from the Office of the Auditor-General.

Committee members

Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Phil Heatley
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Phil Twyford
Hon Michael Woodhouse

Evidence and advice received


Office of the Children’s Commissioner, Responses to written questions, dated 21 and 27 March and 16 April 2013.
Contents

Recommendation 2
Introduction 2
2011/12 performance 2
National Strategy for Financial Literacy 3
Monitoring retirement villages 3
Appendix 5
Retirement Commissioner

Recommendation

The Social Services Committee has conducted the financial review of the 2011/12 performance and current operations of the Retirement Commissioner and recommends that the House take note of its report.

Introduction

The Retirement Commissioner is a Crown entity created by the New Zealand Superannuation and Retirement Income Act 2001, but the commission was established in 1993. It is legally known as the Retirement Commissioner, but has branded itself as the Commission for Financial Literacy and Retirement Income. It is responsible to the Minister of Commerce and the Minister for Building and Construction.

The previous Retirement Commissioner, Diana Crossan, was appointed in February 2003 and stepped down in January 2013. Diane Maxwell was appointed on secondment from the Financial Markets Authority to act as Interim Retirement Commissioner from 25 March to 30 June 2013.

The Retirement Commissioner seeks to improve financial literacy, reviews retirement income policy, and monitors retirement villages legislation.

2011/12 performance

In 2011/12 the Retirement Commissioner’s total revenue was $6,151,878 and its total expenditure was $6,392,008, resulting in a net deficit of $240,130. As at 30 June 2011, the commission had retained earnings of $1,191,422, and a cash balance of $2,493,884.

The commission budgeted a deficit for 2011/12 of $832,977, but its actual deficit was $240,130. It forecasts deficits for the outyears 2012/13 ($392,000), 2013/14 ($651,000), and 2014/15 ($443,000). We were told the intention of the forecast deficits is to reduce the retained earnings and cash reserves over three years to a level at which the commission could comfortably continue to operate. The increase in expenditure has been incurred in 2011/12 and 2012/13, in 2011/12 mainly on intangible assets such as the commission’s websites, including the Sorted “Think, Shrink, Grow,” campaign, and in 2012/13 on marketing and communication.

With this additional spending included, the commission forecasts retained earnings of $865,965 and cash reserves of $521,109 at June 30 2013. Subsequently, the commission expects cash flow to remain neutral and reserves of around $500,000 to be maintained.

The commission agreed that it was better to use the reserve to fulfil its mandate than to maintain it at an unnecessarily high level.

The Office of the Auditor-General rated the commission’s management control environment and financial information systems and controls as “very good”. Its service performance information and associated systems and controls were rated “good”, and further development was recommended for the financial literacy output class quality measures, many of which measure only quantity and timeliness. The office also
recommended the inclusion of historical trend information against performance measures and “management commentary” to explain how targets were set for significant measures.

**National Strategy for Financial Literacy**

The commission provides the secretariat for the National Strategy for Financial Literacy. It defines financial literacy as the ability to make informed judgements and effective decisions about the use and management of money. Its programmes seek to empower people to make good financial decisions and to be wary of “dumb debt”, which is high-interest debt that can be easily avoided. The commission said that the attitude of banks towards debt has changed over the last three years, citing financial literacy programmes run by the four major banks and Kiwibank, and that a major part of the commission’s role was now to provide resources for other institutions seeking to foster financial literacy.

We queried some of the sponsorship arrangements for these programmes, including the use of Mastercard, but the commission expressed their comfort with these arrangements.

**Sorted website**

The Sorted website was re-launched in March 2012 with a new campaign called, “Think, Shrink, Grow,” and a tighter focus, now targeting 18- to 55-year olds. Since then, the commission reports that session times spent on the website have increased by 25 percent and visitor numbers by five percent.

The commission told us that according to the 2013 Financial Knowledge and Behaviour survey 37 percent of respondents have used Sorted and 21 percent have done so in the last year. We were pleased to hear that this high level of use has been achieved cost-effectively, largely through social media and online advertising.

**Pacific Financial Literacy project**

With the Ministry of Pacific Island Affairs, the BNZ, and a number of non-governmental organisations, the commission has been working on a 14-week financial literacy programme to help Pacific Island families and groups in Tamaki, Auckland. The commission said the programme had good results, but acknowledged that measuring behavioural change is difficult. Although the project has been evaluated, the commission said the evaluation did not reflect secondary benefits such as dietary improvements, reduced smoking, and family holidays, adding that it intends to continue evaluating the programme by talking to the participating families and groups again in a year. The commission is also seeking a new partner for the programme next year.

We recommend that any further evaluation of the programme include analysis of secondary benefits and look forward to receiving an update at the next review.

**Monitoring retirement villages**

The Retirement Villages Act 2003 requires the Retirement Commissioner to monitor retirement villages, which house about 30,000 residents. The commission said that the Act requires review. In its view the key issues in this area relate to communication between operators and residents, the disputes process, transparency regarding fees, service charges, maintenance, future developments, and information quality, which it considers to be the role of the Ministry of Business, Innovation and Employment. In light of this, the commission said it also thinks that the monitoring function should be undertaken by the Ministry of Business, Innovation and Employment, saying in a letter to the Minister for Building and Construction, Maurice Williamson, that while some issues could be addressed
by a review of the Act, others could be resolved if one agency within government had a leadership role for the retirement sector.

Once the commission has received the Minister’s response, we would appreciate an update.
Appendix

Approach to this financial review
We met on 10 April and 15 May 2013 to consider the financial review of the Retirement Commissioner. We heard evidence from the Retirement Commissioner and received advice from the Office of the Auditor-General.

Committee members
Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Phil Heatley
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Phil Twyford
Hon Michael Woodhouse

Evidence and advice received
Commission for Financial Literacy and Retirement Income, Responses to written questions, dated 5 and 24 April and 14 May 2013.
Housing Accords and Special Housing Areas Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Housing Accords and Special Housing Areas Bill and recommends by majority that it be passed with the amendments shown.

Structure of the commentary
This commentary covers the policy aims of the bill as introduced and the main amendments that we recommend. The Regulations Review Committee provided substantial feedback about the regulation-making powers contained in the bill. These comments have been addressed in the relevant sections of the report. A number of drafting improvements and minor technical amendments have also been recommended, but these are not detailed in the commentary. The commentary includes the minority views of the New Zealand Labour Party, the Green Party, and New Zealand First.
Introduction
The Housing Accords and Special Housing Areas Bill aims to provide a rapid and short-term legislative means, among other legislative changes under way, for improving housing affordability by facilitating an increase in land and housing supply in areas with housing supply and affordability issues. It would provide a mechanism for central government and territorial authorities to negotiate housing accords and for special housing areas to be declared.
A housing accord would set out how central and local government would work together to address housing supply and affordability issues. Special housing areas could be specified within regions or districts with housing affordability problems. This would allow a territorial authority, if there were a housing accord in place, or the Government, if there were no housing accord in place, to exercise new consenting and planning powers in the area.
The types of development to which such powers would apply must be predominantly residential, have a height of no more than six storeys, and have a minimum number of dwellings to be constructed.

Repeal dates
We recommend amending clause 3 to provide sufficient time to implement the bill and operate its provisions. The amendment to subclause (1) would change the date for the repeal of clauses 16 and 17, which would provide for the establishment of special housing areas, from 30 June 2016 to 3 years after the date on which the bill receives the Royal assent, and the amendment to subclause (2) would change the date by which the repeal of the remainder of the provisions would take effect from 30 June 2017 to 5 years after the date on which the bill receives the Royal assent.
We also recommend amending clause 19(1) to ensure that any Order in Council made under clause 16 is revoked on the repeal of that clause.

Definitions
We propose a number of amendments to clause 6(1) to provide greater clarity around terms used within the bill.
We recommend inserting definitions for the terms “maximum calculated height” and “storey”. The building code contains a definition of the term “building height”, but does not include a definition of the term “storey”. Varying definitions for “storey” are used by territorial authorities. The insertion of these proposed definitions aims to provide greater clarity around the height restrictions that would apply for qualifying developments. The bill maintains a six-storey limit, but also proposes an appropriate corresponding maximum building height referred to in clause 14.

We recommend inserting a definition for the term “predominantly residential”, with the detail set out in clause 14(2). Without definition, the term could be ambiguous and difficult to apply. We accept that this term would be difficult to define because the policy intent will differ depending on the circumstances of each development. We note that the Regulations Review Committee raised the issue that the content of regulations made under this bill would likely be informed by the interpretation of this term. We have therefore sought to clarify that a development that is “predominantly residential” would be one for which the primary purpose is the supply of dwellings. Such developments might also include some non-residential activities ancillary to quality residential development, such as recreational, mixed use, retail, or town-centre land uses. We recommend inserting definitions for the terms “proposed combined plan for Auckland” and “proposed plan”. This would clarify that the proposed Auckland combined plan (which includes the regional policy statement, regional plan (including the regional coastal plan), and district plan for Auckland) is covered as a “proposed plan” for the purposes of the bill.

Override provisions

We recommend amending clause 11(2), to provide for a housing accord to contain a dispute resolution process that must be followed before a housing accord may be terminated. Most of us consider that, as the purpose of the bill is to enhance housing affordability by facilitating an increase in land and housing supply, it is desirable for the Government to be able to intervene if necessary to hasten housing development. Our view is that the inclusion of a disputes resolution process in an accord could allay concerns. Others among us remain unconvinced. We have addressed this issue in our minority views.
A major concern expressed was the ability of the responsible Minister to override a territorial authority by declaring or continuing a special housing area where an accord has been terminated or agreement has not been reached with the territorial authority to conclude a housing accord. The chief executive of the Ministry of Business, Innovation and Employment would then be able to exercise the special consenting powers in the bill.

This override power was viewed by some as contradicting the principles of trust and partnership needed for central and local government to work closely together, and being inconsistent with one objective of the bill: to facilitate the establishment of an accord. It was viewed as overriding local democracy by being inconsistent with existing plans, which were a product of community engagement and consultation.

**Qualifying developments**

We recommend amending clauses 14 to 17 and removing clause 18 to clarify the meaning of “qualifying development” (the types of developments to which the more permissive resource consenting and planning powers might apply) and the parameters of the criteria that might be prescribed for a qualifying development.

The Regulations Review Committee noted that a large part of the definition of qualifying development was left to be defined by Order in Council. They noted that clause 15(1) appears to empower an Order in Council to specify a maximum height or the number of storeys a qualifying development might have so long as it was less than six. Regulations could then specify a maximum height that exceeded six storeys.

It is not intended that a building over six storeys could be consented under this bill. Our recommended amendments to clauses 14 to 17 and the removal of clause 18 clarify this intention.

**Power to amend Schedule 1**

Schedule 1 lists regions or districts in which significant housing supply and affordability issues have been identified. Special housing areas could then be designated within regions or districts listed in the Schedule.
Clause 9 specifies criteria under which the Governor-General may add or remove regions or districts from Schedule 1 on the recommendation of the Minister. The criteria make reference to the terms “weekly mortgage payment” and “weekly take-home pay”, which are not otherwise defined in the bill.

We considered defining these terms, but decided not to because they reflect publicly available data sets. However, we do recommend amending clause 9(3), to expand the criteria that must be considered by the Minister when determining whether a region or district should be added to Schedule 1. To balance the Minister’s consideration of publicly available data sets, the proposed amendments would require the Minister to have regard to whether the land available for residential development was likely to meet housing demand based on projected population growth. It would also allow the Minister to consider any other information pertinent to housing supply and affordability issues before recommending the addition of a region or district to the Schedule.

**Infrastructure**

We recommend amending clause 16(3)(a) to require that before designating a special housing area the Minister must be satisfied that adequate infrastructure to service qualifying developments in the proposed area either exists or is likely to exist. To achieve the bill’s purpose, it is important that qualifying developments can be serviced by adequate infrastructure, such as sewerage systems and electricity. This should be more clearly specified in the bill, and is particularly important given the possibility that special housing areas could be established in the absence of a housing accord.

**Resource consent process**

**Decisions on resource consent applications**

We recommend amending clause 32(2) to require an authorised agency when considering a resource consent application to have regard to the listed matters, giving weight in the order listed. In particular, we recommend the inclusion of the Waitakere Ranges Heritage Area Act 2008 as an example of other relevant enactments that should be considered.
Addition of regional councils as authorising agencies
We recommend amending clause 23. The bill needs to provide for the situation where a resource consent from a regional council is necessary, for example, for earthworks, stormwater discharge, contaminated sites, river crossings, or culverts. The amendment provides that a regional council can also be an authorised agency, which determines the consents on such matters.

Infrastructure consents
We recommend amending clause 20 to include reference to related infrastructure. It is important that qualifying developments in special housing areas are not delayed by the resource consent process for associated infrastructure. This amendment would provide explicitly for applications for resource consent for such infrastructure to be included in the streamlined process provided for in this bill.

Notification
We also recommend amending clause 29(2) to expand the notification requirements so that infrastructure providers that had assets on, under, or over a potential qualifying development would be notified in relation to applications, and to specify that notification need not be carried out to those who have already provided written approval for resource consents.
We also recommend inserting clause 66A to require notification of additional adjacent landowners where a submission to expand land area subject to a plan change or variation to a proposed plan was made. If a person who owned land adjacent to land proposed for rezoning requested that their land be included in the proposal, new land areas would potentially become adjacent. This insertion would ensure that the owners of such land would be notified and included in the process.

Prohibited activities
We recommend removing clauses 25 and 26, and including the matters raised there in amendments to clause 24. Clause 25 provides for a person to apply for a resource consent where a proposed plan would allow an activity prohibited under an operative plan, and clause 26 provides for treatment of an activity prohibited in a proposed plan
as a discretionary activity. Clause 26 is primarily intended to allow development in Auckland’s Future Urban Zone.

The amendments would clarify how activities described as prohibited in an operative plan or a proposed plan must be treated by the authorised agency for the purposes of the bill.

We recommend inserting new clause 24B to allow an authorised agency that is also an accord territorial authority to require an application for a prohibited activity to be preceded or accompanied by an application for a change to a plan or a variation of a proposed plan. A person could also submit their own request for a plan change or variation to a proposed plan with a concurrent application for a resource consent.

**Process for plan changes and variations to proposed plans**

We recommend amending clause 61(4) so that an authorised agency would be required to have regard to the matters listed and to give weight to them in that order. This is intended to allay concern that the process provided for in clause 61 would have the effect of nullifying resource planning instruments such as regional policy statements, which might restrict the land available for residential development for valid reasons, such as natural hazards.

We recommend amending clause 65 by inserting subclause (4) to set out the grounds for rejection of a request to change a plan or vary a proposed plan. These provisions, with the necessary modifications, would mirror those in the Resource Management Act. We also recommend inserting new clause 65A to specify what would happen to a concurrent application when a request to change a plan or vary a proposed plan in relation to a prohibited activity is rejected, accepted in part, accepted with modifications, or withdrawn.

We also recommend inserting clause 27(2) and clause 68B to clarify the process to be followed when a resource consent application is made concurrently with a request for a plan change or a variation to a proposed plan.

We recommend amending clause 72 to specify that no compensation is payable by the Crown or an authorised agency for any loss or damage resulting from a proposed plan, a plan change, or a variation to a proposed plan process being stopped. Under clause 72, a plan change or variation to a proposed plan could be sought under provisions in
this bill while an existing Resource Management Act process was being undertaken, but when a plan change became operative under one instrument, the process under the other would be stopped. This insertion makes it clear that compensation would not be paid to those affected by the operation of this provision.

**Deferral pending application for additional consents**
We recommend inserting new clause 31A to allow an authorised agency to defer consideration of a resource consent if it considers other consents will also be required. It was always intended that the bill would reflect similar provisions in the Resource Management Act.

**Joint hearings by two or more agencies**
We recommend inserting new clause 31B to set out the process to be followed when, in relation to the same qualifying development, applications for resource consent are made to two or more authorised agencies and a hearing is to be held. This amendment would allow a joint hearing process, where both territorial authority and regional council consents were notified, and with the necessary modifications would be similar to that provided in section 102 of the Resource Management Act.

**Lapsing of consents**
We recommend amending clause 50 to provide a one-year default period for the lapsing of resource consents if no date is specified in the consent. Because the bill is intended to be a short-term legislative tool, the normal five-year default period for a consent to lapse is not appropriate.

**Relationship to other Acts**
We have recommended amendments to ensure that the relationship between the Resource Management Act, the Local Government Act 2002, and this bill (particularly the status of resource consents granted under the bill) is clear.

We recommend inserting new clause 48A to specify that resource consents granted under the provisions of this bill must be treated the
same as those granted under the Resource Management Act. This would clarify, for example, that a local authority could recover development contributions for the development under the Local Government Act.

We also recommend inserting new clause 20A to clarify that where resource consent for a qualifying development was required under the Resource Management Act an application could be made under that Act or in accordance with the provisions of this bill. For activities that do not require resource consent, an application for a certificate of compliance could be made under the provisions of this bill or the Resource Management Act.

**Administrative charges**

We recommend amending clause 74 to cover administrative charging arrangements. The bill as drafted does not adequately reflect similar provisions in the Resource Management Act. We recommend amending the bill to specify that authorised agencies can set charges for administrative functions, including costs for an accord territorial authority panel and hearings commissioners.

**Regulation-making powers**

We recommend amending clause 88(a)(ii) by removing the phrase “and for authorising the rectification of irregularities in procedure”. The Regulations Review Committee queried whether this provision is demonstrably essential, or if its purpose could be achieved through other means, such as by being prescribed in the bill. Of greatest concern was that the regulations made under this provision would be wide-ranging and uncertain, undermining openness and transparency, and could be argued to have retrospective effect.

We acknowledge the concerns being raised. The provision is intended to address potential conflict between the bill and the Resource Management Act. However, we consider that this could be achieved by reference to the relevant process in the Resource Management Act or its regulations without the need to provide for rectification in process. We therefore recommend the removal of this phrase.

We also recommend amending Schedule 2, clause 4, to more closely target regulation-making powers to scenarios that may arise when the bill’s operative provisions are repealed.
The Regulations Review Committee considers that clause 4(2) and (3) would create wide-ranging “Henry VIII” powers because Orders in Council made under subclause (2) could be authorised to repeal, amend, or reinstate provisions of this bill, and of other primary legislation. Its view is that clause 4(1), which gives much of the breadth and scope to these provisions, is unclear and open-ended.

We agree that the drafting of clause 4 is wider than is necessary. Our proposed amendments would confine the breadth and scope of the regulation-making power to deal more specifically with how unfinished processes would be dealt with following the bill’s repeal.

We recommend amending clause 19 to require the Minister to recommend the making of an Order in Council revoking a special housing area if the Minister is satisfied that the area no longer meets the criteria set out in the bill (clause 16(3)). It is not intended that a special housing area continue to exist where there is no longer a housing supply or affordability issue. The bill as drafted empowers the Minister to revoke a special housing area if it no longer meets the criteria, but we consider it appropriate that the Minister should be required to do so.

**New Zealand Labour Party minority view**

The Labour Party wants to see bold action to address the housing affordability crisis. Labour members support the idea of a short-term mechanism to stimulate the building of affordable housing through accords with councils and special housing areas with fast-tracked consenting.

Labour members voted for this bill at first reading in the Budget debate because the severity of the crisis demands action, and because we thought any agreement reached by the Government and Auckland Council deserved proper scrutiny at select committee. However, we do not support this bill because we believe it is flawed in its design and will not achieve its stated aim of more affordable housing.

In our view the bill’s chief defect is that it will not lead to the building of any affordable housing. Furthermore, it is unlikely to make housing any more affordable.

Its premise is that the speedy introduction of more land for housing developments and fast-tracked consenting will lead to an increase in
the supply of housing, and that this in turn will lower the price of housing.

We doubt this for three reasons. First, the bill contains no mechanism to ensure that if any new houses are built in special housing areas some portion of these are affordable to low-middle income earners. Second, there are such powerful forces driving up the price of housing that even if the bill and associated accords with councils do result in the hoped-for increase in supply of new homes, we doubt this will be sufficient to effect a lowering of prices overall, or even a slowing of their increase. Third, all the market incentives encourage developers and builders to build homes for the premium end of the market. We think that increasing the supply of land on its own will, in current market conditions, simply result in more homes being built that are unaffordable to most people. Nationally only five percent of new residential construction is affordable.

The fundamental problem with the bill in our view is that it picks out only a couple of the factors underlying the crisis (land supply and planning regulations) while ignoring others (poor productivity and lack of scale in the building industry, lack of competition in the supply of building materials, developers’ uncertain access to capital, prohibitive cost of preparing raw land for development, and tax treatment that encourages speculative investment in rental property).

We would prefer to see a more comprehensive approach that tackles all the drivers of housing unaffordability and actually guarantees the building of housing affordable for low- to middle-income earners. While this is our main objection to the bill, we do have other concerns.

We believe the provisions that allow the Government to override a council and its plans are draconian, damaging to local democracy, and risk poor decision-making. As the Human Rights Commission said, “there has been a trend of removing the voice of those affected from the decision-making process.” It is a nonsense, in our view, to expect a council to negotiate an accord with central government in good faith when it knows the Government can get its own way by invoking the override powers.

When those powers are used, they give wide latitude to the Minister of Housing to direct the detail of developments in special housing areas with only very weak requirements to take into account the Resource Management Act, or local or regional plans. We fear this will
result in low-quality developments and could incur considerable risk for councils if special housing areas are set up without reference to a local authority’s planned or resourced investment in needed infrastructure.

While the need to respond to the housing crisis is urgent, we do not believe it justifies a period of only two weeks for public submissions on the bill. In addition, the concerns raised by Parliament’s Regulations Review Committee that the bill contains excessive regulation-making powers reflect a poor legislative approach. Finally, the amended bill weakens the protection for special places like the Waitakere Ranges Heritage Area, which under current law has primacy over local or regional plans. Whereas the Waitakere Ranges Heritage Area Act provides for a binding set of management objectives for the area, the current bill dilutes this language by providing for the decision makers to “have regard” to those objectives.

Green Party of New Zealand/Aotearoa minority view
The Green Party remains strongly opposed to the passage of this legislation. We do not consider that it will achieve the primary objective—to increase the supply of affordable housing—and we are profoundly uncomfortable with the provisions that override the autonomy of territorial authorities and limit consultation and appeal rights under the Resource Management Act.

Increasing the supply of affordable housing
In his first-reading speech, the Minister of Housing said that this bill is “a core part of the Government’s work to improve housing affordability”, yet after hearing from officials and submitters on the substance of this bill we do not believe it will do anything to increase the supply of affordable housing or improve housing affordability across the board.

This bill seeks to solve a problem of lack of supply of affordable housing with measures to increase land supply. The two are not synonymous. Indeed, the problem with prescribing a land supply solution to a housing supply problem is highlighted by the fact that the factors the Minister must consider when deciding whether to pursue a special housing area are housing affordability factors, yet the mechanism he or she can put in place under this bill to address that problem
is designed to increase land supply. The insertion of an additional criterion by the committee does not alter the fundamental point, as was pointed out by numerous submitters, that with the possible exception of Auckland, many of the regions of New Zealand displaying high rates of housing unaffordability do not in fact have a problem with land supply.

Furthermore, increasing land supply through the creation of special housing areas and fast-tracking consent processes may facilitate new property developments, but without specifying that these must contain a certain percentage of affordable and social housing, it is unlikely that any new affordable homes will be built as a result. Indeed, a number of submitters, including numerous territorial authorities and Property Council New Zealand indicated to the committee that they did not expect the bill to result in the creation of any more affordable housing. Instead, the assumption is that if larger, more expensive homes are built in new developments as a result of this bill, first-home buyers will be able to purchase the more affordable homes that are freed up as a result. This is a flawed assumption and a very indirect way to tackle the problem of a lack of affordable housing. We also consider that by encouraging and fast-tracking greenfields developments on the urban fringes, as this bill does, problems of urban sprawl including high transport and infrastructure costs, which are major contributors to the housing affordability crisis, are likely to be exacerbated.

At the very least, we consider that qualifying developments under this legislation should be required to include a minimum percentage of affordable housing, a point that was made by a number of submitters. More fundamentally, we are sceptical of the approach taken by the Government that a focus on freeing up land supply will do anything to improve affordability for the average first-home buyer, and consider that the time and energy of the House and this committee would have been better spent on legislation to tackle that problem directly.

**Overriding local democracy**

A common concern from submitters, including numerous territorial authorities, has been the inclusion of “override” provisions, which would allow the Government to establish special housing areas, appoint commissioners, and grant consents without buy-in from the
relevant territorial authority, if a housing accord was unable to be negotiated with that authority.

In our view, these provisions are an unacceptable curtailment of local democracy. The select committee amendment inserted to make it clear that the parties may engage in a disputes resolution process if negotiations towards a housing accord between central and local government break down does nothing to improve the situation. It will be impossible for councils to enter into such negotiations “in good faith” and on a level footing when they know from the outset that if they fail to agree to the Government’s demands, their authority can be overridden, special housing areas created, and consents issued without their participation. Any such negotiations will be stacked in the Government’s favour from the start, and councils are likely to feel pressured into agreeing to the terms of a housing accord in order to stay “at the table”, even if they have fundamental concerns with it. As far as we were able to ascertain from officials, there is no provision that would allow a territorial authority to refuse the creation of a special housing area within their jurisdiction if the Government was intent on it.

Much of the concern from territorial authorities, in addition to discomfort at the override provisions, relates to the curtailment of appeal and consultation rights under the Resource Management Act. This was a concern shared by many submitters especially members of the public. Housing is vital infrastructure that has profound impacts on the lives and well-being of all New Zealanders. It is crucial that decisions about the provision of new housing are made appropriately, with full awareness of potential environmental and social impacts, and with the participation of those affected. We remain opposed to the curtailment of rights to appeal and consultation under this bill, and share the concerns of many submitters that this may result in poor decisions being made.

Appropriate regulation-making power

We heard from a number of submitters and received advice from the Regulations Review Committee, that in addition to the unpopular override provisions the bill delegates a high level of regulation-making power to Ministers, which may not be justified. We share these concerns, and while we are pleased to note that the committee took
the concerns of the Regulations Review Committee seriously and has recommended amendments to the bill to moderate these powers where practical, we remain concerned that this bill concentrates a high degree of local decision-making power in central government that has only been seen in recent years in emergency legislation. While New Zealand is experiencing a housing crisis, it is not (yet) a national emergency and does not warrant this level of ministerial intervention.

Instead, we think a more considered national plan to tackle housing affordability is what is currently required. Such a plan would treat housing as core national infrastructure, focus on increasing the supply of affordable housing, and need to be developed in true partnership with relevant territorial authorities. The Housing Accords and Special Housing Areas Bill is no such plan and the Green Party will continue to oppose it.

**New Zealand First Party minority view**

New Zealand First acknowledges the Government’s effort to address the housing crisis we currently face in New Zealand. However, this bill is a reactive and rather unbalanced approach to housing in New Zealand. It lacks a long-term plan required to address the needs of all New Zealanders.

We oppose the non-notification approach where there is a blatant undemocratic approach to social housing. Developers under the bill are given the powers to develop without any concern for quality housing. Property speculators are the major contributors to the housing problems. At the moment we have a problem with our immigration policy that allows migrants to arrive under the first tier of the parent category, with the financial means to buy up land and housing in areas such as Auckland, thus leaving no opportunity for New Zealanders to own a piece of this country they call home. Currently we have a government creating obstacles for young people with financial hurdles for those seeking to buy their first home. There is nothing in the Government’s proposal to support these first home buyers, and low-income earners who wish to buy into the housing market in New Zealand are given no hope of being able to do so.

We do not support the width of proposals relating to plan changes. We feel that these plans are likely to compromise district planning,
and the proposal needs to be somewhat more limited and more consistent or in line with plan objectives. In Christchurch, for example, there are developments for housing that are in inappropriate areas—on areas well known to be subject to liquefaction in an earthquake, rising sea levels, and flooding. This is why proposals for special housing areas should be consistent with district plans so that we are not compromising the progress that has been made and do not repeat mistakes and further complicate things for more New Zealanders.

What we need right now is a comprehensive housing strategy addressing affordability and availability. We also need to ensure that a warrant of fitness on these homes is mandatory along with insurance. These homes need to be long-lasting and weather-resistant so that New Zealanders are not indirectly affected by things that are beyond their control and left to fend for themselves. This would also mean that many would not remain on a long waiting list for social housing.

New Zealand First has comprehensive plans that would allow all New Zealanders to attain a home. We believe the Government needs to consider a land-bank approach where land is purchased by the Government and made available where appropriate; targeting smaller more affordable homes on smaller sections. People in New Zealand should be able to buy a section without having to front up with the full capital cost and be given the means to build a home on these sections.

We believe the Government’s approach is a one-sided approach. It lacks any real solution to the problem of housing affordability; supply alone will not resolve this issue. In its current state, we cannot support the bill’s intentions. The disingenuous approach to the crisis currently faced is not something we can support. There is an overwhelming air of apathy from this Government when it comes to addressing the over-inflated housing market.

New Zealand First, however, supports the intention to build social residential housing, for there is a need to address shortages of houses in key areas, especially in Auckland.
Appendix

Committee process
The Housing Accords and Special Housing Areas Bill was referred to the committee on 16 May 2013. The closing date for submissions was 30 May 2013. We received and considered 64 submissions from interested groups and individuals. We heard 40 submissions, holding hearings in Auckland and Wellington. We received advice from the Ministry of Business, Innovation and Employment, and the Regulations Review Committee, who provided advice on the regulation-making powers contained in clauses 9, 15 to 19, and 88, and clause 4 of Schedule 2.

Committee membership
Peseta Sam Lotu-Iiga (Chairperson)
Jacinda Ardern
Hon Phil Heatley
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Phil Twyford
Hon Michael Woodhouse
Holly Walker replaced Jan Logie for this item of business.
The Social Services Committee has considered Petition 2011/64 of Penelope Mary Bright, requesting

that Parliament decline to proceed with the Housing Accords and Special Housing Areas Bill until the lawfulness of the reliance of Auckland Council on the New Zealand Department of Statistics “high” population growth projections, instead of their “medium” population growth projections for the Auckland Spatial Plan, has been properly and independently investigated, taking into consideration that both Auckland Transport and Watercare Services Ltd, have relied upon “medium” population growth projections for their infrastructural asset management plans.

We heard and received evidence from the petitioner, but note that the matters she raised have been addressed publicly by the Auckland Council in statements posted on its website and issued to media.

The Auckland Council’s Chief Planning Officer has said that while Auckland may not grow by one million people by 2041 (the high-growth projection), Auckland Council is preparing for it. The city has historically met the high-growth projection, and it is therefore prudent for the council to plan accordingly. He said that the city needs to be prepared for, and infrastructure needs to be able to cope with, growth. He pointed out that the “Unitary Plan”, which is a part of the Auckland Spatial Plan, sets out only rules for development. We understand that actual development would be undertaken only in response to demand.

Regarding the use of alternative projections for higher- and lower-growth scenarios, we note that the council’s Chief Planning Officer has also said that it is prudent for the Auckland Council to provide for the highest likely population growth, and at the same time to be cautious to avoid over-investment. He said that the council requires organisations it owns or controls to be cautious about capital spending ahead of time to avoid high borrowing, interest, and depreciation costs, and that any underspending on infrastructure could be addressed through regular budget reviews and incremental expansion of facilities such as wastewater treatment plants.

The Mayor of Auckland has also said that using the high-growth projection was the appropriate thing to do, and that the council should not be too conservative in their assumptions about population growth.

We consider that the response to this issue provided by the council appears reasonable, and therefore have no matters to bring to the attention of the House.

Melissa Lee
Deputy Chairperson
Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation
The Social Services Committee has examined the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Bill seeks to amend the Housing Restructuring and Tenancy Matters Act 1992 by providing a framework for the provision of social housing. It seeks to promote contestability by increasing the number and diversity of social housing providers, and increase the housing choice available to tenants and prospective tenants.

Part 1 of the bill would come into force immediately after enactment. It would preserve the ability of Housing New Zealand (HNZ) to as-
ess tenants’ housing needs and eligibility for HNZ housing. It includes requirements for HNZ to be informed when tenants’ circumstances change; failing to advise HNZ of a relevant change of circumstances would be an offence.

Part 2 of the bill would insert new Parts 7 to 10 into the Act. They would make income-related rent (IRR) subsidies available to approved “community housing providers”. Another agency would take over HNZ’s role of assessing need and eligibility for state housing and an IRR subsidy. This role would be expanded to tenants applying for social housing with a registered community housing provider. The agency would take on other new functions reflecting a multi-provider environment, such as managing waiting lists for social housing, and referring tenants. It is expected that the Ministry of Social Development (MSD) would be this agency.

Part 2 of the bill provides for a new regulatory authority to register and monitor community housing providers. It would also allow regulations to be made specifying eligibility criteria and performance standards for such providers.

Proposed amendments
The following commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amendments.

We consulted the Regulations Review Committee on the proposed regulation-making powers in the bill. Their views are discussed throughout the commentary.

Commencement of Part 2
Under clause 2 of the bill as introduced, Part 2 would come into force on a day appointed by Order in Council. The Regulations Review Committee pointed out that commencement of legislation by Order in Council should only occur in rare and exceptional circumstances. Even if such circumstances are established, it is preferable to incorporate a fixed commencement date.

Part 2 is expected to come into force in April 2014. However, there is a risk that this will not be possible, because of the amount of policy work needed, particularly to transfer HNZ’s housing agency functions to MSD, and to appoint the regulatory authority. We are satis-
fied that the circumstances surrounding the transfer are rare and exceptional. The change to add a default commencement date to clause 2 addresses this issue. We recommend amending clause 2 so that Part 2 of the bill and clause 11, new section 56(2), would come into force on 14 April 2016 (if not previously brought into force by Order in Council). Excluded from this would be clause 18, clause 19, new sections 101 and 135, and new clause 24. The reason for excluding these provisions is that clauses 18 and 24 relate to transitional provisions, clause 19, new section 101 enables the social housing agency to be set up, and clause 19, new section 135 enables the establishment of an appeal body to hear appeals against decisions of the social housing agency. Clause 11, new section 56(2) imposes a duty on tenants to advise HNZ of a change in their circumstances that pertains to their eligibility for HNZ housing. Our recommendation that this provision commence later is discussed below.

**Criteria for assessing housing needs**
We recommend amending clause 19, new section 103. Social housing needs assessment criteria are not included in legislation. Under the bill as introduced the social housing agency would have a broad statutory power to assess housing needs and eligibility for social housing. Our recommended amendment would require joint Ministers and any other responsible Minister to issue binding directions setting out the criteria against which the agency must assess initial and continued eligibility for social housing. Notification of the directions would be made through the *Gazette*.

**Reviewing eligibility for social housing**
We recommend removing from clause 19, new sections 102(b)(i) and 123(2)(c), references to “any particular social housing” and replacing them with terms that reflect more accurately the agency’s function in relation to assessing “housing needs”. The social housing agency’s role would be to assess and review housing needs rather than eligibility for specific housing. It would be the social housing provider who would match tenants to particular housing. We recommend amending clause 19 by deleting new section 118(1)(c), and inserting new sections 78A and 99B. This would make it clear that social housing providers would not be required
to provide particular housing, and could refer tenants back to the agency. For example, they could do so if there were no suitable house available for them.

We recommend amending clause 19, new section 103. Inserting subsection (1B) would allow joint housing Ministers to issue binding directions determining the timing of reviews by the agency, and the class or classes of people the agency could review. We recommend deleting subsection (5) and inserting the contents of that provision as subsection (1C), to require consultation before such directions are issued. We also recommend amending clause 19, new section 127(2)(b) so that it would apply to reviews under new section 118. This would allow the agency to treat people differently in particular circumstances, including prohibited grounds of discrimination set out in the Human Rights Act 1993. This treatment would have to be justified under the New Zealand Bill of Rights Act 1990, and people would still be able to complain to the Human Rights Commission if they considered their treatment was unlawful.

We recommend inserting new section 56A by inserting new clause 10A. This would make it clear that obligations on social housing tenants referred to in clause 11, new sections 56 to 57AE, and the power to review housing needs and eligibility for housing also apply to HNZ tenants, even those whose tenancies would begin before Part I came into force.

Clause 10A, new section 56A, would also cover the review of IRR. We recommend replicating this change in clause 19, new section 115A. This would make it clear that the powers of IRR review will continue to apply to HNZ tenants, even those whose tenancies began before the commencement of clause 19 of the bill.

We note that the bill does not aim to review the eligibility of community housing tenants whose tenancies began before the legislation came into force. This is consistent with the intention that the IRR subsidy would be available to registered community housing providers for new tenancies after the legislation came into force, but not for existing tenancies.

Rent changes due to changes in circumstances
We recommend removing clause 7, under which increases in IRR arising from a change in a tenant’s circumstances would take effect
61 days after the change in circumstances. The bill as introduced proposes that this clause would take effect upon enactment. There are similar provisions in Part 2 of the bill, in clause 19, new sections 75, 76, 97, and 98. These would come into force by Order in Council (or on 14 April 2016). We consider it would be impracticable, and confusing for tenants, if HNZ administered the rule for only a few months before the wider changes took effect.

We recommend amending clause 19 by replacing new sections 76 and 98. The new provisions would ensure that social housing providers gave tenants at least two weeks’ notice of these rent changes. This would allow tenants time to adjust their payment arrangements. It should also make for more certainty of interpretation, and align practices between housing providers.

The new provisions would also make it clear that any debt resulting from the 61-day period until new rent took effect is not rent debt, but IRR debt. This means it would be owed to the social housing agency rather than the landlord. This would reduce the risk of a tenant losing their house because of rent arrears.

We recommend inserting new section 71A into clause 19 to make it clear that the power to adjust IRR 61 days after a change in circumstances would apply to all tenancies, including those that began before Part 2 of the bill came into force.

**Appealing decisions of the social housing agency**

The Regulations Review Committee gave us feedback on clause 19, new section 135. In particular, new section 135(1)(a)(i) would authorise regulations to be made establishing an appeals body, and prescribing how the body’s members are to be appointed, and how the body is to hear and dispose of appeals. The Regulations Review Committee considered these to be very wide powers. Given the quasi-judicial function the appeals body would perform, it recommended we consider amending the bill to specify the important aspects of the constitution and procedure of the appeals body. It suggested that at the very least, the bill should include a requirement for the appeals body to act independently and comply with the principles of natural justice. It also recommended that the making of regulations under new section 135 be allowed only on the recommendation of the Minister, after undertaking and taking account of consultation.
As new section 135 would re-enact section 63 of the principal Act we do not consider that any such changes are needed here. We note that in practice, the Governor-General would make regulations on the recommendation of joint Ministers.

We recommend inserting subsection (2A) enabling appeals by tenants or prospective tenants against decisions of the social housing agency to be made first to a Benefits Review Committee for consideration, and confirmed or varied in an interim step before any appeal to the Social Security Appeal Authority.

**Advising the agency of a change in circumstances**

We recommend amending clause 14 by removing new section 61AA and amending clause 19 by removing new section 128. These new sections would make it an offence for tenants not to notify HNZ or the social housing agency within four weeks of a change in circumstances that might affect their rent. We consider these provisions too general. We do not want to criminalise tenants who did not intend to mislead, or to profit from deception. We consider that the other offence provisions in the bill are enough.

Therefore, we recommend amending clause 19, new section 130, which would create an offence of making false statements or misleading the agency. The amendment refers to the tenant’s duty to notify changes of circumstance, making a failure to advise of such a change an offence if the purpose or the result of the failure falls under clause 19, new sections 130(2) or (3).

We recommend amending clause 14, new section 61AC(1) which deals with misleading HNZ for certain purposes. New paragraph (b) would make it an offence for people to do or say anything or omit to do or say anything in order to mislead HNZ for specified reasons. We recommend deleting the words “or omits to do or say anything” as we consider they are too wide. We do not want to punish people, such as the neighbour of a tenant, who have no duty to do anything. The phrase needs to be more specific so that it is clear that omission would constitute an offence only where there was a particular requirement to advise HNZ or provide information. We recommend similar changes to clause 19, new sections 85(1) and 130(1)(b).

We recommend later start dates for the duties set out in clause 11, new section 56(2), which would require tenants to advise HNZ of a
change in circumstances likely to result in their no longer being eligible for HNZ housing. Under clause 2, this provision would take effect the day after enactment. We note that a similar provision in clause 19, new section 116(2), requiring tenants to advise the agency of such a change in circumstances, would come into force by Order in Council (or, as we have recommended, on 14 April 2016). Therefore, we recommend that new section 56(2) also be brought into force on the earlier of 14 April 2016 or a date appointed by Order in Council. By this date the social housing agency would have started reviewing tenants’ continuing eligibility for social housing. Later commencement is appropriate because these new duties would represent a big change for tenants. More lead-in time would allow tenants to adjust to the reviewable tenancy policy, and more time for the agency to establish its process for reviewing eligibility.

We recommend removing clause 19, new section 77. This would avoid duplication of notification provisions under Part 2, new Part 9, and make things simpler for tenants. All notifications of changes of circumstances should be made to the agency, not HNZ.

**Intervention powers and community housing providers**

It is expected that some community housing providers will receive IRR subsidies, while others may receive Crown grants or assets. The investment—and the risk—is greater where there are grants or asset transfers. We consider that registration of community housing providers should be tiered, in classes based on the Government’s relative risk or investment in them.

The following intervention powers would only be available in situations as set out in new section 175. For example, they would be available where there had been a failure to meet the prescribed eligibility criteria or prescribed performance standards. We recommend amending clause 19 to specify that registered community housing providers may be eligible to receive financial assistance in the form of IRR subsidies, Crown grants, and Crown assets. We recommend amending new section 175 to limit the interventions available to the regulatory authority under clause 19, new sections 176 and 177. The interventions should be available only in respect of registered community housing providers who are eligible to receive Crown grants,
or assets of the Crown or a Crown entity. This means the Crown could make an appointment to the governing body of a provider, and give binding instructions to a provider, only if that provider had applied and had been registered as eligible to receive Crown grants or assets.

We recommend amending new section 175(3) so that joint Ministers would be required to, rather than having the discretion to, establish guidelines for the exercise of intervention powers.

We also recommend inserting new section 176(6) into clause 19, to ensure that the proportion of members appointed by the regulatory authority to the governing body of a community housing provider cannot comprise a majority of the board.

**Which providers may access IRR subsidies?**

It would be a significant cost to the Government to give IRR subsidies to all who apply. We recommend inserting paragraph (ga) into new section 179(1) in clause 19, to allow regulations to be made specifying the type or types of registered community housing provider to whom the IRR subsidies may or may not be made available.

We have received advice that this provision appears to be authorising regulation-making powers that address significant matters of policy that would more appropriately be the subject of parliamentary enactment, and that clarification as to how it would interact with clause 19, new section 103 (which authorises Ministers to give the responsible government agency policy directions setting out the terms and conditions on which the IRR subsidy must be made available to registered community housing providers and HNZ) is needed. However, we disagree that these changes should be made by parliamentary enactment. There needs to be sufficient flexibility to allow regulations to specify the type or types of community housing providers to change in response to changes in social housing need and demand in the future.

We also recommend amending new sections 103(1) and 159(1) so that Ministers may give directions regarding the location, in addition to the type and number, of housing units that can be funded using the IRR subsidy.
Pre-approval of community housing providers
We recommend amending clause 19 to insert new section 169A, relating to community housing providers that have entered into a Relationship and Grant Agreement with the Social Housing Unit in the Ministry of Business, Innovation and Employment before the commencement of the legislation. These providers would be eligible for IRR subsidies only for a period of one year from the date of commencement, not Crown grants or Crown assets. The providers would also be able to opt out of the deemed registration.

Appeals mechanism for community housing providers
We recommend amending clause 19 by inserting new sections 178A to G to enable the establishment of an appeals body for decisions of the regulatory authority on registrations and the intervention powers under clause 19, new sections 176 and 177.

Financial products
We recommend removing from the definition of “financial product” in clause 6(2) the words “on behalf of the Crown”. This would allow investigations to be made by HNZ in respect of any product it administers, whether or not on behalf of the Crown. It would entail consequential amendments to clauses 12, new section 57AE(a), and 19, new sections 71 and 102(c).

Electronic transactions
We recommend various amendments to provisions in the bill to make it clear that notices could be communicated electronically. We recommend that the bill refer, where appropriate, to provisions in Part 2 of the Electronic Transactions Act 2002.

Information sharing and use of information
It is expected that MSD will be the social housing agency. We recommend inserting new section 125A into clause 19, to allow MSD to use social security information in order to perform its social housing functions, and social housing information in order to perform its social security functions.
We also recommend amending clause 19, new section 105, to allow the agency to pass on to social housing providers information regarding the sustainability of tenancies as well as a person’s housing needs. By this, we intend to facilitate the sharing of information that social housing providers would need to perform their role as social housing landlords. For example, if a tenant has a history of damage or antisocial behaviour, or mental health needs, this may influence decisions about tenancy management, such as the frequency of inspections, and social support needs. We expect that MSD and HNZ would formalise these information-sharing arrangements, and would seek to involve the Office of the Privacy Commissioner. Similarly, information-sharing arrangements with community housing providers would be formalised contractually.

**Recovering debt from tenants**

We recommend inserting new section 126A into clause 19 so that, should MSD become the social housing agency, then Crown IRR debt could be recovered in the same way as if it were a debt under the Social Security Act 1964. The retention of new sections 142 to 152, and the insertion of new section 141A, would provide flexibility for the future, in the event that another organisation, other than MSD, became the social housing agency, so it could use deduction notice powers to recover Crown debt.

We recommend replacing subsection 4 of clause 16, new section 65AG to clarify that HNZ may recover overdue amounts regardless of whether the debt became recoverable under new section 60 before the commencement of new section 65AG.

**Staff transfer and transitional arrangements**

Clause 18 proposes to insert new section 3AA into the Act, to enact the transitional provisions set out in Schedule 4. This provides for the transfer of employees of HNZ to the agency. We recommend changing the word “must” to “may” in proposed Schedule 4, clause1(2), to better reflect the existing settings in the State Sector Act 1988. This would allow MSD the flexibility to decide which roles would be transferred as part of the transfer of functions.

We also recommend inserting a second Part into Schedule 4, to allow regulations to be made regarding the transfer of functions from HNZ
to the agency, and providing for any other matters necessary for facili-
titating or ensuring an orderly transition.

We are aware that regulation-making powers in proposed new clause
5(3) of Schedule 4 should be “demonstrably essential” and justified
by “exceptional circumstances”; otherwise, this purpose should be
pursued by other means, such as amending primary legislation or
undertaking further policy work. However, we consider these cir-
cumstances to be exceptional. This is a highly complex transfer and
there are likely to be a lot of steps to work through in each part of the
transfer. There are a number of vulnerable tenants who may be af-
ected if the transfer does not go smoothly. We consider these powers
necessary to minimise that risk.

**Information-gathering and privacy issues**

The bill seeks to insert three new sections into the Act allowing
HNZ or the social housing agency to require information for certain
purposes, such as ascertaining housing need. We acknowledge that
clause 14, new section 59AA and clause 19, new sections 82 and 125,
propose broad information-gathering powers.

The bill also seeks to insert three new sections into the Act allowing
regulations to be made authorising HNZ or the agency to obtain in-
f ormation pursuant to a requirement under new sections 59AA, 82,
or 125. These are clause 16, new section 65AC, and clause 19, new
sections 90 and 139.

The Regulations Review Committee questioned the necessity of the
latter regulation-making powers, observing that such regulations
might repeat the powers that are already conferred in new sections
59AA, 82, and 125.

We consider that new section 65AC and its equivalents should re-
main as drafted, as they are modelled on similar provisions in section
11B(5) of the Social Security Act. An objective of the legislation
 was to promote consistency with MSD’s current legislative frame-
work where practicable. Section 11B(5) is intended to be used as a
last resort if the Privacy Commissioner should issue a code of prac-
tice that was inconsistent with MSD’s current information-gather-
ing practices, and MSD had a real need for the information in ques-
tion. MSD would have to operate within a code of conduct (under
clause 16, new section 65AA and clause 19, new sections 88 and
137). This code of conduct would have to comply with any code of practice issued by the Privacy Commissioner, unless the regulations stated otherwise. There is a constraint on the exercise of the delegated powers under proposed new sections 65AC, 90, and 139, in that they would be made only after consultation with the Privacy Commissioner.

We also recommend the addition of new sections 59AA(6) to (9) in clause 14, and 82(6) to (9) in clause 19, to align this legislation further with the matching provisions in the Social Security Act. These additions would clarify that tenants are not required to provide information if this would be privileged in a court, for example self-incriminating information.

**New Zealand Labour Party minority view**

Labour members believe the bill is good in parts, and not so good in others, but we will not vote for a bill that opens the door for senior citizens to be evicted from their homes.

The housing crisis demands action. Housing shortages, and extreme unaffordability in the main urban centres, are putting low-income New Zealanders under great housing stress, with many forced to live in overcrowded and sub-standard conditions. In our view, the need is for the provision of more state and social housing, which currently accommodates only 5 percent of the population.

The bill in our view does two main things. First, it tightens the managerial screws on the administration of state housing. It gives the Government powers to recover debt more easily, and deal with those found to be rorting the system. It also extends to all tenants of state housing and community housing regular reviews of their eligibility. We believe this last provision will have the effect of extending insecurity of tenure to all state house tenants, including the elderly. This will create needless stress, anxiety, and suffering for older New Zealanders who least deserve such treatment, and are least able to cope with it.

We note that Government policy was to impose reviewable tenancies only on new tenants, but not on pre-existing tenants. Government Ministers have stated that this policy would not apply to the old or disabled. This bill, however, explicitly extends reviewable tenancies to all tenants of state and community housing.
Submitters told us state house tenants are among the most vulnerable members of society, often battling complex health challenges associated with poverty. Data was presented which shows state housing, which is often better quality and healthier than comparable homes in the private rental market, has a positive effect on the health status of tenants.

Submitters argued that the Government’s stated estimate of moving 3,000 people from their homes in the next three years will create a public health risk. They said housing insecurity and displacement are associated with poorer health, can create a sense of uprooting and dispossession, and school change can interrupt children’s relationships with teachers and peers and affect child wellbeing and educational achievement.

Even the Government’s own touchstone on these matters, the Productivity Commission, said:

>This emphasis on moving people through state houses (managing “throughput”) undervalues the stability needed for sustainable improvements in social outcomes. The current reform programme is based on making the best use of limited government capital. It presumes that people and families can be reallocated amongst the housing stock relatively flexibly. However, social housing is best thought of as a contribution to a complex set of social needs that typically occur in clusters. The current approach to reform is not always in harmony with the desires of communities for stability and continuity, which are often essential for addressing the needs of families requiring social assistance. It may disturb the social relationships that underpin families and local communities in areas of high state housing concentrations and undermine the social objectives of providing state housing (especially where families have multiple needs besides housing).  

We have seen no evidence that the Government has considered the likely health and social impacts of this provision.

The second main thing this bill does is to enable the transfer of state housing stock to community providers as a way of growing the sector. It makes the IRR subsidy available to them while it was previously available only to HNZ, although it is not clear to us logically why the subsidy should not be made available to local government social housing.

---

The bill sets up a regulatory regime for community housing providers which receive assets and the subsidy from the Government. It also transfers certain functions including the task of assessing eligibility and maintaining the waiting lists from HNZ to another government agency likely to be MSD.

The policy intent is to create a contestable market in which HNZ is just one housing provider among many. The Government has said it hopes to transfer 20 percent of HNZ’s stock to the community sector under these provisions.

Labour supports the intent to grow and empower the community housing sector. We agree that community housing organisations can be innovative, they can attract private investment thus increasing the pool of capital available for social housing, and that social housing would be greatly strengthened by a bigger, more capable sector.

However, the provisions in this bill reflect an approach to this problem that is basically about growing the community housing sector at the expense of HNZ. Instead of baking a bigger pie, this bill focuses on who is baking the pie, and how it is cut up.

Labour believes that putting a roof over the heads of our most vulnerable citizens is a core responsibility of government, and an essential part of the modern social safety net. By growing the community housing sector simply at the expense of HNZ, we fear that this policy will wind back the Government’s role in the provision of social housing without doing what is most needed, and that is increasing the stock of state and social housing.

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

The Green Party remains firmly opposed to the passage of the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Bill.

While we support the goal of growing the community housing sector, we consider that this should be done alongside an expansion of state housing, not via a model designed to compete with and eventually replace HNZ.

This bill seems designed to strip HNZ of its role as a social service provider and place it instead in competition with the community housing sector. We believe there will always be an important role for
the state to lead the provision of social and affordable housing, and we oppose any moves to dilute this function.
We wish to comment in particular on four aspects of the bill.

Reviewable tenancies
Since July 2011, new state housing tenants have been subject to a three-yearly review of their tenancy. Since three years have not yet passed since that time, this policy is completely untested and no analysis has yet been done of the outcomes for tenants whose tenancies will be terminated as a result.
It seems madness to now extend this policy to all existing state housing tenants without even waiting for the “trial” for new tenants to come into effect and be analysed. We consider that this would be likely to result in extremely adverse outcomes for many tenants.
We heard from a number of submitters that insecure tenure and “churn” in the private rental market is a lead cause of poor social outcomes for low-income tenants. We heard that the health, education, and economic outcomes of tenants, especially children, are severely compromised by having to move house frequently. One of the great things about being able to secure a HNZ tenancy has historically been the fact that it offers secure tenure and respite from the instability of the private rental market. Research by the Otago School of Medicine indicates that the longer a family is able to stay in a state house, the better the health outcomes for their children. We think that introducing reviewable tenancies for all social housing tenants would be likely to have significant adverse health and social outcomes for many families.
We heard that there would be discretion for the requirement of reviewable tenancies to be applied leniently to different groups, such as elderly tenants or tenants with disabilities and/or mental health conditions. We agree with submitters who suggested that families with school-age children should be added to this list, but more fundamentally we consider that it is an unfair and uneven process to restrict some groups to a “paper only” review without clear and transparent criteria. We think it would be much better to remove provisions related to reviewable tenancies altogether and retain one of the core strengths of state housing—that it provides safe, secure homes to vulnerable tenants for as long as they need them.
Shifting needs assessment away from HNZ

The bill would transfer many of HNZ’s functions, including those of assessing eligibility for state housing and for an income-related rent, to another government agency, most likely MSD. The Green Party opposes this move for a number of reasons.

First, it seems illogical and inefficient to remove the needs assessment function from the one agency with a clear picture of the need and availability of social housing in a given area. HNZ staff, with their existing knowledge, seem much better placed to undertake these needs assessments, especially for tenants with whom they already have relationships, than over-worked Work and Income case managers without specific knowledge of the client’s housing situation, or of the availability of social housing in the area. Furthermore, not every social housing tenant would be a Work and Income client, and there are some inefficiencies implied in having Work and Income staff take over a new function for a set of clients that they would not otherwise be dealing with.

Secondly, and more fundamentally, we are concerned that this shift would signal a change in function for HNZ from a social service agency to a pure landlord. This change has in fact been signalled for some time under the present Government, including the closure of many HNZ offices around the country, and the much-publicised and unsuccessful move to an 0800 number for all client interactions. The removal of the needs-assessment function altogether heralds the end of HNZ as a social service provider, and we are fundamentally opposed to this.

Extension of IRR subsidy to community housing providers

In principle, this is the one area of the bill that the Green Party supports. We share the goal of growing the community housing sector, and agree that one way to do this is to enable community housing providers to house those on the lowest incomes without having to charge market rents.

As noted above, we are concerned that in practice, the extension of the IRR subsidy to the community sector will be used as an excuse for HNZ to gradually withdraw from the provision of social housing. It is our strong belief that growth in the community housing sector must be achieved alongside an expansion of, not a reduction in, HNZ’s
provision of affordable social housing, including a substantial new building programme.

Furthermore, while we support the extension of the IRR subsidy to community housing providers, we also share the view that many of them expressed to the committee that it should apply not only to new, but also to existing tenants, in order for them to be able to structure their service provision in a fair and consistent manner.

**Regulation of community housing providers**

While we are supportive of moves to extend the IRR subsidy to community housing providers, we share the concerns of many that the draconian regulation and oversight powers that would come with it will be dangerous and damaging for the sector. Submitters from the sector expressed concern that a new framework for accreditation as a registered social housing provider will be drawn up, when the existing accreditation scheme for membership of Community Housing Aotearoa is sufficient, and widely supported by the sector. We share this view and consider that the CHA framework should be endorsed as the appropriate accreditation method. This would send a much stronger signal of partnership between the Government and the community housing sector than the imposition of external standards and the creation of a new regulatory body as proposed under the bill.

We also share the concerns of the sector about the powers of intervention and regulation granted to the Government, for example to appoint members to the governing body of a “non-compliant” community housing provider, or to issue binding instructions that a community housing provider must comply with. Again, such powers send a signal not of partnership with the sector, but of Government control, and are likely to result in some cases in a relationship of mistrust and potential dysfunction. We appreciate that the select committee has slightly modified these powers in its recommended changes to the bill, but we do not consider this to be sufficient.
Appendix

Committee process
The Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Bill was referred to the committee on 16 May 2013. The closing date for submissions was 27 June 2013. We received 380 submissions, 43 with substantive and unique content. We heard 20 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, clause 16, new section 65AC, and clause 19, new sections 135 and 139.

Committee membership
Peseta Sam Lotu-Iiga (Chairperson)
Hon Phil Heatley
Melissa Lee
Jan Logie
Le’aufa’amulia Asenati Lole-Taylor
Sue Moroney
Alfred Ngaro
Dr Rajen Prasad
Mike Sabin
Louisa Wall
Hon Michael Woodhouse

Jacinda Ardern and Phil Twyford were members of the committee for most of this item of business.
Holly Walker replaced Jan Logie for most of this item of business.
Members’ attendance, absence and suspension

Report of the Standing Orders Committee

Contents

Part 1 2
Summary of recommendations 2
Introduction 2
Attendance and absence 2
Salary deductions for suspended members 6
Process for adopting recommended amendments 6

Part 2 7
Recommended amendments to the Standing Orders 7

Appendix 11
Members’ attendance, absence and suspension

Part 1

Summary of recommendations

The Standing Orders Committee makes the following recommendations.

Recommendations to the House

We recommend to the House that the amendments to the Standing Orders set out in Part 2 of this report be adopted, as a sessional order, with effect from 1 January 2014.

We recommend to the House that the sessional order relating to compassionate leave that was adopted by the House on 26 September 2013 be revoked with effect from 1 January 2014, and that compassionate leave granted by the Speaker under that sessional order for a period after 1 January 2014 be treated as permission to be absent granted under new Standing Order 37B(1).

Introduction

This report recommends a procedure for recording the attendance, absence and suspension of members of Parliament. Once adopted by the House of Representatives, this procedure would complement provisions in the Members of Parliament (Remuneration and Services) Act 2013 to penalise members who are persistently absent or who are suspended from the service of the House.

Attendance and absence

Increase of penalty for members who are absent from the House

In the report on its review of the Standing Orders, the previous Standing Orders Committee noted that section 20 of the Civil List Act 1979 was under review. The section provides for members to be penalised if they are persistently absent without proper cause, but the current penalty is only $10 for each sitting day that a member is absent after being absent for 14 sitting days in a parliamentary session. The committee expressed its support for a substantial increase in the statutory penalty for absence from the House.

This higher penalty is implemented through the Members of Parliament (Remuneration and Services) Act 2013 (the Act), which has just been enacted. Under section 13 of the Act, a member who has been absent from the House for more than three sitting days during a calendar year is penalised by an amount equal to 0.2 percent of the member’s gross yearly salary for the fourth and each subsequent sitting day on which the member is absent.

Section 13(5) of the Act states that a member “is not to be treated as absent on any day on which the member is absent in accordance with the rules of the House of Representatives”. Under subsection (3), the Speaker certifies that the circumstances triggering a deduction apply to a member and that a deduction from the member’s gross salary may be made.

**Rules for recording attendance and absence**

In 2011, the Standing Orders Committee observed in relation to the treatment of members’ absences from the House that “a significant penalty would require clear rules concerning attendance to ensure members are certain about the requirement to attend and how it will apply to them”. The committee expressed the view that a record of members’ attendance at parliamentary business should be established, but that it should “take account of the full extent of members’ legislative and scrutiny roles and the other activities for which the House recognises members’ attendance and for which leave is granted”. The committee listed these aspects of members’ attendance, which should be taken into account in addition to attendance at sittings of the House, as follows:

- attendance at select committees
- official parliamentary travel funded by the Office of the Clerk
- attendance at other official business approved by the Business Committee
- absence approved by the Speaker or by party whips for illness or other family cause of a personal nature, or to enable attendance at other public business (whether overseas or in New Zealand).

Part 2 of this report sets out recommended amendments to the Standing Orders that would constitute rules of the House as acknowledged under section 13(5) of the Act.

**Attendance and presence within parliamentary precincts**

New Standing Order 37A sets out the types of attendance that would result in a member being recorded as “present in the House”. This provision reflects the list set out by the previous Standing Orders Committee. The record would not distinguish between types of attendance by members (for example, in the House or at a select committee)—once a member had attended in any of these ways, he or she would be recorded as present on that sitting day.

Since the types of attendance to be recognised under new Standing Order 37A are the same as those that already qualify members to be regarded as “present within the parliamentary precincts”, it is proposed that new Standing Order 37A(2) define this term accordingly. The phrase would then no longer need to be set out in Standing Orders 140(3) and 152(4), which relate to the casting of party votes and the exercise of proxy votes. The proposed amendments therefore remove the use of this phrase from these Standing Orders.

For the purposes of casting party votes, the essential factor is whether or not members are within the parliamentary precincts at the particular time when a vote takes place. This appropriately recognises that many activities members perform as part of their duties occur outside the House. On the other hand, recording attendance involves noting that during a sitting day members have been present in at least one forum undertaking parliamentary business. Members should not be recorded as attending the House or parliamentary business when they do not do so, even if they are within the parliamentary precincts.

---

2 *ibid.*, p.20.
Permission to be absent

We recommend that a member who is absent with permission granted by leaders or whips, or by the Speaker, be regarded as “absent in accordance with the rules of the House of Representatives”, and thus not treated as absent under the Act.

The Standing Orders currently do not recognise the granting of leave by the whips, although this is implicit in the provisions for proxy votes. In accepting that leave granted by the whips or by the Speaker should be considered as absence in accordance with the rules of the House, it is necessary for such leave to be formally recognised. This would be achieved through new Standing Order 37B. The term “permission to be absent” is used in preference to the term “leave”, as it is more consistent with the language in the Act and avoids confusion with the use of the term “leave” in other parliamentary contexts. Moreover, members with permission to be absent will not be regarded as “on leave” in an employment sense.

Parties may wish to establish standing arrangements whereby members who are within the parliamentary precincts, but are unable to attend parliamentary business, have permission to be absent. Similarly, members who are given leave to be away from the parliamentary precincts but whose proxy votes are given in the House could be regarded as having permission to be absent. In this way, the need for parties to adjust their arrangements for recording leave and noting the whereabouts of members might be minimised.

Members who do not attend but have permission to be absent thus would be recorded as absent in accordance with the rules of the House. In this way, members would have an incentive to attend parliamentary business, but would not usually be penalised financially for being absent. This recognises that, on the whole, members’ absences are on account of their attending to Government or other representative duties, or because of illness or other family cause of a personal nature.

Compassionate leave

The House provided for compassionate leave through its resolution passed on 26 September 2013. Under our recommended amendments to the Standing Orders, compassionate leave would be administered as permission granted by the Speaker under proposed new Standing Order 37B(1). Instead of regarding a member who is absent on compassionate leave as present within the parliamentary precincts, Standing Order 37B(1) would treat the member as absent in accordance with the rules of the House, and thus not subject to penalty. The proposed amendments to Standing Order 152 would—

- permit proxy votes to be cast for members who are absent with permission from the Speaker, over and above the usual 25 percent limit for the casting of proxy votes by a party (new paragraph (2A))
- allow proxy votes to be cast for a party of two to five members if one of them is absent with permission from the Speaker (new paragraph (3)(b))
- allow a proxy vote to be cast for a party consisting of one member or an Independent member where permission has been granted by the Speaker (paragraph (4)).

This would have the same effect as the sessional order of 26 September 2013, without purporting that the member was within the parliamentary precincts. We recommend that, when proposed new Standing Order 37B(1) and the above amendments to Standing
Order 152 are adopted, the sessional order relating to compassionate leave be revoked. We also recommend a transitional arrangement treating compassionate leave that has already been granted by the Speaker as permission to be absent under new Standing Order 37B(1). This would avoid the need for any member who had been granted compassionate leave to reapply under the new provisions.

**Official record of absences**

If a member is not recorded as being present in the House on a sitting day on which he or she does not have permission to be absent, new Standing Order 37C would provide for the member’s name and the relevant sitting day to be recorded in the Journals. At present no official record of the House publishes when a member is absent for the purposes of making salary deductions.

The Journals are an appropriate vehicle for publishing this information and will provide a clear evidential basis for a salary deduction. Information about absences would be published in the schedules appended to the Journals. Publication in the Journals of a member’s fourth or subsequent absence for a calendar year would provide the basis for the Speaker to issue a certificate requiring the deduction provided for in section 13 of the Act.

**Proposed procedure**

The recommended amendments to the Standing Orders would require the Clerk to keep a record of attendance, provide for members to be granted permission to be absent, and require absences without permission to be recorded in the Journals. The procedure for recording attendance or absence, which would be repeated for each sitting day, is along the following lines:

1. Attendance of members at select committees and on official parliamentary travel and other official business approved by the Business Committee is recorded by the Clerk in a database.

2. The Serjeant-at-Arms records in the same database the attendance in the House of members who have not already been recorded as attending other parliamentary business.

3. The Clerk consults party leaders or whips as to whether members who are not recorded as attending parliamentary business were granted permission to be absent during that day.

4. The Clerk similarly consults the Office of the Speaker about the granting of permission to be absent to Independent members and members of parties consisting of one member.

5. When a member is not recorded as being present in the House on a sitting day and does not have permission to be absent on that day, the Clerk informs the member concerned that his or her absence will be recorded in the Journals.

6. The member’s name and the date of the sitting day on which the member is absent are recorded in the Journals of the House published after that sitting week.

7. On the fourth and any subsequent occasion that a member is recorded in the Journals as absent from the House during a calendar year, the process is commenced for the Speaker to certify the member’s absence for the purpose of section 13 of the Act.
Salary deductions for suspended members

Recommendation to penalise suspended members

At present, a member who is suspended from the service of the House—for example, for grossly disorderly conduct—forfeits the rights to enter the Chamber, vote, serve on a select committee, or lodge questions or notices of motion. However, the member does not suffer any financial penalty.

In its 2011 report on the review of Standing Orders, the previous Standing Orders Committee recommended that the legislation to replace the Civil List Act 1979 include a provision to apply salary deductions to members who are suspended from the service of the House. The committee considered that such deductions should apply in respect of the period for which a member is suspended: that is, for 24 hours on the first suspension, 7 days on the second suspension, or 28 days on the third or subsequent suspension. This proposal is implemented by section 14 of the Members of Parliament (Remuneration and Services) Act 2013.

Publication of suspension in Journals

While the naming and suspension of a member is noted in the Journals, there is no formal record of the period for which the member is suspended. The proposed sessional order reflects section 14 of the Act by requiring the suspension of the member, and the day or days on which it applies, to be recorded in the Journals. In practice, this information would be published in a schedule to the Journals published after each week of sittings. This information would then be used as the basis for the issue of the certificate by the Speaker (under section 14(3)) specifying the period of the member’s suspension and directing that the deduction be made from the member’s gross salary.

Member not recorded as absent while suspended

A member who is suspended should not to be treated as absent for the purposes of section 13 of the Act. Otherwise, there would be a risk that a suspended member, who is prevented from attending parliamentary business, could be penalised twice, particularly if the member had already been absent from the House for three or more sitting days in that calendar year.

Process for adopting recommended amendments

Timing for sessional order to come into effect

Section 13(2) of the Act provides for the number of sitting days that a member has been absent to be “calculated from the beginning of the first day of the calendar year.” We therefore recommend that the sessional order have effect from 1 January 2014. This would allow administrative processes—such as the consideration and granting of permission to be absent—to be undertaken before sittings commence next year.

Review of Standing Orders

The adoption as a sessional order of the amendments set out in Part 2 will provide the opportunity for the rules and procedures for members’ attendance and absence to be subject to a trial period until the end of this term of Parliament. Next year, in our review of the Standing Orders, we will consider how these rules and procedures are working in practice. This will allow the rules to be refined when they are incorporated in the Standing Orders.

3 Standing Order 92.
Part 2

Recommended amendments to the Standing Orders

Members’ attendance, absence and suspension

The following amendments to the Standing Orders are recommended to be adopted as a sessional order:

CHAPTER 2

SITTINGS OF THE HOUSE

SEATING AND ATTENDANCE AND ABSENCE

37 Seating

(1) As far as practicable, each party occupies a block of seats in the Chamber.

(2) The Speaker decides any dispute as to the seats to be occupied.

37A Attendance

(1) A member is recorded by the Clerk as being present in the House on a sitting day if, during that sitting day, the member—
   (a) attends the House, or
   (b) attends a meeting of a select committee, or
   (c) attends other official business approved by the Business Committee, or
   (d) is participating in the official inter-parliamentary relations programme funded by the Office of the Clerk.

(2) At the time that a member is outside the parliamentary precincts attending or participating in business under paragraph (1)(a) to (d), that member is regarded as present within the parliamentary precincts for the purposes of the Standing Orders.

37B Permission to be absent from the House

(1) The Speaker may grant a member of a party consisting of one member, an Independent member, or any other member (following a request from a member’s party leader or whip) permission to be absent from the House—
   (a) on account of illness or other family cause of a personal nature;
   (b) to enable the member to attend to public business (whether in New Zealand or overseas).

(2) A leader or whip of a party consisting of more than one member may grant any member of that party permission to be absent from the House.

37C Absence from the House

If a member is not recorded as being present in the House on a sitting day and that member did not have permission to be absent on that day, the member’s name and the sitting day on which the member was absent are recorded in the Journals.
MAINTENANCE OF ORDER

83 Members to be seated
(1) Members must be seated when they are in the Chamber except when speaking in debate or voting.
(2) As far as practicable, each party occupies a block of seats in the Chamber.
(3) The Speaker decides any dispute as to the seats to be occupied.

92 Rights forfeited by suspended member Effect of suspension
(1) A member who is suspended from the service of the House may not enter the Chamber, vote, serve on a committee, or lodge questions or notices of motion.
(2) The Journals record the suspension of a member from the service of the House, and state the day or days on which the member is suspended from the service of the House.

PUTTING THE QUESTION

140 Procedure for party vote
(1) In a party vote,—

(c) the total number of votes cast for each party may include only those members present within the parliamentary precincts together with any properly authorised proxy votes:

(3) Any member absent from the parliamentary precincts—
(a) attending a meeting of a select committee held outside the Wellington area with the agreement of the House or the Business Committee, or
(b) on official parliamentary travel funded by the Office of the Clerk, or
(c) attending other official business approved by the Business Committee
is regarded as present for the purposes of paragraph (1)(c).
152 Casting of proxy vote

In the case of a party vote, proxies may be exercised for a number equal to no more than 25 percent of a party’s membership in the House, rounded upwards where applicable, but at least one proxy may be exercised for a party.

(2A) A proxy may be exercised for a member, in addition to the number of proxies that may be exercised under paragraph (2), while that member is absent from the House with the permission of the Speaker granted under Standing Order 37B(1).

In the case of a party vote, proxy votes may be exercised for a party consisting of two to five members only if at least one of the members of that party is—

(a) present within the parliamentary precincts at the time, or
(b) absent from the House with the permission of the Speaker granted under Standing Order 37B(1).

In the case of a party vote, a proxy may be exercised for a party consisting of one member and for any Independent member only if the member concerned is—

(a) present within the parliamentary precincts, or
(b) absent from the parliamentary precincts attending a meeting of a select committee held outside the Wellington area with the agreement of the House or the Business Committee, or
(c) absent from the parliamentary precincts attending other official business approved by the Business Committee, or
(d) absent from the parliamentary precincts with the permission of the Speaker granted—
   (i) for illness or other family cause of a personal nature, or
   (ii) to enable the member to attend to other public business (whether in New Zealand or overseas),
(b) absent from the House with the permission of the Speaker granted under Standing Order 37B(1).

APPENDIX B

PECUNIARY AND OTHER SPECIFIED INTERESTS

PART 1

8 Contents of return relating to member’s activities for period ending on effective date of return

(1) Every return must contain the following information for the period specified in clause 9:

(d) a description of each payment received, and not previously declared, by the member for activities in which the member was involved, including the source of each payment, except
that a description is not required of any payment that is—

(i) paid as salary or allowances under the Civil List Act 1979—Members of Parliament (Remuneration and Services) Act 2013, the Civil List Act 1979, or the Remuneration Authority Act 1977, or as a funding entitlement for parliamentary purposes under the Parliamentary Service Act 2000:

(ii) paid in respect of any activity in which the member concluded his or her involvement prior to becoming a member (that is, before the commencement of a period set out in clause 9(2)(b) or (d), as applicable).
Appendix

Committee procedure
The committee considered this matter of procedure and practice under Standing Order 7(b). Advice was received from the Clerk of the House of Representatives, and the committee considered the matter on 17 October and 14 November 2013.

Committee members
Rt Hon David Carter (Chairperson)
Hon Gerry Brownlee
Hon Peter Dunne
Te Ururoa Flavell
Hone Harawira
Gareth Hughes
Sue Moroney
Denis O’Rourke
Grant Robertson
Hon Anne Tolley
Minimum Wage (Starting-out Wage) Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the Minimum Wage (Starting-out Wage) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Minimum Wage Act 1983 to change the way in which minimum rates of wages may be prescribed by Order in Council. It would introduce the ability to set one or more starting-out rates of wages, of no less than 80 percent of the minimum adult rate of wages, for eligible 16- to 19-year-olds. It would repeal the ability to set the current new-entrant rate, and would change the criteria for setting the current training rate. This commentary covers the major amendments that we recommend; it does not discuss minor, technical, or consequential amendments.
Commencement
We recommend amending clause 2, to change the commencement date for the legislation from 1 April 2013 to 1 May 2013. A minimum wage order, which in previous years has taken effect from 1 April, is required to set all minimum wage rates. There may not be enough time between the bill being enacted and a wage order on 1 April 2013 to educate the public about the starting-out wage.

Prescription of minimum wages
Clause 4 of the bill would replace section 4 (Prescription of minimum wages) of the Act with new sections 4 to 4B.

Continuous employment
We recommend amending the explanation of “continuous employment” in new subsection 4A(6) to clarify the intended meaning of the term as used in subparagraphs 4A(1)(c)(ii) and 4A(3)(a)(i).

Continuously paid 1 or more specified social security benefits
We recommend further amending new subsection 4A(6) by inserting an explanation of “continuously paid 1 or more specified social security benefits”, as used in new subsection 4A(5), to clarify that the length of time a worker had spent on one or more specified social security benefits before they reach an age specified in a pertinent Order in Council would count towards their eligibility for the starting-out wage.

New Zealand Labour Party minority view
Labour members of the committee oppose the Minimum Wage (Starting-out Wage) Amendment Bill because it discriminates against young workers by enabling employers to pay lower wages to a worker performing the same work as another on the basis of their age.
It sanctions those who have been on social security benefits for a variety of reasons by enabling them to be employed on 20 percent less than other workers.
It reintroduces youth wages for 18- and 19-year-olds, which have been absent in New Zealand since the 1990s.
It creates the unfair situation where 16- and 17-year-olds who gain experience in one job can be returned to youth rates in a new job, despite the experience they have gained.

There is no evidence that cutting the wages of young people will have any impact on youth employment rates, and the bill is unlikely to succeed in its aim of reducing youth unemployment.

However, it will increase youth hardship, particularly for those who are returning to work after being on a social security benefit.

We believe that this bill is unfair and discriminatory to some of the most vulnerable workers in New Zealand’s labour force. It will discourage many young people from work and encourage bad employment practices among employers. It will force many young beneficiaries into work that is poorly paid and undervalues their contribution.

We believe that there are more effective and equitable means to improve outcomes for 15–19-year-olds by way of investment in education and active labour market policies.

**Green Party minority view**

Members of the Green Party oppose this bill as we believe it will not address the aims of the bill. The explanatory statement includes the following statement:

Minimum starting-out rates of wages are designed to support young people entering the workforce, including those who have been on a benefit, and young people who are undertaking industry training for their work. Starting-out wages provide an incentive for employers to take on young workers at a reduced rate of pay while foundational work skills, experience on the job, or training is gained.

We maintain that this bill will not support young people entering the workforce. We agree with the many submissions that maintained that lowering the price of labour for young workers creates a low-wage economy and does not alleviate poverty.

We note that there were a total of 531 submissions to this bill and, of those, only nine were in support. Most of the submissions that opposed the bill claimed that the bill would not reduce youth unemployment and that the bill is discriminatory. We endorse this view and note that there was conflicting evidence from government departments and economists to support this claim.
We believe that the bill breaches international law, and in particular—as noted by submitters from Caritas Aotearoa/New Zealand—the United Nations Convention on the Rights of the Child. We believe this bill may be a move to stigmatise and discriminate against younger beneficiaries and we agree with the submission from the New Zealand Council of Social Services—amongst others—that “the imposition of a lower minimum wage depending on age and history of receipt of a benefit is both discriminatory and unfair.”

Further we are concerned that the bill may allow young workers to be exploited. We agree with the Council of Trade Unions’ concerns that “The proposals in this bill will incentivise poor employment practices. There is a clear encouragement for some employers to sack young staff after six months—and they can do so at 90 days without any justification—in order to get labour at a 20 percent lower cost.” Members of the Green Party reject the assertions from submitters supporting this bill that the employment of young people is a risk to businesses, and maintain that we have sufficient legislation in place—like the 90-day trial period—to enable employers to deal with substandard workers, whether they be young or older.

And finally, we believe in pay equity and the concept of an equal day’s pay for an equal day’s work should be the norm. This bill runs counter to that.
Appendix

Committee process
The Minimum Wage (Starting-out Wage) Amendment Bill was referred to the committee on 18 October 2012. The closing date for submissions was 27 November 2012. We received and considered 531 submissions from interested groups and individuals; 106 of these were unique submissions. We heard 23 submissions.

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

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Dr Cam Calder (from 13 February 2013)
Darien Fenton
Andrew Little
Simon O'Connor
Denise Roche
Jami-Lee Ross (until 13 February 2013)
Mike Sabin (from 13 February 2013)
Scott Simpson (until 13 February 2013)
Phil Twyford
Marine Legislation Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the Marine Legislation Bill and recommends that it be passed with the amendments shown.

Introduction
This is an omnibus bill in two parts. Part 1 seeks to amend the Maritime Transport Act 1994; part 2 seeks to amend the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The Maritime Transport Act would be amended to provide for local regulation of maritime safety and maritime-related activities by regional councils; to regulate alcohol consumption by seafarers; to implement four international maritime conventions; to create offences and prescribe penalties for the improper operation of ships; and to make other miscellaneous changes.

1 Largely by the transfer of provisions from the Local Government Act 1974.
The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act would be amended to make new provisions in relation to discharges and dumping, and to ensure that New Zealand continues to act consistently with two international conventions to which it is party: MARPOL and the London Convention.2 This commentary covers the major amendments we recommend; it does not discuss minor, technical, or consequential amendments.

Maritime Transport Act

Commencement
We recommend amending clause 2, to change the commencement date for the legislation from 1 April 2013 to the day after the date of the Royal assent.

Interpretation
We recommend inserting new subclause 5(2A), to replace the definition of “port” in section 2(1); and amending subclause 5(4), which would insert new definitions into section 2(1), to amend the new definition of “harbormaster”, aligning it with the provisions of new section 33D discussed below.

Application of this Act
We recommend inserting new clause 5A, which provides that, unless otherwise specified, the Act would apply to New Zealand ships (other than pleasure craft) anywhere in the world, and to foreign ships in New Zealand waters.

Local regulation of maritime activity
We recommend amending clause 6, which inserts new sections 33A to 33S as new part 3A, as follows.
New section 33B, the interpretation section for new part 3A, would allow the regulation of ports that service recreational craft; we con-

sider some of the definitions in it to be too broad. Amending the new section as recommended would, along with other amendments, ensure that only commercial ports would be regulated under new part 3A. This would involve amending the definitions of “port operator”, deleting the definitions of “port” and “port facility”, and inserting definitions of “commercial port” and “port company”. Amending the definitions of “regional council” and “wreck”, and inserting a definition of “maritime-related activities” would align these definitions with other amendments we recommend.

We are aware of concern that the proposed new responsibility of regional councils prescribed in new section 33C, to take all reasonable and practical steps to regulate maritime safety and maritime-related activities in their regions, might prove too onerous in some situations. We recommend addressing this concern by amending new section 33C to frame these responsibilities as functions of a regional council rather than as duties, to allow councils to decide when regulation is appropriate.

We recommend replacing new sections 33D and 33E and amending new section 33F, which would provide for the appointment, duties, and powers of harbourmasters, to require that a harbourmaster appointed under section 33D be “suitably qualified”, to ensure that a regional council would be required to appoint a harbourmaster only when necessary or as directed to by the Minister, to reframe the duties of harbourmasters as functions, to make a harbourmaster’s powers of entry subject to reasonable constraints, and to provide a right of appeal against directions given by a harbourmaster in certain cases.

New section 33G would allow enforcement officers (appointed by the regional council) or constables to exercise certain of the powers of a harbourmaster set out in new section 33F. We consider that this should be amended to restrict the exercise of the powers set out in new paragraph 33F(1)(c) by an enforcement officer or constable to occasions when specially requested or authorised by a regional council.

Inserting new section 33I (Harbour works) (combining the provisions of new sections 33I (Aids and impediments to navigation) and 33L (Maritime works) from the bill as introduced) would clarify which legislation these provisions are subject to. We recommend inserting new clause 36A to make a consequential amendment to section 200 (Navigational aids).
We consider that the wreck removal provisions in new sections 33J and 33K do not make sufficient provision for the removal of abandoned ships that may become a hazard or impediment to port operations but are not necessarily a hazard to navigation, and recommend inserting an amended new section 33L to give regional councils the power to remove any such abandoned ship.

New section 33M would allow regional councils to make navigational bylaws. Inserting new sections 33MB to 33ME would provide a general penalty for breach of navigation bylaws, and related provisions. Deleting new paragraph 33M(1)(k) and inserting new section 33MF would allow fees and charges relating to functions of the regional council to be prescribed in accordance with provisions of the Local Government Act 2002.

We recommend amending new sections 33N to 33Q, which relate to the safety of port operations, to better define the responsibilities of port operators for the safety of port operations, and to align these sections with the new definitions above; and new section 33R to make it clear that this section would apply to all Crown harbours and facilities, including those on inland waters.

Amending new section 33S as we recommend would prevent the powers to appoint harbourmasters and to make bylaws from being transferred from a regional council to a council-controlled organisation or a port operator, and would also forbid the delegation of the power to make bylaws from a public authority to a port operator.

**Operation of ships**

We recommend amending clause 19 which would insert new sections 67A and 67B. New section 67A would create an offence and prescribe a penalty for overloading a ship; we recommend amending it for consistency with the International Convention on Load Lines 1966, which requires a ship’s load lines not to be submerged when the ship proceeds to sea, is at sea, or arrives in port.

**Civil liability for pollution of marine environment from marine structures**

We recommend amending clause 62, which would insert a new part 26A relating to civil liability for pollution from marine structures and operations. Amending the definition of “regulated offshore installa-
tion” in new section 385A would make it clear that the insurance requirement extends to pipelines connected to offshore installations.

**Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act**

**Interpretation**

We recommend amending clause 90, which would amend section 4 by inserting definitions related to the discharge of harmful substances and the dumping and incineration of waste or other matter at sea. Our proposed amendment to the new definition of “mining activity” would ensure that this term covered prospecting; inserting a new definition of “mining discharge” would ensure that hydraulic fracturing (“fracking”) would be subject to the legislation; and amending the definition of “structure” would ensure that a ship connected to an offshore installation would not be treated as a structure.

**Duties, restrictions, and prohibitions**

We recommend amending clause 96, which would replace part 2 of the Act (sections 20 to 26).

New section 24AA, which we recommend inserting at the beginning of subpart 2, explains how subpart 2 and the Maritime Transport Act would interact to regulate the discharge of harmful substances; amendments to new section 24A (including the incorporation of new section 24C from the bill as introduced) would reflect more accurately the jurisdiction New Zealand has over the continental shelf beyond the exclusive economic zone and the waters above that part of the continental shelf.

Our recommended replacement for new section 24C explains how subpart 2 and the Maritime Transport Act would interact to regulate the dumping of “waste or other matter”; our amendments to new section 24F would clarify that this might include ships, aircraft, or structures disposed of into the sea or seabed; and our amendments to new section 24H would make it clear that the restrictions on the disposal of human remains would not apply to the scattering of human ashes.
Marine discharge consents and marine dumping consents
We recommend amending clause 107, which would insert into part 3 new subpart 2A (new sections 87A to 87I) concerning marine discharge consents and marine dumping consents, by inserting new section 87J. This would allow the holder of a marine dumping consent granted under new section 87F to request the Environmental Protection Authority to change or cancel a condition of the consent.

Offences and defences
We recommend amending clause 108, which would replace sections 132 to 134, by inserting new subsection 134D(5) to provide for an offence relating to the disposal of human remains in the exclusive economic zone, or on the continental shelf, in breach of new section 24H.

Environmental Protection Authority and Maritime New Zealand to share information
We recommend inserting new clause 110B, which would insert new section 158A, to allow information sharing between the Environmental Protection Authority and Maritime New Zealand.

Transitional provisions relating to discharges and dumping
We recommend amending clause 111, which would insert new section 164A, so that dumping permits issued under the Maritime Transport Act would continue in force regardless of amendments resulting from this bill; and new section 164B, so that discharge management plans approved under that Act would be treated as marine discharge consents issued on the same terms and conditions.
Amending new section 164A so that a dumping permit issued by the Director of Maritime New Zealand should be treated as a consent granted under section 87F of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act would mean that all the provisions of that Act applying to consents granted under that section would apply to the dumping permit. Amending new section 164B would specify transitional provisions for the transformation of appropriate aspects of discharge management plans into marine discharge consents. Inserting new section 164C would provide for the completion of applications for dumping permits and discharge man-
agement plans under the Maritime Transport Act, and would then transform them into marine dumping consents and marine discharge consents.

Schedules

Schedule 2
This schedule sets out consequential amendments to various pieces of legislation.
We recommend amending the new definition of “regulated offshore installation” in the Marine Protection Rules, which refers to offshore installations within New Zealand continental waters, to include any pipeline connected to such an installation.

Schedule 3
This schedule contains amendments to maritime transport legislation consequential on amendments to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act.
We recommend amending schedule 3 as follows:
Inserting new section 224A to describe how the Maritime Transport Act and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act would cover the regulation of the discharge of harmful substances;
Amending section 225, the interpretation section for part 19 of the Maritime Transport Act, for consistency with the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act;
Replacing section 226 to reflect accurately New Zealand’s jurisdiction regarding discharges in the exclusive economic zone, over the continental shelf, and from foreign ships, by moving its focus from the nature of the discharge to the kind of activity undertaken by the ship;
Inserting new section 226A to reflect that New Zealand’s jurisdiction over ships beyond the continental shelf is limited to New Zealand ships;
Inserting new section 257A to describe how the Maritime Transport Act and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act would cover the regulation of the dumping of waste or other matter;
Amending section 258 by inserting new subsections (2) and (3) to ensure that the incineration of radioactive waste (and the export of such waste for dumping or incineration at sea) would remain prohibited despite the replacement of section 261;

Replacing section 261 to reflect provision for emergency dumping permits in new section 262A;

Amending section 262 to make it clear that ships, aircraft, or offshore installations would constitute a type of waste when being disposed of, and to narrow the scope of this section to the dumping of waste or other matter beyond New Zealand continental waters from New Zealand ships or aircraft;

Replacing new section 262A (Duty to report discharge or escape of harmful substances) with new sections 262A (Emergency dumping permit) and 262B (Conditions of emergency dumping permit), to give effect to a Cabinet decision that Maritime New Zealand should retain emergency dumping functions, and to distinguish the emergency dumping process from the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act’s regulation of dumping activities, while ensuring their compatibility;

Inserting new section 389 to allow rules to be made specifying the duration of emergency dumping permits, and authorising the Director to specify the duration of permits;

Amending section 463 to allow a District Court Judge to order the detention of a ship if property “is likely to be” damaged by a discharge.
Appendix

Committee process
The Marine Legislation Bill was referred to the committee on 11 September 2012. The closing date for submissions was 12 October 2012. We received and considered 42 submissions from interested groups and individuals. We heard 21 submissions.

We received advice from the Ministry of Transport, the Ministry for the Environment, the Department of Internal Affairs, Maritime New Zealand, and the Environmental Protection Authority. The Regulations Review Committee reported to the committee on the powers contained in clauses 9, 66, 77, and 79.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Dr Cam Calder (from 13 February 2013)
Darien Fenton
Andrew Little
Simon O’Connor
Denise Roche
Jami-Lee Ross (until 13 February 2013)
Mike Sabin (from 13 February 2013)
Scott Simpson (until 13 February 2013)
Phil Twyford

Gareth Hughes replaced Denise Roche, and Ian Lees-Galloway replaced Andrew Little, for this item of business.
Land Transport Management 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 Management Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
This bill seeks to amend the Land Transport Management Act 2003 in three main ways. It would change the planning and funding framework for central Government funding of land transport activities including roading, public transport, and road safety; it would improve the framework for assessing toll road schemes; and it would lay the legislative foundation for a new policy framework for a long-term partnership between regional councils and public transport operators, to be known as the public transport operating model. This commentary covers the major amendments that we recommend; it does not discuss minor, technical, or consequential amendments.
Purpose
We recommend amending clause 4, which would replace section 3 (Purpose), to link the way the land transport system is to be managed under the legislation more clearly with its intended impact.

Interpretation
We recommend amending clause 6, which seeks to amend section 5 (Interpretation). The replacement definition of “activity” would capture better the concept intended, and simplify the language needed elsewhere in the legislation. Replacing the definition of “New Zealand Railways Corporation” with a definition of “railway track access provider” would allow for the possibility of a different organisation assuming responsibility for maintaining and providing access to railway tracks. This would also make the principal Act consistent with the Railways Act 2005. Inserting a definition of “shuttle” based on Land Transport Rule: Operator Licensing 2007 would prevent a “shuttle service” from competing directly with a bus service by picking up and dropping off passengers at any point on a route. The amended definition of “unit” is clearer and would specify that a unit should consist of public transport services that are “integral” to the region’s network. The amended definition of “public transport service” would make it clear that such a service must be available to “the public generally”.

Payments exempt from procurement procedure
We recommend amending clause 35, which would amend section 26. In the bill as introduced, emergency funding of a public transport service would be available if, among other criteria, the service were identified in a regional public transport plan. We consider it desirable to provide for the possibility that a service might require emergency funding before the council could finalise its plan, by specifying that a service that is “integral to a public transport network” could qualify for such funding without being specified in such a plan.

Privacy
We recommend inserting new clause 43A to amend section 50 (Privacy), to make it clear that tolling information linked to registration
plate details is personal, and should be retained only as long as is necessary for the purpose of collecting tolls, enforcing the toll offence provisions, or meeting a statutory obligation to retain the information.

**Delegation and leasing**

We recommend amending clause 49, which would amend section 61, and clause 51, which would amend section 63, by replacing “toll road” or “new toll road” with “new road”, and by replacing “the Crown” with “a road controlling authority”. We consider the wording in the bill as introduced to be too narrow in its effect to accord with the rest of the Act.

**Government Policy Statement on Land Transport**

We recommend amending clause 54, which would replace sections 66 to 71. The Government Policy Statement on Land Transport Funding currently provides, in the absence of a National Land Transport Strategy, a simple and quick way of setting national transport policy. This form of GPS is, however, limited in scope to policy on funding. The bill as introduced would require the Minister to issue a “Government Policy Statement on Land Transport” that combines the intended functions of the National Land Transport Strategy with the functions of the current Government Policy Statement on Land Transport Funding. Our proposed amendments would give clearer guidance on the matters that might be included in the new Government Policy Statement on Land Transport, and would require the inclusion of any additional land transport appropriations.

**Objective and functions of Agency**

We recommend amending clause 59, which would amend section 94, and clause 60, which would amend section 95, to align the objective and functions of the New Zealand Transport Agency with our recommended amendment to the purpose of the Act.

**New parts 5 and 6**

We recommend amending clause 69, which would insert new sections 114 to 149 as new part 5 (Regulation of public transport) and
new sections 150 to 156 as new part 6 (Transitional and savings provisions), as follows.

**Regulation of public transport**

New section 114A sets out principles for planning and operating public transport services, and would require that these principles guide decision-making under new part 5. The principles we propose are those used when developing the Public Transport Operating Model and its objectives.

**Regional public transport plan**

Subpart 1 of new part 5 (new sections 116 to 128) concerns regional public transport plans (“PT plans”).

We recommend replacing new section 116 to express more clearly the intended purpose of PT plans, of encouraging regional councils and operators to work together, engaging with the public, and determining what services are integral to the network.

The proposed amendment to new section 117 would ensure that the validity of a PT plan would not be affected by the inclusion of matters not within the scope of a regional land transport plan provided that the PT plan was “otherwise consistent” with the public transport components of the regional land transport plan.

The replacement new section 119 would require less detail in some parts of a PT plan, and expresses the requirements for the plan’s content more concisely.

The proposed amendment to new section 122 would limit the exclusion of regional councils from liability for compensation in relation to PT plans or exempt services to occasions where the council had acted in good faith. The bill as introduced provides for a general exclusion, which we consider to be too broad.

Amending new section 123 would require regional councils to be satisfied that a PT plan had been prepared in accordance with any relevant New Zealand Transport Agency guidelines, and that they have applied the principles set out in new section 114A. It would remove the requirement for a PT plan to be “consistent with” the GPS, but would add a requirement for matters outside the scope of the regional land transport plan to be otherwise consistent with it. We
consider that PT plans are sufficiently closely linked to the GPS by their respective relationships with a regional land transport plan. Amending new section 125 by deleting subsections (2) and (3) would allow a regional council to review a PT plan for reasons other than its consistency with the regional land transport plan. Our proposed amendment to new section 126 would ensure that the information a regional council might require from an operator was precisely the information it needed. Amendments to new sections 126 and 128 would limit the parties to whom the council could disclose fare revenue data to persons registered to tender for the provision of a unit. The bill as introduced would allow disclosure to “potential bidders”, which we consider to be too broad.

Registration of exempt services
Subpart 2 of new part 5 (new sections 129 to 138) concerns the registration of exempt services. Amending new section 129 by deleting subsection (2)(b) and (c) would allow existing services that are transitioning to the new system to be dealt with separately in new part 6; replacing subsection (2)(d) is intended to distinguish the regions required to have a PT plan for defining exempt services; and new subsection (3) would exclude anything done under an agreement between a regional council and an operator to reduce passenger fares from the meaning of “subsidy” for the purposes of new subsection (2)(d)(i)(C). We propose amending new section 130 to make it clear that a service that had been operating as a registered exempt service before being designated as integral to the public transport network in a PT plan could continue operating as an exempt service until replaced by a unit under new section 136. Amending subsection (1) of new section 132 as proposed would require a person who proposed to operate or vary an exempt service to notify the regional council of the timetables, and the stops, stations, or terminals, for the service. Inserting new subsection (5) would include among exempt services that may be varied under this section any that were registered under the Public Transport Management Act

---

1 In new section 150.
2008 and would continue to operate as exempt services under this part.
The recommended amendment to new section 133 would substitute reference to “units” of an exempt service for “public transport services contracted with the regional council”, for consistency with the terminology used elsewhere. It would also give regional councils discretion, on the new grounds that they had yet to adopt their PT plan, to decline to register proposed new or varied exempt services. The recommended amendment to new section 136 would allow a service identified in a PT plan as integral to the public transport network when already operating as a registered exempt service to be deregistered, and replaced by a unit, only by Order in Council.

**Miscellaneous**
Subpart 3 of new part 5 (new sections 139 to 149) sets out miscellaneous provisions concerning the regulation of public transport.

We recommend amending new section 139 to make it clear that grounds for appeal to the Environment Court would be limited to the arrangement of public transport services into units and their allocation in PT plans, and that any affected operator of a public transport service would have a right of appeal.

New sections 145 to 147 would create the offences of operating unregistered exempt services, operating public transport services that are not exempt or contracted, and varying registered exempt services without notice. We propose amending these new sections to provide that no offence would be committed if an operator was operating in accordance with other specified sections or under an emergency contract to replace a public transport service; and to include in the variation of an exempt service any variation of its timetables, stops, stations, or terminals.

We recommend replacing new section 149 to add a power to make an Order in Council requiring a subsidised inter-regional service operating before the bill commences to be contracted as part of a unit; and a power to make an Order in Council requiring a public transport service to be specified as an exempt service if the Minister is satisfied that the service is in effect part of the local roading network (as in the case of some ferry services). Replacing this section would also allow various minor, technical, or consequential changes.
Transitional and savings provisions

New part 6 is largely concerned with avoiding undue prejudice to any existing operators in the transition to the new framework.

We recommend inserting new sections 149A and 149B at the beginning of new part 6. New section 149A specifies that, for the purposes of sections 149B, 150, and 151, a service registered as a commercial public transport service includes a service treated as such under the Public Transport Management Act 2008.

New section 149B specifies that transitional provisions analogous to the provisions of new section 126 (information required from operators of public transport services) would be applied to certain bus and ferry services that are intended to be replaced by units.

We recommend amending new section 150 to accord with our recommended amendment to new section 129 by making clear the intention that several categories of existing commercial service might continue to operate as registered exempt services under the new framework.

The proposed amendment to new section 151 would provide for several categories of service to continue operating as if they were registered exempt services under part 5 until the regional council required their cessation, despite the requirement for public transport services to be provided as units under contract unless exempt.

The replacement new section 152 would make it clear that the transitional provisions for processing notifications primarily cover inter-regional services operating in regions without PT plans.

We recommend amending new subsection 153(1) to make it clear that it refers to a PT plan adopted under the Public Transport Management Act 2008, not one in existence immediately before the section commences. New subsection 153(7) would impose a requirement on regional councils to use reasonable endeavours to ensure that operators of existing commercial public transport services are not unreasonably disadvantaged when councils arrange public transport services into units.

Amending new section 154 as proposed would make it clear that an operator contracted by a regional council could continue to provide a public transport service under that contract, or a variation to it, until the service was replaced by a unit or part of a unit in accordance with the PT plan.
Transitional regulations

We acknowledge concern raised by the Regulations Review Committee regarding the regulation-making power set out in new section 156, but consider that the new section is demonstrably essential to the bill. We recommend amending the new section to make it clear that regulations could only be made for transitional and savings purposes, and that regulations stating the meaning of specified terms could not alter the effect of any legislation other than the principal Act; to require that regulations be made only on the recommendation of the Minister of Transport, and that the Minister satisfy an objective test before making the recommendation; and to require the test to be that the regulations are necessary or desirable for facilitating an orderly transition from the provisions of the Public Transport Management Act 2008 to part 5 of the bill and that regard has been had to the principles in new section 114A. We consider that these amendments would address the concerns raised, as far as practicable.

Consequential amendments

We recommend amending the amendments to the Local Government (Auckland Council) Act 2009 set out in the schedule, to align the purpose of Auckland Transport more closely with the new purpose of the principal Act, and to ensure that Auckland Transport may not delegate its responsibilities for regional land transport plans and PT plans to the Auckland Council.

New Zealand Labour Party minority view

The Labour Party opposes the Land Transport Management Amendment Bill. Labour members of the committee believe the bill unwisely narrows the principal Act’s purpose and decision criteria, reduces the say of local communities in setting transport priorities, and expands debt-funding options for a National Land Transport Programme we believe has the wrong priorities.

We believe that now more than ever the transport system needs to better integrate environmental, social, and public health considerations in policy, strategy, project appraisal, and design. The bill’s changes to the Act’s purpose statement and decision criteria move in the opposite direction with a narrow focus on economic efficiency.
While there is some worthwhile streamlining of planning processes, the strengthening of the Government Policy Statement on Land Transport without any requirement for consultation with local authorities nor alignment with local policy statements or plans, will have the effect of further tilting the power to set priorities in favour of central Government and away from communities.

The bill’s abolition of the mechanism for a Regional Fuel Tax further undermines local autonomy in setting transport priorities. A Regional Fuel Tax can allow regions to fund projects that do not fit central Government priorities. Given that any Regional Fuel Tax has to be approved by the Minister it seems draconian to repeal the legislative mechanism that at least allows it as an option.

Labour opposes the bill’s provision enabling NZTA to borrow for land transport projects beyond the current allowance for cash flow smoothing. We support in principle the case for borrowing as a means of spreading the cost of long term infrastructure across generations. However, we are so opposed to the current funding priorities we believe it would be irresponsible to pass on the costs of the current large new state highway projects to future generations.

Similarly, with the provisions facilitating Public Private Partnerships (PPPs), we are opposed to their being used to front-load current new state highway projects and push the debt burden on to future taxpayers. Together the borrowing and the PPP provisions open the door to a significant expansion of debt-funding of the current National Land Transport Programme at a time when we believe the priority should be a reconsideration of the programme’s direction and priorities.

Finally, we are supportive of the bill’s new Public Transport Operating Model, recognising it is the result of serious effort by both the public transport operators and local authorities to design a new framework.

**Green Party minority view**
Members of the Green Party do not support the bill for the following reasons:

**Changes to the purpose of the Land Transport Management Act**
The bill simplifies the purpose of the Act so it no longer contains the five transport objectives: “an affordable, integrated, safe, respon-
sive and sustainable land transport system”. While we could support some simplification of the purpose and criteria, the new proposed purpose “to contribute to an effective, efficient and safe land transport system in the public interest” was not supported by the majority of submitters. We do not feel “effective” has a meaning other than giving effect to the Government Policy Statement, and “in the public interest” is vague. The land transport system directly impacts social, economic, and environmental outcomes, including public health, carbon emissions, air and water quality, and the amount households and business have to spend on transport. We would prefer those linkages to be explicit and included in the purpose of the Act.

**Changes to the makeup of Regional Transport Committees**

The majority of submitters, including representatives from Regional Transport Committees, preferred to maintain the status quo of requiring specialist experts, including the Police, disability experts, and representatives from walking and cycling groups, on regional transport committees, as they have provided valuable input. Having a wide variety of experts and perspectives involved in the transport planning and funding process at the outset ensures more robust decisions are made about transport projects and priorities. Without the requirement to have these diverse views, it is entirely possible that regional councils will come under financial pressure to remove them from RLTCs. This move to simplify the committees could appear prima facie to save money and time, but cost significantly more in the long term as problems with transport infrastructure are not proactively identified.

**Borrowing to pay for projects in the National Land Transport Programme**

The bill makes changes that enable borrowing for reasons other than covering cash flow. While the argument has been put forward that it is logical to spread the cost of infrastructure over multiple generations, transport projects do not generate revenue or appreciate in value over time. The ability for NZTA to borrow to fund projects in the National Land Transport Programme will be a one-off increase in funds, which will then need to be paid back with interest from future National Land Transport Funds. Effectively, what this provision is allowing is for
the Government of the day to fund more of its priorities, which will have to be paid back by future generations of taxpayers, who will have less money available for new infrastructure investments and possibly also less available for operational expenses.

**PPPs**

The bill makes provisions for public–private partnerships for the purposes of building and operating transport infrastructure. Our concerns about using PPPs to fund transport infrastructure are very similar to our concerns about borrowing for the National Land Transport Fund. The NZTA is currently pursuing an availability payment model, which locks the NLTF into a long-term contract with a private company that will secure high rates of return. This type of PPP is effectively borrowing at a higher interest rate. This will mean less money is available in future land transport funds, just like direct Crown borrowing, but even more expensive. The Government of the day can have a one-off increase to spend on its transport priorities, which will be paid back with interest for generations.

**Removal of the Regional Fuel Tax**

We do not support the removal of the provisions that would allow a region to raise its own fuel tax to pay for transport infrastructure. While this bill allows some creative ways of increasing the money available to the NZTA in the short term, through borrowing and PPPs, it removes the provision that would allow regions to responsibly raise revenue to fund regional transport priorities. We note that many submitters opposed the removal of this funding tool.

A regional fuel tax is a transparent and inexpensive way for regions to raise revenue, and in the case of Auckland, it would have been a logical way to fund alternative transport options such as improvements to commuter rail. It makes sense to use fuel taxes to pay for alternatives because 1) public transport alternatives are a cost-effective way to free up the roads for those who are driving, and 2) it provides a price signal that will further encourage those at the margins to choose the more cost-effective option.
Appendix

Committee process
The Land Transport Management Amendment Bill was referred to the committee on 11 September 2012. The closing date for submissions was 26 October 2012. We received and considered 98 submissions from interested groups and individuals. We heard 29 submissions, which included holding hearings in Auckland.

We received advice from the Ministry of Transport and the New Zealand Transport Agency. The Regulations Review Committee reported to the committee on the powers contained in clause 69.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Dr Cam Calder
Darien Fenton
Iain Lees-Galloway (from 27 February 2013)
Andrew Little (until 27 February 2013)
Sue Moroney (from 27 February 2013)
Simon O’Connor
Denise Roche
Mike Sabin
Phil Twyford (until 27 February 2013)

Julie Anne Genter replaced Denise Roche, and Ian Lees-Galloway replaced Andrew Little, for this item of business.
The Transport and Industrial Relations Committee has considered Petition 2011/29 of Iain Lees-Galloway requesting that the House of Representatives instruct the New Zealand Transport Agency to work with KiwiRail and regional councils to maintain a viable commuter rail link between Palmerston North and Wellington and note that 1988 people have signed petitions to that effect.

Written submissions on the petition were sought and received from KiwiRail and the New Zealand Transport Agency, and subsequently from the petitioner, Greater Wellington Regional Council, and Horizons Regional Council. The petitioner appeared before the committee to speak to his submission.

The Minister of Transport advised us in April 2013 that KiwiRail will continue to operate the Capital Connection service between Palmerston North and Wellington until June 2015 unless annual losses exceed $1 million, and that it will then make a final decision on the viability of the service. The Minister advised us that the future of the Capital Connection depends on growing patronage to achieve commercial viability.

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

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered matters raised in the report from the Controller and Auditor-General, *Transport sector: Results of the 2011/12 audits*, and has no matters to bring to the attention of the House.

David Bennett
Chairperson
Petition 2011/57 of Raymond Hellyer

Report of the Transport and Industrial Relations Committee

The Transport and Industrial Relations Committee has considered Petition 2011/57 of Raymond Hellyer, requesting “that the House consider the Aviation Occurrence Report Inquiry 10-011: Report into flying training safety in New Zealand (28 March 2013) and the allegation of withholding information made therein by the Transport Accident Investigation Commission against the Civil Aviation Authority.”

We have determined that the report in question does not allege that information was withheld by the Civil Aviation Authority; the findings focus rather on the limitations of the Civil Aviation Authority’s safety occurrence reporting and monitoring system, which the report has recommended be addressed. We therefore have no matters to bring to the attention of the House.

David Bennett
Chairperson
Health and Safety (Pike River Implementation) Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the Health and Safety (Pike River Implementation) Bill and recommends by majority that it be passed with the amendments shown.

Introduction

Part 1 of the bill would create a new WorkSafe New Zealand Act 2013 establishing WorkSafe New Zealand, a new standalone Crown agent responsible for workplace health and safety. This part of the bill would set out the objectives and functions of WorkSafe New Zealand, and prescribe the composition of its governance board. It would also
provide for the transfer of employees and assets from the Ministry of Business, Innovation and Employment to WorkSafe New Zealand. Part 2 of the bill would amend the Health and Safety in Employment Act 1992 to support the introduction of a new regulatory regime for the management of hazards in the mining industry. The new regime itself would, for the most part, be set out in regulations; this part of the bill would provide the necessary regulation-making powers and definitions. In the bill as introduced, the scope of the new regulatory regime would extend beyond underground coal mining to include other hazardous operations; it would apply to underground and surface coal and metalliferous mines, and to some quarries and tunnels. The main amendment to the Health and Safety in Employment Act would be provision for a new approach to workers’ participation in mining operations.

Part 3 of the bill would create a new Mines Rescue Act 2013, repealing the Mines Rescue Trust Act 1992. It seeks to reflect more closely the functions performed by the trust’s operational arm, the Mines Rescue Service, and to extend the service’s coverage to include all coal mines, underground metalliferous mines, and long tunnels. This part of the bill would also make some changes to the service’s funding arrangements, for flexibility, and would limit the trust’s liability for damage, in line with that of other emergency services.

Further health and safety legislation
The bill focuses on mining health and safety, so does not deal with the more general recommendations of the Independent Taskforce on Workplace Health and Safety. Since it was introduced, however, the Government has announced its intention to introduce new health and safety legislation to replace the Health and Safety in Employment Act 1992 as New Zealand’s main workplace health and safety legislation. The new legislation would implement recommendations by the taskforce, and would be modelled on Australia’s Model Work Health and Safety Act (the Australian Model Act).

Proposed amendments
The following commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amendments.
We consulted the Regulations Review Committee on the proposed regulation-making powers in the bill, and are recommending some amendments to take account of their views.

Part 1: WorkSafe New Zealand

WorkSafe’s board

Clause 7 sets out the provisions for WorkSafe’s governance board. To make clear the intention that membership of the board must reflect different viewpoints on workplace health and safety, including those of workers, we recommend amending the phrase “perspectives of workplace participants” in clause 7(2)(d) to “perspectives of workers”, and inserting clause 7(2)(da), “perspectives of employers”.

WorkSafe’s main objective

We recommend amending clause 9(1) so that WorkSafe New Zealand’s proposed objective would be to “promote and contribute to securing the health and safety of workers and workplaces”. We consider it vital that WorkSafe play a strong leadership role, and believe the amended wording would send a suitable signal that WorkSafe aims to help secure the safety of workers, rather than simply to “promote the prevention of harm”, as it is phrased in the bill as introduced.

The wording we propose would align the objective with Australia’s Model Act which, at the recommendation of the independent task-force, the Government intends to use as the basis for new workplace health and safety legislation. We consider it appropriate to make the change now, rather than to wait for the proposed Health and Safety at Work Bill to be introduced and enacted.

Transitional arrangements

Clauses 11 to 18 provide for the transition of employees and functions from the Ministry of Business, Innovation and Employment to WorkSafe. We are recommending some amendments to this part of the bill (inserting clauses 16A and 18A, and amending clause 18) for technical reasons to assist with the transition.

Interpretation
We are recommending several amendments in clauses 21 and 27, and the insertion of clause 25A, for purposes of clarity. In particular, we recommend changing the terms “mine health and safety representative” and “mine health and safety committee” to “site health and safety representative” and “site health and safety committee”, to distinguish them clearly from industry representatives and to make it clear that they would operate at the site level. For consistency, we also recommend that “mining industry health and safety representative” be changed to “industry health and safety representative”.

What mining operations would be covered by regulations
Clause 27 includes a definition of mining operation in section 19M which would determine the types of mining operation to be covered by the proposed new mining regulations. As introduced, the bill proposes to apply the regime to a number of kinds of operation considered to be particularly hazardous, with the potential for multiple fatalities. As well as underground coal mining, surface coal and metalliferous mines would be covered, as would some quarries and tunnels.

When considering the proposals in the bill, we have kept in mind the importance of matching the degree of regulatory control to the degree of risk. The Pike River tragedy made it all too clear that there was a mismatch. Stronger health and safety controls, which this bill and the associated regulations aim to achieve, are clearly needed. The controls should, however, be in proportion to the risks.

After considering submissions on the bill and on the public consultation document Safe Mines: Safe Workers, we have come to the view that quarries and alluvial mining operations do not entail the same degree of hazard or potential for multiple fatalities as other mining operations, and so do not warrant the imposition of the more stringent requirements of the proposed regulatory regime. We consider it more appropriate that the Government and industry jointly develop health and safety rules appropriate to the risks entailed in such activities, rather than having them caught in the same net as mining. We also note that, because the definition of “coal” would include “peat”, peat farming operations would potentially be included in the new regula-
tory regime. We do not consider that such operations incur hazards that would justify the compliance costs entailed in the proposed regulations.

Accordingly, we recommend amending clause 27, sections 19L and 19M, to exclude quarries, alluvial mining, and peat farming from the definition of “mining operation”. We note the intention that the regulations would distinguish between types of operations where appropriate, so that, for example, metalliferous mines would not have to comply with standards to control methane, which is not a hazard in such mines.

We also recommend amending clause 27, section 19M, so that coverage of the exploration phase would apply only to coal. Consultation on the proposed regulations has made it clear that exploration for minerals is not sufficiently hazardous to justify imposing the more stringent requirements of the new regime.

We recommend consequential amendments in clause 27, sections 19N and 19P, to reflect the recommendation to remove quarries from the definition of “mining operation”. Section 19P would allow the Governor-General, by Order in Council, to specify classes of quarrying or tunnelling operations that would be excluded from the new mining health and safety regime. If our recommendation regarding section 19M is accepted and quarrying is excluded from the definition of “mining operation”, this provision need not to apply to quarries.

As the Labour and Green members note in their minority view, they do not agree with these amendments.

Worker participation

Part 2A of the existing Act provides for the participation of employees in processes relating to workplace health and safety. The bill (clause 27, inserting Part 2B, sections 19Q to 19ZY) would add new provisions covering participation by all mine workers, not just those who are employees. Part 2B aims to mirror the existing Part 2A, with amendments to address the recommendations of the Royal Commission.
We recommend the following amendments in clause 27 to clarify the provisions and to correct an apparent oversight:

- inserting section 19Q(5)(da) to carry over an element of Part 2A in the existing Act that appears to have been inadvertently omitted from the proposed Part 2B
- amending section 19R(4) to make it clear that there would have to be a health and safety representative if one or more mine workers requested it.

Mine health and safety representatives
Under clause 27, section 19U(2), a person could not be elected as a mine health and safety representative unless they met the competency requirements prescribed in regulations. As this formulation would limit potential candidates for the role to those who had already received the necessary training, we recommend amending this provision so that a person could be elected without the prescribed competencies but would not be allowed to exercise the functions and powers for which training is required (relating to inspection, and stopping operations) until they had completed their training and achieved the required level of competency. In the meantime, they could exercise all the other functions and powers of a representative. To this end, we recommend deleting section 19U(2) and inserting section 19WA.

We also recommend inserting subsection (4) in clause 27, section 19U, to ensure that mine health and safety representatives would have enough leave to undertake the training that would be required of them by the regulations.

Functions of health and safety representatives
We considered a number of possible adjustments to the functions of mine health and safety representatives set out clause 27, section 19V. We believe there would be benefits in standardising the functions of representatives between mine sites. Accordingly, we recommend deleting section 19V(f) which would provide a catch-all ability for additional functions to be negotiated. However, we recommend adding two further broad functions: section 19V(aa), to represent workers in matters relating to workplace health and safety (a core function, but previously only spelled out in a definition); and an amended section 19V(f), to promote the interests of workers who
have been harmed at work, by means including arrangements for their rehabilitation. The second of these functions echoes an existing default provision in the Health and Safety in Employment Act.

**Powers of health and safety representatives**

We examined closely the powers proposed for mine health and safety representatives set out in clause 27, sections 19X to 19ZL, and consider some changes and additions to be warranted.

The proposed power to examine and copy documents in section 19Z raises concern about confidential information. To address this, we recommend inserting section 19ZKA, a confidentiality provision based on section 271 of the Australian Model Act. A mine or industry health and safety representative would be required to keep confidential any information they accessed under the Act, with certain exceptions. For example, information could be disclosed with consent, or if disclosure was necessary to exercise a power or function.

We recommend amending clause 27, section 19ZD, to make it clear that mine health and safety representatives must have received appropriate training and achieved the required competency before they could exercise the power to issue a hazard notice.

We recommend amending clause 27, section 19ZE, so that the power to give a notice requiring the suspension of a mining operation would include a requirement for the health and safety representative to discuss or attempt to discuss the matter with the site senior executive (SSE), and for the SSE to notify WorkSafe that a notice had been given.

Similarly, we recommend amending clause 27, section 19ZF, so that the SSE would be required to notify WorkSafe if the health and safety representative exercised their power to stop a mining operation.

We consider that health and safety representatives should have immunity from liability for any actions or omissions in good faith when exercising their functions and powers. We therefore recommend inserting section 19ZLA, which is based on section 66 of the Australian Model Act.

We also recommend inserting section 19ZLB to impose a positive duty on mine operators of allowing health and safety representatives
such time and access to facilities as is reasonably necessary for them to perform their functions and to exercise their powers.

Removal of health and safety representatives
Clause 27, sections 19ZM and 19ZV, would allow WorkSafe to remove a mine or industry health and safety representative if they were not performing their functions or exercising their powers satisfactorily. For clarity, we recommend amending section 19ZM to include examples of grounds for removal. The examples we propose are exercising functions or powers for an improper purpose, and using or disclosing information acquired in the role otherwise than as permitted under the Act.
Section 19ZO provides for a mine health and safety representative to appeal against their removal, while section 19ZN would prevent the election of a replacement until a decision was made on the appeal. We see value in allowing the election of a temporary representative while an appeal is under way, and recommend amending clause 27, section 19ZN, to provide for this if one or more mine workers should request it.

Mining industry health and safety representatives
Clause 27, section 19ZP, provides for the appointment of mining industry health and safety representatives (IHSRs, sometimes called “check inspectors”). We recommend an amendment so that such representatives would be appointed only for underground coal mining. We are aware of differing views about the value of such representatives. The Royal Commission recommended check inspectors for underground coal mines, noting the value of “an extra set of eyes and ears” in these extra-hazardous settings. We agree. We also acknowledge the view that workers can find it reassuring to have an independent person, not associated with the workplace or a union, with whom they can raise health and safety issues. However, we are conscious that checks and controls should match the level of risk if unnecessary compliance costs are to be avoided. We consider that the extra check an ISHR provides is not necessary for metalliferous mines and tunnels, where the risk of explosion from methane is absent.
Functions of the New Zealand Mining Board of Examiners
Clause 28, sections 20D to 20H, provides for WorkSafe to establish a Board of Examiners for the mining industry to advise WorkSafe on competency requirements for mine workers, to examine workers and issue certificates of competence, and to perform other functions conferred by regulations. The provision as introduced seems rather open-ended, so we recommend amending section 20E(d) to make it clear that the functions to be conferred by regulations would relate only to training and competency requirements in the extractives industry.

Board levy
Clause 28, section 20H, would provide for a levy to be imposed on mine operators, by regulation, to fund the costs of the Board of Examiners. We recommend some amendments to specify in more detail what the regulations should prescribe, including how the levy rate or rates would be calculated, and which mine operators would be responsible for paying the levy. We also recommend including a requirement for levy payers to be consulted, and specifying that the levy would cover both the direct and indirect costs of the board. We also recommend amending section 20H(1) to ensure that the levy on mine operators would fund only those costs incurred by the Board that relate directly to mining operations.

Part 3: Mines rescue
The bill would extend the coverage of the Mines Rescue Service beyond coal mines to include underground metalliferous mines and tunnels of 150 metres or more. We consider the proposed coverage appropriate. Rescue capability in these environments would be enhanced by the service’s specialist expertise in dealing with emergencies in irrespirable atmospheres, while the Fire Service and other emergency services would have the capacity to deal with quarries, shorter tunnels, and surface metalliferous mines.
We recommend amending the provision in clause 45(a) for a non-voting member on the Mines Rescue Trust Board to be appointed by the chief executive of the Ministry of Business, Innovation and Employment. We consider it would be more appropriate for the Crown’s interests to be represented by a person appointed by WorkSafe (again,
in a non-voting capacity), and recommend amending clause 45(a) accordingly.

**Regulations**
We recommend an amendment in clause 52(3), which relates to an Order in Council revoking the appointment of a commissioner to carry out the functions of the Mines Rescue Trust. Our proposed change would reflect more closely the approach taken in the equivalent provision in section 6(4) of the Mines Rescue Trust Act.

We recommend amending clause 54 to clarify the intent of the proposed regulation-making power, in that it should allow for regulations to prescribe the number of workers to be made available for mines rescue brigades, the extent to which they must be made available, and any other matters necessary to achieve this.

**The Pike River families**
We feel it appropriate that the final words in our commentary should relate to the families of the 29 men who died on 19 November 2010 in the Pike River mine.

We received written submissions from Nicholas Davidson, QC, on behalf of all the families, and from two individuals who each lost a son in the disaster. We also visited Greymouth to meet family representatives and community members, and to hear their views and concerns in person.

Key concerns expressed to us by the families included the inexperience and lack of training of workers operating and monitoring sophisticated machinery, the use of unproven technology, a lack of communication and coordination, high staff turnover, and the adverse incentives and pressures engendered by remuneration arrangements in which bonuses figure prominently.

We believe that by creating an entity with a key role in leading the promotion of health and safety, by providing for workers to participate much more closely with managers in managing hazards, and by expanding the coverage of the Mines Rescue Service in preparing for and responding to emergencies, the enactment of this bill would go a considerable way to addressing the failings that led to the tragedy at Pike River. However, we agree with the families that even under this more prescriptive legislation, drawing on best-practice models,
much will also depend on actual performance under the new structure.

Some of the issues raised by the families are being addressed in the new mining regulations being developed in tandem with this bill. The regulations are intended to require, among other things, specified competencies for safety-critical roles, minimum training, and continuous professional development, and will require mines to have a site senior executive with overall responsibility for a site’s health and safety management systems. The regulations would also set out in detail the processes to be followed in managing principal hazards, and would require operators to maintain up-to-date lists of emergency contact details for all workers. We understand from the families that gaps in next-of-kin contact information added considerable additional stress to the grief of the disaster.

Some of the concerns raised by the families would also be addressed in broader legislation for health and safety at work, which is proposed to follow this bill. In particular, the responsibilities of directors would include a duty to manage health and safety proactively, and penalties, including the potential maximum term of imprisonment, for breaches of health and safety duties would be increased. We understand that the possibility of extending the crime of manslaughter to the corporate level is being considered by the Ministry of Justice.

Ultimately, we acknowledge that a legislative framework, however sound, can only go so far to prevent tragedy. We believe the experience of Pike River has brought about the necessary recognition and secured commitment on all sides to address issues that remain. We appreciate the efforts being made by various chief executives and senior leaders through the Business Leaders’ Health and Safety Forum to increase awareness of the need for improvements, and to encourage a step-change in New Zealand’s health and safety performance. We hope to see such engagement and commitment to health and safety continue at all levels and become an integral part of corporate cultures, to ensure that New Zealand never again has to suffer a tragedy like that of Pike River.
New Zealand Labour Party and Green Party of Aotearoa/New Zealand minority view

There are three areas in the bill as reported to the House where the Labour Party and Green Party have a substantial disagreement with the majority.

WorkSafe New Zealand’s board

At Clause 7 the bill provides for the board members of WorkSafe New Zealand to be appointed by the Minister. The bill does not place any constraint on these ministerial appointments but instead requires the Minister to “have regard” to various factors. This will result in a board that will be, to some extent, reflective of the perspectives of the various workplace participants, but it will not represent them. The recent comprehensive review of New Zealand’s occupational health and safety framework supported the Royal Commission’s call for an independent regulator with a tripartite board, but recommended that this board should be comprised of members who actually represented the three parties.

It is the view of the Labour Party and Green Party that the bill should follow the Taskforce’s recommendation, and that this is essential both for rebuilding trust and confidence in the state’s role as regulator and to ensure that the nature of the independent regulator does not shift according to which political party happens to be in power.

There were no arguments made in submissions as to why a reflective model should be preferred to a representative one.

WorkSafe New Zealand’s powers and functions

Clause 10 sets out a list of thirteen “functions”. While these have something in common with those recommended both by the Royal Commission and by the Task Force, they are not the same, and in our view there has been no compelling argument as to why the Task Force recommendation as to functions should not be adopted in its entirety.

This is particularly concerning because the functions set out in this clause seem to describe pretty well the intended way of operating for the Department of Labour’s Mines Inspectors at the time of the Pike River Disaster, and fall well short of those the Royal Commission intended for the independent regulator. In the view of the Labour Party
Commentary

Health and Safety (Pike River Implementation) Bill

and Green Party, “working alongside” a mine operator to improve health and safety is to be encouraged but, as was shown in the Pike River disaster, sometimes employers will have strong incentives not to comply with good practice, and it is essential that the regulator possess an adequate range of enforcement powers. We do not believe that clause 10 does this.

Scope of the legislation

As introduced, the bill sets out new health and safety requirements in Part 2 for all mining operations, including quarrying and some types of tunnelling. In the view of the Labour Party and Green Party, this scope is appropriate. The Royal Commission’s report very clearly identifies the Pike River disaster as a “process safety” failure. Crucially, process safety failures result from the combined failures of multiple “defences”, rather than a single risk factor. The majority of the committee have preferred to significantly narrow the coverage of Part 2 on the basis that only certain mines carry the particular risk of explosions. In our view this is inappropriate and fundamentally misses the point of what went wrong at Pike River. In our view the range of industries to which Part 2 provisions should be applied ought to be expanded, not narrowed.
Appendix

Committee process
The Health and Safety (Pike River Implementation) Bill was referred to the committee on 27 June 2013. The closing date for submissions was 25 July 2013. We received and considered 41 submissions from interested groups and individuals. We heard oral evidence from 11 submitters; we also heard from members of the community at a hearing in Greymouth attended by representatives of the families of the 29 men who died in the Pike River disaster.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in clauses 27, 28, 29, 46, 52, and 54.

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Carol Beaumont (from 25 September 2013)
Dr Cam Calder
Darien Fenton
Iain Lees-Galloway (until 25 September 2013)
Andrew Little (from 25 September 2013)
Sue Moroney (until 25 September 2013)
Simon O’Connor
Denise Roche
Mike Sabin
Kevin Hague replaced Denise Roche for this item of business.
The Transport and Industrial Relations Committee has considered Petition 2011/42 of R E Hill, requesting that the House of Representatives amend section 317 of the Accident Compensation Act 2001 so that medical misadventure pensioners have their human rights restored to them.

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

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/56 of Henry Work on behalf of the Committee of International Retirees, requesting that the House of Representatives

review the economic and social opportunities for New Zealand in order to facilitate the retirement of financially independent overseas persons within New Zealand, and make the necessary changes in Immigration rules and regulations to enable this to occur.

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

David Bennett
Chairperson
The Transport and Industrial Relations Committee has considered Petition 2011/70 of Suzanne Hubball, requesting that the House of Representatives

    note that 653 people have signed an on-line petition asking that the House inquire into truck driver training, licensing and recruitment in New Zealand, including the recognition of suitably skilled drivers for addition to skills shortage lists, the simplification of the current driver licensing regime, the recognition of skilled driver competence at Level 3 of the NZSCO classification and financial support for potential entrants to the freight transport industry.

We understand that the recruitment and training needs of the industry are regularly monitored by Government and industry bodies. We have no matters to bring to the attention of the House.

David Bennett
Chairperson
Employment Relations Amendment Bill

Government Bill

As reported from the Transport and Industrial Relations Committee

Commentary

Recommendation
The Transport and Industrial Relations Committee has examined the Employment Relations Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction
The bill seeks to amend the Employment Relations Act 2000. It would principally change the following aspects of employment law:
• the duty of good faith, by clarifying disclosure requirements
• collective bargaining, by removing the requirement to conclude a collective agreement; by allowing a party bargaining for a collective agreement to seek a determination from the Employment Relations Authority as to whether the bargaining has concluded; and by allowing an employer to opt out of collective bargaining involving multiple employers
Employment Relations Amendment Bill

Commentary

- flexible working arrangements, by extending employees’ existing right to request a variation of their working arrangements
- Part 6A of the Act, which relates to continuity of employment if an employee’s work is affected by restructuring, by introducing an exemption from certain requirements for small to medium-sized enterprises
- rest and meal break provisions, by reducing prescription and allowing for flexibility, including provision for compensatory measures where there is a failure to provide a break
- strikes and lockouts, by requiring advance written notice for strikes and lockouts, and by allowing an employer to make specified pay deductions for partial strikes
- the Employment Relations Authority, by setting timeframes for the Authority to release determinations, and by extending aspects of its jurisdiction.

Proposed amendments
This commentary discusses the more significant amendments the majority of us recommend to the bill. It does not discuss minor or technical amendments.

Good faith in providing information
Clause 4 would amend the requirement in section 4 for an employer to provide an employee with relevant information if a decision were being made that might affect their continued employment. Clause 4 would limit this requirement by specifying certain confidential information that an employer could withhold.

We recommend a few amendments. First, we consider that the provision as introduced could be improved to strike a better balance between providing natural justice (for example, by allowing an employee in a disciplinary situation to know who was making a complaint against them), and recognising that some situations demand particular sensitivity (for example, to protect the safety of a person making a complaint). The amendment we recommend to proposed new section 4(1B)(a) in clause 4 draws on an approach used under the Privacy Act 1993, which is relatively well understood. An employer
would not be required to provide access to confidential information about an identifiable person other than the affected employee if it would involve an unwarranted disclosure of the affairs of that individual.

We recommend removing new sections 4(1B)(b) and (c), which would provide employers with grounds for withholding evaluative or opinion material, or information identifying the person who compiled it. In the type of situation that this provision would cover—where a person’s continued employment is at risk—we believe the need for them to see and be able to respond to such material about themselves outweighs confidentiality regarding the person who supplied the material, and is consistent with the duty of good faith.

We believe further clarification is needed of the avoidance-of-doubt provision in clause 4, new section 4(1C), which relates to documents that may be released in summary form, or with deletions or alterations, to avoid disclosing confidential material. Our proposed formulation would make it clear that an employer could not refuse to provide information simply because it was contained in a document that included confidential information.

We also recommend inserting new section 4(1D) to make it clear that “confidential information” means information that is provided in circumstances where there is a mutual understanding (whether express or implied) of secrecy, as described in the judgment of the Employment Court in *Massey University v Wrigley*. We believe this would allay concern that an employer would have sole discretion as to what information could be withheld as confidential.

**Collective bargaining**

**Duty to conclude**

Clauses 7 to 9 would remove the current provisions to the effect that the duty of good faith requires parties bargaining for a collective agreement to conclude the agreement unless there is genuine reason, based on reasonable grounds, not to. Parties would still be required to deal with each other in good faith, but the change aims to avoid protracted fruitless bargaining that is costly for both sides. The bill would protect against stalemate if the bargaining parties hit an im-
passe on one issue, as a declaration could be sought from the Employment Relations Authority as to whether bargaining had concluded.

To address the possibility that an employer might walk away from bargaining on principle, we recommend amending clause 9 by inserting new section 33(2) to provide that an employer is not complying with the duty of good faith if they refuse to conclude a collective agreement simply because they object in principle to collective bargaining or collective agreements.

**Notifying employees about initiation of bargaining**

We recommend an amendment to improve the legislation’s workability in situations where more than one employer is cited in the initiation of bargaining (that is, for a multi-employer collective agreement or MECA). As the bill (clause 11) proposes 10 days in which an employer could opt out of such bargaining, the Act’s existing provision allowing 10 days for employers to notify employees that bargaining has been initiated would not always be sufficient. We recommend the insertion of new clause 10A, amending section 43, to allow employers a further five days in which to give notice to employees about the initiation of bargaining.

**Opting out of bargaining**

Clause 11 would allow an employer to opt out of bargaining for a multi-employer collective agreement. We recommend an amendment to make it clear that the ability to opt out of bargaining would also apply to bargaining initiated for the purpose of obtaining an employer’s agreement to become party to an already-concluded collective agreement (as provided for in section 56A of the Act). We consider that an employer should have the same opt-out option in this situation as they would if they had been identified as an intended party to the initial bargaining for the collective agreement.

**Determination that bargaining has concluded**

Clause 12, inserting new section 50K, would allow a party bargaining for a collective agreement to apply to the Employment Relations Authority for a determination as to whether bargaining had concluded. The Authority would be required to consider whether the parties had tried mediation or facilitation to resolve their differences and, in cer-
tain circumstances, the Authority would be required to direct that mediation or facilitation be used.

We recommend some amendments to this clause to make it clear how it would align with existing sections of the Act. The Authority can direct parties to facilitation on the grounds set out in existing section 50C(1), unless certain countervailing factors are relevant. The factors specified in proposed new section 50K(2)(c) are the same as those in existing section 159(1)(b) of the Act.

We recommend amending clause 12, new section 50K(3)(a), to make clear the intention that the Authority must (rather than “may”) make a declaration if it finds that bargaining has concluded.

**Continuation of a collective agreement**

We believe clarification is needed about the status of an existing collective agreement in relation to an employer who has opted out of bargaining for a multi-employer collective agreement. In line with existing provisions in the Act, we propose that the existing MECA would continue in force in relation to that employer until its expiry, or for up to 12 months if bargaining to replace the MECA was already under way. We recommend amending clause 13 to insert new section 53(2A) to this effect.

We also recommend a change in clause 13 to avoid uncertainty about the legal status of a collective agreement in the event of a decision that bargaining had concluded being overturned on appeal. Under our proposed new section 53(4), the period during which parties could not bargain under new section 50K(3)(b) would be disregarded when determining the period for which the collective agreement continued after expiry.

**Flexible working arrangements**

Clauses 20 to 27 would extend the right to request flexible working arrangements to all employees, not just those with caring responsibilities as is currently the case. The bill would remove the current limits on the number or timing of such requests, and would shorten the period in which an employer must respond to a request. We support the proposed changes as a means of promoting the benefits of flexible working arrangements, which we believe are of value for
both employers and employees, allowing productivity gains and a better work-life balance.

For consistency, since an employee’s request must be given in writing, we recommend amending clause 24, new section 69AAE, to require an employer’s response also to be given in writing. If the request was refused, the employer would also be required to state and explain the reason for the refusal.

**Part 6A: continuity of employment**

Clauses 28 to 36 would amend subpart 1 of Part 6A of the Act to exempt employers (together with any associated person) who have 19 or fewer employees from the Act’s requirement that employees who are covered by the provisions of that subpart be allowed to transfer to the new employer following a restructuring.

The intent of the provision is that small and medium-sized enterprises should not be constrained to take on staff from the previous employer; this responds to the review of Part 6A, which found that smaller businesses have difficulty absorbing the financial risks associated with such transfers. Employers who wished to claim exempt employer status would be required to provide a written warranty to each employer with staff who might be affected by the restructuring confirming that they (along with any associated person) employed 19 or fewer employees to qualify as an exempt employer.

We recommend several changes to these provisions. Those of a substantive nature are discussed below.

**Vulnerable workers: object of subpart 1 of Part 6A**

We recommend amending clause 28 to help with interpreting subpart 1 of Part 6A and to make clearer the type of employees to whom the subpart is intended to apply. The wording we propose is drawn from existing sections 69A and 237A(4), apart from new section 69A(4) which contains the proposed exception for exempt employers.

Subpart 1 of Part 6A relates to the types of employees generally known as “vulnerable workers”: those listed in Schedule 1A of the Act, who provide such services as cleaning, catering, caretaking, laundry, and orderly services in specified sectors and workplaces. While we do not consider it necessary, or appropriate, to define vulnerable workers in legislation, our recommended amendment would
provide some guidance as to the kind of employees who would be covered by the protections afforded by Part 6A. The proposed amendment reflects the matters currently included in section 237A(4) of the Act as criteria for the Minister to consider when recommending the inclusion of an employee group in Schedule 1A: whether the employees work in sectors where restructuring of the employer’s business is common, where terms and conditions of employment tend to be undermined by restructuring, and where employees have little bargaining power.

As the bill (clause 63) proposes to repeal section 237A (because it is considered more appropriate for changes to Schedule 1A to be made by Parliament than by Order in Council), we consider our proposed amendment a worthwhile means of retaining a useful reference to these matters. It could help to explain why these categories of employees are in Schedule 1A, and serve as a guide to interpreting subpart 1 of Part 6A.

**Exempt employers**

We considered the position of businesses that operate as franchises. In the bill as introduced, they would fall within the definition of associated person, so all of the franchisor’s employees would be counted when calculating the number of employees. A franchisee might therefore not qualify as an “exempt employer”, even if individually they had 19 or fewer employees. We consider this appropriate where the franchisor bids for and allocates work to the franchisee; however, we believe that franchisees who have relatively few staff and bid for and manage contracts independently are acting in effect as small businesses, and so should qualify as exempt employers if they have 19 or fewer employees and are not otherwise excluded by the associated person test of new section 69DA.

We recommend amending the definition of “associated person” accordingly, by amending clause 29 and inserting clause 30A, new section 69DA. New subsection 69DA(2) would give exempt status to franchisees with 19 or fewer employees who operated at arm’s length from the franchisor; the rest of the section as amended would carry over provisions from clause 29 in the bill as introduced.
Warranty as exempt employer
Clause 30, new section 69CA would require an employer who wished to claim exempt employer status for the purposes of subpart 1 of Part 6A (and therefore not be required to take on the employees who performed the work before the restructuring) to provide a warranty to each employer with staff who might be affected by the restructuring confirming their exempt status. The importance of the warranty is that it would ensure that employees affected by the restructuring would be notified in good time if they did not have the right to transfer to the new employer.

We consider that substantial changes are needed to this provision to ensure it works as intended, especially where work has been subcontracted. The procedure provided for in the bill as introduced might not always allow an incoming employer to know, or even identify, the employers to whom they must provide the warranty.

Accordingly, we recommend amending clause 30 to insert new sections 69CA to 69CE, setting out procedures for providing information for the purposes of giving a warranty, and specifying to whom the warranty must be provided. The changes we propose are largely technical in nature, and of necessity quite detailed in order to cover each type of contracting and restructuring situation. Apart from the proposed addition of a penalty provision, which we discuss below, they would retain the intent and substance of the bill as introduced.

Penalty for non-compliance
We draw attention to our recommended insertion of subsections 69CD(16) and (17) in clause 30. The provisions we recommend would make it clear that parties should act promptly in requesting and providing the information required for warranty purposes, and that they would be liable to a penalty imposed by the Employment Relations Authority if they failed to do so without reasonable excuse. We believe these provisions would be of particular value if there was ill will between the new and old employers in a restructuring situation.

Employer’s breach of obligations
We recommend inserting clause 31A, new section 69FA, to make it clear that failure of an outgoing employer to fulfil their obligations
under Part 6A does not affect an employee’s entitlement to transfer to the new employer or obligations of the new employer.

**Implied warranty by outgoing employer**

Clause 35, new section 69LC, provides that an employer with staff who elect to transfer to the incoming employer would implicitly be giving a warranty to the new employer that it had not without good reason changed the work affected by the restructuring, or the terms and conditions of employment. To reflect the policy intent, we recommend inserting new section 69LC(2)(ab) to add an additional term to the implied warranty: that the employer would not without good reason change the employees who perform the work affected by the restructuring, for example by substituting less experienced or less efficient employees.

We also recommend clarifying the period covered by the implied warranty, by inserting new section 69LC(2A) in clause 35, and inserting new section 69LC(4) to make it clear that an objective test would be used in determining whether there was good reason for a change covered by the implied warranty.

**Timing of the provision of information**

We recommend an amendment in clause 41 to reduce the possibility of conflict between the timing requirements under clause 41 (new section 69OEA(3)) and those provided for under clause 32 (new section 69G). We can foresee a situation in which an outgoing employer might not have received notifications by the date of restructuring from all the employees who wished to transfer to the new employer, and so might not be able to comply with the requirement under new section 69OEA(3) to provide information about them to the new employer. The proposed amendment would allow the incoming and outgoing employer to agree on a later date for providing the required information.

**Rest and meal breaks**

Clauses 43 to 46 of the bill would change the existing rules for employees’ entitlements to rest and meal breaks. The aim is to move from a prescriptive to a more flexible approach, encouraging employers and employees to negotiate in good faith about workable ar-
rangements as to how and when breaks should be taken. The changes proposed would require an employer to provide reasonable compensatory measures where an employee could not reasonably be provided with breaks.

We are aware of considerable concern about these provisions, particularly about the possible impact on employees’ health and safety if breaks are restricted. We have considered these issues carefully. The majority of us consider two points to be particularly relevant. First, the bill would not override any requirements under other legislation. For example, specific regulations governing hours of work for drivers of passenger transport services, and—importantly—the general duty imposed on employers under the Health and Safety in Employment Act 1992, would be unaffected by the provisions in question. Section 6 of that Act imposes a general duty on employers to take all practicable steps to ensure the safety of employees at work, including providing and maintaining a safe work environment. An employer’s responsibility under that Act for controlling hazards extends to any person’s behaviour resulting from physical or mental fatigue that might be an actual or potential source of harm to themselves or others. Providing breaks, or varying the nature or intensity of work, would remain obvious ways for an employer to address such hazards, regardless of the changes proposed in the bill.

A second important consideration is the reasonableness test in these clauses. Clause 44, new section 69ZD(2), specifies that any restriction of rest or meal breaks must be reasonable and necessary, having regard to the nature of the employee’s work. If breaks were not provided, a reasonable compensatory measure must be provided (new section 69ZEB).

The majority of us consider that these factors would ensure that the bill met the policy intent of improving workplace flexibility, while continuing to protect the rights of employees. Accordingly, we are not recommending any amendment of these provisions.

** Strikes and lockouts**

Clauses 47 to 55 would introduce requirements for written notice of all strikes and lockouts. Clause 56 would give employers the option of making specified pay deductions in response to partial strike action.
Notice of strikes and lockouts
We recommend amending clauses 49 to 53 so that all notices for a strike or lockout must include both a start and end date and time, or specify an event (such as the reaching of agreement) which would mark the end of the strike or lockout. Specifying the date and time would provide certainty for the parties, and would help ensure that any pay deductions were made accurately; while allowing the end to be triggered by an event would provide useful flexibility. It would be open to the parties to issue another notice of industrial action should they decide that the action should continue beyond the end date and time originally specified.

We recommend amending clause 49 by inserting new section 86A(3)(b)(iii) so that a notice for strike action could specify workers by reference to a particular worksite. This would parallel existing notice provisions for strikes in essential services in section 90 of the Act.

We recommend amending clause 55, new section 95AA, to allow the union to withdraw a notice of a strike or lockout on behalf of all union members covered by the bargaining; under the bill as introduced, withdrawal of notice would be done by “the employee”.

We note that Schedule 1 of the Act requires three days’ notice of strike action for premises that slaughter and process specified animals, to protect the welfare of animals awaiting slaughter. We recommend inserting clause 63A to ensure that Schedule 1 covers the range of animals (mammals and birds) that may be commercially slaughtered for the domestic or export market.

Partial strikes
Clause 56 would insert new sections 95A to 95H, allowing an employer to make specified pay deductions from an employee who participated in a partial strike.

We consider that clarification is needed about what constitutes a partial strike. A strike is already defined in section 81 of the Act. The bill as introduced (clause 56, new section 95A) would define a partial strike as any strike in which an employee did not wholly discontinue their employment. It would not count a refusal to work overtime or to perform call-out work as a partial strike, because in such situations
the employee would have discontinued their employment fully; that is, such refusals would count as a full strike. We consider that the definition could be made clearer by focusing on what we consider to be the distinguishing characteristic of a partial strike: that the employees who are a party to the strike are continuing to perform some work. In our view, this would include the following actions by such employees:

- refusing, or failing to accept, particular tasks that would normally form part of their duties, such as answering phone calls, but otherwise performing their work
- reducing their normal performance (“working to rule”)
- reducing their normal output or normal rate of work (a “go-slow”)
- breaking some aspect of their employment agreement, for example by refusing to wear the uniform.

We recommend amending the proposed definition in clause 56, new section 95A, accordingly. We agree with part (b) of the definition as introduced that a refusal to work overtime or to perform call-out work should be considered a full rather than partial strike as the employee would not be performing any other work for the employer during those times. An employer would therefore not be allowed to make a specified pay deduction in such instances. We recommend retaining these provisions, but moving them to new section 95B(2)(c).

**Specified pay deduction for partial strike**

Schedule 2 of the bill would make consequential amendments to the Wages Protection Act 1983 to allow an employer to recover an overpayment if a partial strike occurred without the opportunity to arrange a specified pay deduction. It would require the employer to notify employees about the intention to recover the overpayment. We consider that the period of notice proposed in the bill could be impractical, and recommend that it be amended from 1 working day to 5 working days after the relevant pay day.
Employment Relations Authority
Clause 61 would replace section 174 of the Act to introduce requirements on the nature and timing of determinations by the Authority when investigating employment relationship problems. The bill as introduced would require the Authority to give an oral determination, or an oral indication of its preliminary findings at the conclusion of an investigation meeting. It would then be required to record such determinations in writing within 3 months unless there were exceptional circumstances that warranted an extension of time. We recommend replacing proposed clause 61 with more detailed provisions which we believe would achieve the purpose of making determinations more timely, while recognising that requiring an oral determination, or an oral indication of preliminary findings would be inappropriate for some complex matters, and could lessen the quality of the decision. Our recommended amendments would also help to clarify various aspects of the proposed rules.
We propose requiring the Authority to provide an oral determination or an oral indication of its preliminary findings at the conclusion of an investigation meeting wherever practicable (new section 174), but allowing it to reserve its determination if satisfied there were good reasons why it was not practicable to do so (new section 174C). We recommend the insertion of new section 174D to make it clear that, as at present, the Authority should be able to determine matters on the basis of written material, without holding a hearing or investigation meeting.

Timing of determinations
As for the timing of determinations, we believe the policy intent is that the Authority should deliver determinations as soon as practicable, and not later than 3 months after the date on which the investigation meeting concluded, unless in exceptional circumstances. The amendments we propose aim to make this clearer. They would retain 3 months as the outer limit (unless the Chief of the Authority decided there were exceptional circumstances), with one exception. To encourage prompt determinations of the more straightforward disputes, we propose that, if the Authority had given an oral determination at the conclusion of an investigation meeting, it would be required to
record the determination in writing within 1 month, rather than the 3 months allowed in the bill as introduced (new section 174A(2)).

**Challenges to determinations**

We recommend the insertion of clauses 61A and 61B to make the rules clear about challenges to Authority determinations.

Section 179 of the Act allows 28 days within which a party who is dissatisfied with a determination by the Authority may elect to have the matter heard by the Employment Court. We propose that the 28 days commence from the date of a written determination, or, if there had been an oral determination or an oral indication of preliminary findings, from the date of the written record of the oral determination or oral indication.

With our proposed amendments, an oral determination or an oral indication of preliminary findings would not be open to challenge or judicial review. We consider this appropriate as there should be certainty about determinations before they can be challenged or reviewed by the court. We are satisfied that such an approach would not diminish the rights of parties to challenge determinations; they would simply have to wait for the written determination before doing so.

**Content of determinations**

Our recommended insertions of sections 174A(1), 174B(1) and 174E aim to make clear what the Authority would need to cover in each type of determination, and in oral indications of preliminary findings. In particular, we note that an oral determination would need to cover only the primary or substantive matters at issue, and any order that the Authority was making. The required content of written determinations, and what need not be covered in them, would remain as provided for in section 174 of the Act at present.

**Ability to correct oral determinations**

We consider it appropriate to allow the Authority to correct an oral determination if it becomes obvious when preparing the written record that this is necessary to correct a mistake caused by an error or omission in the determination. This would allow changes to be made only if there was a manifest error in the reasoning, or if an im-
important matter of law or precedent had been overlooked in reaching the determination. Courts and tribunals have a similar ability. Our recommended amendment is in clause 61, section 174A(4).

**Transition to new rules**

We recommend the insertion of a transitional provision as clause 2(8A) of Schedule 1, new Schedule 1AA so that the bill’s provisions relating to the Authority would apply only to proceedings commenced in the Authority after the bill came into force.

**Minority view of the New Zealand Labour Party**

Labour Party members of the committee are opposed to the Employment Relations Amendment Bill. Most of the changes in the bill have been undertaken against the advice of officials, are contrary to New Zealand’s international obligations, and are a backwards leap in employment relationships towards the failed paradigm of the 1990s.

The bill continues the flawed logic that employers, who at common law not only control the workplace but have the benefit of the implied duty of every employee to obey the employer’s instructions, somehow need more statutory tools to defeat the right of those who freely choose to join a union and exercise the legitimate benefits of belonging to a union, such as collective bargaining.

The effects of this bill will be to impact negatively on wages in general through a deliberate weakening of the already diminished bargaining strength of employees and the removal of protections for workers when they are most vulnerable. It will do nothing to improve the quest for high-skill, high-wage, and highly productive workplaces built on good-quality and mutually respectful employment relationships.

The Labour Party is particularly concerned about the following:

**The removal of the requirement to conclude a collective agreement**

The present law prevents surface bargaining and gives life to the overarching good faith duty. Changes in the bill risk the return of perfunctory conduct on the part of employers hostile to collective bar-
gaining, and will see fewer collective agreements successfully concluded.

The process that allows an employer to apply for an Employment Relations Authority declaration that bargaining for a collective agreement is concluded
Such a facility is wrong in principle. The statutory consequence of a declaration that bargaining is concluded means workers will have no collective rights for 60 days, including the right to strike, and could be forced on to inferior individual contracts. This provision, along with the removal of a requirement to conclude, will encourage early industrial action and do nothing to facilitate harmonious settlements.

The right of peremptory opt-out by the employer from multi-employer collective bargaining when that has been validly chosen by the employer’s workforce
This defeats the good faith rights of workers, and privileges the employers’ choice about the form of employment agreements in the workplace. These changes will all but destroy multi-employer bargaining, which has been effective in setting standards across industry and sectors.

The removal of the “30-day rule” where new employees must be offered the terms and conditions of a collective agreement
This provision will seriously undermine collective bargaining. Employers will be able to offer inferior or different terms and conditions to new employees, despite agreements reached with unions in collective agreements for that enterprise or industry. It will remove the protection new employees have had from being taken on at lower pay rates or on inferior terms and conditions and, over time, weaken hard-won collective agreements.

Amendments to Part 6A—exclusion of smaller employers
Labour Party members of the committee believe that no case has been made for the exclusion of employers with fewer than 20 employees from the important protections under Part 6A for vulnerable workers in situations where their employer changes hands. Both em-
Employer and union submitters opposed this change on the grounds that it will create an unlevel playing field where wages and conditions are the meat in the sandwich, and introduce unnecessary legal complications. It will disadvantage already marginalised employees and help further drive down their wages and conditions.

The added complexity to the strike and lockout provisions
Under the present legislation, written notification of a strike or lockout is only required in the defined essential industries. The changes in this bill will require all industrial action, no matter how slight and no matter the industry, to be notified in writing, including start and finish dates and times.

The wide and arbitrary power to deduct a worker’s pay for so-called partial strike action even when such a strike action results in no loss of productivity or revenue for the employer
This provision can only be seen as one intended to punish those who would use their industrial right to press their claim to their employer through low-level industrial action. It is more reflective of 19th-century industrial relations ideals than 21st-century ones.

The requirement for members of the Employment Relations Authority to give an oral determination or an oral indication of preliminary findings “wherever practicable”
A small proportion of employment relationship problems are heard by the Authority. Those subject to a written determination are typically the difficult and complex cases that do not lend themselves to instant resolution. If it was that easy, the cases would have been resolved long before. This provision in the bill is an incentive to put undue pressure on Authority members to make hasty and ill-considered decisions.

Changes to meal and rest break provisions
Labour re-established minimum standards for rest and meal breaks to protect the health and safety of wage and salary earners, to reduce the risk of accidents, and to improve the quality of work and productivity in all workplaces. A minimum standard for rest and meal
breaks is fundamental to decent work and a basic requirement, especially as New Zealand has few other working hours protections. This proposal was well canvassed in a 2010 bill, which was discharged by the Government. We heard no new evidence to change our view that these provisions are neither necessary nor workable.

Conclusion
New Zealand’s longstanding woeful productivity performance and low wages require management capable of engaging with the New Zealand workforce in an intelligent and respectful way directed at harnessing the best in people.
To achieve this, we need employment legislation that is balanced, fair, and encourages good-quality relationships. This bill is a continuation of the suite of employment legislation over the last five years that would take New Zealand workplace relations in the opposite direction, down the path of continued command and control by management with no assurance of quality.

Minority view of the Green Party of Aotearoa/New Zealand
The Greens maintain that this bill undermines the original intention of the Employment Relations Act, which is to promote collective bargaining, and we oppose it in its entirety.
This bill removes the duty to conclude bargaining in the Act, and also removes the requirements for employers to bargain for multi-employer collective agreements. Both of these provisions will make it less likely that some employers will want to negotiate collectively. It also removes the requirement in the Act that collective employment agreements be offered to new employees, which is effectively a return to individually-based bargaining.
None of these changes to the Act will promote collective bargaining. Rather, they will make it harder for workers to negotiate collectively. The Greens will also be opposing this bill on the basis that changes to the duty of good faith interfere in the process of natural justice and fairness, and we believe workers should maintain their right to information regarding an employer’s decisions around restructuring and dismissals. Under the provisions in the bill employers will not
be able to be held accountable for the decisions they may make that impact on their affected employees.

We also oppose the changes to the right to meal and rest breaks as we believe this right needs to be enshrined in legislation to help facilitate good health and safety in the workplace. And we strongly object to the provisions in the bill that will change the continuity of work protections for some employees as outlined in Part 6A of the Act. The argument that this provision should not apply to contractors employing 19 or fewer staff introduces more complexity while discriminating against employers with 20 or more staff who will still be bound by the provisions.

**Minority view of the New Zealand First Party**

New Zealand First does not support this bill. We believe it will perversely undermine wage fixing principles under New Zealand law and create conflict between employers and employees. There is currently no call by employers or employees for this bill.

The bill proposes, among other things, to allow employers to walk away from collective bargaining; ensuring people have challenges determining changes to their employment contract, withdrawal of the right to a scheduled tea or lunch break; paying new workers less than others who have been doing the same work; deducting 10 percent of workers’ pay for partial industrial action, and allowing pay to fall below the minimum wage. The net effect of these proposals will make it harder to settle collective agreements and will increase the potential for industrial disputes.

New Zealand First is of the view that employers need flexible, dedicated staff, and employees need appropriate conditions and remuneration. Safety of employees is paramount and scheduled tea and lunch breaks assist with this.

The employment relationship is not a level playing field. Employment relations must be collaborative. There is a fine balance between assuring and affirming the rights of workers and allowing sufficient flexibility so as not to hinder production or productivity.

We believe that the Employment Relations Amendment Bill is an unnecessary piece of legislation that has the potential to create a hostile industrial relations environment and adversely affect both workers and business.
Appendix

Committee process
The Employment Relations Amendment Bill was referred to the committee on 5 June 2013. The closing date for submissions was 25 July 2013. We received and considered 13,679 submissions from interested groups and individuals. Of the total number of submissions received, 11,909 were in the nature of form submissions, with replicated content. We heard oral evidence from 163 submitters, holding hearings in Auckland, Christchurch, and Palmerston North, as well as in Wellington.

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

Committee membership
David Bennett (Chairperson)
Chris Auchinvole
Carol Beaumont (from 25 September 2013)
Dr Cam Calder
Darien Fenton
Iain Lees-Galloway (until 25 September 2013)
Andrew Little (from 25 September 2013)
Sue Moroney (until 25 September 2013)
Simon O’Connor
Denise Roche
Mike Sabin
Barbara Stewart was a non-voting member of the committee for this item of business.
Proposal to hold an inquiry into the process for appointing Ian Fletcher as the Director of the Government Communications Security Bureau

Report of the Intelligence and Security Committee

On 16 April 2013, the Intelligence and Security Committee debated a notice of motion proposed by Dr Russel Norman:

That the Intelligence and Security Committee hold an immediate inquiry into the process for appointing Ian Fletcher as the Director of the Government Communications Security Bureau.

Given the subject matter of the motion, the Prime Minister recused himself from the discussion and appointed Hon Peter Dunne to chair the committee for the consideration of the motion.

Following discussion, Dr Norman moved his motion and the committee voted on it. The result was two votes in favour and two votes against, with the Prime Minister not participating in the vote. The chair declared the motion to be lost.

Rt Hon John Key
Chairperson
Government Communications Security Bureau and Related Legislation Amendment Bill

Government Bill

As reported from the Intelligence and Security Committee

Commentary

Recommendation
The Intelligence and Security Committee has examined the Government Communications Security Bureau and Related Legislation Amendment Bill and recommends that it be passed, by majority, with the amendments shown.

Introduction
This is an omnibus bill that proposes amendments to the Government Communications Security Bureau Act 2003, the Inspector-General of Intelligence and Security Act 1996, and the Intelligence and Security Committee Act 1996.

The bill is focused and narrow in its scope and deals with matters of immediate concern. The purposes of the bill are to

- provide for a clearly formulated and consistent statutory framework governing the activities of the Government Communications Security Bureau
update that framework to respond to the changing security environment (particularly in relation to cybersecurity and information security), and to changes in the public law environment since the GCSB Act was passed in 2003

• enhance the external oversight mechanisms that apply to the intelligence agencies by strengthening the Office of the Inspector-General of Intelligence and Security and by improving the operation of the Intelligence and Security Committee.

Our commentary outlines the amendments we propose. It also includes comment on a number of the issues we considered.

Part 1 – Amendments to Government Communications Security Bureau Act 2003

Interpretations

Definition of “information infrastructure”
Clause 5 of the bill proposes repealing the definition of “computer system” in section 4 of the GCSB Act and replacing it with a new definition of “information infrastructure”. We support this amendment.

We note the concern of submitters at the broad and expansive nature of the proposed definition especially that it would allow the Bureau to intercept a wider range of communication systems and the communications carried on, stored in, or relating to them. However, the current definition of “computer system” is outmoded, and a broader and more expansive definition is necessary for the Bureau to carry out effectively its primary function of collecting information through the interception of communications. The proposed term is consistent with the purpose of the GCSB Act to allow for the interception of communications. It would also allow, in the medium term, some flexibility of the GCSB Act to capture developments in communication media.

Definition of “private communication”
The definition of “private communication” is already contained in section 4 of the GCSB Act. While the bill, as introduced, does not propose any amendment to this definition, it does propose using this
definition in new section 14 (inserted by clause 5) instead of the undefined phrase “communication of a person”. While we recognise that the use of this definition in this context is not straightforward, and its difficulties have been judicially noted, we support its use.

We considered carefully the concerns of submitters that the definition of “private communication” is technologically outmoded and could pose legal interpretation difficulties. The definition has however acquired a degree of orthodoxy, and we consider it more preferable than using the more problematic and imprecise phrase “communication of a person”, which we are told has no developed jurisprudence or supporting case law. Its use would also maintain consistency between the Crimes Act 1961, the Search and Surveillance Act 2012, and the GCSB Act.

We note the definitions of the term “private communication” were discussed in the Law Commission’s 2010 report *Invasion of Privacy: Penalties and Remedies* in the context of recommending surveillance devices legislation that would address criminal and civil liability in relation to unlawful surveillance. The Law Commission recommends the definition of “private communication” for the purpose of interception offences should be amended to replace the current criterion with a single “reasonable expectation of privacy” test.

We are advised that the Government is still considering the wider implications of the Law Commission’s recommendations contained in its 2010 report. It would therefore be premature to anticipate those changes in the wider context.

**Objectives and functions of the Bureau**

“Economic wellbeing” and “international relations”

The bill seeks to replace section 7 of the GCSB Act (inserted by clause 6) with a set of revised objectives for the Bureau that specifically refer to it contributing to the “economic well-being of New Zealand” and the “international relations and well-being of New Zealand”. We support these objectives and do not propose any amendment to them.

We did consider the concerns raised by submitters about the reference to the Bureau performing its functions to contribute to “economic well-being” and “international relations”. Submitters believe that “economic well-being” and “international relations” were the re-
sponsibility of New Zealand’s diplomats and the Bureau had no role to play in such matters—the objective of the Bureau should therefore be confined to national security.

We are not persuaded by this argument. These are not new concepts. Section 7 of the GCSB Act refers currently to the “international relations of the Government of New Zealand” and to “New Zealand’s international well-being or economic well-being”. Submitters’ belief that the revision of the Bureau’s objectives would make it responsible for – as opposed to contributing to – national security, economic well-being, and international relations, is incorrect. The intelligence gathered by the Bureau is used to inform decision-makers who are responsible for those matters.

Information assurance and cybersecurity
We recommend amendments to new sections 8A(c) and 8B(1)(c) (inserted by clause 6) to provide consistency between the language used in these provisions. We consider the lack of uniformity between these provisions is not ideal given they each intend to allow the same type of activity, albeit for two separate functions, i.e. the communication of intelligence gathered.

Section 8A outlines the Bureau’s information assurance and cybersecurity function – permitting the Bureau to give advice and assistance to public sector agencies in New Zealand – whilst also clarifying that advice and assistance may be given to public authorities overseas and expanding the function to explicitly include assistance to the private sector on the authorisation of the Minister. Section 8B outlines the Bureau’s foreign intelligence function – permitting the Bureau to perform a number of detailed tasks in pursuit of intelligence collection and dissemination.

We are advised that if the issue of consistency between section 8A(c) and section 8B(1)(c) is not addressed, a court could determine that the bill intended to allow two quite different activities under each one (i.e. “reporting” versus “analysing” and “communicating”). As introduced, a court might not only reasonably conclude that the bill intended the term “intelligence” to have a narrow meaning, confined to raw material gathered. On the contrary, we understand that the bill has been prepared on the premise that the term can be applied across
all stages of the information-gathering process, from raw collect, to end product report.

**Co-operation with other entities to facilitate their functions**

New section 8C (inserted by clause 6) outlines the GCSB’s co-operation function. We recommend amendment of new section 8C(1)(d) to make clear the limits and oversight applying to the Bureau when it exercises its co-operation functions with other entities.

We considered the many submissions that oppose this function. Submitters described this function (along with new section 8A) as allowing the Bureau to spy on New Zealanders and would transform the Bureau into a domestic surveillance agency. We believe the amendment we propose would make clear what has been a vexed issue, and the source of some confusion in the current GCSB Act.

We recommend inserting new section 8C(3) to require any advice or assistance provided under section 8C(1) to another entity to be subject to the jurisdiction of any other body or authority to the same extent as the other entity’s actions are subject to the other body’s or authority’s jurisdiction (e.g. the Independent Police Conduct Authority in relation to co-operation with the New Zealand Police). We also recommend inserting new section 8C(3)(b) to make clear that it is intended that the Inspector-General of Intelligence and Security would continue to have an oversight role in respect of activities undertaken by the Bureau under new section 8C.

**Principles underpinning performance of Bureau’s functions**

We recommend inserting new section 8CA to provide for a set of principles that would underpin the performance of the Bureau’s functions. These would require the Bureau to act

- in accordance with New Zealand law and all human rights standards recognised by New Zealand law, except where modified by an enactment in relation to matters of national security
- independently, impartially, with integrity and professionalism
- in a manner that facilitates democratic oversight of its operational functions.
The set of principles extend to obligating the Director of the Bureau to ensure

- the activities of the Bureau are limited to only those that are relevant to its functions
- the Bureau is not influenced by matters not relevant to its functions
- the Bureau does not act to further or harm the interests of any political party in New Zealand.

The principles also specify that the Director would be required to consult regularly with the Leader of the Opposition to keep him or her informed about matters relating to the Bureau’s functions.

**Intercepting communications and accessing information infrastructures**

**Authorisation**

New section 15A (inserted by clause 14) outlines the scope of the interception warrants and access authorisations that may be sought by the Director of the Bureau. As well as carrying over current types of warrants and authorisations permitted by section 17 and 19 of the GCSB Act, section 15A would allow warrants to be issued in relation to classes of persons, places, and information infrastructures.

Many submitters oppose new section 15A, particularly the phrase in new section 15A(1)(a) “not otherwise lawfully obtainable”. Opposition appears to be based on a misapprehension as to the existing legislation. The use of this phrase in section 15A is however a straight carryover of an existing permission framework. We therefore support its retention as it requires the Bureau to consider what other lawful means might be available to it in order to gain access to certain communications before seeking a warrant or authorisation to intercept such communications.

Submitters also oppose new section 15A(5) which seeks to make clear that section 15A would apply despite anything in any other Act. Submitters are concerned that this would give primacy over the New Zealand Bill of Rights Act 1990. We are advised this is not correct. We are advised that new section 15A(5) is proposed for the avoidance of doubt, given that the bill would empower the Bureau to act in ways that otherwise are, or might be, contrary to various Acts.
view of the rights and freedoms at stake, the inclusion of such a provision in the bill is prudent.

These matters aside, we propose amendments to address some gaps in proposed section 15A relating to the information that any warrant or access authorisation must contain (new section 15D), requirements regarding the specification of persons assisting the interception warrant or access authorisation holder (new section 15E), and privileged communications (new section 15C).

**Information warrants or authorisations must contain**

We propose inserting new section 15D to make clear the information any warrant or access authorisation must contain. We consider that every interception warrant and access authorisation must specify:

- the date of issue and the period of the warrant or access authorisation, not exceeding 12 months
- the person(s), or class of persons authorised to make the interception or obtain access
- the person(s), or class of persons that the warrant or access authorisation applies to
- the place(s), or classes of places that the warrant or access authorisation applies to
- the information infrastructure(s), or classes of information infrastructures that the warrant or access authorisation applies to
- the function(s) of the Bureau that the warrant or access authorisation relate to
- any conditions under which interception may be made or access may be obtained.

We believe greater specificity of the information any warrant or access authorisation must contain would help compliance outcomes, enhance accountabilities and transparency generally, and assist in the ongoing management of the new register of warrants and authorisations, required by new section 19 (inserted by clause 18).

**Authorisation of persons to assist warrant or authorisation holder**

Section 18 (inserted by clause 17) provides for certain matters about the content of warrants, namely the specification of persons or classes
of person who may assist in executing a warrant. We recommend deleting clause 17 and inserting new section 15E (clause 14) to set out in more detail the requirements regarding the specification of persons assisting the interception warrant or access authorisation holder.

**Ministerial versus judicial authorisation of warrants**

Section 15B (inserted by clause 14) provides for a joint authorisation system for the application of, and issuing of, an interception warrant or access authorisation where warrants are sought about New Zealanders. Applications would be required to be made jointly to the Minister and the Commissioner of Security Warrants who would jointly issue the warrant or authorisation.

We considered whether this proposed framework would be strengthened by the use of judicial warrants. We were not however persuaded to change the system proposed by the bill for authorising warrants or access authorisations. We believe the system proposed to be sound and provides a strong focus on the relevant legal requirements.

The Commissioner of Security Warrants was introduced in 1999 as a co-approver of the New Zealand Security Intelligence Services’ domestic warrants alongside the Minister for the New Zealand Security Intelligence Service. The Commissioner’s role is to advise the Minister on NZSIS applications for warrants concerning New Zealanders, and to jointly issue the warrants. Section 15B (clause 14) proposes to extend the involvement of the Commissioner to include interception warrants or access authorisations if the authority is required by the Bureau for the purposes of intercepting the communications of New Zealand citizens or permanent residents. This extension mirrors the framework in the New Zealand Security Intelligence Act 1969.

**Privileged communications**

As an added safeguard for New Zealanders, and to avoid any debate, in those cases where the Commissioner of Security Warrants is involved, we recommend inserting new section 15C (clause 14) to prevent the Minister and the Commissioner of Security Warrants from issuing an interception warrant or access authorisation if the communications of New Zealand citizens or permanent residents to be intercepted or accessed are privileged.
New section 15C(2) (clause 14) describes a privileged communication as one that is, or would be, privileged in proceedings in a court of law under sections 54, 56, 58 or 59 of the Evidence Act 2006.

This provision is modelled on section 4A(3) of the New Zealand Security Intelligence Service Act 1969.

Register of interception warrants and access authorisations

New section 19 (inserted by clause 18) proposes the Director keep a register of interception warrants and access authorisations that have been issued. We recommend amendment of new section 19 to refer to the need to capture the same information on the register as specified in new sections 15D, 15E(1) and 15E(3).

Urgent issue of warrants or authorisations

New section 19A (inserted by clause 18) provides for the urgent issue of warrants or authorisations by the Attorney-General, the Minister of Defence, or the Minister of Foreign Affairs, if the Minister is unavailable and it is necessary to issue them before the Minister is available.

We recommend inserting new section 19A(4) (clause 18) to require that the Minister is informed as soon as is reasonably practicable after an urgent warrant or authorisation had been issued. We consider this amendment would further enhance the accountabilities under the GCSB Act.

Use of incidentally obtained intelligence

Section 25 (inserted by clause 24) would replace section 25 (Prevention or detection of serious crime) of the GCSB Act. It specifies when and to whom “incidentally obtained intelligence” about New Zealand citizens or permanent residents would be retained and communicated.

We recommend inserting new section 25(2)(ab) (clause 24) to allow the communication of incidentally obtained intelligence for the purpose of preventing or avoiding the loss of human life on the high seas. We consider that new section 25 should account for situations where the threat to life may not be associated with a serious crime. Such situations may be relevant in cases of search and rescue or nat-
ural disaster. While it is difficult to provide specific examples, we consider that saving the life of a person was sufficient justification for communicating relevant intelligence.

We recommend an amendment to new section 25(2)(c) (clause 24) to replace the term “national security” with the more relevant term “security or defence”. We agree with the concerns raised by some submitters about the new ground of threats or potential threats to the national security. The term “national security” is used in new section 7 (inserted by clause 6). It is a carryover from the GCSB Act.

National security is a term that has a broad meaning and can encompass a wide range of interests. Its use in section 7 is appropriate as the Bureau contributes to those broad interests. However, in section 25, which sets out what the Bureau can do with incidentally obtained intelligence, a more specific formulation should be used.

We also recommend that new section 25(3)(d) (clause 24) be amended to remove references to “any other person” and replace it with “any other public authority in New Zealand and any other country”. We agree with submitters that section 25(3)(d) in referring to “any other person that the Director thinks fit” is too wide. We are advised that the intention was to allow the intelligence to be communicated to authorities who could take steps to respond to the identified purposes. In addition to the listed bodies (New Zealand Police, New Zealand Defence Force and the New Zealand Security Intelligence Service) they could include other law enforcement agencies, search and rescue authorities, and the overseas equivalents where the threat was in another country. We therefore propose this amendment to limit the class of persons to whom the intelligence can be given, to public authorities in New Zealand or overseas.

**Personal information**

Clause 25 would insert new sections 25A and 25B into the GCSB Act to provide for the protection and disclosure of personal information. New section 25A would require the Director of the Bureau, in consultation with the Inspector-General of Intelligence and Security and the Privacy Commissioner, to formulate a policy on the protection and disclosure of personal information that complies with the principles proposed in new section 25B. New section 25B sets out the principles about collecting, using, storing, and retaining personal
information. New section 25A(2A) would require the Director to advise the Privacy Commissioner of the results of the audits conducted under the policy.

We recommend inserting new section 25A(2A) and 25A(2B) to make it clear that the Privacy Commissioner may provide a report to the Inspector-General if the results of the audits conducted under the policy disclose issues to be addressed.

We also recommend an amendment to new section 25A(3) to require the Director of the Bureau to review the Bureau’s privacy policy at intervals of not more than 3 years.

Part 2 – Amendments to Inspector-General of Intelligence and Security Act 1996

Functions of Inspector-General

We recommend an amendment to section 11(1)(c) (inserted by clause 31(1)) to remove the requirement for the concurrence of the Minister to be obtained before the Inspector-General can investigate whether the actions of security agencies may have adversely affected a New Zealand person. We believe this amendment would strengthen the oversight regime of New Zealand’s intelligence and security agencies.

Who can make a complaint

The Inspector-General of Intelligence and Security Act provides in section 11(1)(b) that it is the function of the Inspector-General “to inquire into any complaint by a New Zealand person, or a person who is an employee or former employee of an intelligence and security agency”.

We recommend an amendment to section 11(1)(b) to insert section 11(1)(ba) (new clause 31(1AA)) that would allow the Inspector-General to inquire into any complaint made by the Speaker of the House of Representatives on behalf of 1 or more members of Parliament. The Privileges Committee in its interim report to the House on a Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of informa-
tion by the NZSIS made the following recommendations to the Intelligence and Security Committee:

That we consider whether there is a need to clarify the oversight of the intelligence agencies to ensure the Inspector-General of Security and Intelligence can receive complaints about, and inquire into, the actions of those agencies that affect a class of person.

That we consider the appropriateness of requiring the agreement of the responsible Minister before the Inspector-General can undertake an inquiry under the new section 11(1)(e) of the Inspector-General of Security and Intelligence Act 1996 that is proposed in the Government Communications Security Bureau and Related Legislation Amendment Bill.

The Privileges Committee’s recommendation regarding who can complain to the Inspector-General arises from the committee’s view that the activities of the NZSIS under the agreement being examined should come clearly within the oversight of the Inspector-General. The committee is concerned that “it does not appear possible under the current wording of section 11 of the IGIS Act for the Speaker to complain to the Inspector-General on behalf of the members of Parliament or about the actions or policies of the NZSIS more generally”. The Privileges Committee did not want to see an amendment specifically for the benefit of the House of Representatives and felt any amendment should apply more generally to all bodies of persons.

However, we recommend that this matter is addressed specifically for the Speaker in terms of members of Parliament.

Establishment of an advisory panel

We recommend amending the bill (inserting new sections 15A, 15B, 15C, and 15D (new clause 33A)) to establish an advisory panel to provide advice to the Inspector-General. The bill aims to build on and further strengthen the oversight arrangements of New Zealand’s security and intelligence agencies. We believe the establishment of an advisory panel to provide advice to the Inspector-General would contribute significantly to strengthening the oversight arrangements. The amendments we propose also provide for the advisory panel to
report to the Prime Minister on any matter relating to intelligence and security, if the panel considers it necessary to do so.

We recommend in new section 15C that the panel consist of 2 members and the Inspector-General. Members would be appointed by the Governor-General on the recommendation of the Prime Minister after consulting the Intelligence and Security Committee.

Reports in relation to inquiries
Section 25 (inserted by clause 34) would require the Minister to respond as soon as practicable after receiving a report from the Inspector-General. We considered why the Minister is not required to provide to the Intelligence and Security Committee a copy of his or her response to an Inspector-General’s inquiry report.

Whilst this is desirable, we are advised that it raises questions about operational security, the classification of such information, and the timing of the provision of the response. On balance, we believe that the Minister should have discretion as to when he or she would provide a copy of his or her response to an inquiry by the Inspector-General to the Intelligence and Security Committee.

An associated matter is who determines the classification of a report. We consider it should be the Inspector-General and propose an amendment to insert new section 8(a) and (b) (clause 34) to make clear that for the purpose of section 25 of the IGIS Act the Inspector-General would be responsible for determining the security classification of a report prepared under section 25.

Our amendment recommends that the Inspector-General, in determining a security classification of a report, must consult with the head of the intelligence and security agency that is the subject of the report and retain the same security classification in respect of any material provided to the Inspector-General that is quoted verbatim in the report.

Inspector-General’s annual report
Clause 36 proposes amendments to section 27 (Reports by Inspector-General) to provide for the Inspector-General’s annual report. The amendments, as introduced, would require the Inspector-General to certify whether each intelligence and security agency’s compliance systems (see clause 31(1)(d)) are sound and as soon as practicable
after his or her annual report is presented to Parliament, to make a copy of the report (as presented to Parliament) publicly available on an Internet site maintained by the Inspector-General.

We consider that the proposed amendment requiring the Inspector-General to make a public statement regarding the adequacy of each intelligence and security agency’s compliance systems is the role of an auditor.

We therefore propose an amendment to section 27 (inserted by clause 36) to require that the Inspector-General certifies instead the extent to which each intelligence and security agency’s compliance systems are sound.

Part 3 – Amendments to Intelligence and Security Committee Act 1996

Functions of Committee – Inspector-General’s annual report

We recommend amending the functions of the Intelligence and Security Committee (inserting new section 6(1)(f)) (clause 38) to provide for the Committee to consider and discuss with the Inspector-General of Intelligence and Security his or her annual report that the Inspector-General is required to present to the House.

Chairperson and Leader of the Opposition

The bill proposes inserting new section 7A (clause 39) into the Intelligence and Security Committee Act. Section 7A contains further provisions relating to the chairperson of the Intelligence and Security Committee. The new section provides:

- that the Prime Minister is not to chair a meeting of the Intelligence and Security Committee while it is discussing, in the course of a financial review of an intelligence and security agency, any matter relating to the performance of the intelligence and security agency if the Prime Minister is the responsible Minister of the agency. In that case, one of the members of the Committee appointed under section 7(1)(c) must act as chairperson
- that the chairperson may appoint either the Deputy Prime Minister or the Attorney-General (if not already a member of the
Committee) to act as chairperson in the absence of the chairperson. Existing section 13(6) of the Intelligence and Security Committee Act prohibits members of the Intelligence and Security Committee from being represented by anyone else. We are advised that this provision is at odds with new section 7A (clause 39) and needs amending to enable the new provision to provide some flexibility in respect of the chair of the Committee.

In the light of this, we recommend that existing section 13(6) of the Intelligence and Security Act is expressed to be subject to new section 7A(3) of the Intelligence and Security Act.

We also recommend that new section 7A(4) be inserted to provide for the Leader of the Opposition to appoint the person who acts as his or her deputy in the House to act in place of them at a meeting of the Committee.

**Labour Party minority view**

Labour believes New Zealand’s intelligence services are necessary for the security and prosperity of our people. It is vital that our agencies are set-up and structured to ensure they can deal with potential threats. It is equally important that we have strong oversight in place so that New Zealanders can be confident their rights and freedoms are adequately protected and that powers of surveillance are not more intrusive than necessary or liable to be abused.

Labour does not believe the current bill has met this important balance. It has been rushed and poorly informed. There is no evidence this legislation will restore public confidence in our intelligence network. We therefore oppose this bill.

Labour wants the best possible security arrangements with the best possible guarantees to New Zealanders that the powers given to these agencies are not misused and that surveillance is targeted appropriately.

We would consider supporting legislation if the Government was able to persuade us that there was a case for urgent change based on an imminent threat to New Zealand. Such legislation would be considered temporary and would need to include a sunset clause allowing for a full inquiry to be carried out as soon as possible. The findings
of that inquiry would be the basis for the drafting of new and comprehensive legislation governing our intelligence agencies.

But the case for urgent legislation has not been made. The Government has failed to provide sufficient evidence that there is a need to rush through changes. It has failed to show that we will be exposed to greater threat of terrorism or cyber-attack without this legislation. Furthermore, no evidence has been produced to show whether changes will add to or reduce costs to the taxpayer.

We are concerned that the bill is not well-informed. We were disappointed that the Prime Minister denied a request from Labour for the Intelligence and Security Committee to hear evidence from other security agencies, including the SIS, police, defence forces – or any other government agency that could potentially call on GCSB support.

The process has also been unnecessarily rushed. It was introduced under urgency and the committee hearings were shortened, despite the complexity of the issues being examined. The final changes to the bill were only delivered to Labour on Friday afternoon for deliberation on the following Monday. That length of time is ludicrously short if government is serious about achieving wider consensus on such a significant piece of legislation.

This matter has been the subject of public debate for more than a year now. Questions were first asked about the possibility of the GCSB potentially illegally spying on New Zealanders back in May 2012 although the concerns were not revealed publicly by the Prime Minister until September that year when the Kim Dotcom case hit the headlines.

Labour cannot understand why the Government did not move swiftly at that time if it felt that urgent changes were needed. If it had commissioned a full review across the intelligence network at that time, we could have been in a position now to pass comprehensive and well-informed legislation.

The terms of reference for the Review of Compliance, carried out by Rebecca Kitteridge in March 2013, gave a limited mandate and as a result were too narrowly focused on the GCSB and did not examine whether there are deeper problems across our entire intelligence community and with the interaction between the agencies.
There are still serious questions about the current oversight arrangements, including the fact that too much power and responsibility rests in the Prime Minister’s hands. He has final say over the appointment of the head of the GCSB, chairs the Intelligence and Security Committee, sets the agenda and has the casting vote. The Inspector-General and the Commissioner of Warrants are appointed by the Governor-General on the recommendation of the Prime Minister and with respect to the Commissioner of Warrants, after consultation with the Leader of the Opposition.

In other jurisdictions, there is a greater level of oversight including the intelligence and security committee being chaired by the Leader of the Opposition.

Labour supports strengthening the oversight the agencies receive, including the establishment of a panel and a review of any warrants within three weeks of being issued as laid out by New Zealand First. The concerns about illegal spying on New Zealanders and the uncertainty around the legislation governing our intelligence agencies, combined with serious questions about the misuse of power by intelligence-gathering entities overseas, have dramatically eroded public confidence.

New Zealanders have legitimate questions about whether the balance between their privacy and their security is being met.

This bill is a missed opportunity for meaningful change and to restore people’s confidence in our security agencies. The role of our intelligence community has not been reviewed since 1976. In that time, the world, the threats we face, technology available and the information we share, as a nation and as individuals, has changed dramatically. That is why Labour has argued ever since the concerns first became public that there is a need for a full independent inquiry. It should be carried out along the lines of a similar inquiry in Australia, where terms of reference were agreed across Parliament as a whole.

A number of respected individuals and agencies, including the Human Rights Commission, the Law Society and the Privacy Commission, have all raised serious concerns about this bill. They suggest any broadening of the powers of security agencies must be clearly justified and recommend the Government take the time to hold an inquiry and get this legislation right.

We urge the Government to pay attention to their submissions.
Insufficient consideration of relevant matters

This bill must be examined in conjunction with the associated legislation. It is closely linked with the Telecommunications (Interception Capability and Security) Bill and a bill has been drafted to amend the SIS legislation, which has now been delayed. The changes made should be considered together, allowing them to be put in context and to ensure functions and capabilities are not being unnecessarily replicated. And that no loop-holes are created.

The Privacy Commissioner and the Human Rights Commission whose roles centre on the balancing and protection of New Zealanders’ rights and freedoms emphasised the need for a wider inquiry before proceeding.

The Privacy Commissioner believes this needs to be considered further and in more detail as this is a complex, dynamic environment:

In particular, it is not yet clear what type and level of oversight is most appropriate. The effects on individuals are potentially very significant, and it is important to get the legislation right.

The Human Rights Commission took the rare step of issuing a report directly to the Prime Minister, a statutory power used only three times before. Their report states clearly the problems with this bill:

The relatively innocuous description in the explanatory note does not reflect the full extent of what the GCSB bill will allow – namely, permit foreign intelligence agencies to access data about private citizens in New Zealand.

And

People in New Zealand are entitled to know if mass surveillance of data, such as metadata, relating to them, is being collected through surveillance by New Zealand’s intelligence services or its international partner agencies and for what purpose.

Labour believes there is a strong case to hold an inquiry into our surveillance agencies before this legislation progresses further.

Our issues with this bill as proposed include the following:

Expansion of powers

This is not, as has been stated, simply a “clarification” of the law. With this bill, the Government is trying to rush through legislation
to make potentially unlawful practices by the GCSB legal going into the future.

Legally enabling the GCSB to do something they are not legally permitted to do now, such as intercepting private communications of New Zealanders, is an expansion of their powers. Aside from the power to spy on New Zealanders, the bill expands the powers of the GCSB in addressing cybercrime, particularly in relation to information infrastructures. This raises significant concerns about the privacy of New Zealanders’ communications and it is inaccurate to claim it is simply “clarification”.

**Insufficient safeguards**

The safeguards in this bill are insufficient to ensure New Zealanders’ civil, political and privacy rights are adequately protected as these new measures are introduced.

It is unclear what activities the GCSB will be able to undertake and the information they can gather. Power continues to be concentrated in the hands of the Prime Minister as Minister responsible for the GCSB.

*GCSB’s functions*

Section 8 of the bill does set out the functions of the GCSB but it has stripped out the limitations in place in the current Act. The New Zealand Law Society submitted that more detail is needed about the range of activities the GCSB would be undertaking, as without an answer to this basic question further substantial issues cannot be determined.

The ISC’s addition of principles underpinning the Bureau’s performance to make this consistent with those for the New Zealand Security Intelligence Service is a good improvement, as is the requirement to consult the Leader of the Opposition.

*Surveillance of New Zealanders*

The current law states that the GCSB may not intercept New Zealanders’ communications.

This bill restricts that to not intercepting New Zealanders’ “private communications”. While that term is defined in the GCSB Act, the definition remains problematic. The Law Society submitted this could mean those communications which could be intercepted would be those which a person ought reasonably expect to be intercepted.
The range of information which may be intercepted may be very broad.

The Legislative Advisory Council questioned whether the definition was adequate

given its centrality to the privacy protection mechanism in section 14. The key question is whether the definition provides the expected degree of privacy protection.

They and Internet NZ criticised the circular nature of the definition. If it is not clarified it will be left to the courts to define and to determine what Parliament intended.

We believe what constitutes a “private communication” should be clarified now to ensure that New Zealanders’ privacy is protected in a manner as could reasonably be expected.

**Metadata**

There is no restriction or other safeguard in the bill relating to the collection of metadata. Currently the GCSB does not consider metadata to be a “communication”, therefore a warrant is not required for its collection. Internet NZ argued that the collection of metadata is highly valuable in intelligence circles as it can reveal more than an actual communication. Labour believes safeguards should be put in place to protect New Zealanders’ privacy when metadata is collected and it should be examined whether a warrant should also be required for collection of this data.

**Co-operation too broadly framed**

Section 8C of the bill which states who the GCSB is able to co-operate with is too broadly framed. It allows the GCSB to assist any department or part thereof simply through the issuing of an Order in Council. There is no need for further justification or public reporting of such co-operation. It is not clear why it is necessary for this to be available to every department.

The LAC recommended that criteria be developed to limit the type of agencies that can be assisted and the circumstances in which assistance may be requested by those agencies. Despite the improvements made to section 8C by the ISC we believe greater justification is required for including such a broad range of departments.

**Overseas information sharing**

The GCSB shares its information with overseas intelligence agencies, whereas the SIS does not. Therefore safeguards must be put in
place to ensure that New Zealanders’ information, including metadata, is not shared with these agencies other than in tightly restricted specified circumstances.

Role of the ISC

The operations of the ISC should also be examined. It meets infrequently, is not properly briefed (as seen with this legislation), and reports to the House are not adequate. An inquiry could include examining whether we should look at a model such as the Regulations Review Committee and have an Opposition member chairing the committee.

There are matters in this bill that Labour does support – such as the expansion of the Inspector-Generals’ office to have a deputy and widening the pool of people the Inspector-General can be drawn from. We believe it should be a requirement to have the Opposition’s concurrence for the appointment, as is done for the Governor-General because of the importance of the position.

Conclusion

Labour maintains that the case for urgent change has not been made. The progress of this bill should be paused until a full independent inquiry into our intelligence agencies is held.

We must ensure our national security is protected while also recognising the importance of the basic freedoms and rights of New Zealanders. We are not persuaded that this bill is the best, or only, way to do so. There are too many unanswered questions for us to support this bill in its current form.

Finding the appropriate balance between national security and individual rights and freedoms is critical. The committee and Parliament have a responsibility to New Zealanders to get it right.

Green Party minority view

Introduction

The Green Party opposes this bill because it is an unjustified and fundamental extension of the ability of the state to intrude into the private lives of ordinary New Zealanders. The Greens jealously guard the democratic rights and freedoms fought for and won by those who
came before us, and it is anathema to those rights and freedoms to support this bill.

**An extension of state powers**
This bill proposes an unjustified extension of the powers of the Government Communications Security Bureau. This bill blurs the separate roles of the GCSB with domestic spy agencies. There are domestic agencies that can spy on New Zealanders and there is no justification for turning the GCSB’s powers onto the residents and citizens of New Zealand.

As the Law Society submission noted:

> The Bill changes the Government Communications Security Bureau (GCSB) from being a foreign intelligence agency to a mixed foreign and domestic intelligence agency. The Bill empowers the GCSB to spy on New Zealand citizens and residents, and to provide intelligence product to other government agencies in respect of those persons, in a way not previously contemplated and that is inconsistent with the rights of freedom of expression and freedom from unreasonable search and seizure under the New Zealand Bill of Rights Act 1990 (NZBO-RA) and with privacy interest recognized by New Zealand law.

The Government has failed to provide a justification for this fundamental attack on our democratic rights and freedoms.

**Surveillance state**
These issues have received considerable international attention in recent weeks with the revelations of mass surveillance activities by the GCSB’s Five Eyes’ partner in the United States, the NSA. Total state surveillance of a kind only previously imagined has now been revealed as the reality in the United States.

We believe this bill facilitates the legal establishment of a surveillance state in New Zealand. As Internet New Zealand noted in their submission, a “broad reading renders the sum effect of the bill, as currently drafted, as providing access to anyone’s communications whether live or stored, including internet communications.” And the recent history of the GCSB in relation to the illegal spying on Kim Dotcom, and potentially many others, demonstrates that the GCSB
is not averse to taking a broad reading of their surveillance powers in relation to New Zealand citizens and residents. The Human Rights Commission also is of the view that the “legislation is overly broad and enables mass surveillance”.

A mass surveillance state we believe would have a very corrosive effect on the kind of free and democratic New Zealand that generations have fought for. As the Tech Liberty submission stated:

The creation of a mass surveillance state with government agencies that collect data about us and analyse it is a major step in changing the nature of our society. People act differently when they are being watched and there is a chilling effect on freedom of expression. The government has failed to show that these losses are proportional to any perceived benefit we will get from giving up our privacy in this way.

This bill undermines New Zealanders right to privacy and fundamental human rights. This bill could have a chilling effect on freedom of expression if people feel they live in a state of constant surveillance.

Oversight

Those who support the bill point to the relatively small improvements contained in the bill in relation to oversight by the Inspector General of Intelligence and Security. However, if the bill makes large scale surveillance lawful, as many have persuasively argued, then the oversight bodies may find themselves having to sign off such activities. As Internet New Zealand stated in their submission:

the Inspector General may have no choice but to give his or her sign-off to such extreme incursions on human rights, in breach of NZBORA, whatever reservations he or she may have.

Moreover, proper oversight would involve establishing the Intelligence and Security Committee as a regular select committee of Parliament with real powers to inquire into the activities of the spy agencies. A properly established ISC would not have the responsible Minister as the Chair of the Committee. Likewise the Inspector General of Intelligence and Security would be established as an Officer of Parliament, like the Ombudsman. This bill does none of those things.
Cyber security
We believe that there are legitimate concerns around cybersecurity. However, it does not follow that we should locate our national cybersecurity function within the GCSB. There will inevitably be a blurring of roles between the GCSB’s cybersecurity function and its foreign and (now) domestic intelligence functions.

Economic impact
As some submitters pointed out, this bill will have a negative effect on New Zealand’s growing ICT sector. If we want to become an ICT hub we need laws that protect data privacy except for legitimate lawful purposes. This bill significantly erodes New Zealand’s claims to be a jurisdiction where data is protected.

Inquiry
The Green Party believes that there needs to be a wide ranging independent inquiry into New Zealand’s intelligence services before this bill proceeds. If the public is to have any confidence in our security and intelligence agencies a thorough and independent review is the first and most vital step.

We agree with the Human Rights Commission call for such an inquiry which would ensure that there is full and coherent consideration of the role and functions of New Zealand’s intelligence services, including their governance and oversight mechanisms. Such an inquiry could usefully give full and measured consideration to the tensions between human rights … and the balance to be struck between them and legitimate national security concerns.

The rational order of proceedings is to hold the inquiry before passing the legislation. Law changes should be the last step in the process following inquiry and analysis, not the first.
Appendix

Committee process
The Government Communications Security Bureau and Related Legislation Amendment Bill was referred to the Intelligence and Security Committee on 8 May 2013. The closing date for submissions was 21 June 2013. We received and considered 123 submissions from interested groups and individuals. We heard 28 submissions. The hearings were open to the public. We also received a late report from the Human Rights Commission.

We received advice from the Department of the Prime Minister and Cabinet and the Government Communications Security Bureau.

Committee membership
Rt Hon John Key (Chairperson)
Hon John Banks
Dr Russel Norman
Hon Tony Ryall
David Shearer
Supplementary Estimates of Appropriations for Vote Communications Security and Intelligence and Vote Security Intelligence for the year ending 30 June 2013

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 2013, as set out in Parliamentary Paper B.7, be accepted.

Rt Hon John Key
Chairperson