



Newsletter

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In this issue—

CALC President’s Report—May 2022	2
Dennis Robert Murphy QC (1940–2022), New South Wales Parliamentary Counsel (1982–2001)	5
Dennis Murphy QC on privative clauses – a tongue-in-cheek memory from 2005	12
News from Jersey: Jersey strengthens links with OPC in London / 30 th anniversary celebrations	14
Items of interest (including from New Zealand, United Kingdom, and Western Australia)	17
New CALC Secretary from July 2022	26
Stop press: How do I get ready to e-vote in CALC’s 2022 elections?	27
New CALC members	29
Secretary’s contact details (until July 2022).....	30



Dennis Murphy QC (CALC President 1996-1999), Dame Brenda King CB (CALC President 2017-2019), and
Geoff Lawn (CALC President 2019-2022)

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

CALC President's Report—May 2022



President
Commonwealth Association of Legislative Counsel

Dear CALC members

Greetings

Greetings once again to you all.

I thank your forever energetic Secretary, Ross Carter, for producing another interesting *CALC Newsletter*.

This *Newsletter* includes a tribute to the late Dennis Murphy QC. Dennis was a great supporter of CALC, serving as its President between 1996 to 1999. He was an exceptional drafter, and contributed enormously to the craft of legislative drafting in Australia and the Commonwealth.

CALC virtual conference: 18 and 19 July 2022

As announced in the February 2022 *CALC Newsletter*, the 2022 CALC conference will be virtual only. To make all sessions as accessible as possible to all CALC members across the time zones that span the Commonwealth, the conference will run over 2 days in 3 streams (Africa and Europe; Asia, Australasia and the Pacific; the Americas).

The content for each stream will not be identical. Some papers for a particular stream will be presented live by presenters from the relevant time zones for that stream. Some papers will be pre-recorded and played as part of a session for each of the 3 streams. And some papers presented live for a particular stream will be recorded and played as a session for the other streams.

All the conference proceedings will be recorded and made available online after the conference.

It is also hoped that one of the sessions for each stream will have an interactive “social” flavour, to make up in a small way for the inability of CALC members to get together in person at this conference.

Many thanks to everyone who responded to the call for papers for the conference. The conference program committee, led by Katy Le Roy, is putting the conference program together, and it promises to be an eclectic mix of sessions that provide relevant, useful and stimulating content for all CALC members. The program will be circulated next month.

The general meeting will be held on day 1 of the conference.

Given that this is a virtual conference, and the elections for the CALC Council are being held electronically before the conference, the format of the general meeting will be a bit different.

The reports from the Secretary, Treasurer and President will be made available to CALC members before the conference. The results of the elections will also be announced at the conference.

CALC Council elections

Ross Carter notified all CALC members by email on 18 April 2022 that the 2022 elections for the CALC Council will be held by electronic voting only.

Nominations for election to the CALC Council close on 12 June 2022. There will be a considerable turnover of members of the CALC Council at these elections, as many existing Council members are not standing for re-election. I encourage anyone who wishes to contribute to CALC's important work in promoting cooperation in matters of professional interest among legislative drafters to consider nominating.

Closer to voting week, CALC members will be emailed a reminder to vote and information about how to vote. Since the elections will be conducted by personal electronic voting, with no proxy voting, I encourage all CALC members to vote in the elections.

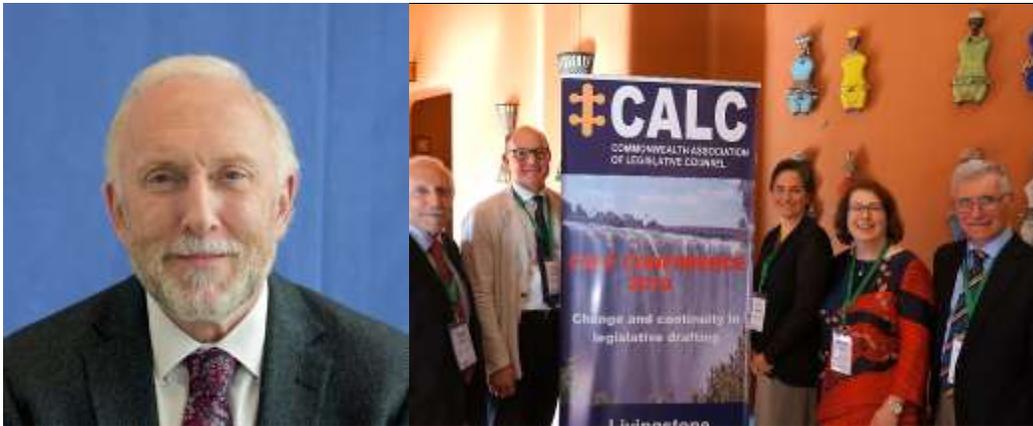
I especially thank the CALC Council Governance Working Group, chaired by Ross Carter, for their work in investigating options for using electronic voting for CALC Council elections, and recommending the system (and the necessary changes to the CALC Election Rules) that the CALC Council has endorsed for the 2022 elections.

Last words

Finally, this is my last President's message for a *CALC Newsletter*. I am not seeking re-election at the next CALC Council elections. I will have more to say in my President's report to the conference. In the meantime, I express my sincere gratitude to the current CALC Council members for their tremendous work over the last 3 years.

Best wishes to all CALC members and their families, friends, and colleagues.

Stay safe.



Geoff Lawn

CALC President, May 2022



Dennis Robert Murphy QC (1940–2022), New South Wales Parliamentary Counsel (1982–2001)



Dennis Robert Murphy

(1982–2001) Championed the integrated drafting and publishing role of the Office, and its independence. He consolidated the early use of plain language and the effective application of information technology.

A screenshot of an obituary for Dennis Robert Murphy from The Sydney Morning Herald. The header includes "HERALD TRIBUTES" and "The Sydney Morning Herald". The main title is "DENNIS ROBERT MURPHY". Below the title is a "BACK" button. The obituary text includes: "MURPHY Dennis Robert QC", "25.7.1940 - 29.4.2022", "Parliamentary Counsel of NSW 1982-2001", a family list, a short biography, funeral details for Friday 6th May at Christ Church St Laurence, and contact information for Lady Rose Funerals. At the bottom, there is a "Listen to Obituary" button and social media icons. The footer shows "Published 4 May 2022" and "The Sydney Morning Herald".

Dennis Murphy QC – Eulogy delivered at his funeral by Don Colagiuri SC

I have been asked by the family to say something about Dennis's professional life.

The profession of writing our laws (legislative drafting) was his life's work.

Dennis started work in the Public Trust Office on 14 December 1959. He joined the NSW Parliamentary Draftsman's office (now called the Parliamentary Counsel's Office) as a clerk on 25 January 1960, studied law and became a legal officer in the office in 1965.

His unique skills and his dedication resulted in his appointment to senior roles in the Office and he went on to become the Parliamentary Counsel of NSW and head of the Office. He held the office of Parliamentary Counsel for a record-breaking 19 years – from 1982 until 2001.

During his time as head of the NSW office, Dennis also played an important leadership role in the drafting of legislation across Australia and in English speaking countries around the world.

When I succeeded him as the Parliamentary Counsel, he continued to make an invaluable contribution to the work of the office as a part-time contract drafter working from home for another 16 years.

I worked in the office with Dennis from 1974 and can attest to the high regard of all those who dealt with him. In recent days many people who worked with him have mentioned his dedication to his work, his kindness and his willingness to help them in their work.

The work of parliamentary counsel is not widely known in the general community, but, as Dennis would often observe, it is at the heart of government. It combines precise written skills and a sound general knowledge of all areas of the law. It also involves developing the details of legislative proposals and identifying options to deal with relevant issues and then helping Ministers and senior officers to make the best decisions on the available options.

Dennis personally drafted a huge amount of legislation during his career – far too numerous to go through. However, some that come to mind include the new planning legislation in 1979; legislation establishing the Independent Commission Against Corruption; legislation on National parks and wildlife; and legislation on State-owned corporations.

The distinguishing feature of the legislation he drafted was its elegance – Hilary Penfold, a chief Commonwealth Parliamentary Counsel, mentioned to me that she read his Independent Commission Against Corruption legislation on a trip to the USA and said it was among the most elegant pieces of legislation she had read.

I might briefly touch on some highlights of his professional life:

1. After becoming a barrister, he was appointed in 1983 as a Queen’s Counsel in recognition of his expertise and standing as a government lawyer. Roger Wilkins, the long-serving head of the NSW Cabinet Office and later head of the Commonwealth Attorney General’s Department, observed when I told him that Dennis had passed away - Dennis was an institution in the legal scene.
2. Dennis took the Parliamentary Counsel’s Office from a small office in the Attorney General’s Department to a separate agency under the Premier – he oversaw major changes that created a highly efficient office that integrated the work of lawyers and editors in the drafting and publishing of Acts, regulations, and planning instruments. Dennis made arrangements to ensure the very highest standards of accuracy in the work produced by the office.
3. Dennis anticipated technological change, and NSW took the lead in Australia in using computers for the drafting of legislation and its printing and publication. It started in the 1980’s, when Dennis took us all down to the Sydney Technical College to learn how to type. He oversaw the development of sophisticated computer drafting tools and one of the first websites for free public access to legislation – developments that were copied in other jurisdictions, here and overseas.

4. During the 19 years he was the NSW Parliamentary Counsel, Dennis was also the chair of the Australasian Parliamentary Counsels' Committee, comprising the chief Parliamentary Counsel of the Commonwealth of Australia, the States and Territories of Australia, and New Zealand. He ran the Secretariat of that Committee – organizing and progressing the important work of the Committee in settling the terms of national uniform laws and in improving drafting standards and the management of drafting offices.

The Commonwealth and NSW often led the push for national consistent laws (particularly those affecting the economy) and Dennis had a pivotal role in the drafting of those laws. For instance, Dennis took a lead role in drafting and getting interstate colleagues to agree on mutual recognition legislation (to remove barriers between the States and Territories on the selling of goods and the practice of professions). He played a major role in the drafting of the Corporations Law (when we had to move office in 2005 there were several trolley loads to carry the boxes of Dennis's papers on the Corporations Law).

Dennis formed a close working relationship with Ian Turnbull, the then head of the Commonwealth Parliamentary Counsel's office, in developing drafting standards and getting agreement behind the scenes between the Commonwealth and the States. That close relationship continued with successive Commonwealth Parliamentary Counsel, including the recently retired Peter Quiggin, who is here today.

It was not always easy to get agreement among the drafters from the different States and Territories. I remember on one occasion, Dennis sent me (with instructions) to represent him at a drafters' meeting in Adelaide on the uniform credit law – the brilliant but eccentric then chief Parliamentary Counsel of SA, Geoff Hackett-Jones, expressed his displeasure with my instructions from Dennis, declaring that there Dennis sat in Sydney issuing instructions, the Byzantium Emperor of the East.

5. Legislative drafters in the English speaking world have an organization, called the Commonwealth Association of Legislative Counsel which, through conferences and a magazine called *The Loophole*, fosters legislative drafting across jurisdictions. Dennis supported the organization and its work over the years and became its President between 1996 to 1999.

6. One of Dennis's many achievements in drafting style was the adoption of gender-neutral language in legislation. Since Magna Carta, legislation in the English-speaking world used male pronouns and words such as workmen and chairman. The legal profession is very conservative, and it was Dennis who was the first to achieve reform in Australia and adopt gender-neutral language.
7. Another important achievement was the adoption of plain language in the drafting of legislation. In Dennis's time legislation had become very complex and often incomprehensible to the general public. Dennis took the lead in Australia. He became a member of the board of the centre for plain language at Sydney University. He was persistent in the office and the wider drafting community in advocating for plain language. He set up a group in the office of himself and 3 other senior drafters (known as the gang of 4) who interrogated poor drafters about their draft legislation – if something was written in a convoluted fashion, Dennis would often ask “what would Mrs Murphy make of this?”.

After he retired as Parliamentary Counsel, Dennis continued to contribute by working on draft legislation from home on a part-time basis. Departmental officers were always delighted to have Dennis as their drafter.

Although Ann dissuaded Dennis from taking a computer to work on drafts on their many overseas cruises, I was lucky on one occasion that stormy weather on their return to Australia meant that he was able to find a computer and finalise the mammoth 500-page national law on the regulation of the legal profession.

In his professional life, Dennis's skills as a legislative drafter, his leadership and fierce defence of the independence and professionalism of the Parliamentary Counsel's Office, his willingness to help others and his integrity were widely recognized.

He was the doyen of legislative drafters in Australia.

Vale Dennis Robert Murphy.

The Sydney Morning Herald

Public Guestbook

I have known Dennis since 1973. He will be remembered as both a good man and as a highly competent lawyer dedicated to the drafting of legislation.

0:08 / 0:08

Walter ILES, Q.C., Chief Parliamentary Counsel, New Zealand, 1975-1996. *2 weeks ago*

Dear Ann and family, my sincere condolences for your loss. A good man who will be mourned by his loved ones.

I worked in the Parliamentary Counsel's Office from 1980 to 2001 under Dennis' stewardship, till my retirement in 2011. The time Dennis was PC was a seminal time in the Office's history, with the closure of the Government Printing Office and the advent of technology. A challenging and exciting time. Thank you for the opportunity to have been part of it. Dennis was a strong leader and extremely talented draftsman. His influence is obvious in the number of skilled and hard working people he surrounded himself with. Vale Dennis.

Listen to Tribute

Pamela Williams *2 weeks ago*

Walter Iles, CMG, QC, has also kindly provided these 2 anecdotes in respect of Dennis Murphy:

On one occasion, when I went into Dennis's office, he was doing something on a computer. I asked him what he was doing. He replied "I have been told that this computer can be used by any idiot. I am testing it."

On another occasion, at a meeting in Melbourne, Rowena Armstrong, who was the host, asked each member to say whether he or she would be bringing a partner to the dinner to be held that evening.

Dennis immediately asked her, in perfect Australian, whether her partner would be coming to the dinner.

She replied, in perfect English, "No, Dennis, he will not be able to attend, he has to attend a meeting of bell-ringers." (Rowena's husband was Bishop James Grant, who was Dean of Melbourne.)

For a 'History of the [Australasian] Parliamentary Counsel's Committee [(PCC)]', written by Dennis Murphy (with assistance from Rowena Armstrong (Victoria) and Marion Pascoe (NSW)) for *PC News and Views*, inaugural edition, date unspecified, see the following link:

http://www.pcc.gov.au/uniform/appendix2_history.pdf.

Dennis Murphy QC also contributed these articles and tributes to *The Loophole* and *CALC Newsletter*:

- 'The printing of legislation: recent developments in New South Wales', [The Loophole, Nov. 1990 \(3.1\)](#), in 'Papers', p 3/5s.
- 'Bill review—a question of quality', [The Loophole, Feb. 1996](#), p 11.
- 'Vale Harry Rossiter QC AO—former New South Wales Parliamentary Counsel', [Newsletter, Nov. 2010](#), p 50.
- 'Tom Willis—Former New South Wales Deputy Parliamentary Counsel', [Newsletter, Mar. 2010](#), p 8.

Dennis Murphy QC was elected President of CALC in 1996 at the CALC Conference in Vancouver, Canada (on 26 and 27 August 1996), and served in that role until 1999, when succeeded by Hilary Penfold QC (elected at the Conference in Petalang Jaya, Malaysia, in September 1999): [Walter Iles QC, "Short History of the Commonwealth Association of Legislative Counsel" \(2011.1, February 2011\) The Loophole 10](#) at 15.

Dennis Murphy QC on privative clauses – a tongue-in-cheek memory from 2005

In 2005, Dennis Murphy QC judged a drafting competition at the Fourth Australasian Drafting Conference hosted in Sydney by Don Colagiuri SC and his hospitable colleagues at the NSW PCO. Dennis’s decision and comments, as judge of the competition, included the following remarks:

- Your conference organisers thought it would be a good idea to hold a drafting competition. Entrants were required to produce “a draft privative clause”. So far so good—but typically, no further instructions were provided to give any kind of guidance whatever. This was a sensible decision as it turned out: it allowed the competitors to exercise their creative minds to the full. Indeed, as the Justices in [the Plaintiff S157 case \[\(2003\) 211 CLR 476\]](#) at [60] remarked, “there can be no general rule as to the meaning or effect of privative clauses”.
- There were 12 entries, and the judge has carefully considered them all. As you know, the identities of the entrants have been concealed from the judge. All the entries were of a high standard, covering a wide range of detail, and in many cases bringing a humorous approach to the task. I will share some of these with you in a few moments. We must thank all those who were brave enough to make the effort to enter the competition. . . .

After an exhaustive examination of all entries, it became clear that the overall winner should be the entrant who produced the most “effective” provision. The winner clearly wins on the grounds of effectiveness and the draft runs to 3 full pages, complete with 10 definitions. It might be that long, but I liked it. The thoroughness of the drafting was impressive, even overwhelming, and its legislative outcome precise. Whether it would ever be enacted is another matter.

I am pleased to announce that the winning entry is from the super-effective category ... number 6. [Here is an extract from the relevant 2005 edition of *PC News & Views*:]

2005 Drafting Competition



The prize for overall winner was awarded to Ross Carter.

A drafting competition was conducted in association with the conference and the winners of the competition were announced during the official dinner on Thursday. The aim of the competition was to draft the most effective privative clause. Each entry was to contain a draft privative clause and could be accompanied by an explanation of not more than 300 words.

Dennis Murphy judged the competition and

was so impressed with the standard that he divided the entries into the following three categories:

1. Mainstream

The finalists were Glen Gibbs (Tas. OPC) and Anne Treleaven (Cwlth OPC).

2. Super-effective

The finalists were Ross Carter (NZ PCO) and Peter Williams (NZ PCO).

3. Whimsical

The finalists were George Tanner (NZ PCO) and Anne Michell (SA OPC).

The overall winner was Ross Carter. The runners-up were Glen Gibbs and George Tanner.

Dennis Murphy QC kindly emailed me congratulations:

Dear Ross,

Congratulations on winning the drafting competition. I appreciated your entry as a piece of classic drafting and well worthy of winning the competition - though I still haven't finally decided whether your tongue was resting gently against your cheek when you prepared and submitted the draft. I hope George [Tanner QC, New Zealand Chief Parliamentary Counsel,] isn't too miffed with being a runner-up!

Thanks and congratulations again.

Kind regards,

Dennis Murphy

Here is my email in reply:

Dear Dennis

Thanks very much indeed for your kind email and congratulations.

I was surprised and delighted that my entry won the competition.

As you know, there was great legislative drafting experience among the (11?) other entrants (eg, from the NZ PCO alone, Peter Williams and George Tanner).

As well, the length and overwhelming determination of my clause made me think it would attract (justified?) amusement, if not outright derision! (I definitely agree with your remark that my clause is unlikely ever to be enacted!)

In any case, I was delighted to have been singled out for favourable comment by so experienced and distinguished a legislative drafter, and I look forward to reading your remarks on all the entries. (Greg Calcutt kindly read them out at the conference dinner, but only some of them were audible then!) Robyn Hodge said all entries will be published (perhaps in *PC News & Views*), along with your remarks on them.

George Tanner is (typically) not too miffed. He has joked that we should perhaps stage a celebration parade along Lambton Quay! I can assure you that, unlike numbers of other successful NZ competitors returning from abroad, we were not mobbed by well-wishers, eager to hold our trophies, at Wellington Airport!

In my view, the competition was just one excellent element of a highly rewarding, superbly organised, and hugely enjoyable conference run by Don Colagiuri and his team at the New South Wales Parliamentary Counsel's Office. As George Tanner said at the end of the conference, NSW's successor as host of the conference certainly has a hard act to follow.

Thanks and kind regards

Ross Carter
Parliamentary Counsel
Parliamentary Counsel Office



News from Jersey

Jersey strengthens links with OPC in London

Jersey continues to forge closer links with the Office of Parliamentary Counsel in London. Last year the office included Jennifer Cartwright while she was on a career break and this year Edward Burrows is working for Jersey under a similar arrangement. Like Jennifer, Ed works remotely, though in his case he beams in from various parts of Africa and occasionally Europe. Jennifer drafted the changes to Jersey's electoral system ready for the General Election in June and Ed leads on financial services matters.

The Jersey team is also delighted that their first-ever trainee, Advocate Jackie Harris, is taking up a secondment to OPC in July. Lucy Marsh-Smith, head of the Jersey office is very grateful to Dame Elizabeth Gardiner and her colleagues for enabling this to happen. Jackie will be working half time from London and half from Jersey and is hugely looking forward to her new role.

Remote working has become a feature of the Jersey office since Covid made recruitment to the Island difficult in the short term. The Jersey Office was therefore pleased also to welcome Charlotte Martin to the team, recruited from the UK SI hub, also working remotely. Jane Reed has recently retired from the office after 10 years' excellent service. New Zealander Zoe Rillstone is now a permanent member of the office and Jersey is now recruiting a second trainee from the local population.



Jersey drafters old and new come together in person. From left to right: Matthew Waddington, Jackie Harris, Ed Burrows, Zoe Rillstone, Jennifer Cartwright, Charlotte Martin and Lucy Marsh-Smith.

30th anniversary celebrations



On 24th March 2022 the Legislative Drafting Office in Jersey celebrated its 30th anniversary with an event attended by office members past and present, local colleagues and visiting drafters from Northern Ireland, the Irish Republic, Guernsey and the Isle of Man, with others unable to attend listening on-line. The anniversary celebrated the split of the posts of Law Draftsman and Greffier of the States when Geoff Coppock became Greffier and Bill McGregor Law Draftsman, though today the office is part of the Greffe, Jersey's parliamentary office. The event highlighted the developments in legislative drafting in Jersey over that time, particularly in using new technology, and the hard work of

the team recently through Covid-19 and the preparations for this year's election (with nearly a year's worth of Laws lodged in the first quarter of this year).

The Attorney General for Jersey, Mark Temple QC, introduced the keynote speaker CALC immediate past President Dame Brenda King, the Attorney General for Northern Ireland and former First Legislative Counsel. In her talk, entitled "Legislative Stewardship, good government and the role of legislative counsel", she outlined the role of legislative counsel in promoting high quality legislation and keeping the statute book coherent and well written.



This was followed by a message from current Greffier of the States, Mark Egan, who emphasised the importance of the work of the LDO to Government. He said he was proud to be associated with the office, particularly during the Covid pandemic when the drafters were a real credit to the Island.

Lucy Marsh-Smith outlined the key achievements of the LDO over the past 30 years, including the development of the electronic statute book and annual revision of the legislation through to more recent changes which included keeping the website permanently up to date online and developing a trainee programme to enable local locals to be given the necessary experience to become drafters. Advocate Jackie Harris, the first ever trainee drafter in Jersey then explained to the audience how much there was to learn, even for an experienced lawyer, to be proficient in legislative drafting.

Heather Mason, Legislation Editor, presented the work of the office's support team in developing an editorial function to improve the quality of complete drafts and to consolidate law changes for loading on the website. Legislation Services Consultant Kate Hannah outlined how enhanced use of technology has greatly improved efficiency, and the use of a wiki to preserve know how and a new document management system which provides vital data on progress of draft legislation. Drafter Zoe Rillstone outlined the application that she and Kate had developed as part of a course they took remotely through Flinders University in Australia on coding the law. It is designed to rationalise and speed up instructing the drafter on fees increases and won the 2021 Jersey One Gov Innovation award. Looking further to the future, the presentations finished with office deputy head Matthew Waddington, well known to CALC members through his ground-breaking work on Rules as Code, who explained the potential the use of coding in developing both legislation and the policy underpinning it.

The event was followed by a dinner and the following day Jersey hosted their Irish colleagues for coffee and a chat in the Office.





The Jersey team and their guests at the celebration dinner



Jersey drafters and editorial staff (including remote attendance) with Evelyn Robinson and Margaret Kelleher over from Dublin and Brenda King.

Items of interest

New Zealand: Parliament protest ends with clashes

[Plans to erect Parliamentary fence, as protest lingers | Stuff.co.nz](#)

[Parliament grounds 'reclaimed': Police operation ends 23-day protest | RNZ News](#)

[Fires and clashes break out at New Zealand parliament as police move in to clear protest | New Zealand | The Guardian](#)

Fires and clashes break out at New Zealand parliament as police move in to clear protest

Clashes erupt between police in riot-gear and protesters as Māori leaders denounce violence at demonstrations that have run for weeks



■ Fires and clashes break out at Covid protest outside New Zealand parliament - video

Eva Corlett in Wellington

✉ @evacorlett

Wed 2 Mar 2022 01:47 GMT



Fires burned across parliament grounds, and violent clashes broke out between protesters and police at an anti-vaccine mandate demonstration on New Zealand's parliament grounds, in extraordinary and chaotic scenes rarely seen in the country.

After nearly four weeks of impasse between the protesters and police at parliament, hundreds of officers in riot gear stormed the occupation on Wednesday morning, and by the afternoon had gained significant ground, tearing down tents, towing vehicles and making 38 arrests. The police said protesters used fire extinguishers, paint-filled projectiles, homemade plywood shields and pitchforks as weapons and a cord was set up as a trip wire.

Speaking at parliament today, prime minister Jacinda Ardern said "the police expected there would be hostility, resistance and violence ... while they had planned for it, it is another thing entirely to witness it."

She said a number of police officers had been injured, and the fires had destroyed, among other things, a children's playground which is open to the public on parliament grounds. "I was both angry and also deeply saddened to see parliament, your parliament, our parliament desecrated in that way," she said.

Thursday, 3 March 2022 - Volume 757

[Home](#) » [Parliamentary Business](#) » [Hansard \(Debates\)](#) » [Read Hansard Reports](#)

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MOTIONS

New Zealand Parliament—Occupation of Grounds

Rt Hon JACINDA ARDERN (Prime Minister): I move, *That this House recognise the safe restoration of Parliament's grounds and the selfless service of our Police, Fire and Emergency Services, Wellington Free Ambulance, Parliament Security, and many others, in returning Parliament to the people.*

Yesterday, the Police restored order on Parliament's grounds after an illegal occupation that lasted 23 days. As a result of that operation, 89 arrests were made, 40 police officers were injured, and 8 were admitted to hospital. In total, 600 police staff were involved in yesterday's events. There were 50 firefighters on site alongside Wellington Free Ambulance, who were treating those who were injured. And Parliament security once again supported all those involved, and have stood alongside the New Zealand Police throughout the occupation.

To each of you, we say thank you. You were there throughout these events at a great risk to yourselves. Many of you were abused, some were injured, but you put your personal safety aside in order to look after others. And for that, we are very grateful.

To Wellingtonians, I am sorry for what you have had to endure, but I thank you for your resilience. I hope your sense of safety and confidence has been restored.

[Parliament grounds reopened after protesters' destruction | RNZ News](#)

[NZ's 'disinformation dozen' | RNZ](#)

[Speaker Trevor Mallard withdraws five trespass orders relating to Parliament protest | RNZ News](#)

[Budget 2022 Includes Funding For New Parliament Buildings | Scoop News](#)

United Kingdom: Parliament fire risk and renovation

[Parliament could burn down any day, says Andrea Leadsom - BBC News](#)

Parliament could burn down any day, says Andrea Leadsom

🕒 22 hours ago



Parliament could burn down "any day", former minister Andrea Leadsom has warned as she urged MPs to "get on" with the renovation of the building.

Speaking to the BBC, she said the Houses of Parliament could see a fire **similar to the one that damaged** the Notre-Dame cathedral in Paris.

Parliament needs urgent repair work that could cost between £7bn and £13bn.

A recent report said costs could be kept down if MPs and peers left while the building work was carried out.

However, some politicians have expressed concern about moving out and plans to relocate to Richmond House in central London were vetoed.

In 2019 a major fire engulfed Notre-Dame, destroying the 850-year-old building's Gothic spire and roof.

United Kingdom: Extrinsic context in interpretation

- See [LHPGT v Minister of State for Housing \[2022\] EWHC 829 \(Admin\)](#) on use of pre-legislative material (minutes of a Committee of the Promoter of a private Bill) to confirm meaning - see [77] and [79] – “The Trust produced evidence from Dr Gerhold, a former House of Commons Clerk [(1978)-(2012)] and a Fellow of the Royal Historical Society and the Society of Antiquaries. In his witness statement, he stated that he was familiar with the Parliamentary process and with archival work. He explained that he undertook research on the history of the Act using the London Metropolitan Archives and the Parliamentary Archives. . . No party submitted before me that the Court could not have regard to the material produced by Dr Gerhold. The context of the Act as a whole includes its legal, social and historical context (*Principles of Statutory Construction: Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020) (11.1, 11.2 and 11.3)).”
- At [105], Mrs Justice Thornton says: “My conclusions on the construction of section 8 of the Act, do not rely on the pre-legislative material. However, to the extent the Court is able to rely on the pre-legislative material to elucidate meaning (in addition to context) then, in my view, it provides strong support for the interpretation I have arrived at on the basis of the wording of section 8.”
- See also <https://rozenberg.substack.com/p/wrong-place-right-ruling> (Judge blocks memorial to the dead after historian brings the law to life).

United Kingdom: Court judgments made accessible

See <https://www.gov.uk/government/news/court-judgments-made-accessible-to-all-at-the-national-archives> and <https://caselaw.nationalarchives.gov.uk/>.

New Zealand: Declarations of Inconsistency

The second reading of the [New Zealand Bill of Rights \(Declarations of Inconsistency\) Amendment Bill](#) was completed during an extension, from 9am to 1pm on 12 May 2022, of the House’s 11 May 2022 sitting. The video clip of the Attorney’s remarks on 2R is at this link: <https://ondemand.parliament.nz/parliament-tv-on-demand/?itemId=225269>.

For developments in related recent case law, see—

- [Make It 16 Incorporated v Attorney-General \[2022\] NZSC 47 \[13 April 2022\]](#) (Leave to appeal to the NZSC is granted (*Make It 16 Inc v Attorney-General* [2021] NZCA 681). The approved question for the appeal is whether the Court of Appeal was correct to dismiss the appeal.).
- *Bouwer v Police* [2022] NZCA 166 per Clifford J for Brown, Clifford and Courtney JJ (leave to appeal to NZCA denied – proposed appeal to NZCA not an appropriate context for determination of question as to jurisdiction to make DoI in criminal appellate proceedings, despite remarks of Clifford and Goddard JJ in *Fitzgerald v R* [2020] NZCA 292 at [87] and [88]).

Western Australia: ExCo Meetings held virtually

In Western Australia, Executive Council (ExCo) meetings have been able to be held virtually. That is because of an amendment (in enduring, technology-neutral, terms) made in 2020 to the [Constitution Acts Amendment Act 1899](#) (WA):

Constitution Acts Amendment Act 1899
Executive Part II

s. 45A

45A. Executive Council meetings

- (1) In this section —
remote communication, in relation to a meeting, means any technology that enables all the persons taking part in the meeting to communicate with each other at the same time in a reasonably continuous way.
- (2) A meeting of the Executive Council may be held —
 - (a) in person; or
 - (b) using remote communication; or
 - (c) by a mix of those 2 ways of meeting.
- (3) A person (including the Governor or any member who is presiding) who participates in a meeting of the Executive Council using remote communication is taken to be present at the meeting.
- (4) This section applies despite anything in any Letters Patent relating to the office of Governor.

[Section 45A inserted: No. 34 of 2020 s. 84.]

Section 45A was inserted, on 12 September 2020, by section 84 of the [COVID-19 Response and Economic Recovery Omnibus Act 2020 \(WA\)](#). Compare the [Letters Patent Constituting the Office of Governor-General of New Zealand \(SR 1983/225\)](#), Clause 9 (Quorum of Executive Council), as amended, on 22 August 2006, by [clause 2 of the Letters Patent \(2006\) Amending Letters Patent Constituting the Office of Governor-General of New Zealand \(SR 2006/219\)](#) (“except that in a situation of urgency or emergency, members may be present by any method of communication that allows each member to participate effectively during the whole of the meeting”).

United Kingdom: gender-neutral language in legislation

In 2021, during the passage of the [Ministerial and Other Maternity Allowances Act](#) through the United Kingdom Parliament, concern was expressed by members of both Houses about the Bill's use of gender-neutral language in the context of pregnancy and childbirth. As a result, drafting changes were made to the Bill during its passage, and the Government undertook to carry out a review to explore the various approaches to drafting legislation on subjects that prompt these sorts of questions around language.

Following the review, on 23 May 2022 the United Kingdom Government made a statement to Parliament setting out their position <https://questions-statements.parliament.uk/written-statements/detail/2022-05-23/hcws47>. The statement endorses and builds upon the approach of successive UK Governments to the use of gender-neutral language in legislation.

The statement explains:

"In 2007, as recorded in the Official Report, 8 March 2007, Col. 146WS, the then (Labour) Government stated their intention to draft legislation to avoid rigid stereotypes that only men could hold positions of authority. The approach adopted was to avoid the use of male pronouns on their own in contexts where a reference to women and men is intended. This Government agrees with that approach. This statement addresses the separate issues of when it is appropriate to use gendered nouns like 'woman' and 'mother'.

Each Bill is brought forward on its own merits and is drafted in a way to ensure legal clarity and in order to fulfil the Bill's policy intent. Ministers believe it can be appropriate to use sex-specific language in legislation where such language delivers the desired policy outcome. This may include, for example, legislation which relates to the needs of men and women respectively, or areas of policy where biological sex is a relevant or pertinent concept."



Here at OPC, we are now updating our published drafting guidance to reflect the position set out in the ministerial statement.

It has been clear from my discussions with a number of CALC colleagues over the last 12 months that this is a live issue in a number of jurisdictions. So, I thought you would be interested to see how this issue has been approached by the UK Government.

Elizabeth Gardiner DCB QC (Hon) | First Parliamentary Counsel |
Office of the Parliamentary Counsel | Cabinet Office, London |

(Editor: Compare Australian Senate motion, 16 March 2021: [May 2021 CALC Newsletter](#) p 53.)

Regulatory Institute: Model Laws Library project

The Regulatory Institute recently started researching and developing model laws in response to the problem of incomplete laws in many policy fields.

Since we started operations in 2016, we found that, for every law we researched, roughly one in a hundred would be fairly complete. This is woefully low, and prompted us to establish a library of model laws.

Where complete and politically unbiased model laws exist, the Model Laws Library would catalogue and highlight a few possibilities for improvement.

Where complete model laws do not exist, the Regulatory Institute would create them.

Currently, we are researching, analysing and cataloguing all the model laws we can find.

We have already published [model laws](#) in policy fields where we find quite incomplete laws, including:

- [Model Law on Alcohol, Cannabis and Tobacco products](#)
- [Model Law on Emergency Management](#)
- [Model Law on Artificial Intelligence](#)
- [Model Law on Environmental Liability](#)

The Model Laws Library is expected to be published in 2023 and, from then onwards, to be continuously updated and improved, subject to continuity of donor funding.

The purpose of this Model Laws Library is to help regulatory practitioners, be they working for administrations or parliaments, to improve the quality of laws. The model laws developed by the Regulatory Institute are drafted in a way that triggers more conscious choices and can be used as a checklist, raw material or a basis for the development of an adapted law.



We urge readers of this fine newsletter to take a look at our project and give us feedback and suggestions.

Valerie Thomas -- manager@regulatoryinstitute.org
General Manager, Regulatory Institute, Lisbon and Brussels
Executive Secretary, Regulatory Institute ASBL, Brussels
www.howtoregulate.org

(Editor: model laws for Australian national uniform legislation, prepared by the Australasian Parliamentary Counsel's Committee, are available at [National Uniform Legislation | Australasian Parliamentary Counsel's Committee \(pcc.gov.au\)](#).)

United Kingdom: Lady Arden's 2021 Renton Lecture: comments on drafting practice and Schedules

Lady Arden of Heswall, Justice of the Supreme Court, gave the Statute Law Society Annual Lord Renton Lecture on 25 November 2021, at 6pm UK time. The lecture was entitled “What makes good statute law: a judge's view”. An on-demand recording of this lecture is available at this link: [Statute Law Society Annual Lord Renton Lecture – YouTube](#). A published version of her speech now appears as [an advance article on the Statute Law Review website](#).

Lady Arden discusses, among other matters, [R \(Maughan\) v. Oxfordshire Coroner \[2020\] UKSC 46](#), [2021] AC 454. There, the Court decided the standard of proof for the short-form verdict of suicide. The standard of proof was described in [a footnote to a statutory form used for recording the results of an inquest](#). The question was whether the footnote codified the common law about the standard of proof – putting it on a statutory footing which would preclude the courts from developing the common law in future – or whether it was merely descriptive of the common law as it was then understood to be, allowing the courts to develop the common law in future. The majority held that the note in the form in the schedule to the rules could not change the common law. Lady Arden, in her judgment, with which Lord Wilson agreed, gave as subsidiary reason that it would be contrary to drafting conventions for a schedule to be used for changing a rule of law without some indication that that was so. Lady Arden mentioned Lord Thring's noting, in his *Practical Legislation* (1877), a drafting convention that matters of principle should not be put in schedules, and related discussion in CALC member Diggory Bailey's article “Legislative drafting practice and statutory interpretation: a postscript” [2021] Public Law 687–690.

Mr Diggory Bailey, Parliamentary Counsel, wrote a helpful article in the journal *Public Law*.²⁴ He took the view that Lord Thring's instruction on the matter of schedules represented a narrow and out-moded description of their use today. I would agree that Lord Thring was not laying down an immutable rule. But, looking at the monumental Companies Act 1862, which he drafted, it seems that Lord Thring understood that schedules could be used in the way Mr Bailey describes in his article. Lord Thring was thus not laying down a hard and fast rule about schedules or saying that they could never include points of principle.

Mr Bailey accepted that it was easy to see how Note (iii) containing an operative legislative proposition was not viewed as decisive in the circumstances of the case. Mr Bailey makes the wise observation that the interpretative significance attached to a provision in a given context will vary according to its nature and function, and that the user of the form would expect the notes to be providing guidance, not introducing a significant legal change. The important point as it seems to me that it is not that there is suggested to be a rule that significant legal points should not be put into a schedule but that the drafter or promoter of the legislation should appreciate that, because of the importance of the nature and function of the provision in its context, statutory drafting which departs from what a reader would expect heightens the need for the language to signal the departure.

United Kingdom: Diggory Bailey on “Settled practice in statutory interpretation”



The November 2021 edition of the Cambridge Law Journal also includes a very interesting article by Diggory Bailey on “Settled practice in statutory interpretation”. Here is the abstract:

What use (if any) may be made of settled practice in statutory interpretation and what are the potential justifications for its use? Debate about the use of settled practice is often framed in terms of a tension between legal certainty, on the one hand, and legal correctness in giving effect to Parliament's will, on the other. That account presents a false choice. This article explores the use of settled practice and argues that it has a legitimate role to play in statutory interpretation and one that is consistent with the prevailing approach of the courts to statutory interpretation.

This article can be read for free at [this link](#).

New CALC Secretary from July 2022

I am not seeking re-election as CALC Secretary at the next CALC Council elections.

I will have more to say in my Secretary's report to the CALC conference, 18 and 19 July 2022.

In the meantime, like outgoing CALC President, Geoff Lawn, I am very grateful to the current CALC Council members for their tremendous work over the last 3 years.

I am also very grateful to CALC Council members, and other CALC members, who have worked with me, and supported me, in my role as CALC Secretary 2015–2022.

My special thanks also to Fiona Leonard and Cassie Nicholson, Chief Parliamentary Counsel at New Zealand's PCO, who supported very strongly my work for CALC in this period (2015–2022).

It has been a privilege and a pleasure, in this role, to serve CALC, and interact with CALC members.

I will work closely with the new CALC Secretary to facilitate their transition into that role.

CALC remains a strong, and immensely worthwhile, professional association. I will surely support, in other ways, the achievement and carrying out of CALC's vitally important aims and activities.

Ross Carter, CALC Secretary (2015–2022), Wellington, New Zealand



Stop press:

How do I get ready to e-vote in CALC's elections 2022?

Elections – voting by personal electronic vote only in 2022 – approach

Council has agreed that any needed elections for 2022 may be conducted electronically, and so by personal electronic vote only.

Council has also made election conduct e-voting rules.

The Constitution and election rules (those rules as amended on 15 April 2022 to include the 2022 election conduct e-voting rules) are available at calc.ngo/constitution-and-rules.

Any needed ballots will be conducted using an online SurveyMonkey survey the electronic link to which is accessible to members through the Members' Area at the CALC website.

How do I get ready to e-vote in CALC's elections 2022?

To prepare for your personal e-voting, check you can log in and, once logged in, click on and go to the Members' Area, at the CALC website --- www.calc.ngo.



Members' Area

To be sent a new password via email, click on "Forgot your password?".

Forgot your password?

To update your details (for example, your email address), click on the online registration form at [Membership | Commonwealth Association of Legislative Counsel \(calc.ngo\)](http://Membership | Commonwealth Association of Legislative Counsel (calc.ngo)), enter the updated information in that membership form, and save the changes.

use our [online registration form](#).

If you need help with any of the above, please email Ross.Carter@pco.govt.nz.

Timetable

Any needed ballots will be conducted in line with the following timetable:

Date	Event
3 months before 18 April 2022	Last day for Secretary to give notice of meeting.
6 weeks before 5 June 2022	Last day for member to give notice of special resolution (if any), which Secretary must notify at least 1 month before meeting.
5 weeks before 12 June 2022	Last day for receipt by Secretary of nominations for offices.
5 weeks before 12 June 2022	Nominations and supporting information to be put on the CALC website under CALC Election Rule 2(1) and (2). If insufficient nominees under CALC Election Rule 3, that rule is modified so further nominations are called for immediately (not at the meeting itself) and no later than 3 weeks before meeting.
1 month before 18 June 2022	Last day for Council to give notice of special resolutions (if any) and for notification of any special resolutions moved by a member.
3 weeks before 26 June 2022	Last day for receipt by Secretary of nominations for offices called for under CALC Election Rule 3 (as modified). CALC Election Rule 2 applies to these nominations.
3 weeks before 27 June 2022 to 3 July 2022	Voting period (1 week).
2 weeks before 4 July 2022 to 17 July 2022	Vote checking period (2 weeks).
Date of meeting 18 July 2022	Meeting – checked results announced.

Closer to voting week (27 June 2022 to 3 July 2022), CALC members will be emailed—

- a reminder to vote; and
- information about how to cast a personal electronic vote.

New CALC members

New members since 6 February 2022

The following have been recorded as members of CALC (a) since 6 February 2022 (the date when new members were last listed in the *CALC Newsletter* (February 2022 edition, as published on 7 February 2022), and (b) as at 23 May 2022.

Name	Country
Bryant, Ella	Australia
Marley, Timothy	Australia
Noonan, Riley	Australia
Aslan, Arabelle	Canada
Amesame, Mawuse Evelyn	Ghana
Krishnakumar, Tarun	India
Muralidharan, T S	India
Sheridan, Keith	Ireland
Kabaila, Edna Kasichana	Kenya
Kamunde, Nelly	Kenya
Grundy, Camilla	United Kingdom
Williams, Llinos	United Kingdom
Mwera, Frida	Tanzania
Simmons, Peter	Palau
Chuma, Thandi	Botswana
Muir, Pamela	Canada
Sparling, Millie	Canada
Lam, Vonda Hei Man	Hong Kong
Prendergast, Emma	Ireland
Okirig, Paul	Uganda
Jeng, Ndey Ngoneh	Gambia
Asiedu- Asante, Adjoa Ago	Ghana
Sargent, Ronetta	Guyana
Coombs, Ann-Marie	British Virgin Islands
Khanijo, Kritika	WHO
Tabitha, Oduor	None specified
Wainwright, Julian	Australia
Ticky, Tiffany	Canada
Ali, Zakiyyah	Fiji
Rup, Siksha Seemal	Fiji
Ablordeppey, Isaac T.K.	Ghana
Onyekwelu, Chukwuma	Nigeria

Name	Country
Nassoro, Salehe	Tanzania
Rigsby, Akeila	Montserrat
Farouk Dawaki, Aisha	Nigeria
Onyekwelu, Chukwuma	Nigeria
Saleem, Muhammad	Pakistan
Munjoma, Natasha	Zimbabwe



Secretary Contact Details (until July 2022)

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



REFORMATIVE LEGISLATION. NEW LEGISLATION.

Much Needed Legislation. ADVANCED LEGISLATION.

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