



# Newsletter

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



Sir John William Salmond, KC (3 December 1862– 19 September 1924)  
New Zealand lawyer, university professor, law draftsman, solicitor general, judge  
<https://teara.govt.nz/en/biographies/3s1/salmond-john-william>

## CALC President's Report—March 2018



President  
Commonwealth Association of Legislative Counsel



### 2019 CALC Conference – Livingstone, Zambia

I emailed members in January to announce the venue for our 2019 conference – Livingstone, Zambia. The conference is the largest event organised by CALC and is held, in accordance with CALC's Constitution, in the same place as the [Commonwealth Lawyers Association \(CLA\) conference](#) (usually during the week before that conference).

As soon as the venue and dates for the CLA conference were announced, I contacted the hotels in Livingstone large enough to accommodate our conference. The most suitable hotel was in the process of providing a proposal and quote for the conference when the CLA changed the dates for their conference, so that they now coincide with the proposed dates for the CALC conference. The CLA proposes to hold their conference in the same hotel that we had intended to use. We were not informed about this but picked up the information in the course of a Commonwealth Secretariat meeting. This means that we will have to consider alternative dates (most likely 3 to 5 April 2019) and, possibly, alternative hotels and/or venues. I have asked the hotel to provide a quote and proposal for the week commencing 3 April 2019 and will keep members informed about developments. Emails sent to you by me will come, as usual, from the New Zealand drafting office (thanks to Ross) where our IT system is now based.

The Council has been forging ahead with preparations for the conference. The following working groups have been established:

1. **Conference Programme Working Group** – chaired by Katy Le Roy, members: Geoff Lawn, Lucy Marsh-Smith, Johnson Okello, Therese Perera, and Brenda King:
2. **Logistics Working Group** – chaired by Brenda King, members: Michelle Daley, Nola Faassau, Johnson Okello, Lawrence Peng, John Mark Keys, and Ross Carter:
3. **Governance Working Group** – which will organise the General Meeting of Members, voting, etc. – chaired by Ross Carter, members: Adrian Hogarth and Brenda King:
4. **Finance Working Group** – chaired by John Mark Keys, members: Adrian Hogarth and Brenda King:
5. **Social Activities Working Group** – chaired by Brenda King, members Nola Faassau, Dingaana Mangena, Michelle Daley and Lucy Marsh-Smith.

I have asked members of the local drafting office in Lusaka if they could help us by forming a local working group to assist with preparations and am hopeful that they will be as enthusiastic as we are!

We will take account of feedback from the last conference in Melbourne when organising the conference and if members have any further suggestions for the 2019 conference, these would be very welcome.

I will be visiting Livingstone from 22 to 28 April 2018, and will report back on my findings.

## Drafting conferences – London, Canberra, Washington, and Jersey

One of the top priorities for CALC's President and Council during our 2-year tenure is the involvement of CALC in regional activities.

This edition includes items on the PCC/CALC (Pacific) Regional Conference in Canberra, 4-6 April 2018, and [CALC \(Europe\) Regional Conference in Jersey](#), 20-21 September 2018. Can I encourage CALC members to forward proposals for papers for the Jersey Conference to Lucy Marsh-Smith as soon as possible, so as to allow us to settle the programme for the Jersey Conference?

I am looking forward to attending the [Fifth International Conference on Legislation and Law Reform](#) in Washington, DC, USA, on 12 and 13 April 2018, and to seeing many of our CALC members there (eg, scheduled presenters, Estelle Appiah and Eamonn Moran QC).

The Office of the Parliamentary Counsel in London will host a forum for UK drafters on 26 and 27 March 2018. 37 drafters from across the UK will visit OPC for two days of drafting discussions and debate, and we hope to include an article on this in the next (second for 2018) edition of the *CALC Newsletter*.

## Commonwealth Secretariat activities



I have provided input to some papers for the forthcoming Commonwealth Heads of Government Meeting (CHOGM) which have rule of law themes.

Adrian attends Commonwealth Secretariat meetings on our behalf and I am very grateful to him for this. Being based in Belfast means that I can attend at least some of the meetings with the Secretariat. The Secretariat has now launched the [Commonwealth Legislative Drafting Manual](#) on its [Office of Civil and Criminal Justice Reform website](#) which is available to read and download online. Many thanks to all the members of the previous CALC Council who provided comments on early drafts of the manual.

## Office of Civil and Criminal Justice Reform



I have uploaded copies of *The Loophole* and *CALC Newsletter* to the Commonwealth Secretariat's internal huddle site for accredited organisations so that others can share the information carefully compiled by John Mark and Ross.

### Links to other organisations

We want to build on our links with organisations which have interests similar to those of CALC.

Ross has helpfully included a section on the [CALC website](#) with links to a number of [related associations](#). If the Commonwealth Secretariat includes a link to the CALC site on its [Office of Civil and Criminal Justice Reform site](#), this should provide a fairly comprehensive cluster of online information on drafting and related issues.



Many thanks to Ross for producing another informative, and colourful issue of the *CALC Newsletter* with his usual enthusiasm, professionalism and energy!



**Brenda King**

CALC President, March 2018



**Baroness Scotland of Asthal PC QC, Secretary-General of the Commonwealth of Nations**



## CALC Conference — April 2019, Livingstone, Zambia



The 2019 CALC Conference will be held in Livingstone, Zambia, in April 2019.

- Preparations for the 2019 CALC Conference have begun.
- As soon as further details are available, they will be published at [calc.ngo/conferences](http://calc.ngo/conferences).



## PCC / CALC (Pacific) Regional Conference – “Drafting for the 21<sup>st</sup> Century” – 4 to 6 April 2018 Canberra, Australia



This joint (Australasian Parliamentary Counsels' Committee (PCC) and CALC (Pacific) Regional) Conference will be held early next month (April 2018), in Canberra, Australia. The theme is “Drafting for the 21st Century”. The program includes an exciting array of presentations, plus social events, and a range of weekend activities in the Australian Capital Territory (ACT).

The Gang-gang Cockatoo is a distinctive and appealing bird that is the faunal emblem for the Australian Capital Territory (ACT), and has been incorporated into the logo for the conference. A full report on the Conference will be in the next (2<sup>nd</sup> for 2018) edition of the *CALC Newsletter*.



## Parliamentary Counsel's Office

## **CALC (Europe) Regional Conference — “Delivering Brexit: Legislative Sprint or Marathon?” 20 and 21 September 2018, Jersey, UK**



### **Delivering Brexit: Legislative Marathon or Sprint – Conference Jersey 20-21 September 2018**

A reminder that this first CALC Europe region conference is to take place in Jersey mid-September 2018 (20 and 21 September 2018).

Related optional social activities will take place in the weekend 22 and 23 September 2018.

The call for papers and conference themes are posted at [calc.ngo/conferences](http://calc.ngo/conferences).

Anyone interested in presenting a paper on 1 or more of the conference themes should send—

--a brief abstract; and

--a short biography

to Lucy Marsh-Smith at [L.MarshSmith@gov.je](mailto:L.MarshSmith@gov.je) by **31 March 2018**.





## Items of interest

### ***New Zealand: Declarations of inconsistency (of legislation with rights in NZBoRA 1990) – NZSC Taylor case appeal – Amendment Bill***



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

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."

On 30 August 2017, the New Zealand Supreme Court (William Young, O'Regan and Ellen France JJ) granted the Attorney-General and Arthur William Taylor leave to appeal:

[2017] NZSC 131. The approved questions are whether:

- (i) The Court of Appeal was correct to make a declaration of inconsistency (DoI); and
- (ii) Mr Taylor has standing (the NZCA held he did not).

The NZSC was scheduled to hear the appeal on 21 and 22 November 2017, and granted intervener status to the New Zealand Human Rights Commission (HRC).

However, on 16 November 2017, the NZSC indicated the hearing of the appeal has been adjourned until 6 and 7 March 2018.

At the Supreme Court's hearing, the Solicitor-General, Una Jagose QC, reportedly said that—

... it was an important moment being the first time a court had made such a declaration so the outcome was crucial and without precedent ...

Jagose said a person should not be able to come to the court to raise a question for which the court could not make a decision other than to dismiss the case.

She said there were no remedies available to a person through the court so they should go on and go the Human Rights Commission.

"It is bad for our democratic system for the Court to take power it does not have to criticise the legislation," she said.

Chief Justice Dame Sian Elias said she had no problem with Parliament being the correct place to make assessments of inconsistency, but if it was in breach it could be a question of law and would be valid and helpful.

The court is also to hear from Taylor, who has appealed whether he had standing in the case after the Court of Appeal said he was not representative of prisoners, since he could not vote even before the [Electoral Act 1993] was amended [in 2010] to include [a voting ban for] all prisoners.

Taylor told the court that the High Court judge had very carefully considered the case and determined that the only remedy available was the declaration.

"Courts make declarations every day of the week."

"Supreme Court to decide if they can say prisoners voting ban breaches Bill of Rights", *Dominion-Post* 6 March 2018 <https://www.stuff.co.nz/national/crime/101988794/supreme-court-to-decide-if-they-can-say-prisoners-voting-ban-breaches-bill-of-rights>



Una Jagose QC, Solicitor-General



Arthur William Taylor



Andrew Butler (HRC Counsel)

On 26 February 2018, Cabinet earlier approved in principle an amendment to the New Zealand Bill of Rights Act 1990 to provide a statutory power for the senior courts to make declarations of inconsistency under the Act, and to require Parliament to respond. Justice Minister Hon Andrew Little and Attorney-General Hon David Parker [on 26 February 2018] welcomed this decision:

Andrew Little [said], “Declarations of inconsistency can perform an important function by informing Parliament that the senior courts consider an Act of Parliament to be inconsistent with the fundamental human rights affirmed in the Bill of Rights Act.

“The Government supports the senior courts making declarations of inconsistency where there is a legislative power. As there is currently no explicit power in the Bill of Rights Act, amending the Act will allow for this.”

David Parker [said]: “Parliament occasionally passes laws inconsistent with the Bill Of Rights Act. Currently there is no established route for Parliament to revisit the issue.

“The change proposed is to amend the Act to confer an express power for the courts to make a declaration of inconsistency. That would trigger reconsideration of the issue by Parliament.”

The Courts would not be able to strike down statutory law and Parliament would retain its sovereignty. After reconsideration Parliament could amend, repeal or stick with the law as originally passed.

The Government will carry out further work to enable the change proposed, while protecting Parliament’s sovereignty.

<https://www.beehive.govt.nz/release/government-provide-greater-protection-rights-under-nz-bill-rights-act-1990>

Speaking at the Prime Minister’s post-Cabinet press conference on 26 February 2018, the Attorney-General, Hon David Parker, said:

... we’re doing it in a way that preserves the sovereignty of Parliament in the end to have the final word, but creates the opportunity for Parliament to review whether it’s gone too far at times. We’ve got a wonderfully flexible system in New Zealand; we’re not encumbered by a written constitution or complicated by upper and lower Houses of Parliament. The risk is that when you have a system like that, which serves New Zealand very, very well, we’re at the forefront of recognising human rights and civil liberties around the world, nevertheless the risk is there that at times we can just be a bit pre-emptory in Parliament and with a rush of blood can authorise legislation which is inconsistent with the Bill of Rights. This provides a mechanism for Parliament to reconsider that. It was recommended for consideration by the Constitutional Review Committee a couple of years ago [ 2013: [www.ourconstitution.org.nz/NZ-Bill-of-Rights-Act-1990](http://www.ourconstitution.org.nz/NZ-Bill-of-Rights-Act-1990) ] and we’re picking up that recommendation, which will be achieved by a combination of amendment to the Bill of Rights to confer the Statutory Jurisdiction on the courts to make declarations of inconsistency, plus some provisions inside standing orders so that we achieve that outcome, which is reconsideration of the underlying issue.

On 27 February 2018, Mr Speaker (Hon Trevor Mallard) determined a related general question of privilege arises, and should be referred to the Privileges Committee for consideration, saying: “The provision of a statutory basis for the courts to make findings of inconsistency and the way that Parliament might respond to such findings would have an impact on the relationship between courts and Parliament.” Mr Speaker indicated that the Committee could formulate recommendations for the House that will provide guidance for the future.

## ***European Union (Withdrawal) Bill – at Lords Committee stage***

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:

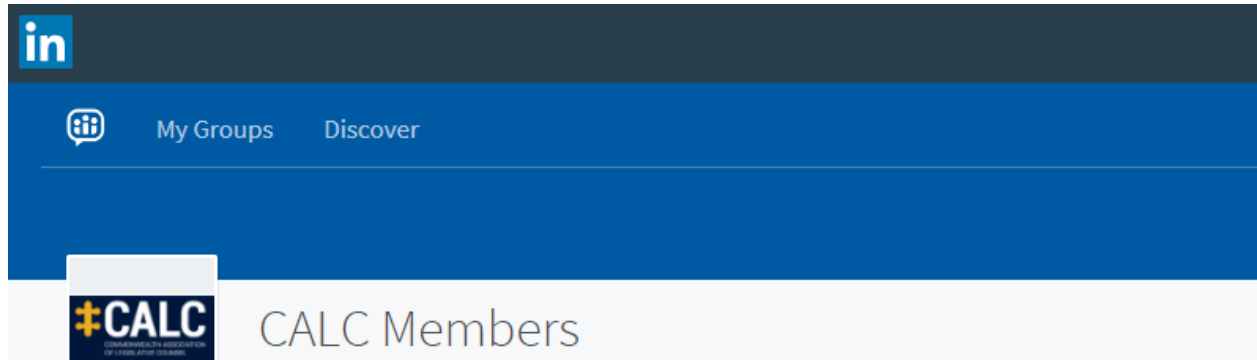
- provisions on retention (savings and incorporation) of existing EU law; and
- provisions on main (instrument-making) powers in connection with withdrawal; and
- provisions on devolution; and
- provisions on financial and other matters (eg, publication and rules of evidence); and
- general and final 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).

On 14 March 2018, the Bill was still in its House of Lords Committee stage. This stage has included debating amendments about topics that include the status and amendability of retained EU law, the status of European Court of Justice (ECJ) judgments after the UK's "exit", powers to make secondary legislation that amends UK primary legislation to address "deficiencies" (for example, perhaps modifying the Scotland Act 1998 and the Government of Wales Act 2006 without the consent of the devolved legislatures), the terms of the UK's withdrawal from the EU, and requirements for the UK Parliament to approve of the exact terms of a proposed withdrawal agreement. Related Bills have been proposed in the devolved legislatures in Scotland and Wales, reflecting effects on devolution, and raising questions of devolved legislative competence that could involve a pre-enactment reference to the UKSC. For some commentary, see these blogs:

- Sir Stephen Laws: Giving "Deemed" Domestic Law Status to Retained EU Law -- U.K. Const. L. Blog (28th Feb. 2018) (available at <https://ukconstitutionallaw.org/>)
- P. Craig, 'European Union (Withdrawal) Bill: Legal Status and Effect of Retained Law', U.K. Const. L. Blog (8th Mar. 2018) (available at <https://ukconstitutionallaw.org/>)
- Christopher McCorkindale and Aileen McHarg: Continuity and Confusion: Legislating for Brexit in Scotland and Wales (Part I) U.K. Const. L. Blog (6th Mar. 2018) and (Part II) (7th Mar. 2018) (both Parts are available at <https://ukconstitutionallaw.org/>)



## Statutory Interpretation items at CALC members LinkedIn group



CALC members Diggory Bailey (UK OPC, London), and Luke Norbury (OLC of NI, Belfast), are the joint editors (along with Professor David Feldman QC (Hon) FBA as a consultant editor) of the latest (7<sup>th</sup>, 2017) edition of the famous work *Bennion on Statutory Interpretation*.

Diggory and Luke have been composing useful items on statutory interpretation and posting them at the CALC members LinkedIn group: [www.linkedin.com/groups/4049736](http://www.linkedin.com/groups/4049736)

The items have, to date, covered these 4 topics:

- **Application of legislation to the Crown** – posted by Luke on 20 December 2017, and referring to *R (Black) v Secretary of State for Justice* [2017] UKSC 81: [www.linkedin.com/pulse/application-legislation-crown-luke-norbury/](http://www.linkedin.com/pulse/application-legislation-crown-luke-norbury/)
- **Referential legislation** – posted by Diggory on 25 January 2018, and referring to *R (Gibson) v Secretary of State for Justice* [2018] UKSC 2: [www.linkedin.com/pulse/referential-legislation-diggory-bailey/](http://www.linkedin.com/pulse/referential-legislation-diggory-bailey/)
- **When does statute oust inherent jurisdiction?** – posted by Diggory on 8 February 2018, and referring to *Anderson v Spencer* [2018] EWCA Civ 100: [www.linkedin.com/pulse/when-does-statute-oust-inherent-jurisdiction-diggory-bailey/](http://www.linkedin.com/pulse/when-does-statute-oust-inherent-jurisdiction-diggory-bailey/)
- **Statutory interpretation: use of later legislation and settled practice** – posted by Diggory on 27 February 2018, and referring to *Knight v Goulandris* [2018] EWCA Civ 237: [www.linkedin.com/pulse/statutory-interpretation-use-later-legislation-settled-diggory-bailey/](http://www.linkedin.com/pulse/statutory-interpretation-use-later-legislation-settled-diggory-bailey/)



## **New Zealand: Chamberlain v Ministry of Health [2018] NZCA 8**

The Court of Appeal on 7 February 2018 gave judgment in this case about payments to spouses or resident family members for provision of support services to people with disabilities.

Until recently, the Ministry of Health refused these payments. In the *Atkinson* litigation, this was found to contravene s 19 of NZBORA (family status): *Atkinson v Ministry of Health* [2010] NZHRRT 1, (2010) 8 HRNZ 902; aff'd (2010) 9 HRNZ 47 (HC) and [2012] NZCA 184, [2012] 3 NZLR 456.

The New Zealand Public Health and Disability Amendment Act 2000, Part 4A (inserted in 2013), recognised eligibility of certain family members to enter into Crown funding agreements to provide support. Shane Chamberlain is a middle-aged man with profound intellectual disability. His mother Diane Moody has been his fulltime carer for almost all his life.

The Ministry funds Shane for 17 hours per week for his mother's care, plus funding for a third party for additional services. Shane and his mother claimed he is entitled to up to 40 hours per week. Key to the case was that Mrs Moody performs intermittent but recurring services which require her constant presence.

The claim was unsuccessful in the High Court. The key question on appeal was whether funding eligibility is limited to discrete services, or whether broader services such as safety supervision and intermittent care can be included.

It involved interpretation of a family care policy which, under the Act, has "direct force of law".

The NZCA noted the effect on interpretation of New Zealand's international obligations, especially the Convention on the Rights of Persons with Disabilities, art 19: "Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement."

The CA held that the Ministry failed to take into account the "intermittent type of personal care" performed by Mrs Moody to meet Shane's immediate intermittent needs as they arise at any hour of the day. A formulaic approach to assessment is, the Court held, inconsistent with the spirit and purpose of the policy: "What is required is a fair estimate of the essential care which Mrs Moody provides and which the Policy is intended to support".

The Court was very critical of the complexity of the statutory instruments governing funding eligibility for disability support services, referring in a postscript to "... our unease, which is shared by Palmer J, about the complexity of the statutory instruments governing funding eligibility for disability support services. They verge on the impenetrable, especially for a lay person, and have not been revised or updated to take into account the significant change brought about by pt 4A. We hope that the Ministry is able to find an effective means of streamlining the regime, thereby rendering it accessible for the people who need it most and those who care for them.":

[www.courtsofnz.govt.nz/cases/chamberlain-v-minister-of-health/@images/fileDecision?r=932.534840869](http://www.courtsofnz.govt.nz/cases/chamberlain-v-minister-of-health/@images/fileDecision?r=932.534840869)

## ***Bermuda: repeal of same sex marriage law and new Domestic Partnership Act 2018 – subject to Supreme Court challenge***

Bermudans were granted the right to same-sex marriages after a Supreme Court ruling in May 2017: <http://www.royalgazette.com/assets/pdf/RG36691455.pdf>.

The ruling was disagreed with by a majority of voting Bermudans in a 2016 referendum (invalid because only 46.89% -- so less than 50% -- of Bermudans voted). So Bermuda's [Domestic Partnership Act 2018](#), assented to by His Excellency the Governor Mr John Rankin, CMG, on 7 February 2018, provides domestic partnerships open to same sex couples (and also to heterosexual couples), and also provides as follows:

### *Provisions relating to marriage*

#### **Clarification of the law of marriage**

53 Notwithstanding anything in the Human Rights Act 1981, any other provision of law or the judgment of the Supreme Court in *Godwin and DeRoche v The Registrar General and others* delivered on 5 May 2017, a marriage is void unless the parties are respectively male and female.

#### **Saving for certain same sex marriages**

54 (1) In this section—

"pre-commencement same sex marriage" means a marriage entered into under the Marriage Act 1944 or the Maritime Marriage Act 1999 during the transitional period by two people of the same sex;

"relevant law" has the meaning given in section 36(2);

"transitional period" means the period beginning on 5 May 2017 (the date of the Supreme Court judgment in *Godwin and DeRoche v The Registrar General and others*) and ending immediately before the commencement date.

(2) Notwithstanding sections 48(2) and 53, nothing in this Act affects the validity of a pre-commencement same sex marriage.

(3) Notwithstanding sections 38, 48(2) and 53, nothing in this Act prevents the recognition in Bermuda of a marriage lawfully entered into and registered in an overseas jurisdiction under the relevant law before or during the transitional period by two people of the same sex if—

(a) both parties met all requirements necessary to ensure the formal validity of the marriage under the relevant law; and

(b) at the time of the marriage each party was domiciled in Bermuda or had capacity to enter into the marriage under the place of his domicile,

provided that both parties were over 18 years of age at the time of the marriage.

(4) In relation to—

(a) a pre-commencement same sex marriage; and

(b) a marriage falling within subsection (3),

any reference in any enactment to marriage, the parties to marriage or the dissolution of marriage shall be read with the necessary modifications.

(5) No action shall lie against any person for any act or omission before the commencement date relating to any failure to recognise a marriage falling within subsection (3).

The developments in Bermuda were controversial even in the UK:

Following the announcement, MPs from across the Commons floor demanded to know why Boris Johnson, the Foreign Secretary, had approved the move.

Harriett Baldwin, a foreign office minister, told MPs that the government was “obviously disappointed” with the decision but that British overseas territories were “separate, self-governing jurisdictions with their own democratically elected representatives that have the right to self-government”.

She said: “The secretary of state decided that in these circumstances it would not be appropriate to use this power to block legislation, which can only be used where there is a legal or constitutional basis for doing so, and even only in exceptional circumstances.”

Ms Baldwin added that the new civil partnership law met European human rights standards.

Walton Brown, Bermuda's minister of home affairs, whose ruling PLP party proposed the act, said he was pleased with the decision.

"The British government recognises that this is a local government decision," Mr Brown said, adding that the act struck a compromise by "restating that marriage must be between a male and a female while at the same time recognising and protecting the rights of same-sex couples.":

[www.telegraph.co.uk/news/2018/02/08/bermuda-reverses-same-sex-marriage-legislation-world-first/](http://www.telegraph.co.uk/news/2018/02/08/bermuda-reverses-same-sex-marriage-legislation-world-first/)

Bermuda's Domestic Partnership Act 2018 comes into operation (s 57) on such day as the Minister may appoint by notice published in the *Gazette*. As at 28 February 2018, no commencement date for the Act had, however, been appointed.

A date has been set, however, for a Supreme Court challenge against the new law:

Chief Justice Ian Kawaley will hear the civil case brought by gay Bermudian Rod Ferguson, 38, against Attorney-General Kathy Lynn Simmons on May 21 and 22.

Mr Ferguson's lawsuit, filed on February 15, claims that the new Domestic Partnership Act is unconstitutional and will subject gay people to “inhuman or degrading treatment” by denying them the right to wed.

He is seeking to have the legislation declared void by the court on the basis that it is inconsistent with his fundamental rights as set out in the Constitution.

[www.royalgazette.com/same-sex-marriage/article/20180227/may-date-for-domestic-partnership-act-appeal](http://www.royalgazette.com/same-sex-marriage/article/20180227/may-date-for-domestic-partnership-act-appeal)



## ***Scotland and New Zealand: Child Poverty: ASP and New Zealand Bill***

The Child Poverty (Scotland) Act 2017 (2017 asp 6) was passed by the Scottish Parliament on 8 November 2017, and received Royal Assent on 18 December 2017:

[www.legislation.gov.uk/asp/2017/6/contents/enacted](http://www.legislation.gov.uk/asp/2017/6/contents/enacted)



The Bill for the Act was promoted to ensure use of a set of income-based targets. (The Welfare Reform and Work Act 2016 (2016 c.7) amended the Child Poverty Act 2010 to rename it the Life Chances Act 2010, and remove from it 4 UK-wide income-based targets and replace them with new measures to improve children's life chances.)

Cabinet Secretary for Equalities Angela Constance MSP called the Scottish Bill an "historic milestone" in the fight against poverty. After a series of amendments were agreed, MSPs agreed unanimously to pass the Scottish Bill.

BBC News reported that—

The [Scottish 2017] legislation means that in the financial year starting in April 2030, the government has [that is, Scottish Ministers have] a statutory obligation to have achieved:

- Less than 10% of children living in households that are in relative poverty - currently 22%
- Less than 5% of children living in households that are in absolute poverty - currently 21%
- Less than 5% of children living in households that combine low income and material deprivation - currently 12%
- Less than 5% of children living in households that are persistent poverty

The bill also sets out reporting mechanisms for progress towards the targets, with delivery plans to be published in April 2018, 2021 and 2026.

It places duties on the government, local authorities and health boards to report annually on what they are doing to reduce child poverty, and provides for the establishment of a Poverty and Inequality Commission.

[www.bbc.com/news/uk-scotland-scotland-politics-41917814](http://www.bbc.com/news/uk-scotland-scotland-politics-41917814)

The Child Poverty Reduction Bill was introduced to New Zealand's Parliament on 31 January 2018 by Prime Minister and Minister for Child Poverty Reduction, Rt Hon Jacinda Ardern: [www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_76267/child-poverty-reduction-bill](http://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_76267/child-poverty-reduction-bill)



The Bill's purpose, stated in clause 3, is "to help achieve a significant and sustained reduction in child poverty in New Zealand by provisions that—

- (a) encourage a focus by government and society on child poverty reduction:
- (b) facilitate political accountability against published targets:
- (c) require transparent reporting on levels of child poverty."

In a related news media release on 31 January 2018, Prime Minister Ardern said:

"Tackling and measuring child poverty is complicated and demanding, but our children are relying on us to act.

"I am committed to achieving a significant reduction in child poverty and I want to create a framework that is durable enough to require future governments to do the same":

[www.beehive.govt.nz/release/taking-action-reduce-child-poverty](http://www.beehive.govt.nz/release/taking-action-reduce-child-poverty)

The Bill was read a first time and referred to the Social Services and Community Committee on 13 February 2018, for report back to the House on or before 13 August 2018. The Committee has called for public submissions on the Bill on or before 4 April 2018.

Prime Minister Jacinda Ardern and her partner, Clarke Gayford, announced on 19 January 2018 that they are expecting their first child in June [2018]:

[www.beehive.govt.nz/release/prime-minister-and-cl Clarke Gayford-expecting-first-child](http://www.beehive.govt.nz/release/prime-minister-and-cl Clarke Gayford-expecting-first-child)

### ***Canada: Richard Denis appointed Chief Legislative Services Officer***

Richard Denis, a CALC Council member (Americas), has accepted an assignment as Interim Clerk of the Senate and Clerk of the Parliaments and Chief Legislative Services Officer in Canada. Our congratulations to Richard on this very prestigious posting.



### ***Jersey: Lucy Marsh-Smith appointed as Law Draftsman***

Lucy Marsh-Smith, a CALC Council member (Europe), was in February 2018 appointed as Law Draftsman, Law Draftsman's Office, States of Jersey. On her LinkedIn profile, Lucy says: "I am delighted now to lead the Jersey team of legislative drafters." Our congratulations to Lucy on her appointment. Lucy was from 1996 – 2007 Assistant Law Draftsman in that team, and from 2008 – 2013, Chief Legislative Drafter, Attorney-General's Chambers, Isle of Man.



Jersey's law draftsmen in 2016 celebrate the retirement of Pam Staley (Law Draftsman from 2003 to 2016) with an informal lunch. They are (clockwise from the left) Lucy Marsh-Smith, Matthew Waddington, Karen Stephen Dalton, Liz Walsh, Jane Reed, Pam Staley, Jacque Miller and Theresa Graves.

## **UK: BBC News item on Elizabeth Gardiner, First Parliamentary Counsel**

See this item profiling the UK 1PC and OPC by BBC Political reporter Gavin Stamp, published on 27 February 2018: <http://www.bbc.com/news/uk-politics-42772718>



Some extracts: "The 51 year-old solicitor, the first woman to hold the post of first parliamentary counsel, has a gimlet [(sharp or piercing)] eye when it comes to making sure bills hold together and, in modern political parlance, are fit for purpose . . . 'I think it is the sort of job that you either love or hate, probably - I think it's a bit Marmitey. People leave very quickly if they don't like it, but there are a lot of people who come and stay a long time.' . . . The drafting process, she says, needs consistency, collaboration and the ability to ask searching questions . . . 'You have to be quite thick skinned. But 999 times out of 1,000, when someone says the bill is not well drafted, they really mean, "I don't like the policy in the bill."' "If you compare an [Act] from now to one from the late-1980s, it is written far more in everyday English." 'I don't see myself as a role model, but I have to step into that role a bit because it is important to people in the organisation that there are women in senior positions.'"



## ***Australia: New South Wales: Retirement of Don Colagiuri SC***



Mr Don Colagiuri SC, who has been drafting legislation since 1972, and has led the New South Wales Parliamentary Counsel's Office since 2001, is to retire later in 2018.

"[NSW] Parliamentary Counsel Don Colagiuri has also indicated he intends to retire in 2018. He has led the Parliamentary Counsel's Office — responsible for nearly all legislation, as well as a wide range of regulations, rules, proclamations, orders and planning instruments — for the last 16 years.

"While probably unknown to most of the people of New South Wales, Don Colagiuri is a legend of the public sector whose fine work has touched the lives of everyone in the State," [Secretary of the NSW Department of Premier and Cabinet, NSW's top public servant] Tim Reardon said.

"Known to many just as 'The Don', he has been drafting legislation since 1972, first in the Chief Secretary's Department and then from 1974 in the NSW Parliamentary Counsel's Office, an organisation he has led since [14 February] 2001 [when, as a Deputy Parliamentary Counsel in that Office and with over 25 years experience as a legislative drafter, Don succeeded Dennis Murphy QC, who retired on 9 February 2001, after serving as Parliamentary Counsel for 19 years and completing 41 years of service in the NSW Parliamentary Counsel's Office].

"Don understands legal policy problems and how to resolve them and we are indebted to him for the countless occasions he has drafted complex and urgent legislation, always with good humour despite the demands."

[www.themandarin.com.au/87282-head-walks-nsw-looking-new-public-service-commissioner/](http://www.themandarin.com.au/87282-head-walks-nsw-looking-new-public-service-commissioner/),  
<https://arp.nsw.gov.au/c2001-09-parliamentary-counsel-retirement-dennis-murphy-and-appointment-don->

[colagiuri, www.pco.nsw.gov.au/about.html](http://colagiuri.www.pco.nsw.gov.au/about.html) (History),  
<http://archive.nswbar.asn.au/findabarrister/details.php?m=UmFuZG9tSVbBewmDbz6pttImQhqAjHQM> .

Mr Colagiuri was appointed as a Senior Counsel (SC) in 2002.



New South Wales Government  
**NSW legislation**



Australasian  
Parliamentary Counsel's Committee

Don is the current Secretary of the Australasian Parliamentary Counsel's Committee (PCC), and hosted the PCC's 4th Australasian Drafting Conference in Sydney in 2005, and the 2017 CALC Drafting Workshop in Sydney (after the 2017 CALC Conference in Melbourne).

At the CALC Conference in March 2017, CALC President Peter Quiggin thanked Don for his substantial contribution as a CALC Council member. Don's immense contributions to CALC over many years include these 2 articles in *The Loophole*:

- Colagiuri, D & M Rubacki, 'The long march: pen and paper drafting to E-publishing law', *The Loophole*, Aug. 2010 (2010.2), p 43.
- Colagiuri, D, 'Address on the organisation of drafting offices', *The Loophole*, July 2007 (2007.2), p 6.

(Don is also a speaker -- on "Consistent/Model Legislation in Federal Jurisdictions – Drafting and Arrangements to Promote Uniformity (the Australian Experience)" at the Fifth International Conference on Legislation and Law Reform in Washington, DC, USA, on 12 and 13 April 2018.)

CALC members extend their sincere thanks, and very best wishes, to Don on his retirement.



## UK: Legislate – the board game ! And a Tweet on Users’ Views

See Hayley Rodgers’ items at the following links for “a popular and engaging way of helping people [(civil servants)] to understand the legislative process” (presumably for Bills, in the UK Parliament):



- <https://www.gov.uk/government/speeches/the-legislation-game>
- <https://github.com/alphagov/Legislate>



## ***New Zealand: Towards “Democratic Renewal: Ideas for Constitutional Change” – revised proposal for higher-law Constitution***

In a book to be launched on 5 April 2018, Sir Geoffrey Palmer QC and Dr Andrew Butler revise their proposal (in their earlier, 2016 book) for a new, higher law Constitution for New Zealand.



For more about the earlier, 2016 book, see the [February 2017 CALC Newsletter](#) at page 27.

For more about the 2018 book, see <http://vup.victoria.ac.nz/towards-democratic-renewal-ideas-for-constitutional-change-in-new-zealand/>



## CALC website: Related associations page

Recent changes to CALC's website include the addition of a related associations page.



**What's New?**

COMMONWEALTH ASSOCIATION  
OF LEGISLATIVE COUNSEL

**RELATED ASSOCIATIONS**

CALC has links to some related associations.

[View related associations](#)

[Home](#) > Related associations

## Related associations

CALC has links to, and shares publications and activities information with, the following related associations.

| Association  | Description  | Links or related information   |
|--|--|--|
| International Association of Legislation (IAL)                   | Association to promote science and research in the field of legislation, focussing mainly on civil law, and with a mainly European basis.  | <a href="http://www.ial-online.org/" style="color: blue; text-decoration: underline;">http://www.ial-online.org/</a> |
| Association of Parliamentary Counsel in Canada (founded in 1982) | Association of parliamentary counsel serving parliamentary institutions (Senate, House of Commons, and Legislative Assemblies of the Provinces and Territories).   | <a href="#" style="color: blue; text-decoration: underline;">Info (13.24KB)</a>                                      |
| Association of Legislative Counsel in Canada (founded in 1994)   | Association of legislative counsel serving the executive branch of government (usually as part of a Department of Justice or Ministry of the Attorney General).  | <a href="#" style="color: blue; text-decoration: underline;">Info (13.24KB)</a>                                      |
| Australasian Parliamentary Counsel's Committee (PCC)             | Committee representing the drafting offices in Australia and New Zealand. A forum for the preparation of national uniform legislation, a forum for discussion about the development of legislation and the management of those drafting offices, and an IT Forum for those drafting offices. | <a href="https://www.pcc.gov.au/" style="color: blue; text-decoration: underline;">https://www.pcc.gov.au/</a>       |



# New CALC members

## New members since December 2017

The following have been recorded as members of CALC (a) since the publication of the last edition of the *CALC Newsletter* (in December 2017), and (b) as at 16 March 2018.

| Name                               | Country                          |
|------------------------------------|----------------------------------|
| <b>Matthews, Nancy</b>             | Isle of Man                      |
| <b>Yahya, Siti Fatimah Zaharah</b> | Malaysia                         |
| <b>Isles, Shelley</b>              | Montserrat                       |
| <b>Bullard, Harriet</b>            | Australia                        |
| <b>Kinch, Deidre</b>               | Barbados                         |
| <b>Tsang, Salvador</b>             | Hong Kong                        |
| <b>Musau, Angela</b>               | Kenya                            |
| <b>Okeke, Augustine Elochukwu</b>  | Nigeria                          |
| <b>Imtiaz, Shahid</b>              | Pakistan                         |
| <b>Walters, Kezron</b>             | Saint Vincent and The Grenadines |
| <b>Carter, Susan</b>               | Australia                        |
| <b>Crouch, Rebecca</b>             | Australia                        |
| <b>Andrews, Glenys Eteva</b>       | Fiji                             |
| <b>Muhtar Yola, Asiya</b>          | Nigeria                          |
| <b>Kapumba, Doris Nyirenda</b>     | Zambia                           |
| <b>Hodgett, Simon</b>              | Channel Islands                  |
| <b>Ogier, Victoria</b>             | Channel Islands                  |
| <b>Stockwell, Laura</b>            | Channel Islands                  |
| <b>Langman, Corinne</b>            | Australia                        |
| <b>Been, Jo-Ann</b>                | Barbados                         |
| <b>Coutu, Alexandre</b>            | Canada                           |
| <b>Yates, Zara</b>                 | Cayman Islands                   |
| <b>Naidu, Krishneel Krishan</b>    | Fiji                             |
| <b>Wong, Man Yin Bonita</b>        | Hong Kong                        |
| <b>Nakhanya, Paul Wekesa</b>       | Kenya                            |
| <b>Magaji, Maurice</b>             | Nigeria                          |
| <b>OGUNLOLA, OLUYEMISI</b>         | Nigeria                          |
| <b>Shah, Syed Irfan Ali</b>        | Pakistan                         |
| <b>Munkombwe-Hlazo, Peggy</b>      | Zambia                           |
| <b>Rakai, Mele Loiloi</b>          | Fiji                             |
| <b>Kumwenda, Mwase</b>             | Zambia                           |
| <b>Henry, Lauren</b>               | Palau                            |

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| Name                           | Country                        |
|--------------------------------|--------------------------------|
| Joseph, Josephine              | Federated States of Micronesia |
| Brownlee, Christina            | Canada                         |
| Ole Larpei, Timothy            | Kenya                          |
| Ramoni Tagini, Florence Yalide | Solomon Islands                |
| Katoa, 'Akanesi 'Emeline       | Tonga                          |
| Kowalski, Gregor               | United Kingdom                 |
| Jere, Eneya                    | Zambia                         |
| Brewster, Yasmin               | Barbados                       |
| Moremi, Kelebogile             | Botswana                       |
| Walker-Mcfarlane, Simone       | Jamaica                        |
| Giouba, Jasmina                | Nauru                          |
| Chong, Kah Kheng               | Singapore                      |
| Ng, Junyi                      | Singapore                      |
| Warren Nisa, Jennifer          | Vanuatu                        |
| Waiti, Divine                  | Marshall Islands               |

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## 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](mailto:ross.carter@pco.govt.nz)



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

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