



# **LEGISLATION ADVISORY COMMITTEE**

**Annual Report 2010**

February 2011

Report of the Legislation Advisory Committee to the Attorney-General  
Rt Hon Sir Geoffrey Palmer SC, Chairperson

## FOREWORD

This report outlines the work done by the Legislation Advisory Committee (LAC) during 2010.

The primary purpose of the LAC is to promote standards in legislative design, development and drafting that will ensure our legislation is accessible, understandable and based on New Zealand's public law and constitutional principles. The Committee is an independent body of recognised experts who draw on wide experience to support officials developing new legislation.

The major focus of work by the LAC is the preparation of Guidelines for legislation and the scrutiny of Government Bills after introduction into Parliament. In 2010 the LAC considered 58 Bills, presented 11 submissions to select committees, and wrote to Ministers drawing attention to particular issues with a number of Bills. LAC members held discussions with departmental officials to work through legislative issues identified in the scrutiny process. Meetings were also held with officials to assist in resolving issues prior to the introduction of a number of Bills. The LAC regards this engagement as an effective means of resolving problems early in the process of developing policy proposals into principled and effective legislation.

Targeted seminars were given to two government departments and a full day seminar was held for policy and legal advisers in conjunction with the Office of the Clerk entitled *From Policy to Legislation*. The committee is currently reviewing the LAC Guidelines with the aim of improving accessibility.

The report summarises this work and the outcome of the Committee's recommendations to Parliament on bills. The workload of members for the LAC is significant, usually on top of other commitments. I want to thank all members of the LAC for their contribution in 2010 and their commitment to the promotion of good legislation.

Sir Geoffrey Palmer SC  
Chair  
Legislation Advisory Committee

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## **INTRODUCTION**

1. The Legislation Advisory Committee (LAC) was established by the Minister of Justice in February 1986. The Law Commission was established at the same time and replaced the former law reform committees. It was considered desirable, however, that the work of one of those committees, the Public and Administrative Law Reform Committee, should continue. The LAC in effect succeeded that committee but with an enlarged role.
2. The objective of the LAC is to promote good quality legislation. It does this principally through the publication of guidelines for lawyers and policy advisers engaged in designing, developing, and drafting legislation, through the scrutiny of Bills before Parliament, by providing advice and assistance in particular cases, and through education.
3. The LAC membership is drawn from experienced government and private sector lawyers, representatives of the senior judiciary, experienced law teachers, and senior economists. The members of the LAC bring considerable knowledge, skill, and experience to a wide range of issues related to legislation. The LAC receives valuable support from the Ministry of Justice, the Law Commission, and the Parliamentary Counsel Office.
4. The LAC is not concerned with the policy objectives of legislation. Its focus is more on good legislative practice and public law issues. It is able to provide guidance to those engaged in the challenging task of producing effective, principled, and clear legislation and also to identify problems with proposed legislation and suggest solutions.

## **FUNCTIONS OF THE LEGISLATION ADVISORY COMMITTEE**

5. The different ways in which LAC promotes legislative standards are contained in its Terms of Reference. These are to:
  - a. provide advice to departments on the development of legislative proposals and on drafting instructions to the Parliamentary Counsel Office;
  - b. report to the Attorney General and the Legislation Committee of Cabinet on the public law aspects of legislative proposals that the Attorney General refers to it;
  - c. advise the Attorney General on any other topics and matters in the field of public law that the Attorney General from time to time refers to it;

- d. scrutinise and make submissions to the appropriate body or person on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
- e. help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the Legislation Advisory Committee Guidelines, and discouraging the promotion of unnecessary legislation.

## **MEMBERSHIP**

6. The membership of the LAC is:
  - Rt Hon Sir Geoffrey Palmer SC, Chairperson
  - Ms Katherine Anderson (Department of the Prime Minister and Cabinet)
  - Mr Guy Beatson
  - Mr Graeme Buchanan
  - Mr Robert Buchanan
  - Professor John Burrows QC
  - Mr Andrew Geddis
  - Ms Cheryl Gwyn (Crown Law)
  - Mr Jack Hodder SC
  - Mr Ivan Kwok
  - Mr Bill Moore (Parliamentary Counsel Office)
  - Mr David Noble (Parliamentary Counsel Office)
  - Ms Lauren Perry (Ministry of Justice)
  - Rt Hon Sir Ivor Richardson
  - Hon Sir Bruce Robertson
  - Ms Mary Scholtens QC
  - Mr George Tanner QC
  - Dr John Yeabsley
  - Dr Warren Young.
7. Dr Mark Hickford replaced Katherine Anderson from DPMC in October 2010.

## **MEETINGS AND WORK**

8. In 2010, the LAC met eight times. The Committee carried out the following categories of work:
  - a. provided advice to agencies on the development of legislative proposals;

- b. scrutinised and prepared submissions on aspects of Bills introduced into Parliament;
- c. prepared comments on matters not arising out of particular Bills;
- d. continued work on updating the Legislation Advisory Committee Guidelines on Process and Content of Legislation; and
- e. undertook promotional and educational activities relating to the guidelines.

### **SCRUTINY OF AND SUBMISSIONS OF BILLS INTRODUCED INTO PARLIAMENT**

9. The LAC reviews all new Government bills against the *Legislation Advisory Committee Guidelines on Process and Content of Legislation*, which incorporate accepted public law and constitutional principles. The Committee is not concerned with the policy content of bills but with good legislative practice.
10. The Law Commission assists LAC by providing the Committee with reports that assess new bills against the Guidelines and alert the Committee to possible issues. The Law Commission agreed in 2005 to provide the equivalent of one ½ FTE policy and legal adviser, acting under the supervision of a Law Commissioner, to prepare these reports. In 2010 three Law Commissioners, in addition to the President, were members of LAC and were largely responsible for preparing submissions to select committees.
11. In 2010 the LAC considered 58 bills and took the following actions:
  - presented 11 submissions to select committees
  - referred Law Commission reports on 2 bills to select committees
  - wrote 5 letters to ministers or officials
  - raised drafting issues on several bills.
12. In 2010 the LAC made submissions or wrote to select committees on the following bills:
  - Auditor Regulation and External Reporting Bill
  - Customs and Excise (JBMS) Amendment Bill
  - Electoral Referendum Bill
  - Electricity Reform Bill
  - Financial Markets (Regulators and KiwiSaver) Bill
  - Identity Information Confirmation Bill
  - Insolvency Practitioners Bill

- Land Transport (Road Safety and Other Matters) Bill
  - Legislation Bill
  - Rugby World Cup 2011 (Empowering) Bill
  - Marine and Coastal Area (Takutai Moana) Bill
  - Social Assistance (Future Focus) Bill
  - Student Loan Scheme Bill
13. Liaison with Ministers or officials occurred with the following bills:
- Civil Aviation (Cape Town Convention and Other Matters) Bill
  - Canterbury Earthquake Response and Recovery Bill
  - Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill
  - Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Bill
  - Social Assistance (Future Focus) Bill
14. The LAC considered the Securities and Statutory Supervisors Bill 2009 and in particular the provisions relating to civil penalties. The LAC wrote to the Rules Committee regarding the procedure for civil penalties generally, and subsequently met with a member of the Rules Committee to discuss these issues.
15. Issues relating to 25 other bills were discussed but no action was taken other than comments on drafting points. There were 14 bills where no issues arose.
16. Changes were made to a number of Bills as a result of the LAC's involvement, both prior to introduction and at select committee stage. Actions taken by the Committee include the following examples.

### **Auditor Regulation and External Reporting Bill**

17. The Bill establishes a regime for the licensing and registration of auditors and for accreditation of licensing bodies by the Financial Markets Authority. It also makes extensive changes to the Financial Reporting Act 1993. The Accounting Standards Review Board is renamed the External Reporting Board and given the functions of issuing accounting standards, auditing and assurance standards, and ethical standards (referred to in the Bill as specified standards). The LAC made a submission to the Commerce Committee on two matters.
18. The first was that the Bill makes it an offence, subject to a maximum fine of \$30,000, for an auditor to fail to comply with applicable auditing and assurance standards. The LAC questioned the need to extend the criminal law to auditors who may already be subject to disciplinary proceedings and

civil liability for negligence when that is not the case with most other professions.

19. The second related to publication of the specified standards. The Financial Reporting Act requires notice to be given of accounting standards but without any requirement to publish the standards themselves. The Bill continues this for specified standards. The LAC submitted that, although the specified standards will contain technical and complex material relevant to accountants and auditors rather than obligations of general application, they are nevertheless important documents and there is a public interest in ensuring they are available for scrutiny. The LAC submitted that there should be a specific statutory obligation to ensure accessibility of the specified standards and that they should be available on the internet and for inspection and purchase.
20. The Bill was before the Commerce Committee in December 2010.

#### **Customs and Excise (Joint Border Management Information Sharing and Other Matters) Amendment Bill**

21. The Bill amends the Customs and Excise Act 1996 and the Biosecurity Act 1993. It provides for information sharing between border agencies, increases the amounts of administrative penalties for incorrect entries, and extends the scope and increases the penalties for petty offences. The LAC made a submission to the Justice and Electoral Committee on three matters.
22. The first related to the changes to the administrative penalty regime. The Bill increases the minimum penalty from \$20 to \$200 and the maximum penalty from \$10,000 to \$50,000. The new provisions do not, however, carry forward the right in the current Act for a person to state why they should be exempt from imposition of a penalty before it is imposed even though the person may later request a review by the chief executive or appeal. The LAC submitted this was an important safeguard that should continue. The amount of penalty will vary depending on whether a person was careless, grossly careless, or acted knowingly. Consideration by the chief executive of whether to impose a penalty and, if so, what category of penalty applies are matters that should be informed by information the person can put in front of the chief executive. The LAC did not consider that it was satisfactory from a public law perspective to say that merely because there is no conviction involved a “pay now, argue later” approach is justified: the provision was not compatible with principles of natural justice.
23. The second related to petty offences. Currently, the chief executive can accept payment up to \$500 instead of prosecution for an offence involving



- goods the value of which is less than \$1000 or where the duty is less than \$1000. The Bill extends the regime to all non-imprisonable offences and increases the maximum payment to one-third of the maximum fines available. The LAC submitted that there was no process on the face of the Bill to guide Customs officers as to what is an appropriate penalty and no safeguards around the exercise of discretion although large sums of money and more serious offences are involved. The proposed regime had similarities with infringement offences, but none of the safeguards. There appeared to be no provision for appeal.
24. The third related to information sharing. The LAC submitted that the power to make regulations determining what agencies the regime extends to as well as describing the kinds of information that might be exchanged between agencies was too wide. There was a risk that the absence of a tight definition could result in a large bank of information to which a large number of agencies could have access. At the least, the regime should apply only to agencies with border protection functions and information necessary for a border protection purpose.
25. The regulation-making power was changed in the Bill as reported back to the House to require the Minister before recommending the making of any regulations to consider whether and how they are consistent with the purpose of enabling agencies to co-ordinate their border protection functions and to consider and consult on the information privacy implications of the regulations. The Bill was not, however, changed in any other respects.

### **Electoral Referendum Bill**

26. The LAC made a submission to the Select Committee on one aspect of this Bill. Clause 49 of the Bill provided that any search of a register would be an interference with privacy under the Privacy Act 1993 if it was not “carried out for a purpose specified in [section] 44”. Yet the purpose of the register under clause 44 was simply to enable anyone to find out the identity, names and addresses of registered promoters. The LAC believed that that purpose was so wide that it would not be possible to conceive of a search which did not come within it. Clause 49 was thus effectively meaningless.
27. The Select Committee reported the Bill back on 22 November with a recommendation that clause 44 be amended to define the purpose of the register more narrowly, making it clear that it is to enable members of the public to find out whether a promoter is registered, and whether an election advertisement was promoted by a registered promoter.

## **Electricity Industry Bill**

28. This Bill replaced the Electricity Authority for the Electricity Commission with the function of making and monitoring compliance with codes of practice, introduced less stringent requirements for separation of ownership and control of distribution businesses from generation and retailing businesses, introduced a new consumer dispute resolution scheme, and contained provisions relating to continuance of supply, tariffs, and SOE asset holding. The LAC made a submission to the Commerce Committee on several matters.
29. The LAC submitted that there should be criteria for the granting of exemptions by the Authority. One provision specified criteria: the LAC considered all exemption provisions should do so. The power to vary or revoke exemptions should also be subject to criteria and to requirements for notice. The Bill was amended in line with the LAC's submission.
30. The Bill established a Rulings Panel with power to adjudicate on complaints about breaches of the code, regulations, or an order of the Panel itself. The Bill provided for appeals against suspension orders and termination orders and against the amount of pecuniary or compensation orders. Appeals against all other decisions were limited to questions of law. The LAC considered there should be a general merits appeal available in all cases or, at the very minimum, there should be a full appeal to the High Court on certain specific kinds of order. The Bill was amended in line with the LAC's submission.
31. The LAC also submitted that there should be greater guidance in the Bill as to when the penalties of criminal offences and pecuniary penalties should be used. It was concerned that the Panel could impose a pecuniary penalty of up to \$2,000,000 with a right to appeal limited to quantum. The Bill listed criteria relevant to the amount of the penalty but contained no guidance as to when a penalty should be imposed. The Bill was amended to permit appeals as to both the making of the order imposing a pecuniary penalty and the amount. It was also amended to provide that the criteria relevant to quantum apply also to the decision whether to impose a penalty.
32. The LAC questioned provisions requiring Transpower and industry participants to enter transmission agreements and the unusual terminology to describe them. The Bill was changed to reflect the LAC's concerns.
33. Finally, the LAC submitted that a provision enabling the share-holding Ministers to direct asset transfers and acquisitions by a state enterprise were far-reaching and in the nature of a property taking that could have

substantial effect on the financial position of the state enterprise. The Bill should, it was submitted, provide for the setting of a price if the entities involved could not reach agreement. It was also suggested that the Bill make clear what effect compliance with a direction would have on existing contracts and the rights of third parties. Extensive changes were made to the Bill to deal with the position of third parties.

### **Financial Markets (Regulators and KiwiSaver) Bill**

34. This Bill establishes the Financial Markets Authority (FMA) to replace the Securities Commission and extends its powers and functions to include functions of the Government Actuary, Registrar of Companies, and the Stock Exchange, and makes extensive changes to the Securities Act, Securities Markets Act, and the KiwiSaver Act. The LAC made a submission to the Commerce Committee on two matters.
35. The first related to the power for the FMA to bring proceedings in the name of an investor or take over an existing proceeding. The power is said to be modelled on a provision of the Australian Securities and Investments Commission Act 2001. On the first reading of the Bill, the Minister of Commerce indicated that he was particularly interested in submissions on this new power. The LAC drew attention to the differences between the Bill and the Australian provision. Unlike the Bill, the Australian provision does not allow proceedings to be commenced unless an individual consents and does not permit recovery of litigation costs from the person in whose name the proceedings are taken. The LAC questioned the fairness of using the power to further a public interest objective in circumstances that might conflict with the objective of a private litigant while at the same time making the private litigant pay.
36. The second related to appeal rights. Under the Bill, decisions of the FMA and the new Rulings Panel can be appealed against only on questions of law. The LAC submitted that the decision-making and enforcement functions of the FMA and the Rulings Panel (particularly as regards the penalty orders available to the Panel) were such that there should be an appeal on the merits. The Panel is a statutory replacement of the New Zealand Markets Disciplinary Tribunal. In the LAC's view, reconstituting it as a statutory tribunal makes it desirable that it is subject to minimum standards of public law-making, including adequate rights of appeal.
37. The Bill was before the Commerce Committee in December 2010.

### **Identity Information Confirmation Bill**

38. The Bill enables public and private sector agencies to confirm identity information about individuals through a state operated data confirmation

- service. There will be cost-based charges for the service. The LAC will make a submission on the Bill to the Government Administration Committee in January 2011. The submission will address an issue relating to the exemption of the Crown and its servants and agents in clause 18.
39. Clause 18 of the Bill would exempt the Crown and its servants and agents from liability for loss or damage due directly or indirectly to use of the service except for bad faith or gross negligence. The LAC considered that the exemption is inconsistent with the Crown Proceedings Act 1950 that subjects to the Crown to liability for tort to the same extent as a private individual and is inconsistent with the basic legal and constitutional principle referred to in the LAC Guidelines that no one, including the Crown, is above the law.
40. The Bill was before the Government Administration Committee in December 2010.

### **Insolvency Practitioners Bill**

41. This Bill proposes what it describes as a negative licensing regime that enables the Registrar of Companies to restrict or prohibit individuals from providing corporate insolvency services. It provides for a register of those who are prohibited or restricted from acting as insolvency practitioners. The Bill also strengthens the existing statutory provisions for automatic disqualification. The LAC made a submission to the Commerce Committee on one matter.
42. The Bill amends section 316 of the Companies Act 1993 relating to the Liquidation Surplus Account to extend the matters that may be funded out of the Account to include payment of the costs and expenses of the Registrar in performing the functions and exercising the new powers regarding insolvency practitioners. Currently, the Account which is funded from unclaimed assets of liquidated companies is limited to paying the claims of creditors of a company whose surplus assets have gone into the account and to meet a creditor's costs in liquidation proceedings. Those uses are for persons who have a connection with the assets. Under the Bill, unpaid creditors of particular companies will be required to bear the costs of the licensing system. The LAC suggested better options were a levy or, because of the small number of insolvency practitioners, simply for the Crown to meet the costs.
43. The Bill was before the Commerce Committee in December 2010.

### **Land Transport (Road Safety and Other Matters) Bill**

44. The Bill makes extensive changes to the Land Transport Act 1998 designed to improve the safety of young drivers, extend the range of sanctions for serious or repeat offenders, and enhance enforceability of existing provisions. The Bill also raises the minimum age for driver licensing. The LAC made a submission to the Transport and Industrial Relations Committee on two matters.
45. The first related to the power to issue a search warrant under the Summary Proceedings Act 1957 for offences under sections 79T and 79U which are not punishable by imprisonment. The LAC was concerned that the provision added a further and unnecessary layer by requiring not only that the driver has been charged with an offence against either of the sections (which is not an element of the offence), but also that the member of the Police has reasonable grounds to believe that another person has contributed to the driver's breach. The Bill was amended to require only that a constable believe on reasonable grounds that an offence against either of the sections has been committed.
46. The second related to the power of parking wardens to require a person who is on a road and in charge of or in a vehicle to furnish his or her name and particulars of identity. This is in addition to requiring the person to give information that may lead to the identification of the driver or person in charge of the vehicle. The LAC submitted that it was not clear why a parking warden should be able to require information about a person in the vehicle. It noted that the power of the Police to require evidence of identity is very limited. The power should be limited to situations where this is necessary for the purpose of enforcing road rules. The Bill was amended to restrict the power to enforcement of stationary vehicle and special vehicle lane offences.

### **Legislation Bill**

47. This Bill relates to the publishing, reprinting, revising, and drafting of legislation. It implements recommendations made by the Law Commission for systematic revision of the statute book and for new legislation to replace the Statutes Drafting and Compilation Act 1920. The LAC made a submission to the Regulations Review Committee on two matters.
48. The LAC supported the extension in the Bill of the current narrow powers to make changes to legislation in producing reprints of Acts and regulations. It noted that wide powers are available in comparable jurisdictions and that their addition will aid accessibility of the statute book. The LAC did not believe that the enlargement of the reprinting powers undermines the principle that only Parliament can amend legislation in a manner that changes the law: that principle is preserved by the Bill.

49. The LAC also supported the new provisions for systematic revision of the statute book, in particular, the powers of the Chief Parliamentary Counsel, the requirement for certification, and the safeguards relating to changes in the law.
50. The LAC submitted that although the Bill does not contain provisions for accelerated parliamentary approval of revisions, there was a strong case for some kind of streamlined parliamentary procedure. It recommended that the Regulations Review Committee encourage the Standing Orders Committee to implement changes in parliamentary procedure to give effect to the Law Commission's proposals in this regard. In its Commentary on the Bill the Regulations Review Committee said that while it considered that the process for passing revision Bills was a matter for the House to determine through the Standing Orders Committee it encouraged the Standing Orders Committee to consider the procedure laid out in the Law Commission's report in its current review of the Standing Orders.

#### **Marine and Coastal Area (Takutai Moana) Bill**

51. The Bill repeals the Foreshore and Seabed Act 2004 and replaces it with a new Act. The Law Commission provided a report on the Bill to the LAC. The LAC referred the report to the Maori Affairs Committee considering the Bill together with a brief summary of the main points. The Bill was before the Maori Affairs Committee in December 2010.

#### **Rugby World Cup 2011 (Empowering) Bill**

52. The Bill establishes and empowers the Rugby World Cup Authority to determine applications for temporary regulatory approvals that are reasonably necessary for the proper conduct of the Rugby World Cup. The Bill also empowers the Minister for the Rugby World Cup to grant urgent approvals for temporary activities and facilities where the necessity for these was unforeseen, and enables the making of urgent regulations declaring activities or facilities to be a Rugby World Cup permitted activities. The Law Commission provided a report on the Bill to the LAC. The LAC referred the report to the Select Committee considering the Bill.

#### **Social Security (Future Focus) Bill**

53. This Bill made a number of changes to the Social Security Act 1962 relating to work testing for benefit purposes. The LAC made a submission to the Social Services Select Committee and appeared before the Committee in support of the submission. The submission dealt with two matters.

54. The first related to the state of the Social Security Act itself and the fact that continuous and extensive amendment of the Act had made it inaccessible. The LAC described it as one of the worst statutes on the books in New Zealand. The LAC said that the Act needed a complete rewrite. The Minister of Social Welfare subsequently wrote to the LAC acknowledging that the Act had been the subject of criticism from the Law Commission, LAC, and the courts and that the frequency of amendments has resulted in an Act that is confusing, hard to follow, and with no clear structure. While acknowledging the Act's shortcomings, the Minister indicated that a decision to rewrite it was not one to be taken lightly and would have to be considered along with the Government's other legislative priorities. The Minister said that if the Act were to be rewritten, the Ministry would consult with the LAC and the Law Commission.
55. The second related to a power to make regulations authorising the chief executive to require a beneficiary who applies for an advance payment of a benefit or their spouse or partner to undertake a budgeting activity of a kind specified in regulations. The LAC submitted that this was a new public power affecting individual rights and entitlement and would be more appropriate in primary legislation. The Bill was amended in line with the LAC's submission on this point.
56. The LAC also submitted at the select committee hearing that the title of the Bill was inappropriate and unhelpful. In its Commentary on the Bill, the select committee said that it was aware of concern about the vagueness of many titles given to New Zealand legislation and that titles should refer specifically to the intent of a Bill. The title of the Bill was changed to Social Assistance (New Work Tests, Incentives, and Obligations) Amendment Bill.

### **Student Loan Scheme Bill**

57. The Student Loan Scheme Bill will replace the current Student Loan Scheme Act 1992 with a new statute. The LAC made a submission on the Bill to the Finance and Expenditure Committee on two matters.
58. As regards the first, the LAC said it was pleased that substantial changes to the existing legislation were being achieved by means of a whole new Act rather than by amending the present Act. In the LAC's view, the new Bill having started from scratch was coherent and readable.
59. The second related to clause 63. This clause authorises the Commissioner of Inland Revenue to prohibit a borrower from applying under clause 36 for any unused payment threshold to be allocated to secondary employment earnings or for a declaration under clause 49 relating to exemption from salary and wages deductions if the Commissioner is satisfied the borrower

is using or has used the procedures in a manner that damages the integrity of the scheme. The LAC submitted that the power effectively enables the Commissioner to prohibit a borrower from exercising a right to apply to the Commissioner on grounds that in the LAC's opinion were so vague as to be meaningless. The LAC suggested that criteria should be spelt out so that borrowers know where they stand and the Commissioner has guidance to enable consistent decision-making.

### **Transport legislation: rule making process**

60. In 2007 and 2008 representatives of the LAC met with the Ministry of Transport to consider issues with the process for making transport rules and possible ways to expedite the making of rules. The Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (enacted on 30 June 2010) amended the Civil Aviation Act 1990 to include provisions enabling the Governor-General to make rules on any matter on which the Minister of Civil Aviation may make rules. This change is in line with advice given to the Ministry by the LAC.

### **Private Security Personnel and Private Investigators Act 2010**

61. The LAC made a detailed submission to the Justice and Electoral Committee on this Bill in September 2009 raising a number of issues with the Bill which are referred to in the annual report of the LAC for 2009. The Bill was reported back to the House on 29 March 2010 and enacted on 20 September 2010.
62. Changes made to the Bill reflect many of the points raised by the LAC. These included specifying criteria for making regulations conferring exemptions, incorporating into the Bill provisions from regulations relating to hearings and decisions, enlarging the disciplinary powers of the Licensing Authority, providing for a second tier appeal to the High Court on questions of law, moving the Complaints, Investigation, and Prosecution Unit to a department separate from the administering department, providing for codes of practice in the Bill instead of regulations, and clarifying transitional arrangements.

## **COMMENTS ON MATTERS NOT ARISING OUT OF A BILL**

### **Regulatory Responsibility Bill**

63. The Committee had a general discussion on the options proposed by Treasury regarding the Regulatory Responsibility Bill. The Committee discussed the practical outcome of the principles in the Bill.



### **Proposals to change law affecting drafting, publication, and disallowance of regulations**

64. PCO presented a paper to the Committee summarising the issues regarding the drafting, publication, and disallowance of regulations. The Committee was invited to have a general discussion on the proposal in the paper, without seeking a formal Committee position.

### **LEGISLATION ADVISORY COMMITTEE GUIDELINES**

#### **Updates and New Chapters**

65. The Committee has prepared a draft of a new chapter of the LAC Guidelines on Exemptions from Statutory Provisions. Finalisation of the chapter awaits the passage of the Legislation Bill currently before Parliament; that Bill's provisions about delegated legislation are of direct relevance.
66. The full Guidelines are over 400 pages long. The Committee is looking into the possibility of supplementing them with a summary in plain English. Work has commenced, but is resource intensive.

#### **Accessibility of Guidelines**

67. This year the Parliamentary Counsel Office produced copies of the Guidelines for Government advisors attending a seminar held at Parliament. The Guidelines are also available on the Legislation Advisory Committee website: [www2.justice.govt.nz/lac/index.html](http://www2.justice.govt.nz/lac/index.html).

### **PROMOTIONAL AND EDUCATIONAL ACTIVITIES**

68. The Committee held a general seminar for policy and legal advisers and targeted seminars for the Department of Internal Affairs and the Ministry of Transport.
69. The seminar for policy and legal advisers was hosted by the Attorney-General in October at Parliament. The seminar, held in conjunction with the Office of the Clerk, presented an opportunity for policy and legal advisers to gain insight into the legislative process, with speakers from the judicial, legislative and executive branches of government. Topics included policy inception and development, legislative drafting, the passage of legislation through the House of Representatives, and a view from the judiciary on why good legislation matters. Attendees received a copy of the Legislation Advisory Committee Guidelines.

70. Demand to attend the seminar was extremely high and registrations closed in under a week. Due to the large number of registrations, 265 the seminar was held in the Banquet Hall, Executive Wing. Feedback on the seminar has been positive and the Committee will consider holding a similar seminar in 2011.
71. The Committee held a targeted seminar for the Department of Internal Affairs. The seminar provided an overview of the role and functions of LAC and discussed the application of the Legislation Advisory Committee Guidelines.
72. A targeted seminar was also held for the Ministry of Transport. Senior officials attended the seminar. The seminar also provided an overview of the role and functions of the LAC and the Guidelines. The seminar focused on the regulatory impact analysis process and on aspects of the Guidelines with reference to transport related legislation.

### **RELATIONSHIP WITH THE LEGISLATION DESIGN COMMITTEE**

73. The Legislation Design Committee was set up by the Government in 2006 to identify problems of legislative design before bills are drafted. The Legislation Design Committee comprises Rt Hon Sir Geoffrey Palmer in his personal capacity as Chair, the Secretaries to the Treasury and Justice, the Chief Executive of the Department of the Prime Minister and Cabinet and the Chief Parliamentary Counsel. Law Commissioners Professor JF Burrows QC, Mr George Tanner QC and Dr Warren Young are advisers to the Committee.
74. The Legislation Design Committee discusses legislative projects with departments during the development phase and is concerned with legislative design, instrument choice and the overall impact on the statute book. The Legislation Design Committee's role is advisory and departments are free to accept or reject its advice.

### **ACKNOWLEDGEMENTS**

75. The Committee would like to acknowledge the following contributions:
  - a. The Ministry of Justice for its support to the role of Secretary to the Committee;
  - b. The Law Commission for reviewing and providing reports on all bills considered by LAC;
  - c. The Crown Law Office for reviewing and providing reports on bills considered by LAC that originated with Law Commission reports;

- d. The Parliamentary Counsel Office for following up the Committee's concerns and technical comments with drafters and officials;
- e. The Office of the Clerk of the House of Representatives, the Parliamentary Counsel Office and the Ministry of Justice for their contributions to the seminar held by the Committee at Parliament.