



Newsletter

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If you would like to join CALC, you can use our [online registration form](#).



Sir Thomas Erskine May, KCB, "Parliamentary Practice" (5 May 1871) *Vanity Fair* 176

CALC President's Report—July 2017



President
Commonwealth Association of Legislative Counsel



Welcome to my inaugural CALC President's Report.

I am very honoured to have been elected as CALC President, and look forward to serving you all over the next 2 years. We owe a great deal to our outgoing CALC President, Peter Quiggin PSM, who selflessly served as President for 6 years. Peter, and his Australian OPC, have made an inestimable contribution to CALC (for example, to the organisation of its last 3 conferences). His leadership has left CALC in a great position. I hope I can live up to the high standards he set.

I was also pleased that a new CALC Council was elected in Melbourne. I welcome the new (or, as applicable, returning) Council members (Michelle Daley, Richard Denis, Nola Faasau, Geoff Lawn, Dinggaan Mangena, Lucy Marsh-Smith, Johnson Okello, and Lawrence Peng). I also thank the outgoing Council members (Estelle Appiah, Bethea Christian, Don Colagiuri, Philippe Hallée, and Theresa Johnson) for all the work they have done over the past many years.

As the head of a small drafting office (8 drafters when I left for Melbourne, 12 on my return!) in a medium size jurisdiction, I hope that I can bring the perspective of small and medium size drafting offices, which often don't have the resources and stability that larger offices have, to the role of CALC President. When I took over as head of the drafting office in Northern Ireland, we had only two permanent drafters in post, and I greatly valued the assistance and guidance of CALC members which helped me to build a sustainable drafting office. The great strength of CALC is the willingness of members to share experience and expertise. Under Peter Quiggin's leadership, CALC has grown from strength to strength and I hope that we can build on the work that Peter and previous CALC Councils have done to date.





2017 CALC Conference and workshop—Melbourne and Sydney

The CALC Conference in Melbourne and the associated CALC Workshop were a great success.

The conference was sponsored by Leidos, LexisNexis, and Irosoft. We appreciate their very generous support and input to the conference.



I would like to thank Steffi Linton (Administrative Officer, Australian OPC) and the staff of the Melbourne and Sydney offices for all the work they did to ensure the success of the conference. I also thank John Mark Keyes (CALC's Treasurer) for handling all the complex financial arrangements and the working groups, ably organised by (CALC's Vice President) Katy Le Roy.

Drafters in the New Zealand Parliamentary Counsel Office have kindly compiled a summary of the papers presented at the conference and workshop. Most or all of these will, in due course, be published in [The Loophole](#). The presentations were of extremely high quality and feedback from the conference has been very positive.

In addition to the serious business of learning, there were opportunities to buy an increased range of CALC merchandise. Many of these, thanks to the entrepreneurial spirit of Louise Finucane (of the Australian OPC), have now become collectors' items!



CALC Council activities

Since its appointment in April 2017, the CALC Council has been very active. A survey on the Melbourne Conference and Sydney Workshop was prepared by Katy Le Roy. All responses have now been received. We have analysed the responses to inform our preparations for the next CALC conference in 2019. Under the terms of CALC's Constitution, the CALC conference is normally held in the same location as the Commonwealth Law Conference. We do not yet know where the Commonwealth Law Conference is to be held, but will let members know as soon as this information becomes available.

The Council is up-dating CALC membership records. In particular, we are up-dating the list of heads of drafting offices. As the heads of drafting offices change relatively frequently, we would be grateful if heads of drafting offices could contact Ross Carter (Ross.Carter@pco.govt.nz) with their details so that we can confirm that current CALC membership records are correct.

CALC's IT system (which was so generously hosted by the Canberra Australian OPC for many years) will now be hosted by the New Zealand PCO. I am very grateful to Fiona Leonard, New Zealand's Chief Parliamentary Counsel, and to Peter Quiggin, Steffi Linton, and Amir Shirazi-Rad (all of the Australian OPC), and to David Dew and Ross Carter (of the New Zealand PCO), all of whom did a considerable amount of work to achieve this handover.



The Commonwealth

Members' Area



CHOGM 2018

The Council completed the registration process for the continuing accreditation of CALC with the Commonwealth Secretariat.

A report on CALC activities has been forwarded to the Commonwealth Secretariat for the purposes of informing the meeting of the Justice Ministers of the Commonwealth to take place later in the year. Adrian Hogarth has been liaising with the Secretariat in relation to preparations for the Commonwealth Heads of Government meeting next year.

Possible regional conference(s)

At the 2017 CALC Conference, and the subsequent Sydney Workshop, a number of members mentioned to me their desire to have at least one regional conference before the next biannual conference. The Council is carrying out work on a number of proposals which have been put to us and we hope to provide information on at least one regional conference soon.

Survey of drafting offices

We would like to carry out a survey of drafting offices to gather information on the size, structure and nature of those offices and the work that they do. This will inform the work that CALC does. We would like to follow this up with a more detailed survey of drafting practices across the Commonwealth. The first survey will be sent to heads of drafting offices in the near future.

Ideas and suggestions from members

I, and other members of the Council, are always keen to receive ideas and suggestions from members. Please email any suggestions to me or any Council member. (All Council members' contact details are available in the Members' area at calc.ngo.)



Brenda King

CALC President

July 2017

CALC Conference 2017, Melbourne, and related Sydney Workshop

A report from the NZ PCO



CALC held its 14th Conference in Melbourne, Australia from 29 to 31 March, 2017. The theme of the Conference was: “Beginning with the End in Mind—Legislative Drafting in the context of 21st Century challenges”.

The related post-Conference Workshop was held in Sydney on 4 April 2017. The theme of the Workshop was: “Drafting Downunder: the Australian approach to selected drafting issues”.

There were over 200 registered delegates at the Conference and over 100 registered delegates at the Workshop. Most of the delegates represented different commonwealth jurisdictions from all regions around the world—Africa, Asia, the Caribbean and the Americas, Europe, and the Pacific. Participants from outside the commonwealth included diverse jurisdictions: Hong Kong, Ireland, Liberia, Qatar, South Sudan, and Switzerland.

Both the Conference and the Workshop were successful events with a range of stimulating papers presented under the relevant themes.

Melbourne Conference material summary

Set out below is a summary of the Conference. The Conference papers are available to CALC members at: <http://www.calc.ngo/members/papers/melbourne,-march-2017>. Those papers will also, in due course, be published in CALC's journal: *The Loophole*.

The Conference venue was the RACV Club¹ in the Melbourne CBD.

Day 1: Wednesday, 29 March 2017

Introductory session – Welcome, Keynote Address, and update on Commonwealth Secretariat

The day's events began with registrations and a welcome address by a representative from the local Wurundjeri People. Marina Farnan, Chief Parliamentary Counsel, Victoria, made warm welcoming remarks to the conference attendees. That was followed by Peter Quiggin PSM, First Parliamentary Counsel, Australian Office of Parliamentary Counsel, making opening remarks, as CALC President.

The Keynote Address was delivered by Hon Justice Hilary Penfold PSM QC, of the Supreme Court of the Australian Capital Territory. Justice Penfold, who, before her judicial appointment, worked as a legislative drafter, suggested: "once a drafter, always a drafter", and made a number of observations of interest to drafters. Justice Penfold reminded the conference—

- of the important role that legislative drafters play in the maintenance of the rule of law; and
- of the need to draft robust legislation that can stand up to the pressures of litigation.

Justice Penfold also shared some illustrations, from her time at the Bench, about the way in which legislation is interpreted in courts—by fellow judges and by legal practitioners pleading before the courts. Rather worryingly, the failure to interpret legislation consistent with well-established rules of statutory interpretation, featured among the illustrations. Justice Penfold ended her presentation with some reminders about hallmarks of drafting of good legislation.

The introductory session ended with a special presentation by Adrian Hogarth on the topic of: "Legislative drafting and the Commonwealth Secretariat". Adrian informed the Conference about some work streams of the Commonwealth Secretariat of interest to legislative drafters, including—

- ongoing contract legislative work for different jurisdictions in need of such services; and
- the project relating to the Commonwealth Drafting Manual that is expected to be launched in the not-too-distant future.

¹ Royal Automobile Club of Victoria.

Session 1: Approaches to the role of legislative counsel now and in the future

Session 1 was chaired by Brenda King, Northern Ireland, United Kingdom.

Roy Lee: "Upgrading democracy: Democratic governance and legislative drafting"

Roy is a drafter at Law Officers' Chambers of the Guernsey Government. Roy's presentation was divided into 3 main parts: democratic governance, design and safety standards for laws, and a case study of the Trump "travel ban".

Roy suggested that democratic governance in a Westminster-style parliamentary system demands trust, legitimacy, and collaboration. Some of the essential values and benchmarks, Roy mentioned, of modern democratic governance are: accountability, transparency, fairness, rationality, and independence.

In a modern democracy, it is not only the courts that have a role to play in ensuring that the Executive acts fairly and honestly. Legislation plays an important role in democratic governance and should meet design and safety standards that ensure that legislation is fit for purpose in a democratic society. Liberally using examples, Roy suggested, the design and safety standards must guide the application of legislation, and include—

- accountability standards, such as setting clear objectives (such as principles and criteria):
- provisions related to decision-makers (including appointment, removal, accountability, resources, and independence—if an oversight role):
- provisions relating to powers (including graduated sanctions, safeguards, and transparency):
- quality standards (including international standards and best practice).

Legislation also needs to be lawfully made, reasonable, fair, proportionate, rationalised, and considered.

Roy concluded his presentation with a critique of the January 2017 US Executive Order in relation to the suspension of entry into the US of persons from certain countries, and gave some suggestions for improvement, for better democratic governance. The job of a legislative drafter who is tasked to draft a similar Executive Order would, no doubt, be an unenviable one. Roy reminded us that legislative counsel should question any drafting instructions that appear to be anti-democratic.

Andy Beattie: "Drafting for an open, capable, and responsive government"

Andy is the Chief Parliamentary Counsel at the Scottish Government Office of Parliamentary Counsel. Andy discussed the Scottish Parliamentary Counsel Office's values: excellence, objectivity, creativity, and teamwork. Andy mentioned that office's work to enhance its position as Scotland's Centre of Legislative Excellence through improving, leading, and sharing. He said that the Scottish PCO seeks to improve its core drafting skills by encouraging feedback from users of legislation (such as a recent session with the Scottish Housing Regulator, and feedback from the judiciary).

The Scottish PCO influences and leads others who are involved in drafting legislation (Departments draft subordinate instruments in Scotland) by giving advice and training.

Andy noted that the Scottish PCO shares its experience with others in various ways:

- publishing its drafting manual—Drafting Matters:
- communicating by means of a wiki-based intranet and social networking tools such as [Yammer](#) and [Twitter](#).

Through its ongoing work in these areas, that office supports an open, capable, and responsive government in Scotland.

Session 2: Mathematics and patterns in legislation

Session 2 was chaired by Don Colagiuri, New South Wales, Australia.

Nicky Armstrong: “Mathematics in legislation”

The topic was one that would scare many off but Nicky, Parliamentary Counsel at New Zealand’s Parliamentary Counsel Office, did an excellent job of converting what could be complicated information into a very digestible form.

The session was focussed on mathematical formulae—when to use them, how to use them, some helpful ideas for using them in the clearest way, and some things to avoid.

Some useful takeaways from Nicky’s session were—

- Use formulae when words alone will not suffice (that is, after all, what mathematical notation was invented to do):
- Remember to include all relevant details, including the unit of measurement and, where relevant, details about how the value of a variable will be determined (and when, and by whom):
- Remember to consider whether it is possible that a variable will have a negative or zero value and, if so, consider what that means for your formula.

One of Nicky’s main arguments was that we should use “the formula, the whole formula, and nothing but the formula”. Drafters sometimes use words as variables when writing formulae, out of the idea that this makes a formula less intimidating for a non-mathematically minded reader. Nicky argued that mathematics is just like any other language and that if you decide to use that language (through use of a formula), you should obey the rules of that language. That means using variables and symbols correctly, structuring formulae appropriately, and using only mathematical notations (not a hybrid of mathematical notations and words).

Luke Norbury: "Pattern languages in legislation—creating tools to assist drafters and policy officials"

Luke is Legislative Counsel at the Office of Legislative Counsel in Northern Ireland, United Kingdom. Luke spoke about a project being worked on by the 4 UK drafting offices to identify common legislative solutions to common problems that legislation addresses.

The premise of the project is that it might be better to deal with commonly occurring, routine matters in a different way than unique or novel legislative issues. The aim is to make the instruction process easier and highlight the matters that instructors need to turn their minds to.

The project team identified some common legislative solutions to commonly occurring policy problems. Examples of the common legislative solutions include powers of entry, licensing schemes, and civil penalty regimes. The team then used the idea of a pattern language (breaking a problem down into a series of smaller problems) to produce guidance for some of those solutions. The guidance—

- Describes the solution and refers to any related solutions:
- Asks questions to identify what is needed for each element of the solution (and to stimulate thought on the part of the instructor):
- Gives a list of examples of the solution.

Luke's discussion of the possible benefits of the project was focused on the increasing the quality of instructions and, in particular, ensuring that instructions address all of the issues that need to be addressed in order to produce a draft. However, another possible benefit would be greater consistency across the statute book, with all similar legislative solutions being implemented in the same way. In this way, it ties in with the standardisation project taking place in this Office.

Session 3: Human rights and statutory interpretation²

Session 3 was chaired by Therese Perera, Sri Lanka.

Nalini Persad-Salick: "Interpreting Freedom of Religion—A Commonwealth Caribbean Perspective"

Nalini Persad-Salick is Course Director for Legal Drafting and Interpretation, Council of Legal Education, Hugh Wooding Law School, St Augustine, Trinidad, West Indies).

² For a summary of papers in sessions 3 and 4, see Ross Carter "Human rights, hair styles, Brexit, and law drafting: 2017 CALC Conference" in 6(1) *Advancing Together* (LexisNexis, June 2017), pages 13–16, available at <http://lexisnexis.com.au/media-centre/downloads/AU%20Advancing%20Together%20H1%202017%20final.pdf>

Nalini's presentation included discussion of the case of *Hinds v Attorney-General of Barbados* (High Court—Civil Division No. 1424 of 1993). In this case, Hinds, an inmate of the Glendairy Prison in Barbados and a member of the Rastafari faith, sought an injunction restraining the Superintendent of Prisons from cutting (as was required under the Prison Rules) his hair or “dreadlocks”.

That action (the hair cutting) would, Nalini said, have been in breach of Hinds's right of conscience, and would have hindered him in the enjoyment of his freedom of conscience (as the long unkempt hair is a central practice of the Rastafarian faith). The Court denied the application on the point that the issue of religion ought to have been expressly stated in the motion as originally filed. This ruling on a procedural technicality may, said Nalini, have denied the court the opportunity to apply the compelling state interest test as set out in section 19(6) of the Barbados Constitution (a reflection of Article 9(2) of the European Convention on Human Rights), that is, as it relates to a limitation on the right, reasonably required in the interest of public health and public safety (of prison officers and other inmates).

Those cases can also be compared and contrasted with other “hairstyles and human rights” cases—in Hong Kong and in New Zealand. See *Leung Kwok-hung also known as “Long Hair” v. Commissioner of Correctional Services* [2017] HKCFI 65 (about HKSAR CAP 480 Sex Discrimination Ordinance s 38 Government), and *LC Battison suing by his Litigation Guardian TP Battison v P Melloy* [2014] NZHC 1462 (school ‘hair rule’ held invalid for uncertainty, cf *Edwards v Onehunga High School Board* [1974] 2 NZLR 238 (CA)).

Lydia Clapinska and Jessica de Mounteney: “Towards Equality: A Legislative Journey”

The Equality Act 2010 (UK) was looked at by 2 London Office of Parliamentary Counsel drafters, Lydia Clapinska and Jessica de Mounteney. In their presentation, Lydia and Jessica analysed *FirstGroup Plc v Pauley* [2017] UKSC 4, in which the Supreme Court allowed an appeal by a wheelchair user, finding that a bus operating company (in breach of the Equality Act 2010 (UK)) had not made reasonable adjustments to avoid disadvantaging passengers who were wheelchair users. The case arose from the refusal of a passenger with a pushchair to give up a wheelchair space in favour of the wheelchair user. Among other things, this presentation was notable for its wonderful PowerPoint slide drawings (the work of the husband of one of the presenters)!

Day 2: Thursday, 30 March 2017

Session 4: Legislative and institutional approaches to human rights

Session 4 was chaired by Theresa Johnson, Hong Kong.

Duane Allen: "The Future of British Human Rights Jurisprudence Post-Brexit"

Duane is a drafter at the Isle of Man Attorney-General's Chambers. Duane noted in his presentation that Brexit and the repeal of the Human Rights Act 1998 (HRA) appear to be causes for alarm from a human rights perspective. Duane provided some reassurance that these developments were not the body blow to human rights in the UK that you might imagine.

Neither Brexit nor repeal of the HRA amount to a repudiation of the European Convention of Human Rights which UK has been a party to since it entered into force in 1953.

Accordingly, the Convention and the European Court of Human Rights ('the Strasbourg Court') remain relevant in the UK, even if the Human Rights Act 1998 is repealed and the UK leaves Europe. It is now established in English law that, save in special cases, the duty of national courts is "to keep pace with Strasbourg jurisprudence as it evolves over time: no more but certainly no less."

Further, human rights of the kind protected explicitly by the Human Rights Act 1998 are now general international legal norms. Rules of customary international law are automatically incorporated into the common law and do not need to be expressly transformed: "... the English courts must at any given time discover what the prevailing international law rule is and apply that rule."

Accordingly, Duane concluded, UK courts will continue to interpret UK legislation in a manner that is consistent with the protection and promotion of human rights regardless of Brexit and the repeal of the HRA.

Ross Carter: "'You Are Always On My Mind': Law Drafting for Human-Rights (In)Consistency"

Ross, Parliamentary Counsel at New Zealand's Parliamentary Counsel Office, exhorted drafters to be aware of and alert to human rights matters right throughout the drafting process, even if they are not human rights experts. As well as reflecting on the origins of modern rights statutes and comparing the statutory rights regimes in 4 jurisdictions, Ross touched on tools and techniques for drafters working with legislative proposals that concerned human rights.

Where it is intended that legislation be inconsistent with human rights, the drafter needs to be very careful about ensuring the proposal is drafted in terms which give that inconsistent effect. As in other administrative law contexts (for example, the case of the prison director's decision to confiscate a toupee from Philip Smith (Traynor) without recording his reasons for the decision), having a full and (if possible) open process will help to capture the intention of a legislative proposal and will assist in shoring up its rights-inconsistent meaning.

The clear message was that human rights should be always on the drafter's mind. Here, the presentation drew on analogy of the restyling of the song You Are Always On My Mind in various genres to illustrate how at each step of the process or at different points in time, the considerations might differ. The song also hints at the regret that a drafter might experience if they were to fail to keep human rights front of mind right throughout the drafting process. Finally, the song gave Ross an opportunity to stream the music of Elvis, Willie Nelson, and the Pet Shop Boys in what was presumably a musical and technological precedent at a CALC conference.

Session 5: Drafting for diversity

Session 5 was chaired by Neil Martin, Wales, United Kingdom.

Dr Briar Gordon: "Legislating for diversity: still a challenge in the 21st century"

Briar, Parliamentary Counsel at New Zealand's Parliamentary Counsel Office, gave an impressive presentation that included a potted history of New Zealand, including the transitions from indigenous society to colonial government and then to nationhood. The Treaty of Waitangi, naturally, found prominent mention, as did the differences in the interpretation of the provisions in the English and Māori versions.

Significant twentieth century developments in New Zealand were mentioned:

- the establishment of the Waitangi Tribunal, in 1975, and the extension of its jurisdiction to 1840, in 1985;
- the incorporation of the Treaty in specialised legislation (including in the State-Owned Enterprises Act 1986 and the Conservation Act 1987).

Briar highlighted the drafting challenges of recognition of Treaty principles (as developed by the courts) in legislation—especially when a number of Māori expressions and concepts do not have a reliable or an adequate English translation.

Te reo Māori has found its way into other New Zealand legislation of general application. Briar gave many examples of Māori terms and concepts included in New Zealand legislation.

Briar's presentation further canvassed drafting challenges and opportunities as she mentioned:

- the hallmarks of Treaty settlement legislation:
- the statutes governing legal personality of a national park (Te Urewera Act 2014) and a river (Te Awa Tupua (Whanganui River Claims Settlement) Act 2017):
- Dual language legislation (Mokomoko (Restoration of Character, Mana, and Reputation) Act 2013/ Te Ture mō Mokomoko (Hei Whakahoki i te Ihi, te Mana, me te Rangatiratanga) 2013).

Briar noted that legislation featured among the tools that the New Zealand government had employed to recognise the role and place of Māori in New Zealand. Briar noted the initiative taken by the New Zealand Parliament to enact legislation featuring recognition of the role and

place of Māori and the Treaty in New Zealand. Because of that, she suggested, administrative decision makers and the judiciary have had to take into account the cultural background of the law, when applying and interpreting legislation encompassing cultural constructs and language. All of this has led, over time, to a significant shift in government action in New Zealand.

Thomas Ahlfors: “Challenges related to the incorporation of Inuit Qaujimajatuqangit into legislation”

Thomas is a legislative drafter for Nunavut’s Legislative Assembly where bills are drafted in English and French. Nunavut became a separate territory of Canada in 1999—following the enactment of the Nunavut Land Claims Agreement Act 1993. Drafters in Nunavut are required to draft in French and English, as everywhere else in Canada, though in Nunavut those languages together account for barely 15% of speakers in the Territory. Inuit languages were side-lined. However, over the recent past, attempts have begun to draft legislation that reflects cultural and linguistic elements of the Inuit people. Thomas’ paper related to the incorporation of Inuit Qaujimajatuqangit (IQ)—a concept that seems to correspond in some ways to mātauranga Māori (Māori traditional knowledge) and te ao Māori (Māori world view). But as in Māori, no English translation can hope to capture the full meaning of the term in the Inuit language. The issues round capturing the meaning of an indigenous language in translation are remarkably like those we encounter when we use kaitiakitanga, mana whenua, whānau, or taonga and a lexicon of others ... the words mean what Parliament intends—depending on the particular beholder.

What the legislation of Nunavut has done is to provide for IQ as a basis for interpretation of the legislation in the appropriate context. The Wildlife Act 2003, for example, expressly states that the Inuit language or an appropriate dialect of it, may be used to interpret the meaning of any guiding principle or concept of IQ used in the Act. That means that in the English or French context, words will be interpreted against a very different linguistic norm.

Dr Felix Uhlmann: “Multilingual legislative drafting in Swiss cantons: burden or blessing?”

Felix is a professor specialising in constitutional and administrative law at the University of Zurich. His presentation, whilst having no connection with the Commonwealth or with the English-speaking world, demonstrated the degree of issues common to diverse constitutional jurisdictions. The “burden” referred to in the title of the paper arises from a variety of circumstances, but largely from the balance of the population in the various cantons of Switzerland. It seems that everywhere, French and German prevail, so the minority, Italian-speaking population, is not well served when it comes to the allocation of drafting and translation resources. He also observed that the drafting of multilingual legislation by translation has its place, but only if it is properly embedded in the legislative process: translation cannot be an afterthought.

While acknowledging that the exercise of translation often leads to detecting drafting flaws, by accident, as it were, Felix emphasised that the “burden” of resourcing multilingualism is

a heavy one. The pressure on people to use English in commerce and in daily life is another factor in resourcing the translation enterprise.

CALC General Meeting

The 2017 CALC general meeting was held on day 2, and after lunch. Full minutes are set out below in this *CALC Newsletter*. All officers' reports are posted at calc.ngo—along with the papers from the 2017 Conference and Workshop (and the other general meeting papers).

However, highlights of the 40-minute general meeting include the following:

- Approval of minutes of the 2015 general meeting in Edinburgh:
- President's report (reviewing achievements 2015 to 2017):
- Secretary's report (including a vote of thanks to Peter Quiggin PSM, CALC's excellent President from 2009 to 2015):
- Treasurer's report (review of financial position pre-2017 Conference):
- Election of CALC Council (including the filling from the floor of the meeting, and unopposed, of the remaining 3 vacancies, of Council regional representatives for Asia, the Americas, and Africa):
- Adoption of the notified changes to the CALC Constitution proposed by the Council. The main proposed change was to allow the Council to provide for electronic voting. An additional change would make it easier to call a general meeting, by reducing the number of members needed to do so (from one sixth of CALC members, which is a threshold hard to calculate given changing membership, to 100 CALC members). They were carried by a majority of 168 votes (for the proposed changes) to 2 votes (against the proposed changes), with no abstentions recorded.
- General business: Votes of thanks for Council members, and also for CALC's returning officer, associate member Professor Dr Felix Uhlmann (Centre of Legislative Studies, University of Zurich, Switzerland).
- The outgoing President Peter Quiggin also said incoming President Brenda King (Northern Ireland) and other new CALC Council members attending the Conference would (in line with clause 10(1) of CALC's Constitution) meet on 30 March 2017 and immediately after the general meeting at the RACV Club.

Day 3: Friday, 31 March 2017

Session 6: Legislative approaches to corruption

Session 6 was chaired by Lawrence Peng, Hong Kong.

Estelle Appiah: "Corruption: the antithesis of the rule of law"

Estelle is a legislative drafting consultant in Ghana. Estelle spoke about legislative measures to combat corruption in Ghana, including the anti-corruption provisions in the Ghana Constitution, and about the Constitution Review Commission's recommendations on how to more effectively tackle corruption.

Legislative counsel, as keepers of the statute book, Estelle suggested, should be mindful of the ways in which legislation can minimise opportunities for corruption and should draft defensively to minimise those opportunities.

Estelle noted the various challenges in Ghana in tackling corruption, including the lack of right to information legislation even though a Right to Information Bill was drafted in 1999; reviewed in 2003, 2005, and 2007, but was not presented to Parliament until February 2010. That Bill was presented to Parliament in 2013, but lapsed once more in 2016. Estelle reported that a number of other anti-corruption Bills have been drafted in Ghana, but not been enacted (including the Conduct of Public Officers Bill).

Defensive drafting strategies, under the principles of accountability and transparency, include:

- discouraging complicated rules that would encourage short-cuts and allow intermediaries to step in to offer their services for a fee (such as in land registrations):
- placing limits on any discretion conferred by legislation:
- sharing decision-making powers among a team:
- stipulating written decisions:
- requiring public hearings, where relevant:
- specifying qualifications for persons aspiring to hold public office:
- requiring the disclosure of conflicts of interest.

However, there's only so far legislative counsel can go in eliminating opportunities for corruption by drafting defensively. Ultimately, and as Estelle admitted, leadership and political will is needed in containing "the canker of corruption."

Paul Salembier: "Institutionalising Corruption"

Paul is Associate Professor, at Queen's University in Canada, and a legislative drafting consultant. Paul defined corruption as existing on a continuum ranging from bribe-taking to far more subtle practices, like manipulating rules in a way that distorts them and undermines their purpose. An example of this is a customs official who is required to inspect shipping containers but interprets the law as requiring only a brief inspection of the outside of the containers without looking at their contents.

Drafters can, Paul suggested, draft in a clear and precise way that minimises the potential for institutionalising corruption in the law. If the Customs official in the example were required by law to inspect "the contents of each shipping container" instead of just to inspect "each shipping container", it would be harder for the lazy official to justify their scant inspection. Paul also discussed the cost of corruption, and stated that corruption hampers a nation's economic well-being by generating unpredictability that in turn creates risk.

Others ways of drafting to minimise corruption, Paul noted, are—

- to avoid creating subjective rules in legislation that use subjective modifiers like “reasonable” and “excessive”:
- to place limits on, and criteria relating to the exercise of, any discretion that is conferred on decision makers in legislation:
- delegating discretionary power to a body of individuals rather than a single individual.

However, Paul clarified: the very existence of a discretionary decision-making power in legislation did not, in all circumstances, lead to injustice, discrimination, and corruption.

Session 7: Corruption: a legislative case study

Session 7 was chaired by Bethea Christian, Cayman Islands.

Deana Silverstone: “Drafting legislative provisions to combat corruption in petroleum activities”

Deana is a legislative drafting consultant. Deana’s presentation gave some insights into the techniques she employs to combat corruption in the context of drafting petroleum-related legislation in developing countries.

Deana noted that corruption is a particular risk in the petroleum sector in developing countries; it carries a hefty economic and social price tag. Some factors that contribute to the risk include frequent dealings with poorly-paid government officials, the large sums of money involved, and the lack of or underdevelopment of good governance practices and institutions to guard against corruption.

Deana described and discussed several legislative techniques aimed at combatting corruption. The techniques included—

- requiring industry participants to report payments made to the Government or to Government agencies:
- requiring transparency from the Government (eg “the Minister must make available all petroleum data, agreements, and licences etc”):
- providing for open-bidding for licences etc:
- limiting discretion by decision makers:
- requiring consultation with affected communities:
- declarations of assets, liabilities, and interests of senior public officials.

A key message of Deana’s presentation was that legislation alone cannot protect against corruption; it have to be implemented fully and effectively, and institutions and actors have to play their roles as well. Above all else, Deana said, political will was necessary to achieve any success in combatting corruption.

Session 8: Drafting with the end in mind

Session 8 was chaired by Dr Katy Le Roy, New Zealand.

Louise Finucane: "Beginning with the end in mind—the importance of legislative design"

Louise, a drafter at the Australian Office of Parliamentary Counsel (the OPC), gave a paper on the importance of legislative design. Louise is well-known for giving engaging and humorous papers and this paper was no exception. To illustrate her points on legislative design she used the analogy of a GPS navigation system (and credited a particularly helpful electronic navigator called "Kate" with having saved her marriage on a long road trip to York a few years ago).

Just as most people who use a map have a particular destination in mind, most readers of legislation have a particular end in mind – they are looking at the legislation for a specific purpose, to find the answer to a particular question. Users need a navigator like Kate to help them find what they need. Drafters can effectively provide users with a Kate for legislation if they begin with the users' needs in mind and employ navigational aids. Ask yourself: what common questions do most users need answered?

In the OPC, the use of devices such as guides, simplified outlines, and notes serve like signposts to guide users around legislation. The way in which legislation is structured can also help users navigate the law more easily. The OPC uses the layering principle and the 80:20 rule: put the most important and most general provisions first, then the more exceptional. Louise used the Income Tax Assessment Act (ITA Act) and the Paid Parental Leave Act as examples of how these principles were applied to make the structure as user-friendly as possible. The ITA Act has a pyramid structure: the peak of the pyramid is the core provisions, which come first, followed by the general provisions, then the specialist provisions, followed at the base of the pyramid by the administrative provisions. This structure helps users find what they need and avoid wading through provisions that are irrelevant to them. The Chapters are the Freeways, Parts are the major roads, provisions are the little side roads.

Louise also talked about the narrative drafting style and the story-telling approach to legislation as another navigational aid: introducing things progressively and in a timely way (like GPS). What is the first question that needs to be answered? What is the next one? Ask yourself how can I structure the legislation so that the answers to these questions tell a story? Louise encouraged the audience to try to build a helpful navigator like Kate into their draft legislation.

Dr Maria Mousmouti: "Drafting with the end in mind"

Maria is a lecturer at the Sir William Dale Center for Legislative Studies at the Institute of Advanced Legal Studies of the University of London.

In her paper, Maria argued that drafting with the end in mind means caring about results. A good law is a law that can do the job it is intended to do. This means that, in order to assess whether a law is good or not, we need to know what it is expected to do and how it is expected to operate. The impact of a law is an essential element of its effectiveness and quality.

Critical factors for an effective law are:

1. Clear objectives/purpose (what?)
2. Content (how do we achieve that objective?)
3. Results (what has been achieved?)

A good law (= an effective law) has two main dimensions: a prospective dimension when it is formulated and drafted and a real-life dimension when it is implemented. The former expresses the extent to which a law is conducive to the desired regulatory effects while the latter expresses the extent to which the attitudes and behaviors of target populations correspond to those prescribed by the legislator. These two dimensions are closely interconnected. This means that an effective law needs to be drafted with the end in mind and its expected results and impact need to guide its design and drafting. The paper examined three tools that can potentially help in anticipating impact and drafting effective legislation: purpose clauses, impact assessments, and sunset and review clauses.

Every law has a purpose, but where do we find it? Experience shows that clear and accurate statements of purpose are very rare. Some purpose statements are minimalist and narrow. This makes them accurate, but not very helpful (ie: to amend...). Others are more policy than legal, ie: to make equality a reality. Such statements are too broad and aspirational to be a legislative purpose. The kind of purpose statements that aid the understanding of the content of the law are those that combine legal and policy objectives, ie: to set a framework for combatting discrimination... in order to ensure the application of the principle of equal treatment. A purpose statement should provide substantive, clear and balanced information that provides meaningful guidance to the interpreter and implementer.

Impact assessments are tools that support evidence-based decisions for effective rules. They offer a structured framework for considering available options to address problems and the advantages and disadvantages associated with each option. Impact assessments can help policy-makers/instructors ask the right questions. They should be available to drafters and considered by them to complement their legal analysis.

When a law is enacted it is expected to achieve results. There are 2 main sources of information on the results of legislation: evaluation and post-legislative scrutiny, and review clauses. In Europe (including the UK) there is a clear trend towards including review clauses in legislation.

Maria's conclusion was the drafting with the end in mind requires an internal alignment between the elements of the legislative text. This means clearly stating the purpose of the law, developing content that takes into account all relevant evidence and analysis, and including provision for getting feedback and knowledge about the results of the law.

Session 9: Complexity and interconnection in legislation

Session 9 was chaired by John Mark Keyes, Canada.

Toni Walsh: “The relationship between complexity in legislation and the processes by which legislation is created”

Toni, a drafter at the Australian Office of Parliamentary Counsel, considered complexity from the perspective of the statute book as whole and, in particular, how the law-making process can tend to result in legislation that deals with common problems in a number of different ways. As Toni pointed out, having a statute book full of subtle variations on a theme makes legislation harder to use and can cause confusion.

Toni used her presentation to carry on the discussion started by Luke Norbury about the UK’s efforts to find common solutions to common problems. Toni did this mainly by outlining the Australian experience with the Regulatory Powers (Standard Provisions) Act 2014 (the Regulatory Powers Act).

The Regulatory Powers Act contains suites of standard provisions dealing with monitoring, investigation, civil penalty provisions, infringement notices, enforceable undertakings, and injunctions. Another Act can “switch on” the standard provisions in the Regulatory Powers Act by identifying those provisions that must apply to the former and plugging in a set of variables to allow the Regulatory Powers Act to work (for example, identifying who the “authorising officers” are).

Before the Regulatory Powers Act, the provisions for regulatory powers across the statute book were inconsistent and incoherent. This mainly resulted from 3 process issues:

- Even if a drafter used a precedent, the drafter would ask policy questions as if they had never been asked and policy officials (often inexperienced) would answer them as if they had never been answered:
- Officials at other agencies that were consulted on the Bill (also often inexperienced) would scrutinise the provisions without knowing what had been done before:
- The provisions would be examined afresh in parliament and there would always be the risk that they would be changed in response to particular issues of the day.

Developing the Regulatory Powers Act required resourcing, of course, and rested to a large degree on support from the Attorney-General’s Department. But it has had real benefits, including that—

- it has enabled the Attorney-General’s Department to exercise greater influence in preventing unnecessary variation:
- scrutiny, of drafts, from officials is focussed on variations from the standard provisions:
- it has encouraged Parliament to demand more from officials when it comes to justifying departures from the standard approach:
- debate in Parliament is more focussed on whether the standard provisions should be used

at all and, if so, whether any variations (including more extensive powers) are actually necessary.

In the light of the benefits of this example of standardisation, Toni briefly discussed how drafters can work together to develop standard provisions for use within their offices. The main take away from this was that discussions need to be led: everyone should have a chance to contribute, but someone has to take responsibility for steering the discussion, making a decision when one is needed, and communicating that decision. Tools—such as templates and IT shortcuts—are then vital to make sure that any standard model is easy to use.

Jeannine Bednar-Giyose: “Complexity and interconnection in financial sector legislation in South Africa”

Jeannine is Director Financial Sector Legislation and Regulation, National Treasury, South Africa. Jeannine’s presentation outlined the extensive reform of South Africa’s financial sector legislation, the first phase of which is a ‘foundational framework’ Bill (the (Financial Sector Regulation Bill or FSRB).

South Africa’s financial sector reform project is complex. It involves a shift from a prescriptive rules-based approach to a principles-and-outcomes-based approach. Among other things, the FSRB creates 2 financial sector regulators (both empowered to make delegated legislation), establishes a licensing regime, provides for investigation and enforcement powers, sets out administrative penalties, establishes an ‘Ombud Council’ and a review tribunal, and provides for the setting of various fees and levies. A particular challenge, Jeannine said, was ensuring consistency with the right to just administrative action (enshrined in section 33 of South Africa’s constitution) when providing for regulators to conduct on-site visits and inspections.

There was also the need to carefully consider the constitutionality of Parliament delegating law-making power (the power to set ‘standards’) to an external regulator (as opposed to a member of the Executive government). Similarly, a concern was raised (and allayed) about the constitutionality of the jurisdiction of the proposed review tribunal. The concern was that granting jurisdiction to the review tribunal would amount to an unconstitutional ouster of the High Court’s jurisdiction.

The drafters wrestled with the temptation of providing in the bill, that the FSRB prevailed over all existing legislation. The preferred approach in South Africa is to consider very carefully which provisions of existing legislation need to be overridden, so that ‘overrides’ can be as specific and limited as possible. That approach has the advantage of providing certainty and ensuring that more general override provisions don’t end up competing in an unsatisfactory manner. Diligently following the more specific override approach involved a great deal of work and consideration.

Some lessons that Jeannine shared on ways to tackle the complexity of large reform projects were:

- be involved in the planning of the project:

- be prepared to significantly revise the draft bill as you go:
- aim for a logical and accessible structure:
- view consultation with industry and public as means of testing practical effectiveness:
- give special consideration to key terms (“financial product”, “financial service”):
- accept that the inherently technical concepts may defy clear expression:
- be prepared to undertake thorough research and analysis:
- engage with government departments, regulators, stakeholders, and parliamentary processes to increase your understanding and to hone the bill.

Session 10: Looking ahead

Session 10 was chaired by Peter Quiggin PSM, Australia.

Dr Daniel Lovric: “The future role(s) of legislative counsel”

Daniel is a drafter at the Australian Office of Parliamentary Counsel. Daniel finished off the conference presentations with a discussion of the possible future role of drafters. He began by noting that while drafters face many of the same challenges as the rest of the legal profession, perhaps the greatest challenge is dealing with the increasing volume and complexity of work. Encouragingly, he was more optimistic than Prof Richard Susskind about the likely continued existence of the legal profession—or at least of drafters.

However, Daniel provided a note of caution. One of the trends facing all professions is disaggregation—the separation of work into its component parts with complex services being performed by highly skilled specialists, and simple services being supplied as a bulk commodity by others.

Daniel observed that while producing large volumes of legislation, quality controlling that legislation, and using plain English and innovative drafting devices are all important, if governments think that is all that drafters offer, we may become seen as producers of a bulk commodity—and be at risk of being out-sourced or overtaken by automated systems.

But, he says, drafters can make themselves indispensable to government by being highly skilled specialists who can provide the skills that governments value—the skills to understand complex problems and help devise ever more sophisticated legislative solutions.

So, there is still some hope!

Sydney Workshop material summary

Set out below is a summary of the Workshop. The Workshop papers are available to CALC members at: <http://www.calc.ngo/members/papers/melbourne,-march-2017>. Those papers will also, in due course, be published in CALC’s journal: *The Loophole*.

The Workshop venue was the Art Gallery of New South Wales in the Sydney CBD.

Session 1: Knowledge Management in a legislative drafting office

Robyn Hodge, Daniel Gray, and Ruth Henderson

Representatives of the New South Wales (Robyn and Daniel) and Tasmanian (Ruth) legislative counsel offices gave presentations on the knowledge management systems they have developed for their offices. Both offices implemented a wiki style knowledge management approach.

In New South Wales, the office broke their drafting manuals and other drafting guidance into relatively small units and assigned to each legislative counsel some units of this knowledge management base. The counsel were responsible to update the knowledge management guidance on that particular topic and then had continued responsibility to monitor any comments made with regard to those units and essentially ensure that they continued to be up-to-date.

The New South Wales office found that the social media page that was also implemented as part of the wiki knowledge management system helped to generate and sustain office interest in the KM website and system.

In Tasmania, a committee took on the responsibility for the initial organisation and division of the knowledge management materials and for their initial content.

In both cases, comments, corrections, and observations were welcomed as they helped to maintain or improve the usefulness of the knowledge management materials.

Some thoughts and observations prompted by this panel in relation to the New Zealand PCO's (NZ PCO's) knowledge management system:

- NZ PCO, too, has a wiki-based system:
- NZ PCO's units of material are sometimes quite large, so that it becomes less practical to notice a comment if it is out-of-sight at the bottom of a long scroll-down:
- Responsibility for the knowledge management materials is not always clearly assigned or distributed:
- There are parts of the NZ PCO knowledge management materials that are inconsistent or out-of-date.
- Comments on, and updates to, NZ PCO's knowledge management materials—for example, the *Drafting Manual*, is done via the Deputy Chief Parliamentary Counsel (Drafting).

Perhaps the NZ PCO could be inspired by the New South Wales and Tasmanian examples to build on the excellent foundation that already exists in the NZ PCO. The NZ PCO might be able to get more benefit from the underlying wiki structure if—

- the units were smaller:
- responsibility for updating was clearly assigned or allocated:
- thought was given to how NZ PCO might better unify, integrate, and connect all the different strands of knowledge management material on particular subjects.

Session 2: Delegating legislative powers: from modern day complexity to Henry VIII

Lee Harvey: "Delegating legislative powers: from modern day complexity to Henry VIII"

Lee is a drafter in the Western Australian Parliamentary Counsel Office. Lee's paper began with a brief exploration of some of the ideas in a paper prepared by her colleague Roger Jacobs in relation to systems thinking, complexity, and wicked problems. She devoted most of her paper to discussing the pejorative use of the term Henry VIII powers, what it really means, and whether such powers are really as bad as it is often made out.

Lee argued that it is unfortunate that a term without any readily apparent meaning has become linked to a supposedly firm prohibition without a definitive description of the problem intended to be addressed. It's definitely a catchy phrase with a nice touch of drama and history but do people who use it really know what it means?

The question of "what is a Henry VIII clause" becomes very important when you have Parliamentary committees who are charged with a duty to identify, and generally object to, Henry VIII clauses. But there is no definition of Henry VIII clause that is authoritative. The paper compared 6 subtly different definitions, some focusing on textual amendment of Acts by subordinate legislation, others more broadly encompassing powers to make regulations that directly or indirectly alter the scope and effect of an Act.

Lee supports Daniel Greenberg's view that "[i]t makes no difference in principle whether the change is made by notional textual amendment of the list or by free-standing modification in another instrument. Either the power in question is one which it is appropriate to delegate to the Executive or it is not; and in either case the question is one of substance and not of form."

Lee argued that it makes little sense in principle to automatically object to all Henry VIII clauses, and very often it is in everyone's interests that the law be flexible and responsive to changing circumstances.

Lee concluded that there is little or no point in continuing to use the term Henry VIII powers because the term has lost any coherent meaning. It is important that the scrutiny of, and automatic objection to, Henry VIII clauses doesn't override a more principled and coherent approach to scrutiny of provisions that delegate legislative power.

Session 3: Powers, duties, and functions

Fiona Leonard: "Powers, duties, and functions— a rose by any other name would smell as sweet"

Fiona, Chief Parliamentary Counsel at New Zealand's Parliamentary Counsel Office, led an interactive discussion on this topic. In William Shakespeare's play *Romeo and Juliet*, Act II, Scene II, Juliet by those words argues that it does not matter that Romeo is from the rival house of Montague (that is, that Romeo is named "Montague"). The reference is often used to imply that the names of things do not affect what they really are. Fiona's discussion explored what legislated powers, functions, and duties really are, and how they are (and should be) drafted or worded in legislation. This involved an exploration of basic legal concepts by reference to analytical jurisprudence (including that of Salmond and Hohfeld). It also involved looking at examples of when instructors propose functions that ought to be cast as duties, or vice versa. Fiona's insightful presentation provoked much lively discussion.

Session 4: Speaking of the State in legislation

Edgar Schmidt: "Speaking of the State in legislation"

Ed, Parliamentary Counsel at New Zealand's Parliamentary Counsel Office, analysed how legislation refers to the State. Ed suggested thinking about the State is "frozen in amber", as it uses ancient concepts that no longer reflect reality. Ed argued that drafters should instead use legislative language that reflects reality. Ed traced how "the State" or "the Crown" as a legal concept has evolved – from the Sovereign as an individual or corporation sole with great personal power ("L'État, c'est moi") to a democratic constitutional monarchy corporation aggregate (with separate executive, legislative, and judicial branches).

Ed's erudite analysis drew on a wealth of sources—from Frederick Maitland to Stephen Sedley. It was also illustrated by a wealth of examples of legislative references to (all, or part(s) of) "the State". Ed suggested the State can be compared instructively with other types of organisation (such as private sector corporations). This can be done, for example, by looking at foundational documents, and at participants' differing functions or roles. (But most non-State organisations lack an equivalent of the Head of State, and the Judiciary is an unusual, and perhaps even unique, feature of the State.)

Ed analysed differing meanings and use, in legislation, of "the Crown" and "the Government". He argued drafting practice departs often from the drafting precept of using 1 term consistently for 1 concept. He also noted that, in international law, the party to international legal obligations is "the State". Legislation should, he argued, speak of "the State" in ways that are clear and consistent. Ed's clear and insightful analysis highlights universal basic ideals of legislative clarity and consistency.

Session 5: Drafting private Members' Bills

Allanah Aitken: "Drafting private Members' Bills"

Allanah is drafter in the Office of Queensland Parliamentary Counsel. Allanah discussed the challenges of drafting private Members' Bills. Allanah indicated these Bills have become more practically significant in Queensland because narrow majorities in the Parliament have led to Governments' reliance on cross-benchers' support. This means that a higher than usual proportion of members' Bills is being enacted. So, recently, a higher proportion of these Bills introduced, have also gone on to be enacted, in Queensland.

OQPC's statutory functions include (Legislative Standards Act 1992 (Qld) s 7(b)) "to draft, on request, private members' Bills". (Compare the Legislation Act 2012 (NZ) s 59(1)(h) and (i), under which New Zealand Parliamentary Counsel Office works on members' Bills only if the Attorney-General directs.)

To help drafters master these Bills' identified challenges, Allanah suggested 10 golden rules. The rules include seeking early help from drafters, and policy development in areas narrow enough to be manageable with finite resources and non-expert instructions (formulated following any guidance or training drafters are able to give). Legal advice privilege, and all other applicable legal professional duties, must be observed. Governor's messages for appropriations are to be avoided. Proposals must be formulated with particular care because private Members are more likely to consult narrowly. Legal and practical effectiveness, and simplicity (for example, avoiding requirements for regulations), are particularly important, as is avoiding the private Member being made to look foolish, especially if the Bill has a good prospect of being enacted. And a final complication can be the presence of a Government Bill on the same topic! Allanah's 10 golden rules help drafters recognise, and respond practically and effectively to, these Bills' identified challenges.

Session 6: Tackling large drafting projects

John Ledda and Paul O'Brien: "Tackling large drafting projects"

John, a drafter in the New South Wales Parliamentary Counsel's Office, gave a series of practical tips for tackling large drafting projects. John's helpful tips were illustrated by examples based on considerable practical experience. John's presentation was leavened by a very entertaining (and not entirely serious) series of remarks about the (sometimes heavy) demands of large drafting projects.

Paul, a drafter in the Northern Territory Office of the Parliamentary Counsel, noted that the Northern Territory is renowned for its crocodiles ("croc"). Paul also noted that some Northern Territory political literature (memoirs, etc) even refers to "Crocs in the Cabinet".

Paul's presentation looked especially at lessons learned from some large drafting projects Paul has tackled during his extensive drafting career in Victoria, Hong Kong, and (until very recently in June 2017) Northern Territory. Those projects included the following:

- Legal Profession Uniform Law 2014 (Replaced 2004 Act. Only 2 jurisdictions, NSW & Vic. Drafted in team of 3. Applied law scheme—Uniform Law drafted by same drafter who drafted the model provisions in 2004, Vic application law drafted by Vic. Vic application Act 160 pages, Uniform Law 400 pages, total: 560 pages. Multiple instructors (Vic/NSW).):
- Gambling Regulation Act 2003 (Vic) (Amalgamation of 8 Acts into one, some going back to the 1800s. Largest Act on the Vic statute book at the time: 669 pages. Drafted alone. Good instructors—team of 3. Had to be done quickly—less than 3 months.):
- Companies Ordinance (Hong Kong) (Rewrite of 1960s Ordinance. One of the largest ordinances on HK statute book: 394 pages. Team of 6 drafters: 4 English, 2 Chinese. Large team of instructors. Long-term project.):

John's and Paul's presentations gave drafters attending a lot of useful tips and ideas for tackling large drafting projects—and confirmed common experiences and best practices.

This report is a collaborative New Zealand PCO effort—compiled and written (in some parts) by Anshuman Chakraborty, with significant written and photographic contributions from: Nicky Armstrong, Rob Brier, Ross Carter, Briar Gordon, Katy Le Roy, Amanda Macfarlane, Edgar Schmidt, Zöe Rillstone, and Stephen Rivers-McCombs.

See also Professor John Mark Keyes' 25 May 2017 CIAJ blog entitled: [Panorama of the Commonwealth Association of Legislative Counsel 2017 Conference \(Melbourne-Sydney\)](#).

Photos of Melbourne Conference and Sydney Workshop

Various CALC members (including Dr Duncan Berry) have very kindly made available, for CALC members' viewing, photos (some of which are set out on the following pages of this *CALC Newsletter*) taken at the Conference, Workshop, and related social activities.

You can view these photos at the CALC website by logging in and, in the Members' Area (login required), going to the [Gallery](#). The gallery pages are best viewed using the Chrome browser.

Other photos taken at those events will also be added to the CALC website. If you have photos you would like to be added to the website, please email them to calc@calc.ngo















First Parliamentary Counsel for Gibraltar



HM Government
of Gibraltar



Under the umbrella Government Law Offices (GLO), headed by Michael Llamas QC, HM Attorney General for Gibraltar, the Office of Parliamentary Counsel (OPC) has been established by HM Government of Gibraltar.



Paul Peralta becomes its first Parliamentary Counsel, and a further 9 drafters (Crown Counsel) comprise the legal complement of the OPC.

The restructure of the provision of legal services to HM Government of Gibraltar under the Attorney General, and the creation of the OPC, should serve to promote legislative drafting as a distinct legal service.

The GLO, effective as from 1 August 2015, consists of 4 distinct legal offices, namely—

- the Office of Advisory Counsel,
- the Office of Parliamentary Counsel,
- the Office of Criminal Prosecutions & Litigation, and
- the Administration Office & Gazette.

For more about legislative drafting in Gibraltar, see Paul Peralta “Emerging from the Shadow – Legislative Drafting in Gibraltar” [November 2011 \(Issue No 4 of 2011\) *The Loophole* 28.](#)

Legislation, investment, and Rwanda's investment code

*Patrick Kamugisha, Legal Awareness Specialist,
Rwanda Law Reform Commission*



I. *Doing Business* in Rwanda – and how it is ranked Worldwide

Rwanda is more competitive, and has an improved business and investment environment. This conclusion follows from Rwanda's having moved up six places from 62nd position to 56th position in the World Bank's flagship annual report (now in its 14th year) [Doing Business 2017](#). This report compares business regulation for domestic firms in 190 economies.

Rwanda – which, in *Doing Business 2017*, ranks second in Africa – is an example of an economy that used *Doing Business* as a guide to improve its business environment.

From *Doing Business 2005* to *Doing Business 2017*, Rwanda implemented a total of 47 reforms across all indicators.

Rwanda is one of only 10 economies that have implemented reforms in all of the *Doing Business* [indicators](#) (for example, for starting a business) and in every year since *Doing Business 2006*.

These reforms are in line with Rwanda's Vision 2020 development strategy, which aims to transform Rwanda from a low-income economy to a lower-middle-income economy by raising (average) income per capita (from US\$595 in 2011) to US\$1,240 by 2020.



**REPUBLIC OF RWANDA
PARLIAMENT**



Rwanda now has a fully functioning [electronic portal](#) that combines company registration, information on tax obligations and duties, and value added tax (VAT) registration. This saves entrepreneurs an average of two days, and eliminates excessive interactions with Government officials. Of the 190 economies included in *Doing Business*, Rwanda made the largest improvement in the registering property indicators in 2015/16. The Rwanda Natural Resources Authority introduced a fast track procedure for commercial property transfers. It also improved the transparency of the land registry (by establishing a land administration services complaints mechanism, and by publishing statistics on property transfers).

The Government of Rwanda has put in place a range of legislation that provides a variety of protections and rights. Law No 6/2015, relating to investment promotion and facilitation (the [investment code](#)) provides special incentives for investors – so making it easier to do business in Rwanda. But, before looking at those special incentives, we can also note that—

- **Business registration:** You register your company at the Rwanda Development Board (RDB), either in person or online. A certificate of registration is delivered in six hours. The RDB business registration service also allows registration for taxes and employee social security.
- **Investment certificate:** You can obtain an Investment Certificate from RDB as long as your investment meets the required threshold of US\$ 250,000 for a foreign investor and US\$ 100,000 for a local or COMESA (Common Market for Eastern and Southern Africa) investor. The RDB is required to make and communicate its decision regarding the Investment Certificate within one working day after receiving a complete application.
- **Environmental Impact Assessment (EIA):** If your project is in industry, road construction, housing, tourism, water and sanitation, energy, railways and airports, fisheries, mining, agriculture, or forestry, you are required to carry out an EIA prior to receiving a certificate of clearance from the RDB.

II. Special incentives for registered investors

- **Preferential corporate income tax rate of zero per cent (0%)** is accorded to an international company which has its headquarters or regional office in Rwanda if it fulfills the requirements provided in the Investment code:
- **Preferential corporate income tax rate of fifteen percent (15%)** is accorded to a registered investor, exporting at least fifty percent (50%) of turnover of goods and services produced in Rwanda, including business processing outsourcing. This incentive excludes unprocessed minerals, and tea and coffee without value addition (NB: Rwanda's tea and coffee sell well due to their good taste):

- **Corporate income tax holiday of up to seven (7) years** is accorded to a registered investor investing an equivalent of at least fifty million United States Dollars (USD 50,000,000) and contributing at least thirty percent (30%) of this investment in form of equity in the sectors specified in the law. Example: Energy, tourism, manufacture, health, ICT and others:
- **Corporate income tax holiday of up to five (5) years** is accorded to Microfinance institutions approved by competent authorities will be entitled to a tax holiday of a limited period from the time of their approval. However, this period may be renewed upon fulfilling conditions prescribed in the Order of the Minister in charge of finance.
- **Exemption of customs tax for products used in Export Processing Zones.** A registered investor investing in products used in Export Processing Zones is exempted from customs taxes and duties according to the provisions of customs rules and regulations of the East African Community.
- **Value Added Tax refund.** The refund of the Value Added Tax paid by investors is made within a period not exceeding fifteen (15) days of receipt of the relevant documents by the tax administration authority.
- **Accelerated depreciation.** A registered investor is entitled to a flat accelerated depreciation rate of fifty per cent (50%) for the first year for new or used assets if the investor meets the criteria in the law. (Example: invest in business assets worth at least fifty thousand US dollars (USD 50,000) each, or operate in at least one of the specified sectors: agricultural processing, education, health, or telecommunications):
- **Immigration incentives.** A registered investor and the investor's dependants are issued with a residence permit in accordance with relevant laws. Furthermore, a registered investor who invests an equivalent of at least two hundred fifty thousand United States Dollars (USD 250,000) may recruit three (3) foreign employees without necessarily demonstrating that their skills are lacking or insufficient on the labour market in Rwanda.

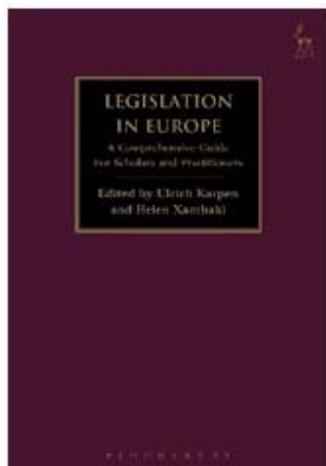
Legislation has been a key factor in making it easier to do business, and to invest, in Rwanda.

Patrick Kamugisha, C/O [Rwanda Law Reform Commission](http://www.rwandalawreformcommission.gov.rw)

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New book: *Legislation in Europe* (2017)



Legislation in Europe

A Comprehensive Guide For Scholars and Practitioners

Edited by Ulrich Karpen and Helen Xanthaki

This book provides a practical handbook for legislation. Written by a team of experts, practitioners and scholars, it invites national institutions to apply its teachings in the context of their own drafting manuals and laws. Analysis focuses on general principles and best practice within the context of the different systems of government in Europe. Questions explored include subsidiarity, legitimacy, efficacy, effectiveness, efficiency, proportionality, monitoring and regulatory impact assessment.

Taking a practical approach which starts from evidence-based rationality, it represents essential reading for all practitioners in the field of legislative drafting.



Ulrich Karpen is Professor of Constitutional and Administrative Law, University of Hamburg.

Helen Xanthaki is Professor of Law, UCL; and Senior Research Fellow, IALS, University of London.

February 2017 | 9781509908752 | 320pp | Hardback | RSP: £95

Discount Price: £76

Click [here](#) to order online and use the discount code **CV7** at the checkout to get your 20% off

New book: *Professional Legislative Drafters* (2016)

Professional Legislative Drafters

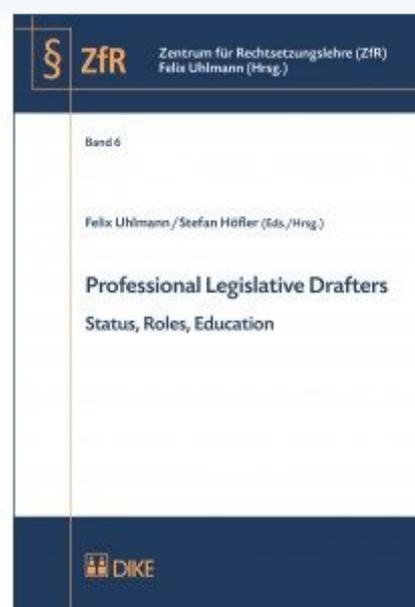
by ICJP-CIDP - Lisbon Law School, University Lisbon

This book edited by Felix Uhlmann and Stefan Höfler includes articles by scholars and professionals about the status, roles and education of legislative drafters across different countries and legal systems.

Several countries and legal systems have comprehensive educational programmes for professional legislative drafters. In Switzerland, there is no such education: training in legislative drafting is constrained to introductory courses on legislation that some universities offer for students of law and to vocational training that certain public administrations organise for civil servants. The Swiss Society of Legislation and the Centre for Legislative Studies of the University of Zurich, who both contribute with their own courses to the training of professionals involved in legislative drafting, have therefore decided to have a closer look at the systems that other countries have in place: How does one become a legislative drafter in these countries? Who organises their education? Where do professional legislative drafters typically work and what are their usual duties and responsibilities? What are the advantages and disadvantages of a specialised education for professional legislative drafters?

The book provides answers to these questions. It compares the Swiss systems with professional legislative drafting in the United Kingdom, the Netherlands, Poland, the United States, Canada and Australia. It comprises contributions by Martin Wyss, Helen Xanthaki, Wim Voermans, Soerd Zijlstra, Wieslaw Skaskiewicz, David Marcello, Richard Tremblay, Peter Quiggin, Louise Finucane, Felix Uhlmann and Stefan Höfler.

More information is available at:



<http://www.dike.ch/professional-legislative-drafters-en>

Fourth annual International Conference on Legislation and Law Reform (2016): Report

A report from John Mark Keyes



The [Fourth International Conference on Legislation and Law Reform](#) was held on November 17-18, 2016 at the World Bank Headquarters in Washington, DC, United States of America (US).

It was organized by the Capitol Hill Chapter of the US Federal Bar Association with the support of the World Bank, the International Association of Legislation, and a number of academic institutions.

This annual conference demonstrates that legislative drafting is alive and well as a focus of critical attention and professionalism in the US. Although legislative drafting in that country tends to be diffuse, carried on by a range of institutional offices and practitioners, it is nevertheless recognized as an important and distinctive field of legal practice.

Like the CALC Conference in Melbourne, this one began with a judicial perspective provided by Federal Court Circuit Judge Alyson Duncan who promoted a collaborative role between judges and legislators in understanding and applying legislation. However, she signaled a warning about the politicization of the judiciary as a threat to the rule of law.

The conference took place in the wake of the 2016 US elections, most notably the election of Donald Trump as president. The presentation by Professor Cary Coglianese of the University of Pennsylvania on public participation in rule-making particularly noted that promises to cut rule-making “massively” would run into considerable procedural hurdles under the Administrative Procedures Act. His presentation appears to have been quite prescient given the difficulties the Trump Administration has already encountered in making Executive Orders.

The conference [agenda](#) included a wealth of sessions address a wide range of topics related to legislative drafting, including—

- assessing the quality of legislation:
- drafting to promote predictability of legal results:
- statutory interpretation:
- expanding public audiences for legislation:
- the rule of law and sustainable development:
- constitutional drafting:
- legislative procedure and drafting in the US Congress:
- public participation in rule-making and judicial review of notice & comment requirements:
- international regulatory cooperation:
- law reform in the health sector:
- anti-corruption legislation:
- immigration and refugee policy:
- climate change and air quality:
- criminal justice reform:
- teaching legislative drafting:
- career paths for legislative lawyers.

One of the sessions featured a presentation by the CALC Treasurer, John Mark Keyes, on CALC's role in promoting legislative drafting as a professional discipline oriented towards maintaining an effective statute book. The session was well-received and provided ideas for our drafting colleagues in the US and elsewhere on how to promote legislative drafting through networking and conference activities carried on by an organized body such as CALC.

The date of the next conference has not yet been announced, but it will likely be in the spring of 2018. Stay tuned. [Editor: *See also* the next item – calling for speakers.]



Fifth annual International Conference on Legislation and Law Reform (2018): Call for speakers

The fifth annual International Conference on Legislation and Law Reform is being planned for April 12-13, 2018 in Washington DC.

Toby Dorsey, a CALC associate member, is responsible for setting the agenda and inviting speakers. If you would be interested in speaking at the conference, please contact Toby at tobiasadorsey@gmail.com.

The web site for last year's highly successful conference is ilegis.org.

What if there was a revolution and no one knew about it? – exploring the disconnect between plain laws and plain language

Presentation by Ben Piper at a concurrent session of the [Clarity Conference held at Wellington, New Zealand on 3 – 5 November 2016](#).

Clarity2016
3-5 November 2016 Wellington, New Zealand

an international association promoting plain legal language

[[Clarity](#) is an organisation that promotes the use of plain language in legal documents. It was created in the early 1980s, and has a fairly large membership spread throughout the world. Like CALC, it holds a conference every 2 years. Despite its purpose, many [Clarity](#) members are not lawyers, and very few of them are legislative drafters.

Although the following presentation was designed with a ‘lay’ audience in mind, I think most of its content may be of interest to drafters, particularly those who aren’t as long in the tooth as I am.

Had all gone to plan, the document below would have been a proper paper, fully researched. Not all did go to plan, so just before the presentation was given the intended paper had only been partially completed. After the presentation was given I created a document re-constructing the presentation based on the parts of the paper that existed (most of the first half of the presentation), my speaking notes and my memory. Where footnote references already existed I retained them, however, a lot more references were, and are still, needed. For the purposes of this CALC Newsletter I have edited the reconstructed document purely to try to shorten it a bit. I note that the document is still in the first person and still contains undiluted references to other presentations that were made at the Conference.]

Introduction

A recent experience

Recently I came across precedent wills that are being used as examples of best practice for graduate law students in Victoria, my home state in Australia. The following clause illustrates the style of the content of the clauses in those precedents –

4. If the foregoing trusts in respect of my residuary estate fail for want of a beneficiary then my Trustee shall hold my residuary estate UPON TRUST to divide it into three equal parts and to dispose of the same as follows:
 - (a) TO PAY OR TRANSFER one (1) of such parts to such of themandas shall survive me and if more than one in equal shares absolutely;
 - (b) [identical to paragraph (a)]
 - (c) [identical to paragraph (a)];

That's semi-okay, but unfortunately the clause then continues:

IF the trusts declared in respect of many of the said parts fail for want of a beneficiary such part including any accretions thereto shall beheld [sic] upon the trusts declared in respect of the other or others of the said parts in the proportions that those trusts bear to each other.¹

Now I admit that I have chosen the most gruesome example in the precedents, but I believe it fairly gives the overall flavour of the precedent wills, that is, that they are not written in anything approaching plain language.

Kennanization

Now I would like to take you back 31 years.

On 7 May 1985, the Attorney-General of Victoria, the Hon. [J.H. Kennan, MLC](#), made a Ministerial Statement entitled "Plain English Legislation" in the Upper House of the Victorian Parliament.²

After giving a quick description of what had happened in the plain language sphere to that time, he observed:

However, we have failed to make headway in either passing a law requiring plain English drafting or more importantly, making an endeavour to see that our legislation is drafted in simpler language.

...

It is the policy of the present Government that legislation be drafted as clearly as possible.

As a result of the work done so far, Parliamentary Counsel has been instructed to adopt a new format for the drafting of Bills. This format will apply to bills introduced from the next session of Parliament onwards. I have referred to the format as the process of Kennanization. These changes are as follows:

Then followed 10 specific changes [they are set out below – in Appendix A to this paper]. Then:

...

What needs to happen now is to have a process whereby Parliamentary Counsel draft Bills and legislation officers draft subordinate legislation from the outset in plain English. This requires a radical departure from tradition and a break with the thinking of the past. It requires imagination, a spirit of adventure and a boldness not normally associated with the practice of law or with the drafting of legislation or subordinate legislation.

...

In the next twelve months it is my intention to ensure that one or more plain English expert is appointed to work in the office of the Parliamentary Counsel as part of the Parliamentary Counsel's team working on legislation. This will ensure that in a collaborative way the art of plain English writing is developed in the drafting of legislation.

1. Example from "Wills – From Drafting to Costing", Leo Cussen Centre for Law, 2015, p. 148. All the precedents in that section of the materials are acknowledged to come from "The Essential Guide to Will-Making, J. V. Kaufman & S. F. McNab (Leo Cussen Institute, 2001). Incidentally, I advise readers not to try to make sense of the clause – it has the potential to do your head in.
2. (Victoria) Parliamentary Debates (LC) Vol. 377 at pp. 432 – 447.

Now, something strange happened.

First, most of the 10 rules of Kennanization were applied by Victorian drafters by early 1986.

Then, Victorian drafters started drafting much more plainly than they had been.

Then, other Australian drafters started to do the same.

Then, other drafters in other countries started to do the same.

Today many English-speaking countries draft their laws in a pretty good imitation of plain language.

Returning to the Australian situation, in a lecture he gave in 2001, Justice Hayne of the Australian High Court, Australia's highest court, stated, in relation to the drafting of laws in Australia: "Plain English drafting is now the norm."³ In his keynote speech yesterday, former High Court judge Michael Kirby said much the same thing.

And yet, anyone looking at the wills precedents I mentioned earlier that are being taught to young lawyers in Victoria would think that they are looking at something from the 1800s, not from a State that has had plain laws for 31 years.

And yet, in Professor Joe Kimble's 40 historical highlights of plain language mentioned yesterday, and published in 2012, the writing of laws in plain language is not highlight number 1, nor number 10, nor number 20. In fact it is not there at all, even though highlight number 37 is the Victorian Law Reform Commission's reports of [1987](#) and [1990](#), which were published after Victoria started writing its laws plainly.

What if there was a revolution, and no one knew about it?

In this presentation I will explore briefly:

- the history of the use of plain language in laws:
- what has happened to legislative drafting since 1985:
- why it is a well-kept secret.

The good old days

Many people have traversed the last few hundred years looking for, and finding, complaints about the plainness with which laws have been written. Judges have declaimed profusely and mightily on the subject in many reported cases, and there has been no shortage of other commentators who have made similar comments.

It has to be said that there are so many complaints on this subject because there was much to complain about. Many laws were written in the way that legal documents generally were written, and there was a time when legal documents generally represented the absolute antithesis of plainness.

3. ["Lessons from the Rear-View Mirror", Leo Cussen lecture, Melbourne, 31/10/2001](#)

However, it is a little known fact that even at the worst of times there have been examples of laws that were fairly plain.

If I could just relate an example I found in interesting circumstances. A number of years ago I visited the site of the former penal settlement at Port Arthur in Tasmania. In the tourist shop I bought a copy of the regulations that applied at the time that the site housed prisoners. I bought the regulations mainly because I thought that they were one of the more unusual things I had ever seen in a tourist shop. Sometime after I returned home I had a glance through the regulations.⁴ Though they were written in the mid-1800s, parts of them are written in a style that would not be out of place in modern plain language regulations. For instance, in parts of them “must” was used to indicate obligation instead of “shall”.

What no one has really done is to explore in any depth the extent to which such laws existed. And, unfortunately, it’s not going to happen here, as to do so would be a quite considerable exercise in itself that would significantly detract from the purpose of this presentation. My point in raising this is that plainness in laws is not something of recent invention. Throughout the history of law writing there have been examples of drafters who have written more plainly than the prevailing legal style of writing. Some of these are known, but most are anonymous. Fortunately the nature of legislative drafting is such that it allows for a wide variety of writing styles, and over the years many individual drafters have had a style that was reasonably plain relative to the prevalent legal drafting style.

In this regard I refer to work done by Duncan Berry in a paper entitled “A Comparative Study of Legal Jargon in Australian Statutes”.⁵ For the purposes of the paper Duncan randomly chose 3 statutes from 7 Australian jurisdictions over 3 periods of time: the late 1940s (primarily); 1991 - 92; and 2006 - 12. Duncan identified about 80 what he called examples of “legalese”. They included archaic words, Latin words, doublets and “legalistic” phrases. He then counted the number of instances in which he found legalese in each of his samples, and, in each case, he divided the number of instances of legalese in a sample by the number of words in the sample, and then multiplied the result by 1000 to derive a rate of instances of legalese per 1000 words. He then combined the results of the 3 laws of a jurisdiction to derive an average usage of legalese per 1000 words in the jurisdiction.

With respect to pre-1950s laws, Duncan found that the average usage of legalese per 1000 words across all 7 of the jurisdictions he examined was 15.34. Another way of saying that is that on average every 65th word consisted of legalese. And that was at a time before [Rudolph Flesch](#) had published his first book on plain language.

By way of interest, returning to Duncan’s results, the worst jurisdiction (Queensland) had an average of 24.30, the best (the Commonwealth) had an average of 9.14, and Victoria had an average of 17.43, putting it roughly in the middle. By way of comparison, the will precedent extract that I set out near the start of this paper has a score of 62.15.

With respect to the 1991-2 statutes, Duncan found that the Australian average was 1.78, and for the 2005 onwards statutes the average was 0.65. The reduction from the 15.34 average for the late 1940s to 1.78, and then to 0.65, is pretty strong evidence that significant change has occurred in Australian law writing from a plain language perspective over the last 60 years.

4. [Rules and Regulations for the Penal Settlement on Tasman’s Peninsula, Convict Department, Tasmania, 1868 reprinted in 1991 by the Port Arthur Historic Site Management Authority.](#)
5. This was delivered at the CALC Conference in Cape Town in 2013 and has been published in [The Loophole, December 2014 at p. 3.](#)

For the sake of completeness, I should mention that Duncan's paper only explored the use of legal jargon. Legislation in the first 2 periods that he examined has also been subject to the criticism that it is also unnecessarily convoluted, and filled with very long sentences. Duncan's paper did not explore those issues.

I was an occasional user of laws in the early 1980s, and I know that they weren't the easiest things to understand. I can remember trying to use quite large Victorian Acts that had no tables of contents – all they had was a list of Part headings.

Before the 1980s, the only formal requirement anywhere that laws be written in plain language was an executive order in 1978⁶ signed by President Carter that required that federal regulations be written in clear and simple English. This order was revoked by President Reagan in 1981, and I am unaware whether it had been observed in the meantime. So that was the state of play when Jim Kennan stood up to deliver his Ministerial Statement.

Kennanization in practice

I mentioned previously that almost all of the Kennanization rules had been implemented by the start of 1986 at the latest.

I can also state that all of the changes that were made are still in operation today, 31 years on.

However, there was nothing in the rules that was particularly momentous. Most of the rules relate to what is basically small beer stuff – worthwhile but not significant. The Victorian drafting office could have complied with them, as it pretty much did, and there still wouldn't necessarily have been a significant improvement in the plainness of Victoria's laws.

Something else had to happen.

Something else did happen. I have already mentioned it, but you probably didn't pay much attention to it, because it was in the Kennan Ministerial statement.

That statement was all clearly political hyperbole, as soon spoken as forgotten.

Except, in this case it wasn't.

The following 2 statements of what was to happen proved to be amazingly accurate, and, even more amazingly, had the intended follow-on effects:

- 1) What needs to happen now is to have a process whereby Parliamentary Counsel draft Bills and legislation officers draft subordinate legislation from the outset in plain English.
 - 2) In the next twelve months it is my intention to ensure that one or more plain English expert is appointed to work in the office of the Parliamentary Counsel as part of the Parliamentary Counsel's team working on legislation. This will ensure that in a collaborative way the art of plain English writing is developed in the drafting of legislation.
6. This was delivered at [Executive Order No. 12044, 43 Fed. Reg. 12661 \(1978\)](#).

How do I know ? Because I was there !

By dint of very fortunate timing on my part, I joined the Victorian drafting office in late September 1985.

Professor Robert Eagleson was appointed as the “one or more plain English expert” in 1985, and he began working with the drafters in the office in early 1986. In fact Professor Eagleson was the only plain English expert ever appointed to work with the office, but as those who knew him can testify, he was more than enough on his own.

It is also worth mentioning that it is clear that Professor Eagleson had been assisting the Victorian Law Department in early 1985. The Ministerial Statement mentions that the Secretary of that Department, Professor David Kelly, “has been working with a consultant, to assist the Law Department in its plain English drafting endeavours”. A number of the Kennanization rules clearly have Professor Eagleson’s fingerprints all over them. To take the most obvious examples, rule 9 (AND/OR) encapsulates what I have referred to for many years now as the “Eagleson and”.⁷

Throughout the early part of 1986 Professor Eagleson had fairly regular meetings with the drafters in the office. In these meetings he discussed the deficiencies in various example legal documents that he provided; he gave the drafters various exercises to do – the exercises were then discussed; he gave us his views on various drafting practices; he raised for discussion topics that later appeared in the Law Reform Commission of Victoria’s “Plain English and the Law” report (1987) that I believe he largely wrote; and he worked with the drafters to produce an Office drafting manual (which only became a reality at a much later date).⁸ He also made books from his personal plain English library available to us.

Although not all of Professor Eagleson’s ideas and suggestions were readily accepted by the drafters, and in fact there was some quite lively disagreement at the meetings with some of those ideas and suggestions, there was also a significant take up of many of the ideas and suggestions. Essentially my recollection is that drafters had no problems accepting ideas and suggestions that had a rationale, or that were based on common sense or Professor Eagleson’s research (either direct or indirect).

For instance, since 1986 Victorian drafters have used figures to depict numbers greater than one.⁹ This is something that a number of plain language practitioners have yet to come to grips with. Yet Victorian drafters readily accepted Professor Eagleson’s rationale for making this change on the basis that there is nothing about the numbers 2 to 10 that makes them any different from any higher number, so there is no good reason to distinguish how they are written. For the doubters amongst you, I note that in Victoria the sun still rises in the east, and sets in the west.

The take up of Professor Eagleson’s ideas and suggestions occurred to the extent that when many of the ideas and suggestions appeared in the “Plain English and the Law” report in 1987, there was no need for them to be considered by Victorian drafters because the drafters were already actively using them.

7. This rule states that an “and” or “or” should appear after each paragraph in a list of paragraphs – the previous practice was to place it only at the end of the penultimate paragraph in the list. Its use means that readers instantly know the relationship between the paragraphs in the list, rather than either having to wait in suspense, or else having to break their rhythm by looking ahead.
8. In producing this list I took the liberty of refreshing my memory by looking at copies of minutes and materials that I have from a number of these meetings.
9. Unfortunately one sees the occasional bit of backsliding on this from time to time.

A number of the Canadian jurisdictions also adopted plain language law policies in or by the 1990s, as was also the case with New Zealand, and in the Canadian case I think they are all on board now. The United Kingdom took a bit longer to join the party (and there was a bit of kicking and screaming in the process), but by the early to mid 2000s it was firmly on board, as was Hong Kong. Singapore is currently in the midst of a multi-year process to 'plain language' its laws.

Thus by mid-1986, if not earlier, Victorian drafters were drafting Bills "from the outset in plain English", where "plain English" meant a style that was recommended by Professor Eagleson, or that was based on his recommendations. Thus, as sought by the Attorney-General in his Statement, "in a collaborative way the art of plain English writing [was] developed in the drafting of legislation".

Speaking for myself, the drafting style I was using when I left the Victorian drafting office in 2006 was the style I started using in 1986. In my first few months in the office I had to draft a few things in the old style, but from the start of 1986 all of the shackles were removed. I was very happy to take up most of Professor Eagleson's ideas. While my style has probably subtly changed over time, the only significant difference is that my older self prefers to leave more redundancy in my work for the purposes of easing the reading task. For those interested, I explained some aspects of this in a bit more detail in the paper I gave at the PLAIN Conference in Sydney in 2009.¹⁰

Of course, I would be the first to tell you that I haven't achieved perfection in either drafting or plain language drafting, but I am prepared to say that I don't think that any law that I have drafted could be significantly improved from a plain language point of view and still retain its effectiveness as a law that implements the policy that it was supposed to give effect to. If anyone wants to test that assertion, I am happy to provide the necessary information to make that testing possible.

Plain language becomes infectious

Victoria did not maintain its position as the only jurisdiction writing its laws plainly for too long. By the late 1980s New South Wales and the Commonwealth were well along the way to writing their laws plainly as well.¹¹ Queensland soon followed. The smaller Australian jurisdictions took a bit longer to come on board, but they all now have plain language policies.

I should give an honourable mention here to John Leahy. John started off his drafting life in the Commonwealth Office. In the 1990s he became the head of the Queensland drafting office, and he turned that office into a plain language drafting office. He then became the head of the Office of Legislative Drafting, which at that time drafted the Commonwealth's regulations and various other subordinate documents. That office became a fully-fledged plain language drafting office. John then became the head of the drafting office of the Australian Capital Territory. That office became a fully-fledged plain language drafting office. Eamonn Moran yesterday mentioned the importance of 'outside' irritants to plain language drafting in Australia, but clearly there was at least one important 'inside' irritant.¹²

10. "Righting the wrongs of rewriting" was published in the [November 2009](#) edition of *Clarity*.
11. As previously mentioned, as shown by Duncan Berry's paper, the Commonwealth in the mid-1980s already wrote pretty plainly, and it had used devices liked worked examples for some time by then. I believe that the Commonwealth dates its formal adoption of plain language to 1986.
12. On the previous day of the Conference Eamonn Moran had delivered a presentation entitled "Looking back, looking forward: The contribution of an outside irritant to plain legislative language". During my presentation I made frequent references to Eamonn's paper, as it complemented a number of the things I spoke about.

I might mention that some jurisdictions, in adopting plain language policies went to great lengths, and expense, to seek state of the art advice on plain language. In particular, the Commonwealth of Australia and the United Kingdom spent literally millions (that is 7 or 8 figure sums)¹³ to obtain plain language knowledge and advice on tax and corporate law projects.

Well, almost

As of 2016, there are still a number of English-speaking countries that do not write their laws in plain language. The most obvious one is also the largest: the United States of America. The legislative drafting process in the US differs significantly from that of countries that are, or were, part of the British Commonwealth. A much wider range of players is involved in drafting laws in the US, and it is not unusual for politicians themselves to draft bits of laws. This contrasts with the Commonwealth, or ex-Commonwealth, countries, where a central government office is usually responsible for legislative drafting. There are usually only a small number of drafters, and this makes it much easier to direct, or to get the agreement of, drafters to draft in plain language.

Unfortunately, most of the countries of the Caribbean are also not yet writing their laws in plain language, even though many of them are Commonwealth, or ex-Commonwealth, countries. I am not sure why that is.

How plain is plain?

Now, what do I mean when I say that lots of countries produce plain laws?

I certainly do not want to give the impression that nirvana has been reached in those countries that have adopted plain language policies, and I certainly do not want to give the impression that every country produces state-of-the-art plain laws.

Each country is different. And, of course, there is no definitive test for whether something is plain or not, but that's another whole topic. The lack of such a test means that it would be possible to produce documents in effectively perfect plain language and no one would know.

It would be helpful to look at Victoria, the jurisdiction I know the most about. What has changed since 1985?

Well, pretty much everything.

To look at this more closely, it will be useful to focus on what I consider to be the 3 major areas of a document: presentation, micro content and macro content.

13. This clarification was included because we had been told earlier in the Conference that in some quarters "literally" is now interpreted as "figuratively" to accord with common usage.

With respect to presentation, if one compares a typical Victorian Act written in 1985 with one written in 1991 one would see:

- shorter line lengths (characters per line) in the 1991 Act
- larger font sizes in the 1991 Act (from 10 pt to 12 pt)
- more space between lines, and between units, in the 1991 Act
- changes in heading styles
- less clutter (in particular, the removal of the header line).

Unfortunately pretty much nothing has changed since 1991. In my opinion, that was not because the 1991 format had reached perfection. In fact there is still lots to criticise with that format. However, my point is that the 1991 format is a significant improvement over the 1985 format.

Micro content involves things like: sentence length and structure; the presence or absence of archaic words or sentence structures; how easy the sentences are to understand; whether or not there is unnecessary jargon, abbreviations, technical terms or long words; how well related sentences relate to each other; whether there is redundancy; whether or not there is excessive cross-referencing; whether or not there are internal reader aids such as notes and examples; how numbers are depicted; and whether formulas and tables are used, and if so, how well they link to the text.

In Victoria all of these things have improved since 1985. Some are as a result of the Kennanization rules, but most are Professor Eagleson-inspired changes.

The most important changes have to do with the way that sentences are constructed, and these changes now highlight how it is possible to express complex legal policy relatively plainly.

This is probably an appropriate point to mention that on the basis of 30 years of experience in plain law writing I can say that there are limits as to how plainly a law can be expressed. This is a topic that merits a paper in its own right, but for present purposes there are only 2 things I will mention in this context.

First, contrary to what early plain language practitioners claimed, the reality is that the easier one makes a reasonably complex document to understand, the longer the document becomes. The longer a document becomes, the harder it is to understand, because there are more concepts that one has to read and keep in mind. The paradox of plainness, one might call it.

Laws are a great example. A law is like an iceberg – to fully understand it, you need to know a lot more about it than you can initially see. You need to know all of the relevant definitions, (whether they are in the Act, in a dictionary (of general or special English language usage), or in an interpretation Act or other relevant laws), all relevant reference provisions, related provisions in the same Act, relevant provisions in other laws, and sometimes even the common law.

Now, all of that can be brought into a law, either directly or indirectly (by way of explanatory material), but it massively increases the visible bits of the iceberg and becomes an enormous obstacle to even wanting to embark on the exercise of understanding the law.

Thus, compromises have to be made.

The second limit on the plainness of laws has to do with the size of the audience that a law can aim to be understood by. It is not practicable to aim a law at someone who has trouble using a phone book.

As Cathy Basterfield mentioned yesterday, according to the latest studies, 44% of the Australian adult population is functionally illiterate.¹⁴

However, if it is any consolation, many legislative drafters aim to produce work that can be understood by their parents (that is, by their mothers or fathers). I am confident that anyone reading this document, regardless of their background, could fairly easily understand 98% of Victoria's laws.

Returning to the visible improvements that occurred after 1985, the third major area of a document is what I call macro content. This involves things like how well the document seems to be constructed; how easy it is to navigate (at the very basic level, does it have a table of contents?); whether the different parts of the document are placed in a logical order; whether or not there are external reader aids such as explanations of the internal material in a broader context.

In Victoria, laws now all have tables of contents, I am pleased to say. Generally speaking, you will now find that Victorian laws have their provisions in a logical order. However, Victoria has yet to fully embrace reader aids.

Part of that failure to embrace reader aids is based on observing Australia Commonwealth practice. With some of the larger Commonwealth laws it is not unusual to have 90-100 pages of external reader aids to get through before the law starts. That's quite a bit of reading!

So, summing up the overall Victorian situation, there has been a considerable improvement in its presentation of its laws, a big improvement in matters of micro content, and some significant improvements in matters of macro content. Victoria hasn't reached perfection, but from its 1985 starting point it has moved a long way towards it.

With respect to other jurisdictions, certainly in Australia you will find similar results. In some such as the Commonwealth, as I have mentioned, they have gone a lot further than Victoria in the macro content area.

I also refer you to the Commonwealth's Plain Language Drafting Manual,¹⁵ which I believe was first published in 1993. It outlines in great detail the micro content issues that the Commonwealth laws now address. Most, if not all, Australian jurisdictions address the same issues.

Internationally, it's a similar story.

As an aside, I might mention that we were told last year at the Commonwealth Association of Legislative Counsel Conference held in Edinburgh that the English statute book now has no "shall"s.

14. On the previous day of the Conference Cathy Basterfield (a Speech Pathologist with 28 years' experience working with people with Complex Communication Needs) had delivered a presentation entitled "Access to written information: A social equity, social justice issue".
15. The Manual can be found at www.opc.gov.au.

World's best kept secret?

Unfortunately, as I have mentioned, the improvement that has occurred in the writing of laws over the last 30 years seems to be one of the world's best kept secrets. You will be hard-pressed to learn about this improvement in most plain language circles. You can go back as many issues of the *Clarity Journal* as you like, but to the best of my knowledge there has never been any explicit recognition of plain laws.

The same applies to books about plain language. In Australia there was some early recognition in plain language circles that laws were being written plainly, but that's about it.

In that respect I should mention Michèle Asprey. In 1991 in her book *Plain Language for Lawyers*,¹⁶ she noted that the Commonwealth and New South Wales had Plain English policies. She also noted: "Over the last few years we have begun to see legislation written in a new, simpler style." I note that reference to Victoria is notably absent here, even though in the same section of the book there is reference to the Plain English reports of the Victorian Law Reform Commission. I have not as yet been able to follow up what Michèle has said on this subject in later editions of her book.

Overseas, while there has been ample recognition of both the Kennan Ministerial statement and the Law Reform Commission of Victoria's "Plain English and the Law" report (1987), there has been almost no recognition of the plain laws that either preceded, or were prompted, by that report. In that respect I note that the latest edition of Christine Mowat's book¹⁷ is now an exception to this statement, and remedies the oversight that occurred in the previous editions. I should also note that I may have had something to do with that fact.

And I note that it is still not unusual to see exchanges on the Internet along the lines of: plain language is not suitable in the legal sphere because that sphere contains so many concepts that cannot be expressed plainly.

Those in the know

Of course, a number of people are aware of the existence of plain laws.

Drafters are obviously one such group.

Judges are another. Comments have been made by judges for quite some time recognising that attempts have been made to write laws in Australia more plainly. Many of the comments are not complimentary, as Michael Kirby noted yesterday.

In this respect I should note that the change from old-style writing to a plainer style of writing was not without its teething problems, and some of the early efforts would now be seen as being clumsy or inelegant. Unfortunately a number of those examples made it to high levels of the Australian courts. Often the problem was primarily a drafting problem, but advantage was taken of the opportunity to have a dig at the style in which the provision was written.

16. *Plain Language for Lawyers*, 1991, The Federation Press, at p.36. [Editor: The most recent edition of Michèle Asprey's book *Plain Language for Lawyers* appears to be the [4th revised edition of 2010](#).]

17. Christine Mowat [A Plain-Language Handbook for Legal Writers](#) (2nd Edition, Carswell, 2015).

However, it was not only the bad stuff that made it there. Clearly some judges had, and perhaps still have, trouble coping with the change of style.

The most egregious, and strange, example of this that has come to my attention occurred quite a few years ago. One of the judges of the Victorian Court of Appeal described part of a Victorian law as “using the language of pop songs”. He was in fact describing the practice of starting a sentence with “However,”, which I, and many other drafters now, find useful as a way of avoiding having to use “Notwithstanding”. This example is strange both because I am not sure how many pop songs start sentences with “However,”, and because the judge who made the remarks was Frank Callaway. Before he became a judge he wrote a booklet on writing in Plain English, and in 1982 he delivered a talk on that subject in my presence at the Leo Cussen Institute.

A number of academics, or quasi-academics, have also written about plain laws. In the 2 most prominent cases that I am aware of, both of them were ex-drafters. Jeffrey Barnes of Latrobe University has written a number of articles exploring a number of aspects of plain laws.

The late Francis Bennion, although perhaps not strictly an academic, also has written much about plain laws. It is fair to say that he was not a fan of plain laws.

Why ignorance matters

The failure to recognise the existence of plain laws is very unfortunate, because plain language should be a much easier ‘sell’ in a world where there is extensive evidence that complicated documents such as laws can be written plainly.

Therefore, the failure to recognise the existence of plain laws has resulted in the missing of a massive opportunity to further the cause of plain language generally over the last 2 to 3 decades.

Why is it so?

That being so, I think it is worth examining why plain laws have remained under the radar for so long.

Although I have written a fair bit on this in draft form, I have not been able to find the answer.

Therefore, to save time, I simply mention the 3 factors that struck me as being possible partial explanations.

First, drafters have not publicised the changes in any formal way. Essentially plain language issues have the potential to become political quite quickly, so it is no great surprise that drafters have been content to hide their lights under bushels in this respect.

Second, law writing is a fairly arcane area, and I suspect that most people are afraid to venture into it, including most plain language practitioners. In the early days that was not so, for which we should be grateful, although those forays into the area by non-drafters did clearly show that the non-drafters were fish out of water in terms of understanding the importance of the relationship between policy and laws.

Third, people tend not to look at what’s happening in fields other than their own.

I realise that these are not satisfactory explanations, either individually or collectively, and I would welcome any other thoughts on this that anyone might have.

Conclusion

So, in conclusion, if you are a pessimist, I have probably succeeded in making you more depressed than you might otherwise have been. After 30 years of plain language reforms and advocacy, it is clear in Victoria that the plain language situation outside of laws is dire, with no prospects of improvement given that young lawyers are being taught to write in the worst possible way.

If you are an optimist, hopefully I have brought a message of hope. We may be facing a dire situation, but there is a powerful weapon at our disposal that should help us to fight the good fight everywhere and anywhere. I have hopefully convinced you that the writing of laws has substantially improved over the last 30 years from a plain language perspective. If laws can be substantially improved from that perspective, then every other legal document can be substantially improved.

Ben Piper



(Ben Piper at the 2017 Melbourne CALC Conference – asking 1 of many welcome questions to speakers.)

Appendix A – The ‘10’ rules of Kennanization

This appendix sets out the specific rules of Kennanization as they were set out in the Kennan Ministerial Statement.

Underneath each rule, in the indented text, I have set out commentary on when, how or if the rule was implemented in Victoria, together with some editorial comment here and there.

1. TITLES

There will no longer be a long title, nor will there be a provision concerning the citation of the Bill by a short title. There will simply be a title of the Bill at the top of the Bill in a short form, that is, Coroners Bill or Coroners Act.

This was a very simple and sensible change that was given effect to almost immediately, and it is amazing that it has not been adopted universally.

2. OBSOLETE FORMS

The use of Latin in Bills will be discontinued. There will be no reference to regnal years. Acts will be numbered following the growth model in annual and numerical sequence alone, that is, No. 31 of 1985.

This rule actually requires 2 separate changes.

Discontinuance of Latin

As was shown by Duncan Berry’s paper, Latin was not used a great deal anyway in Victorian, or any other Australian, laws by the 1940s. Therefore, this rule was also acted on almost immediately with respect to Latin words that had a ready English equivalent.¹⁸

I note that I gave a presentation at the *Clarity* Conference in Lisbon in 2010 in which I noted that there were quite a few words with a Latin origin that were now definitely English words (per, per cent), and that there was a considerable grey area as to whether certain words with a Latin origin could now be called English words.

Numbering of Acts

This was also a simple and sensible change that took effect from the start of 1986.

3. THE ENACTING WORDS

As Parliament is defined in section 15, Constitution Act, as the Queen, the Council and the Assembly, the enacting words will simply be: “The Parliament of Victoria enacts as follows:”

Again a simple and sensible change that took effect from the start of 1986.

18. Examples of this include “good faith” for “bona fide”.

4. PURPOSES/OBJECTS

The very first section of any Bill will be a statement of the purposes/objects of the Bill.

The letter of this change was given effect at the start of 1986. Unfortunately the spirit of the change has not always been observed since then. Every Bill since the start of 1986 has had a purpose clause as its first clause, but the content of the clause was left to the drafter. That has meant that there have been some very helpful purpose clauses that set the scene for a Bill, but there have also been many of those clauses that say no more than used to be said in the former long titles of Bills (which was very basic information).

5. COMMENCEMENT

Wherever possible, there will be a set commencement date. Where that is not possible, the Act should commence on a day or days to be proclaimed. There will be no reference to “several provisions” or to “by proclamation or proclamations”.

Again – simple and sensible changes that took effect from the start of 1986. In practice, very few Victorian laws start on a set date, but for a number of years there has been a requirement that those that don’t must include a forced commencement date, which is usually set at about a year after the passage of the law.

6. NUMBERING

There will be an attempt to avoid the use of Roman numerals and an endeavour to ensure that Bills are numbered decimally.

As with rule 2, this rule contains 2 separate requirements.

Use of Roman numerals

At the time Roman numerals were used in Victorian laws for Part numbers and subparagraph numbers. Pretty much immediate effect was given to this rule in relation to Part numbers. As far as I am aware no attempt was ever made to try to avoid using Roman numerals for subparagraph numbers, although as part of the general changes that were mentioned below, it was made clear to drafters that they should try to avoid the use of subparagraphs as much as possible.

Use of decimal numbers

Some consideration was given to using decimal numbers generally in about 1990, but quickly came to nothing. Later on decimal numbers were used for Chapter and Part headings in particularly large laws, but that was done for practical reasons. I have previously argued in an unpublished paper that the idea that decimal numbering has a place in plain language is horribly misconceived.

7. DEFINITIONS

The term “Definitions” will replace “Interpretation”, as a heading. Definitions in the form of “Reference in this Act ...” should be rephrased as ordinary definitions. The phrase “in this Act”, unless inconsistent with the context or subject matter” will be deleted.

The first and third of these requirements were in place by the start of 1986. The second requirement appears to be based on a misconception, and it did not stop the use of reference provisions. That is to be much applauded, as reference provisions and definitions are not interchangeable, and have a number of plain law uses.

8. TERMS

The term “must” will replace the term “shall”, as consistent with section 45, Interpretation of Legislation Act, wherever “shall” is used to impose an obligation. The term “where” or “in circumstances where” should not be used as a synonym for “if”.

As with rules 2 and 6, there were 2 separate requirements set out in this rule.

Use of “shall”

This rule was given effect from the start of 1986. In fact most drafters completely stopped using “shall” in any context.

Use of “where”

This rule was also given effect from the start of 1986.

9. AND/OR

Where a set of criteria or conditions are set out in successive paragraphs, whether they are cumulative or alternative, they will be made clear by the use of “and” or “or” between each of the paragraphs.

This rule was given effect from the start of 1986.

10. UNNECESSARY QUALIFICATIONS

The phrases such as “notwithstanding anything in this Act”, “subject to this Act” and “subject to section ...” will be used only if absolutely essential.

With respect to the first 2 of these, it became an understood drafting rule from 1986 that the phrases were too uncertain to be used. If a provision was subject to something else in the Act, then it was always necessary to be specific about what provisions the provision was to be subordinate to. That, however, meant that the third phrase could be used. I also note that Victorian laws stopped using “notwithstanding” in any context from the start of 1986.

Items of interest

New Zealand: giving and serving notices – Solicitor-General’s reference No 1 of 2016 – NZSC decision on appeal



As the [November 2016 edition](#) noted, New Zealand’s Court of Appeal in 2016 (upholding the High Court) held that a notice *not* given by the duty holder or by a delegate (who may serve a notice duly given) is a nullity: [Solicitor-General’s Reference \(No 1 of 2016\) \[2016\] NZCA 417](#).

New Zealand’s Supreme Court on 19 December 2016 gave leave to appeal: [\[2016\] NZSC 168](#). The appeal was about a notice of licence suspension or disqualification because a driver has accumulated ≥ 100 demerit points. The High Court and Court of Appeal both held that “giving” (composing) the notice, and “serving” it (communicating it to a driver), were distinct steps. The Court of Appeal concluded that there was no justification for “judicial subversion of the plain meaning of the statutory provision”: [2017] 2 NZLR 1 at [29] (Wild, Cooper, and Kós JJ).

The Supreme Court disagreed. It allowed unanimously the Solicitor-General’s appeal. Giving [the NZSC’s reasons](#), Elias CJ said (at [30]–[34]): “We consider that the inquiry into the meaning of [the Land Transport Act 1998] s 90 has been over-refined. It was a mistake in approach to treat ‘giving notice’ and service of a notice as different and sequential functions . . . we take the more direct view, developed by the Solicitor-General in oral argument, that notice is given by the Agency when it is served in accordance with s 90(2).” Elias CJ at [23] also noted “some awkwardness in the drafting of...the changes ...giving rise to the present controversy”.

Blackout Order made on 1 September 1915 under Defence of The Realm (Consolidation) Regulations 1914, regulation 12

Here is an order imposing a public lights blackout applying to the County of Forfar in Scotland (on and after 6 September 2015, and from 1 hour after sunset to 1 hour before sunrise).

For more about the Defence of the Realm Act 1914 and its use during World War 1, click [here](#).

COUNTY OF FORFAR

ORDER AS TO LIGHTS

(DEFENCE OF THE REALM)

The following is a Copy of an ORDER made by Brigadier-General **McKERRELL**, Commanding Tay Defences, under the DEFENCE OF THE REALM (Consolidation) REGULATIONS, 1914, Regulation 12, the terms of which must be strictly observed.

Any person contravening the terms of this Order will be liable in the Penalties prescribed by the said Regulations, viz.:- (1) If found guilty by a COURT-MARTIAL, to PENAL SERVITUDE for LIFE or any less punishment, or, if the Court finds that the offence was committed with the intention of assisting the Enemy, to suffer DEATH or any less punishment; (2) on conviction by a COURT of SUMMARY JURISDICTION, to IMPRISONMENT with or without hard labour for a term not exceeding SIX MONTHS or to a FINE not exceeding £100, or to both such Imprisonment and Fine.

R. T. BIRNIE, Chief Constable of Forfarshire.

COUNTY QUARTERS OFFICE, FORFAR, 6th SEPTEMBER, 1914.

ORDER AS TO LIGHTS:

In pursuance of the power conferred upon me by Regulation 12 of the DEFENCE OF THE REALM (CONSOLIDATION) REGULATIONS, 1914 :-I, Brigadier-General AUGUSTUS DE SEGUR McKERRELL, being a Competent Military Authority under said Regulations, hereby make the following Order :-

- (1) All public lights, except any low power lamps which, in the opinion of the Police or Military Authorities, are indispensable for public safety, shall be extinguished, and all lights which are not extinguished shall be shaded or obscured so as to render them invisible from above and to cut off direct light from the lamp in all directions above the horizontal.
- (2) All sky signs and illuminated lettering and outside lights of all descriptions used for advertising or the illumination of the fronts of any shops or other premises shall be extinguished.
- (3) The intensity of the inside lighting of shop fronts shall be reduced, and all windows, skylights, &c., in houses and other premises shall be effectively shaded or obscured so that no bright light is shed outside.
- (4) In factories and other buildings with lighted roof areas or numerous windows, the roof areas and windows must be covered over or obscured, and outside lights in factory yards, &c., must be dispensed with, or where this is impracticable, the tops and sides of the lamps must be shaded and the lighting intensity reduced to the minimum possible.
- (5) The intensity of the lighting of railway stations, sidings, goods yards, docks, &c., shall be reduced to the minimum that will suffice for the safe and expeditious conduct of business there: the tops and sides of all arc lamps and other bright lights which cannot be dispensed with shall be shaded or painted over.
- (6) Notwithstanding anything in this Order, the usual lighting may be maintained in the case of shipbuilding yards, armament works and other factories engaged in the manufacture of articles required for the fulfilment of Government Contracts, to such extent as may be necessary for the safe and expeditious progress of the work: but in the case of sudden emergency, any directions given in accordance with Par. 9 of the Order for extinction of lights in such works shall be immediately obeyed.
- (7) The inside lights of trams and omnibuses shall not be more than is sufficient to enable fares to be collected.
- (8) The aggregation of flares in street markets or elsewhere is prohibited.
- (9) In case of sudden emergency, all instructions given by Military or Police authorities as to the further reduction or extinction of lights shall be immediately obeyed.

This Order shall take effect on and after MONDAY, the Sixth Day of September, 1915, and shall apply to the County of Forfar, and to the period from one hour after sunset till one hour before sunrise.

This Order shall not affect the Orders made by the Secretary for Scotland on Jan. 25 and April 8, 1915, in regard:

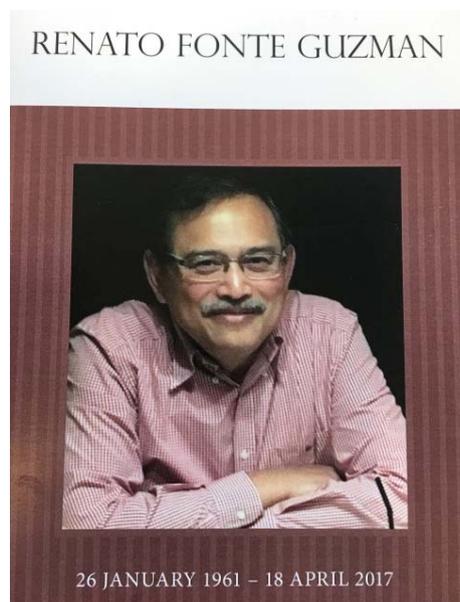
- (1) To the reduction of lights on motor and other vehicles, and
- (2) As to places on the Coast in Scotland respectively.

Given under my hand at Dundee this first day of September, 1915.

Oliver McPherson, Printer, Forfar.

A. McKERRELL, Brigadier-General,
COMPETENT MILITARY AUTHORITY.

Renato Guzman 1961–2017



A well-known and long-serving legal and law drafting colleague, Renato Guzman, passed away suddenly and tragically on 18 April 2017, while on holiday with his family in Bali, Indonesia.

Renato worked for the New Zealand Ministry of Justice (NZ MoJ) for many years before joining the New Zealand Parliamentary Counsel Office (NZ PCO) in 2000–2001.

Renato left the NZ PCO in 2011 to become Manager (Legal Services), and later Chief Legislative Counsel, in the Office of the Clerk of the House of Representatives of New Zealand (NZ OOC). Renato managed NZ OOC's Legislative Counsel, and legal advisers to NZ OOC and to the New Zealand Parliamentary Service.

Renato joined the Parliamentary Counsel's Office of Western Australia in Perth in 2016. Joanne Guzman, his wife and also formerly a drafter in the NZ PCO, is currently a drafter in that office.

Renato's funeral was held in Wellington on 27 April 2017. It was attended by many current and former staff of the NZ PCO, NZ OOC, and NZ MoJ.

(A full obituary will be developed and published in a later edition of the *CALC Newsletter*.)

New Zealand: Declarations of inconsistency (of legislation with rights in NZBoRA 1990) – NZCA decision on appeal in case of Taylor



Arthur Taylor (left) during the prisoners' voting case in the High Court at Auckland Photo: RNZ / Kim Baker-Wilson

On 26 May 2017, a full court (5-Judge bench) of New Zealand's Court of Appeal dismissed the Attorney-General's appeal against the High Court's (Justice Heath's) 24 July 2015 decision to make the following declaration of inconsistency (DoI) about the prisoner voting ban law:

“Section 80(1)(d) of the Electoral Act 1993 (as amended by the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010) is inconsistent with the right to vote affirmed and guaranteed in s 12(a) of inconsistent with the right to vote affirmed and guaranteed in s 12(a) of the New Zealand Bill of Rights Act 1990, and cannot be justified under s 5 of that Act.”

Wild and Miller JJ gave [the reasons of the Court](#) (Kós P, Randerson, Wild, French, and Miller JJ). They summarised the questions raised by the case, and the Court's answers to them, as follows (the questions at [4] and [5], and the answers to them at [77], [108], [109], [146] to [148], [162], [164], [166] to [168], and [173] (citations omitted)):

[4] The general issue on which the Attorney-General appeals is whether the High Court was right to make the declaration. Deciding that issue requires us to answer three questions of constitutional law:

(1) *Jurisdiction?* Do the higher courts of New Zealand have jurisdiction to make a declaration?

[77] We decline the Attorney's invitation to exclude the declaration of inconsistency as unconstitutional. We have rejected his narrowly circumscribed view of the judicial function, holding rather that it extends generally to answering questions of law and specifically to questions of consistency between legislation and protected rights. This is not to question the supremacy of Parliament, which may make or unmake any law it wishes, or to discount the importance of restraint in the exercise of judicial power. We conclude that there is no constitutional bar to a court issuing a DoI in a proceeding that appropriately presents for decision a question of incompatibility between an enactment and a protected right.

(2) *Source of the jurisdiction?* If yes, what is the source of that power? Is it to be found in the common law, or does it reside in the Bill of Rights? Or in a combination of both?

[108] We summarise. The language and purpose of ss 2–6 of the Bill of Rights supports a statutory DoI jurisdiction. We agree with Heath J that the case law also supports that jurisdiction. So does Parliament's conferral, in 2002, of that very jurisdiction on the Human Rights Review Tribunal, albeit confined to inconsistency with s 19 of the Bill of Rights.

[109] We conclude that the higher courts have jurisdiction to make a DoI. It finds its source in the common law jurisdiction of the higher courts to answer questions of law, which extends to incompatibility between legislation and a protected right, and is confirmed in the Bill of Rights.

(3) *Ambit of the jurisdiction?* What is the proper ambit of the jurisdiction to make a declaration – what limitations ought to be placed upon its use?

[147] We have held that there is no constitutional bar to a DoI and no policy reason to disclaim the jurisdiction to make one when addressing incompatibility claims. Jurisdiction established, we must now consider whether a DoI ought to have been made here.

[148] We first address points of general application: *Hansen* indication or DoI, mootness, standing, process and discretion. We qualify these observations by recognising that they are not final; as this Court has previously remarked,

remedies should be allowed to evolve as necessary. Nor are they exhaustive; in particular, we express no view on the questions whether a declaration is available in criminal proceedings, or whether the District Court has jurisdiction to make one.

- [162] We conclude that a *Hansen* indication should ordinarily suffice. It triggers an expectation that the other branches of government will respond to the court's opinion. But there may be circumstances in which a court may go further and make a DoI to emphasise that the legislation needs reconsidering or to vindicate the right. In our opinion the legislature recognised, by authorising a DoI under ss 92I–92J of the Human Rights Act, that the remedy may serve these purposes. More than that it is not necessary to say.
- [164] If accepted, [counsel]'s [mootness] submission would summarily eliminate claims in which the statutory meaning is plain, however stark the incompatibility with a protected right. Fortunately, we need not accept it. The submission rests on the false premise that there can be no dispute for Bill of Rights purposes when the meaning of legislation is clear. The better view is that a dispute is raised when a plaintiff complains that his or her protected right has been limited unjustifiably by legislation. A judicial opinion to that effect may serve a proper purpose if it furthers a dialogue among branches of government in a constitutionally appropriate manner. A DoI may serve the same purpose, as we have just explained. That being so, a claim is not moot simply because a DoI is the only remedy sought.
- [166] Standing matters in incompatibility proceedings because courts will not embark upon general inquiries into conflicts between legislation and protected rights. Accordingly, a claim for a DoI should not ordinarily be entertained unless the plaintiff's protected right is affected on the facts, in the sense that but for the limitation the official conduct complained of might plausibly have breached the right. We note that in the United Kingdom it has been held that, in some circumstances, a representative plaintiff can initiate proceedings under the Human Rights Act (UK) but only when no other plaintiff will step forward, and where a plaintiff is representative a court may decline a declaration in the exercise of discretion.
- [167] The proceeding should be a suitable vehicle for a DoI. The question of incompatibility should arise squarely for decision on the facts, and the court should have any evidence that it thinks necessary, including where appropriate evidence of legislative fact. The Crown must be on notice that a DoI is sought and it must be permitted to defend an inconsistency or advance a justification. In the normal way this would require that the Attorney, if not already a respondent, be given notice and permitted to assume the burden of justification.

[168] In our opinion a DoI, like a *Hansen* indication, must lie in the court's discretion. There is no room for the usual presumption in judicial review that, a wrong having been established, the plaintiff is prima facie entitled to a remedy.

[173] This case concerns a DoI and its alternative, the *Hansen* indication. By adopting this convenient terminology we do not mean to exclude the lesser remedy of a declaration or opinion that legislation limits a protected right. There may be cases in which that is the issue, or in which the court is unable or unwilling to decide whether a limitation is justified.

[5] A fourth question, raised by the intervention of the Speaker of the House of Representatives, is whether the Judge [(Heath J)] breached parliamentary privilege by using a report made under s 7 of the Bill of Rights, in which the Attorney-General advised Parliament that the 2010 Act was inconsistent with the protected right to vote.

[146] We have sought to clarify the use that may be made of parliamentary proceedings in incompatibility proceedings, recognising the Speaker's concern that by their very nature such proceedings may risk breaching privilege. Courts must be sensitive to that risk and refrain from making any finding, whether by approval or criticism, on Parliament's treatment of the subject matter. Because Parliament speaks through legislation, courts may not need to go beyond the words of the statute, or orthodox statutory interpretation materials, in search of policy or justification. Seldom if ever will it be relevant to refer to the way in which members of Parliament voted on a bill, and to do so is to risk questioning proceedings in Parliament. So far as the Speaker's intervention bears on this case, we conclude that Heath J did not breach privilege by referencing the s 7 report as he did.

On the declaration granted in the case itself, the court said, in summary, at [189] (citations omitted): [189] Finally, we have held that a DoI ought not to have been granted on Mr Taylor's application, because he lacked standing to ask for it. However, the DoI was made in a single proceeding in which all plaintiffs joined. That being so, the formal result is that the Attorney's appeal is dismissed.

For some related commentary, see the following 2 blogs by Professor Andrew Geddis:

--29 May 2017 [blog](#) entitled "Taylor strikes again (but still has no right to take his place in the human race)"; and

--19 June 2017 [blog](#) entitled "'Declarations of Inconsistency' under the New Zealand Bill of Rights Act 1990".

The Court of Appeal's decision is under appeal – if the Supreme Court gives leave: [Smith v The Attorney-General on behalf of The Department of Corrections \[2017\] NZHC 1647](#) at [25] fn 19.

When ‘may’ means ‘must’ – (thankfully rare) “obligatory powers”

In *B v Waitemata District Health Board* [2017] NZSC 88 (14 June 2017), the appellant challenged (unsuccessfully) the Board’s smoke-free policy as it applies to patients in the Board’s mental health facilities. In the High Court and Court of Appeal the appellant claimed that that policy was inconsistent with legislation controlling the Board and with the New Zealand Bill of Rights Act 1990. The claim was also unsuccessful in both the High Court and the Court of Appeal.

In the New Zealand Supreme Court, the appellant’s arguments included that the Board was obliged under s 6 of the Smoke-free Environments Act 1990 (NZ) to establish dedicated smoking rooms in mental health units. The appellant was in 2012 an inpatient at the Board’s 2 acute adult inpatient units and, while confined, was banned by the Board’s smoke-free policy from smoking cigarettes. Section 6 is as follows:

6 Dedicated smoking rooms in hospital care institutions, residential disability care institutions, and rest homes

- (1) An employer may permit smoking by patients or residents of a workplace that is, or is part of, a hospital care institution, a residential disability care institution, or a rest home if—
 - (a) the smoking takes place only in 1 or more dedicated smoking rooms; and
 - (b) each dedicated smoking room is equipped with or connected to a mechanical ventilation system to which subsection (2) applies; and
 - (c) the employer has taken all reasonably practicable steps to minimise the escape of smoke from the dedicated smoking rooms into any part of the workplace that is not a dedicated smoking room; and
 - (d) for each dedicated smoking room, there is available for patients or residents who wish to socialise in a smokefree atmosphere an adequate equivalent room.
- (2) This subsection applies to a mechanical ventilation system with which a dedicated smoking room in a workplace is equipped if, and only if,—
 - (a) the system is so designed, installed, and operating that it takes air from the room to a place outside the workplace where any smoke the air may contain will not enter any part of the workplace, either—
 - (i) directly; or
 - (ii) through 1 or more other dedicated smoking rooms; and
 - (b) no part of the workplace that is not a dedicated smoking room is equipped with or connected to the system.
- (3) Subsection (1)—
 - (a) does not authorise an employer to permit a person who is not a patient or resident of the institution or home concerned to smoke in a dedicated smoking room; and
 - (b) does not authorise a person who is not a patient or resident of the institution or home concerned to smoke in a dedicated smoking room.

The Court found that s 6 does not create any obligation on the Board to provide dedicated smoking rooms in its mental health units. While s 6 allows for dedicated smoking rooms in

hospital care institutions, residential disability care institutions and rest homes, the section is permissive and does not impose a positive obligation on the Board to provide such facilities.

Giving the New Zealand Supreme Court's reasons, Ellen France J said (some citations omitted):

- [30] The argument that the word "may" in s 6(1) means that the Board "must" permit smoking does not appear to have been central to the appellant's case in either the High Court or the Court of Appeal, but both Courts concluded s 6 was permissive. Asher J considered the wording was clear, namely, that "employers may permit smoking, if the statutory criteria are fulfilled" ... The Court of Appeal did not consider there was any basis for interpreting "may" to mean "must", noting that the context of the Act did not support that interpretation....
- [31] The word "may" is usually permissive or empowering.²⁸ However, in some situations read in context, "may" means "must".²⁹ Richardson P, delivering the judgment of the Court of Appeal in *Tyler v Attorney-General*,³⁰ endorsed the observation of Windeyer J in *Finance Facilities Pty Ltd v The Commissioner of Taxation of the Commonwealth of Australia* who stated that the general position is that "[w]hile Parliament uses the English language the word 'may' in a statute means may".³¹ As Windeyer J also observed, in some circumstances, the permitted power must be exercised, and that will be dictated by "the particular context of words and... circumstances in which the power is to be exercised – so that in those events the word "may" means "must"". ³²
- [32] We consider "may" in s 6 is permissive. That is its ordinary usage. In addition, we make the following points.
- [33] First, to interpret "may" to mean "must" would be inconsistent with the statutory scheme. . . .

28 The *Shorter Oxford English Dictionary* (6th ed, Oxford University Press, Oxford, 2007) vol 1 at 1731 where one of the definitions given for "may" is to "[h]ave the ability or power to ... be allowed by authority, law, rule, morality, reason, etc". It is also noted that in some legal statutes, may means "shall, must"). See also: *Far North District Council v Local Government Commission* [1994] 3 NZLR 78 (HC) at 84, citing *Finance Facilities Pty Ltd v The Commissioner of Taxation of the Commonwealth of Australia* (1971) 127 CLR 106 at 134; *Tyler v Attorney-General* [2000] 1 NZLR 211 (CA) at [25]–[26]; *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214 (HL) at 222–223 and 225 per Lord Cairns LC (in this case the phrase was "it shall be lawful"); *Gibson v Manukau City* [1968] NZLR 400 (SC) at 406; *Re Wilson Home Trust* [2000] 2 NZLR 222 (HC) at [37]–[44]; [Ross Carter "Statutory Interpretation in New Zealand's Court of Appeal: When 'may' means 'must', section headings affect interpretation, and latent Acts have effect" \(2001\) 22 Statute Law Review 20](#) at 24–26; and, generally, *RI Carter Burrows and Carter on Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 316–319.

29 See, for example, *Julius v Lord Bishop of Oxford*, above n 28, at 222–223; *Finance Facilities*, above n 28, at 134–135; and *Morgan v BNP Paribas Equities (Australia) Ltd* [2006] NSWCA 197, (2006) 1 BFRA 639 at [66]. In *Acquired Holdings Ltd v Turvey* (2008) 8 NZBLC 102,107 (HC) Winkelmann J concluded that the word "may" in s 18 of the Consumer Guarantees Act 1993 (provision for various self-help remedies) was not entirely permissive: at [11]–[14].

30 *Tyler v Attorney-General*, above n 28, at [25].

31 *Finance Facilities*, above n 28, at 134.

32 At 134.

- [34] Secondly, it is difficult on the face of s 6 to read the section as imposing an obligation. Rather, the plain meaning is that the section carves out an exception to the prohibition subject to the specified conditions being met.³³ . . .
- [35] Thirdly, if the appellant was right, the effect would be to require a wide range of different types of institutions to provide dedicated smoking rooms. . .
- [42] ...we consider Asher J was correct to place some weight on the difference between s 6A, which on its face anticipated there would be smoking in prisons, and s 6, which does not assume there will be smoking in hospitals, residential disability care institutions or in rest homes....
- [43] The 2003 Amendment as enacted reflected recommendations from the Health Committee which considered the Bill. . . The Committee's recommendations were to make all indoor workplaces completely smoke-free with some limited exceptions...The exceptions generally reflected the concept that the excluded areas were a person's home, either on a temporary or a permanent basis. . .
- [45] The Health Committee also discussed their recommendation for the insertion of a new provision dealing with patients in hospitals, and the other institutions covered by s 6: . . .

We recommend allowing for dedicated smoking rooms for patients in hospitals, residential care homes and rest homes, to provide for patients who are so incapacitated that they are unable to go outside to smoke. No person other than a patient or resident will be able to smoke [in] such rooms, including employees and visitors.

- [50] In the parliamentary debates on the introduction of the Smoke-free Environments Bill to Parliament in May 1990, reference was made to the fact that the Bill was not "punitive" and did not "outlaw" smoking.⁵⁵ However, those observations only take us so far. They have to be considered in light of the subsequent changes to the legislation in 2003 and in 2013. Those changes support the observation of the Court of Appeal in *Progressive Meats Ltd v Ministry of Health* that the history since the passage of the Act suggests a move away from "the concept of mechanically ventilated rooms as providing, generally, a means of compliance with the Act" and a shift "from a permissive regime which envisaged the establishment of smoking rooms to a more restrictive regime".⁵⁶
- [51] For these reasons, we agree with the Courts below that there is no obligation on the Board to provide dedicated smoking rooms in its mental health institutions. Nor, given the view we reach on the Bill of Rights challenges, is any different interpretation necessary to ensure consistency with the Bill of Rights.⁵⁷

33 A variant on this approach is where "may" is used in situations where more than one option is provided. The use of the word "may" in these situations can then denote a choice as to how the "must" obligation is performed.

...

55 (17 May 1990) 507 NZPD 1634.

56 *Progressive Meats Ltd v Ministry of Health* [2008] NZCA 162, [2006] NZAR 633 at [42].

57 New Zealand Bill of Rights Act 1990, s 6.

A2 THE DOMINION POST

Politics



Parliament asked to make access to the law easier

A bill to improve public access to the law has been introduced to Parliament. Attorney-General Christopher Finlayson said the Government was committed to producing an accessible, clear and up-to-date statute book. "The Legislation Bill will make it easier to find and access secondary legislation by requiring it to be published on the New Zealand Legislation website alongside Acts of Parliament." Currently over 100 agencies are empowered to make secondary legislation.

New Zealand – new Legislation Bill 2017 introduced on 20 June 2017

In New Zealand, the [Legislation Bill 2017](#) (275—1) was introduced on 20 June 2017.

This Bill—

- rewrites and replaces the Legislation Act 2012 to implement publication and other reforms relating to the production of high-quality legislation that is easy to find, use, and understand; and
- updates and re-enacts the Interpretation Act 1999.

The policy objectives of this Bill are to—

- enable easy access to legislation in New Zealand, and improve the overview and enforcement of regulatory regimes, by expanding the content of the New Zealand Legislation website. The website is the authoritative source of official legislation and will now include all secondary legislation, whether made by central Government or other government agencies (other than secondary legislation made by local authorities); and
- improve the accessibility of the law by incorporating the Interpretation Act 1999 into the Legislation Bill. This relocation will ensure that the main provisions of New Zealand legislation that are concerned with Acts and secondary legislation can be found in 1 statute; and
- improve the relocated interpretation rules for the courts and the public by addressing a small number of technical and operational issues identified since 1999; and
- further encourage the production of good legislation by increasing the availability of information about the development and content of new Government-initiated legislation. This is designed to inform the parliamentary and public scrutiny of that legislation; and
- clarify, update, and recast some of the provisions in the Legislation Act 2012 that are being carried forward.

(A predecessor [Legislation Amendment Bill 2014](#) (213—1), introduced on 20 May 2014, was also withdrawn on 20 June 2017.)

In a [media release](#) on 20 June 2017, New Zealand’s Attorney-General, Hon Christopher Finlayson QC, noted that the Bill is one to improve public access to the law and New Zealand’s legislative framework.

New Zealand – un-operated Act repealed, but not blasphemy offence

A [Statutes Repeal Act 2017](#) (2017 No 23) became law on 2, and commenced on 3, June 2017.

The Act repealed or partially repealed more than 100 Acts that are redundant or superfluous. The Acts were considered “spent”; that is, no longer needed because they had ceased to have any actual effect, had very limited effect, or were designed to achieve regulatory outcomes that were no longer relevant.

But the Act’s enactment gave rise to at least 2 significant debated issues.

The first issue was the repeal of the Sentencing Council Act 2007. It was brought into force on 1 November 2007. But, in line with Government policy, the Council was not established. One of New Zealand’s most distinguished jurists, Sir Kenneth Keith ONZ, KBE, QC), [submitted](#) “The Sentencing Council Act presents a completely different case from that of the Acts not in force. That Act has been in force as part of the law of New Zealand since 2007. For the past eight years the Executive has suspended its operation, an apparent breach of s1 of the Bill of Rights 1688; see also *Fitzgerald v Muldoon* [1976] 2 NZLR 615. That refusal to give effect to a statute in force appears to me to be a serious constitutional matter.” The submission also suggested that the Act’s repeal for “policy change” reasons should be via a special repeal Bill. However, the Clerk of the Government Administration Committee [advised](#) that Committee that the Act’s repeal was within the scope of the general ‘omnibus’ Bill to repeal spent Acts.

The second issue was an unsuccessful [proposed repeal](#) of the Crimes Act 1961 s 123 offence of blasphemous libel, proposed because “This provision is anachronistic and has fallen into disuse. The overwhelming opinion of churches and religious groups is that faith does not need statutory protection of this kind.” Repeal of this offence was opposed, and unsuccessful, [reportedly](#) because the Government wants to go through the proper process of select committee and give the public the opportunity to submit on the potential law change. The intention is reportedly to include a repeal of this offence in the next Crimes Amendment Bill (which is reported as being developed, and as having no specific timeframe for when it might make it to Parliament). This New Zealand offence – apparently last prosecuted (with the Attorney-General’s leave sought and given under the Crimes Act 1908, s 150(4), and unsuccessfully) as long ago as [1922](#) – came to light after [reports](#) British entertainer Stephen Fry faced police investigation in the Republic of Ireland for allegedly blasphemous comments.

European Union (Withdrawal) Bill introduced 13 July 2017

The [European Union \(Withdrawal\) Bill \(Bill 005, 2017–19\)](#) was introduced (presented and read a first time) in the House of Commons on 13 July 2017.

The Bill would repeal the European Communities Act 1972 and make other provision in connection with the withdrawal of the United Kingdom from the EU.

The Bill's contents are, in outline, as follows:

- provisions on retention (savings and incorporation) of existing EU law; and
- provisions on main (instrument-making) powers in connection with withdrawal; and
- provisions on devolution; and
- provisions on financial and other matters (eg, publication and rules of evidence); and
- general and final provisions; and
- 9 Schedules (Further provision about exceptions to savings and incorporation, Corresponding powers involving devolved authorities, Further amendments of devolution legislation, Powers in connection with fees and charges, Publication and rules of evidence, Instruments which are exempt EU instruments, Regulations, Consequential, transitional, transitory and saving provision, and Additional repeals).

Commentary includes the following blog from a House of Commons Library Senior Library Clerk:

‘Since the announcement of the intention to convert the *acquis* (the entire body of EU rights and obligations) “wholesale” through this Bill, the Government has claimed that the general rule is that the “same rules and laws” will apply on the day after Brexit. While a significant proportion of EU law will be able to be preserved, this general position masks the complexity of legislating for Brexit:

- the delegated powers in the Bill will be used to amend retained EU law in significant ways, notably to reflect the withdrawal agreement;
- a proportion of EU law will no longer apply once the UK is outside the EU;
- the Government is bringing forward a number of Bills to make substantive policy changes in areas currently covered by EU law; and
- preserved EU law will function differently as retained EU law than it did as EU when the UK was an EU Member State and subject to the full force of EU law.’

See Jack Simson Caird, [‘The European Union \(Withdrawal\) Bill: Constitutional Change and Legal Continuity’](#), U.K. Const. L. Blog (18th Jul 2017)

See also T. Khaitan, [‘A Constitution Protection Clause for the Great Repeal Bill?’](#), U.K. Const. L. Blog (19th Jul 2017)

Scotland: Virtual and In-person Presentations from CALC colleagues!

After hearing so many fantastic presentations at this year's CALC conference Andy Beattie, Chief Parliamentary Counsel in Scotland, decided it would be a good idea to try and find a new way to share some of them with drafters in [Scotland's Parliamentary Counsel Office](#).

Undeterred by 10,000 miles and a 12 hour time difference, an international video link between Edinburgh and Canberra allowed Toni Walsh in OPC Australia to reprise her presentation on how Australian legislation which standardises regulatory powers has helped simplify the process for creating new regulatory regimes. [(Editor: Toni Walsh also very kindly reprised this presentation while recently visiting the New Zealand PCO. Western Australia Parliamentary Counsel (and CALC Council member) Geoff Lawn has also presented virtually – in Canada – a presentation he first gave to an [Australian Parliamentary Counsel's Committee](#) Conference.)]

Toni has previously spent time on secondment in Scotland and so was able to catch up with old friends. Her presentation went well, without any technical hitches, and was followed by a truly international discussion on drafting techniques involving Toni, Scottish drafters and current secondees in Edinburgh from the New Zealand PCO [(Fiona Lincoln)] and the Australian OPC [(Olivia Gossip)].

Next up, Jessica de Mounteney [(of the OPC in London)] visited Edinburgh to share her entertaining and thoughtful presentation on "Towards Equality, A Legislative Journey". Her talk was rounded off with an enlightening discussion on the challenges of drafting for regimes which require individuals to judge the merits of conflicting interests.

These mini-CALC events show that there are great opportunities for drafters to share the learning and camaraderie generated at CALC conferences with the wider drafting world, and to keep building the connections we value in the times between conferences.

[Editor: Many thanks, for this item, to Andy Beattie, Chief Parliamentary Counsel, Scotland.]

Pacific Legislative Drafters' Technical Forum, Tonga, August 23–25

The Government of Tonga, through the Attorney General's Office, with support from the Australian Attorney-General's Department and the Pacific Islands Forum Secretariat, will convene a 2017 Meeting of the Pacific Legislative Drafters' Technical Forum in Nuku'alofa, Tonga, from 23 – 25 August 2017. A CALC Council member (and regional representative for the Pacific region) is involved in the arrangements for the Forum, namely Nola Faasau (Legal Drafting Officer, Pacific Islands Forum Secretariat, Fiji).

Speakers at the Drafters' Forum are to include Telei'ai Dr. Lalotoa Mulitalo of Samoa. Dr Mulitalo's new book [Legislative Drafting in the Pacific Context](#) was launched at the University of Queensland's TC Beirne School of Law, in Queensland, Australia, on 14 July 2017.



CALC General Meeting on 30 March 2017

Minutes of meeting

Minutes of CALC General Meeting on 30 March 2017

Minutes of the CALC general meeting held on 30 March 2017, at the RACV Club (Royal Automobile Club of Victoria), 501 Bourke Street, Melbourne, Australia:

1. Opening of meeting

The meeting began at 2.03pm. It was opened by CALC President, Peter Quiggin PSM, First Parliamentary Counsel, Office of Parliamentary Counsel, Australia.

2. Apologies and proxies

Express apologies were received from the following members: Dawn Ray (Australia), Douglas Belliss (US), and John Moloney (Ireland).

A total of 104 proxies were lodged within the time limit prescribed by the CALC Constitution.

(For lists of the 13 people holding those 104 proxies, of the number that each person held, and of the holders and givers, see, at the end of these minutes, the Appendix.) Those proxies were taken as apologies.

3. Minutes of previous CALC general meeting

In the minutes of the previous general meeting held at Edinburgh on 16 April 2015, the Secretary apologised for misspelling (as Ahflors) the surname of Thomas Ahlfors (of the Department of Justice, Government of Nunavut, Canada). The President also noted the problem in formatting the bullets in the account of the Treasurer's report. It was proposed the meeting adopt, with those 2 corrections only, those minutes.

Motion – that the 2015 CALC general meeting minutes (as so corrected) be adopted:

Proposer: Theresa Johnson (Hong Kong)

Seconder: Lucy-Marsh Smith (Jersey)

Result: Carried (by acclamation)

4. President's report

The President, Peter Quiggin, summarised the report (which was provided to attendees in the conference registration pack). Among the matters noted were:

- The big event for CALC is our biennial Conference. The 2015 Conference was great. We had wonderful Conference venues, some 400 or 500 years old. Our thanks again to our Scotland hosts for their generous support and help.
- The 2013 South African Cape Town Conference made a substantial surplus even though it was budgeted to break even. The 2015 Conference in Edinburgh also achieved a surplus, in part because some venues were cheaper than expected. CALC's Council resolved to use this surplus towards costs of other Conferences, especially given this cross-subsidisation would benefit many repeat Conference attendees.
- The results of the post-2015 Conference survey were good. One identified area of concern from Edinburgh was the seating arrangements, which were affected by

the larger than expected numbers of attendees. This concern was taken into account for Melbourne, which used better “cabaret-style” seating.

- A post-Conference survey would also be done for the Melbourne Conference.
- Organisational arrangements for the current Melbourne Conference began once the venue was known. Under CALC’s Constitution, CALC’s Conferences are held in the same location as the Commonwealth Law Conference.
- CALC’s Council organised the Conference using Committees. CALC’s Vice President Katy Le Roy chaired the Programme Committee. CALC’s Treasurer John Mark Keyes chaired the Budgeting Committee. Other committees established were a social committee and a logistics committee.
- Budgeting involved Conference income in Great Britain Pounds Sterling (CALC’s banking is in Scotland) and Conference expenses in Australian dollars. Changes over the period resulted in an exchange rate differential of about £16,000 GBPS. However, CALC was in a good financial position to absorb these losses, and decisions to pre-pay Conference expenses also ensured CALC saved about £6,000 GBPS that it would otherwise have had to pay as a result of currency fluctuations.
- The Victorian OCPC was to be thanked for its help in organising the 2017 Melbourne Conference. Particular thanks were due to Victoria CPC Marina Farnan, and to Victorian OCPC staff Terry Evans and Sam Portelli.
- The Australian Office of Parliamentary Counsel in Canberra, especially Steffi Linton of that Office, were also due many thanks for their great work in organising the 2017 Melbourne Conference and related Workshop in Sydney.
- CALC’s relations with the Commonwealth Secretariat (ComSec) have continued to be good, especially thanks to CALC Council member based in London (CALC’s English agent) Adrian Hogarth, who has represented CALC, including by making presentations for CALC to Commonwealth Law Ministers. The President also represented CALC at the Commonwealth Heads of Government Meeting (CHOGM) held in Malta in 2016.
- CALC’s publications – *The Loophole* and the *CALC Newsletter* – have continued to be produced regularly. Thanks were due to the editorial board of *The Loophole*, under editor in chief John Mark Keyes, to CALC Secretary Ross Carter for editing the *CALC Newsletter*, and to all CALC members who have contributed Conference papers or other items to 1 or both publications. Members were encouraged especially to send items for the *CALC Newsletter*.

- CALC's Council established a number of working groups to progress a range of matters raised some time ago by Duncan Berry and Eamonn Moran, relating to ways in which CALC might assist less developed jurisdictions. These working groups have completed work on an online drafting advisory service, an online drafting office organisational service, and possible insurance needs and expenses of counsel providing assistance on behalf of CALC. This work and its outcomes were made known to Commonwealth Law ministers. The advisory services, although established and notified to members, have not yet been used.
- CALC's webpage has been redeveloped. It has also been separated from the webpage of the Australian Office of Parliamentary Counsel in Canberra, which has traditionally and generously hosted and supported this webpage. The new webpage at calc.ngo includes the CALC membership database and provision for conference registrations. The new webpage can be operated from other locations as CALC Council members change, with IT support from their offices and from the contracted Internet Service Provider in Canberra.
- The new CALC webpage contains a members' forum which does or may replace similar earlier members' forums hosted by the CIAJ and by Linked-In. The use of the members' forum at calc.ngo has been limited and disappointing. The new CALC Council may wish to consider use of this forum. Its limited use by CALC members may be due in part to Government confidentiality which is required to be preserved by most of CALC's members.
- The President noted that, after the 2015 general meeting in Edinburgh, the CALC Council had developed a proposal for changes to the CALC Constitution to permit electronic voting, and sample voting rules that could be adopted by the incoming CALC Council if it thinks fit. Electronic voting was not to be used for the general meeting in Melbourne, but, if adopted, with voting rules, would allow future use of electronic voting on a sound footing.
- Treasurer John Mark Keyes has continued to look into CALC's taxation status in the UK. With assistance from Laura Barrie in Edinburgh, he has consulted a tax accountant who has now obtained a ruling from Her Majesty's Revenue and Customs stating they do not require CALC to submit tax returns because its management and control is outside the UK.
- The President thanked all CALC Council members for the positive and productive approach that they have taken to all matters that have come up since the last Conference. He thanked especially those CALC Council members not standing for re-election: Don Colagiuri, Theresa Johnson, Philippe Hallée, Estelle Appiah,

Jacques Wolmarans, and Bethea Christian. A number of these members have served on the CALC Council for numerous terms and have made a substantial contribution.

- The President noted CALC's regional activities, for example, by way of a Workshop in Sri Lanka for the Asian region. He noted that, while regional activities in Australasia and Canada were strong (under the Australasian Parliamentary Counsel's Committee and the CIAJ), there is scope for CALC to explore more regional activities in other regions.
- The President thanked Louise Finucane and Fiona Ganter of the Australian Office of Parliamentary Counsel at Canberra for the work that they have done in designing and arranging the new CALC merchandise to go with and supplement CALC ties. He encouraged members to buy this merchandise.
- The President noted that CALC has continued to have a steady stream of advertisements on the CALC webpage, for example, for positions in the Falkland Islands, which the President visited, and in the Northern Territory of Australia (where a Deputy Head of Office job was being advertised). He noted that these advertisements are good value for money (at £1,200 per advert for distribution to CALC's about 1,800 members). He also noted CALC's generous and flexible approach to adverts for developing jurisdictions and the UN or similar bodies.
- The President concluded by saying he believed that the last 2 years have been successful years for CALC although there are a few areas where there is more to be done. He indicated he would be standing down after 6 years as President but was very pleased that Brenda King has agreed to take on the role and that many of the Executive and Council members have agreed to stay on. He said he believed that CALC is in good hands.

The President's report is posted at calc.ngo – with the papers from the 2017 Conference (and the other general meeting papers).

Motion – that the President's report be adopted:

Proposer: Don Colagiuri (Australia)

Seconder: Eamonn Moran (Australia)

Result: Carried (by a show of hands)

5. Secretary's report

The Secretary, Ross Carter, summarised this report, which covers about 24 months (from CALC's last general meeting, in Edinburgh, on 16 April 2015, to 14 March 2017), and was provided to attendees in the conference registration pack.

Among the matters noted were:

- CALC's Council has, as the President's and Secretary's reports show, worked well from 2015 to 2017, including via working groups set up by Katy Le Roy.
- CALC's membership has grown in numbers (up 220 members to 1842 at 14 March 2017), and CALC now has members in 94 countries (up from 85).
- CALC's new website is, thanks to the work on it led by Peter Quiggin, an excellent "shopfront" and resource hub for members – but the online Drafting Manuals and Articles and Papers could be reviewed and updated, and more use could be made of the CALC website's CALC members' forum.
- The applications process for new members through the new website is working well, with thanks to Peter Quiggin and his Australian OPC staff members, especially Steffi Linton, for all their time and effort in keeping the database up to date and helping with database queries, as well as to New Zealand PCO staff member counsel's assistant Linda Dunn, for helping to process the former emailed hard copy membership applications.
- CALC's publications continue to be developed and issued – and members are alerted to them by email, plus they are catalogued thanks to our Australian OPC colleagues Magdalene Starke and Nick Horn.
- CALC's journal *The Loophole* is edited in chief by John Mark Keyes, and its editorial board has, in the report period, been Bethea Christian, Therese Perera, and Bilika Simamba. Thanks to each of them, and to all contributors, for all editions since 2015 – CALC members are very grateful for each edition, for example, with papers from Conferences like the one in Melbourne.
- The *CALC Newsletter* is going strong thanks to generous contributions, but it is by and for CALC members, who should send or suggest material for it.
- The Secretary looked forward to working with CALC's Council for 2017–19. He also thanked Peter Quiggin for his excellent CALC Presidency from 2011–2017 – and especially his generous leadership and service and help from 2015–17.
- The Secretary also thanked Fiona Leonard and Cassie Nicholson of the New Zealand PCO for their generous support for his being CALC Secretary.

The Secretary's report is posted at calc.ngo – with the papers from the 2017 Conference (and the other general meeting papers).

Motion – that the Secretary's report be adopted:

Proposer: Peter Quiggin (Australia)

Seconder: Richard Denis (Canada)

Result: Carried (by a show of hands)

6. Treasurer's report

The Treasurer, John Mark Keyes, presented this report, which focussed especially on the CALC financial statements, 16 February 2017, as reviewed (but not audited) in the 16 March 2017 review report by McCay Duff LLP, Licensed Public Accountants, Ottawa, Ontario. (A review is less exacting than an audit, but is felt adequate.) The Treasurer's report was provided to attendees in the conference registration pack.

Matters particularly mentioned were as follows:

- the statement of financial position as at 16 February 2017; and
- the statement of operations (revenues and expenses) for the period 5 March 2015–16 February 2017 (this excludes revenues and expenses for the current 2017 Conference, as these revenues and expenses are attributable, under accounting practice, to the next accounting period); and
- the statement of cash flows for the period 5 March 2015–16 February 2017 (as noted by the President, these involve a small deficit, involving cross-subsidisation from the previous, 2013, Conference); and
- an update on CALC's taxation status in the UK, as confirmed by HMRC (with thanks also to Madeleine MacKenzie in the Scottish Office of Parliamentary Counsel) – CALC is an international organisation with ties to many jurisdictions but not based in 1 only – notably CALC's HQ is, under the CALC Constitution cl 3(a), in Canberra (but CALC's tax status in Australia has not been an issue); and
- Duncan Berry asked what was covered by the item in the financial statements relating to "deferred revenue". John Mark explained this item, and a similar one entitled "deferred expenses", reflected the expected income and expenditure for the 2017 Conference, which is outside the accounting period; and
- Lucy Marsh-Smith asked what was covered by the item in the financial statements relating to "bad debts". John Mark explained this was hidden banking charges when Conference registration payments (eg, £335) received were the full registration fee (eg, £350) minus those hidden banking charges (eg, £15). John Mark also explained that PayPal has the advantage of transparent banking charges.

The Treasurer's report and financial statements are posted at calc.ngo – with the papers from the 2017 Conference (and the other general meeting papers).

Motion – that the Treasurer’s report and the financial statements be adopted:

Proposer: Ben Piper (Australia)

Seconder: Duncan Berry (Kenya)

Result: Carried (by a show of hands)

7. Election of CALC Council

Executive members

The meeting elected unopposed the following officers:

- President: Brenda King (Northern Ireland)
Proposer: Peter Quiggin (Australia)
Seconder: Eamonn Moran (Australia)
- Vice-President: Katy Le Roy (New Zealand)
Proposer: Duane Allen (Isle of Man)
Seconder: Peter Quiggin (Australia)
- Secretary: Ross Carter (New Zealand)
Proposer: Fiona Leonard (New Zealand)
Seconder: Cassie Nicholson (New Zealand)
- Treasurer: John Mark Keyes (Canada)
Proposer: Janet Erasmus (Canada)
Seconder: Luc Gagné (Canada)

Non-executive members

Non-executive members of the Council were, under clause 9(3) of the Constitution, elected for 5 regions (Africa, Asia, Europe, the Americas, and Australasia and the Pacific).

The meeting elected unopposed the following candidate as a Council member for Asia:

- Lawrence Peng (Hong Kong)

Proposer: Eamonn Moran (Australia)

Seconder: Theresa Johnson (Hong Kong)

The meeting elected unopposed the following candidate as a Council member for the Americas:

- Michelle Daley (Cayman Islands)
Proposer: Gogontle Keneilwe Gatang (Turks and Caicos Islands)
Seconder: Albert Edwards (Belize)

The meeting elected unopposed the following candidate as a Council member for Africa:

- Dingaana Mangena (South Africa)
Proposer: Thandazile Skhosana (South Africa)
Secunder: Nelson Matibe (South Africa)

The meeting elected unopposed the following candidates as Council members for Europe:

- Lucy Marsh-Smith (Jersey)

Proposer: David Bermingham (Isle of Man)
Secunder: Karen Stephen-Dalton (Jersey)
- Adrian Hogarth (United Kingdom)

Proposer: Alex Gordon (Scotland)
Secunder: Dylan Hughes (Wales)

The meeting elected unopposed the following candidates as Council members for Australasia and the Pacific Region:

- Geoff Lawn (Australia)

Proposer: Lee Harvey (Australia)
Secunder: Alison O'Dwyer (Australia)
- Nola Fa'asau (Pacific Islands Forum Secretariat, Fiji)

Proposer: Unaisi Narawa-Daurewa (Nauru)
Secunder: Loretta Teueli (Samoa)

A nomination was sought from the meeting for a second Council member for Asia, and resulted in the election unopposed of the following candidate:

- Therese Perera (Sri Lanka)
Proposer: Duncan Berry (Kenya)
Secunder: Brenda King (Northern Ireland)

A nomination was sought from the meeting for a second Council member for the Americas, and resulted in the election unopposed of the following candidate:

- Richard Denis (Canada)
Proposer: John Mark Keyes (Canada)
Secunder: John-Charles Bélanger (Canada)

A nomination was sought from the meeting for a second Council member for Africa, and resulted in the election unopposed of the following candidate:

- Johnson OKello (Kenya)
Proposer: Duncan Berry (Kenya)
Seconder: Jeremiah Nyegenge (Kenya)

8. Proposal for constitutional change

The President, Peter Quiggin, advised members that, following discussion and undertakings at the last general meeting in 2015, CALC's Council had developed and put forward, and resolved to support, a notice of a motion to change or amend the CALC Constitution.

The main proposed change was to allow the Council to provide for electronic voting. An additional change would make it easier to call a general meeting, by reducing the number of members needed to do so (from one sixth of CALC members, which is a threshold hard to calculate given changing membership, to 100 CALC members).

Details of the changes had been emailed to members (on 15 February 2017) and at about that time also posted on CALC's webpage.

To assist with consideration of the proposed Constitutional amendments, the Council also produced a draft of the type of electoral rules that it was envisaged could be made by a future Council if a decision was made to introduce electronic voting.

Discussion was called for on these proposed changes or amendments.

Eamonn Moran (Australia) supported the changes and said CALC should look to use electronic voting as a useful way to extend participation. The President, Peter Quiggin, thanked Eamonn Moran and Duncan Berry for raising this proposal.

As no other members wished to discuss the changes, they were put to a vote.

They were carried by a majority of 168 votes (for the proposed changes) to 2 votes (against the proposed changes), with no abstentions recorded.

9. General business

The President, Peter Quiggin, called for any items of general business.

Ben Piper (Australia) moved a vote of thanks to the CALC Council, and especially to outgoing CALC President, Peter Quiggin, for his 6 years of excellent service in this key role (the motion being moved by acclamation). Peter Quiggin thanked Ben for this, adding that it had been a pleasure, and very rewarding, to interact with CALC members worldwide. Peter also said that the CALC President, and the CALC Council, had received great support from CALC members.

The President noted the host country and exact location of the next Commonwealth Law Conference – and so of the next CALC Conference – is not yet known. (The requirements of clause 12(1) of the CALC Constitution – and their interpretation for the 2015 General Meeting (held at Edinburgh, 45 minutes from the 2015 Commonwealth Law Conference held in Glasgow), should be noted.) CALC members will be advised as soon as this information becomes available to the new Council.

The President also moved a vote of thanks to Professor Dr Felix Uhlmann (Centre of Legislative Studies, University of Zurich, Switzerland) for acting as a returning officer for the ballots. This role has over many recent general meetings been generously performed by other associate members (Douglas Belliss (US), and John Moloney (Ireland)) neither of whom was able to attend the 2017 Melbourne Conference.

The outgoing President Peter Quiggin also said incoming President Brenda King and other new CALC Council members attending the Conference would (in line with clause 10(1) of CALC's Constitution) meet on 30 March 2017 and immediately after the general meeting at the RACV Club, 501 Bourke Street, Melbourne, Australia.

10. Closure of meeting

The meeting closed at about 2.40 pm.

Ross Carter
CALC Secretary
10 April 2017



Appendix – Proxies lists

Totals list

Proxy holder	Total number of proxies held
Duncan Berry	8
Ross Carter	5
Rosalind Cheek	1
Don Colagiuri	6
Michelle Daley	2
Briar Gordon	6
Amanda Lee Harvey	17
John Mark Keyes	7
Katy Le Roy	1
Lucy Ann Marsh-Smith	6
Neil Martin	6
Lawrence Peng	7
Peter Quiggin	32
Total proxies given (to 13 holders)	104

Holders and givers list

	Proxy holder	Proxy giver
1	Lucy Ann Marsh-Smith	Borrowman, Clive
2	Lucy Ann Marsh-Smith	Miller, Jacquie
3	Lucy Ann Marsh-Smith	Graves, Theresa
4	Lucy Ann Marsh-Smith	Stephen-Dalton, Karen
5	Lucy Ann Marsh-Smith	Waddington, Matthew
6	Lucy Ann Marsh-Smith	Hull, David
7	Ross Carter	Orr, Amy
8	Ross Carter	Hayes, Julia
9	Ross Carter	Leonard, Fiona
10	Katy Le Roy	Schmidt, Edgar
11	Peter Quiggin	Leigh, Meredith
12	Peter Quiggin	Lanspeary, Paul
13	Peter Quiggin	Parkhill, Claire
14	Peter Quiggin	Livermore, Bronwyn
15	Peter Quiggin	Gardiner, Steven
16	Peter Quiggin	Godfrey, Carol
17	Peter Quiggin	Murray, Bevan
18	Peter Quiggin	Byles, Keith
19	Peter Quiggin	Theodorelos, Angela
20	Peter Quiggin	Horn, Nicholas
21	Peter Quiggin	Gossip, Olivia
22	Peter Quiggin	Considine, Rebecca
23	Peter Quiggin	Quinn, Liz
24	Peter Quiggin	Millington, Paul
25	Peter Quiggin	Carde, Naomi
26	Peter Quiggin	Henzell, Linley
27	Peter Quiggin	Zeitsch, Samara
28	Peter Quiggin	Freeman, Andrew
29	Peter Quiggin	Macdonald, Madeline
30	Peter Quiggin	Buck, Donna

	Proxy holder	Proxy giver
31	Peter Quiggin	Fletcher, Michelle
32	Peter Quiggin	Sait, Matthew
33	Peter Quiggin	Brinsmead, Faye
34	Peter Quiggin	Mattingley, Stephen
35	Peter Quiggin	Ilyk, Peter
36	Peter Quiggin	Brennan, Lauren
37	Peter Quiggin	Baumgartner, Nils
38	Peter Quiggin	Butler, Justin
39	Peter Quiggin	Mobbs, Trevor
40	Peter Quiggin	Starke, Magdalene
41	Peter Quiggin	Ganter, Fiona
42	Amanda Lee Harvey	Lawn, Geoffrey Owen
43	Amanda Lee Harvey	O'Dwyer, Lee Alison
44	Amanda Lee Harvey	O'Hare, Helena
45	Amanda Lee Harvey	Guzman, Renato
46	Amanda Lee Harvey	Cuomo, Michael
47	Amanda Lee Harvey	Anderson, Daphne Mary
48	Amanda Lee Harvey	Couper, Una
49	Amanda Lee Harvey	Eldred, Rebecca
50	Amanda Lee Harvey	Corke, Alison
51	Amanda Lee Harvey	Santoro, Peta
52	Amanda Lee Harvey	Guzman, Joanne Marie
53	Amanda Lee Harvey	Jacobs, Roger
54	Amanda Lee Harvey	Stephenson, Ultan
55	Amanda Lee Harvey	Taylor, David
56	Amanda Lee Harvey	Tate, Helen
57	Amanda Lee Harvey	Drew, Chris
58	Briar Gordon	Murray, Scott
59	Briar Gordon	Marlin, Richard
60	Briar Gordon	Williams, Shane
61	Briar Gordon	Giacometti, Suzanne
62	Briar Gordon	Owen, Peter
63	Briar Gordon	Jamieson, Ian
64	John Mark Keyes	Erasmus, Janet E
65	John Mark Keyes	Verhulst, Sherie
66	John Mark Keyes	Mortensen, Melanie
67	John Mark Keyes	Fyfe, Alex
68	John Mark Keyes	Weinhold, Stephanie
69	John Mark Keyes	Swystun, Corinne
70	John Mark Keyes	Fehr, Rodney
71	Amanda Lee Harvey	Greg Calcutt
72	Duncan Berry	John F Wilson
73	Don Colagiuri	Soula Papadopoulos
74	Don Colagiuri	Maplesden, Anne-Marie
75	Don Colagiuri	Hartley, Abbie
76	Don Colagiuri	Gray, Catherine
77	Don Colagiuri	Hughes Gross, Francis-Joseph
78	Don Colagiuri	Chanin, Jessica
79	Peter Quiggin	Parven, Khaleda
80	Duncan Berry	Easterbrook, Colin James
81	Michelle Daley	Gatang, Gogontle

	Proxy holder	Proxy giver
82	Michelle Daley	Downes, Desiree
83	Rosalind Cheek	Chitsiku, Tsitsi
84	Duncan Berry	Butt, Peter
85	Ross Carter	Macasaet, Manuel
86	Ross Carter	Humphrey, Richard
87	Duncan Berry	Kosar, William Edward
88	Duncan Berry	Scott, Jamie
89	Duncan Berry	Griffey, Royston
90	Duncan Berry	Morris, David
91	Duncan Berry	Stargardt, Julian
92	Neil Martin	Madoc-Jones, David Huw
93	Neil Martin	Evans, Nia
94	Neil Martin	Macnamara, Clemency
95	Neil Martin	Hughes, Dylan
96	Neil Martin	Williams, Rhian
97	Neil Martin	Griffiths, Ffion
98	Lawrence Peng	Lam, Michael
99	Lawrence Peng	Hui, Frances
100	Lawrence Peng	Dissanayake, Nilmini
101	Lawrence Peng	Liu, Shandy Wing Man
102	Lawrence Peng	Allen, Lai
103	Lawrence Peng	Ng, Lonnie WC
104	Lawrence Peng	Fung-King, Fanny Ip



New CALC members

New members since February 2017

The following have been recorded as members of CALC (a) since the publication of the last edition of the *CALC Newsletter* (in February 2017), and (b) as at 13 July 2017.

Name	Country
Smart, Holly	Australia
Winter, Ariarne	Australia
Belle, Shawn	Barbados
John, Joelle	Barbados
Courtemanche, Ariane	Canada
McKendy, Jennifer	Canada
Moore, Chelsea	Canada
Kufuor, Gladys	Ghana
Srivastava, Sanjeev Kumar	India
Whelan, Sorcha	Ireland
Omondi, Eddie	Kenya
Lin, Mark	New Zealand
Ibironke-Duyile, Oladipo	Nigeria
Jejelola, Folajimi	Nigeria
Jayawardana, Udara	Sri Lanka
Angura, James Peter	Uganda
Bagaga, Ronald	Uganda
Costelloe, St John	United Kingdom
Davis, Peter David	United Kingdom
Brodrick, Christell	United States
Pojanowski, Jeffrey	United States
Butler, Justin	Australia
Srivastava, Suneet Kashyap	India
Omondi, Fredrick	Kenya
Stewart, Tiffany	Jamaica
Kapei, Beatrice	Kenya
Cheruiyot, Carolyne	Kenya
Tay, Lee Ly	Malaysia
Paterson, Fay	New Zealand

Name	Country
Keys, David	United Kingdom
Graham, Jaimie	Canada
Sinclair, Kerri	Canada
Abdul-Lateef, Abdul-Hakeem	Nigeria
Dauda, Michael Habila	Nigeria
Nyiutsa, Matthew	Nigeria
Ahmed, Sheikh Sarfraz	Pakistan
Roschel Ridley, Roschel	United States
Savins, Heidi	Australia
Watson, Valrie	Jamaica
Matagaro, Lillian	Kenya
Ojaomo, Oluwatosin	Nigeria
Gichana, Philip Nyakundi	Kenya
Piccirilli, Giovanni	Italy
Kuduva, Hilma	Namibia
Abdul Wahid, Ubaidullah	Kuwait
Lugtig, Sarah	Canada
Cormack, Delia	New Zealand
Timini, Melinda Zimiri	Papua New Guinea

Secretary Contact Details

To contact CALC's Secretary, Ross Carter, about membership or any other CALC matters (for example, to suggest or send items for this *CALC Newsletter*), email: ross.carter@pco.govt.nz



NEW LEGISLATION. Much Needed Legislation.
REFORMATIVE LEGISLATION. ADVANCED LEGISLATION.

(Old New Zealand newspaper headlines — courtesy of [Papers Past](#))