



The Commonwealth

Meeting of Commonwealth Law Ministers and Senior Officials

Meeting Paper

November 2019

Colombo, Sri Lanka, 4-7 November 2019

Provisional Agenda Item 16(e)

LMM(19)27

Commonwealth Association of Legislative Counsel Activity Report

Report prepared for the Commonwealth Secretariat by the Commonwealth
Association of Legislative Counsel

1. This is a submission to the meeting of Commonwealth Law Ministers and Senior Officials (CLMM), Colombo, Sri Lanka, 4-7 November 2019. The submission comprises the following sections:

- Executive summary
- Background
- CALC's objectives
- Membership and structure
- Current activities
- CALC's interaction with Commonwealth Secretariat
- Matters for consideration by CLMM

I. Executive summary

2. The Commonwealth Association of Legislative Counsel (CALC) invites Senior Officials of Commonwealth Law Ministries (SOLM) to formally recognise:

(a) the importance of legislation being drafted properly so as to recognise and strengthen the Rule of Law;

(b) the utility and desirability of having a centralised and properly staffed legislative drafting office in each Commonwealth jurisdiction;

(c) the nexus between lack of policy development capacity and challenges in legislative drafting and the need for governments (and donors) to understand this nexus;

(d) the serious issues that currently exist with lack of donor coordination in the provision of legislative drafting assistance;

(e) that CALC, made up of over 2,200 legislative counsel covering most Commonwealth countries, provides a very substantial network of legislative counsel and is a valuable resource that can assist with the resolution of these issues;

(f) that CALC stands ready to work with the Commonwealth Secretariat to look at the ways in which CALC might help smaller jurisdictions to build capability in legislative drafting.

II. Background

3. Having well drafted and effective laws is critical to the maintenance of the Rule of Law. Legislative counsel, who draft those laws for the legislatures throughout the Commonwealth, have a critical role to play in achieving this objective.

4. CALC is the professional organisation of legislative counsel across the Commonwealth, and was accredited to the Commonwealth in 2011. CALC promotes and encourages best practice in legislative drafting throughout the Commonwealth.

5. CALC was established in 1983, largely as a result of discussions at meetings of Commonwealth Law Ministers before that at which the problems of legislative drafting in smaller countries were discussed. Ministers were concerned about the shortage across the Commonwealth of properly trained, experienced and competent legislative drafters.

III. CALC's objectives

6. CALC's objectives as set out in its Constitution are:

- (a) to promote co-operation on matters of common interest among Commonwealth persons and others who are or have been engaged—
 - (i) in legislative drafting; or
 - (ii) in editing or translating draft legislation; or
 - (iii) in training people as drafters of legislation; and
- (b) to promote public awareness of and to disseminate information about legislative drafting and the role of those who draft legislation; and
- (c) to promote the use of effective legislative drafting practices and techniques.

IV. Membership and structure

7. CALC has over 2,200 members in 107 countries (which includes dependencies of a country, such as Jersey). These members come from most of the Commonwealth countries. Considering the relatively small number of legislative counsel in the Commonwealth, this represents a substantial proportion of all legislative counsel in the Commonwealth.

8. The CALC Council is made up of four office bearers (President, Vice President, Treasurer and Secretary), the Immediate Past President (Ms Brenda King, First Legislative Counsel, Office of the Legislative Counsel, Northern Ireland) and 2 representatives from each of the following regions: Africa, the Americas, Europe, Asia and the Pacific (including Australasia). The current office bearers are:

- President: Mr Geoff Lawn, Parliamentary Counsel (head of office), Parliamentary Counsel's Office, Western Australia, Australia:
- Vice President: Dr Katy Le Roy, Deputy Parliamentary Counsel, Office of the Queensland Parliamentary Counsel, Queensland, Australia:
- Treasurer: Mr John Mark Keyes, former Chief Legislative Counsel, Department of Justice, Canada:
- Secretary: Mr Ross Carter, Principal Parliamentary Counsel, Parliamentary Counsel Office, New Zealand.

V. Current activities

9. A major activity of CALC is the biennial conference that is held in conjunction with the Commonwealth Law Conference. These conferences attract a comparatively high attendance rate of legislative counsel from across the whole Commonwealth. The conference offers participants the opportunity to hear well qualified speakers on a range of relevant topics, to participate in formal discussions and to meet and interact with legislative counsel from across the Commonwealth. The most recent conference was held in Livingstone, Zambia, in April this year and was attended by over 130 delegates. CALC also organises workshops on specific issues to supplement the conferences it holds.

10. In addition to its major conferences, CALC has also held some regional conferences in Africa, Asia and Europe and is becoming involved in the running of other regional conferences of legislative counsel.

11. CALC produces a journal, *The Loophole*, which contains papers on a range of drafting related topics. Generally 3 issues are produced each year. Over the years both the number and the quality of the papers published in *The Loophole* have increased.

12. CALC also produces the *CALC Newsletter* twice a year to keep members informed of news relating to members and legislative drafting offices throughout the Commonwealth as well other items of interest to members.

13. The CALC website (www.calc.ngo) contains copies of all issues of *The Loophole* and the *CALC newsletter* as well as a range of other articles related to legislative drafting. The website also includes a collection of links to online drafting manuals and similar material.

14. The CALC Council is able to communicate directly by email with the members on its database and provide them with immediate access to each new issue of *The Loophole* or the *CALC Newsletter* or bring other matters to their attention, including employment opportunities and the availability of contract work for legislative drafters. While CALC charges for the advertising of drafting jobs, this service is provided free of charge for the Commonwealth Secretariat and for small or less-developed countries.

15. There is a CALC Members group on LinkedIn that enables CALC members directly to raise issues with, seek comments from and generally communicate with other CALC members.

16. CALC also provides access to a service providing drafting advice and advice on the establishment and organisation of drafting offices. This service is provided by very experienced legislative counsel, most of whom are or were heads of large drafting offices.

VI. CALC's interaction with Commonwealth Secretariat

17. CALC has increased its interaction with the Commonwealth Secretariat over the last 4 years. One of the priorities of CALC for the next 2 years is to continue to increase this interaction. As a large proportion of legislative counsel in the Commonwealth are members of CALC, including most heads of drafting offices, CALC is very well placed to provide information and guidance to the Secretariat on all matters related to the development of legislative drafting across the Commonwealth.

18. CALC's members have already provided support to the Commonwealth Law Ministers and the Commonwealth Secretariat in addressing issues relating to the legislative drafting and publishing capacity of smaller jurisdictions.

19. In addition, CALC members have taken a leading role in the organisation of Commonwealth Secretariat organised legislative drafting seminars held in 2011 in Barbados and in 2013 in Trinidad and Tobago. CALC members have also assisted with the development of a Commonwealth Manual on Legislative Drafting, which was published in November 2017.

20. CALC would welcome the opportunity to be more closely involved, in partnership with the Secretariat, in the Secretariat's activities across the Commonwealth in the area of legislative drafting.

VII. Matters for consideration by CLMM

21. Having well drafted and effective laws is critical to the maintenance of the Rule of Law. Legislative counsel have a critical role to play in achieving this.

22. There is a worldwide shortage of experienced legislative drafters, even in well-resourced countries like Australia. And it generally takes 5 to 7 years to train a legislative drafter to the point at which they are able to operate reasonably independently. Legislative drafting is under resourced in many parts of the Commonwealth and there is a real need to ensure that quality training and development opportunities in this field are available to counsel. Addressing this need will give Ministers across the whole Commonwealth access to efficient and effective legislative drafting services. On this and any other matter related to the development of legislative drafting in the Commonwealth, CALC continues to stand ready to work constructively with the Commonwealth Secretariat.

23. CALC believes that action by individual governments to establish and properly resource centralised legislative drafting offices is fundamental to addressing the problem of the shortage of legislative counsel and resources in drafting offices within the Commonwealth.

24. Legislative drafting is not done in isolation. To have a successful legislative project it is necessary for the legislative counsel to have access to people with good policy development skills who are able to provide proper instructions. This capacity appears to be missing in many countries and is not addressed by many donor funded projects.

25. CALC also believes that there would great benefit in donors reassessing the way in which their substantial amounts of donor resources are allocated. CALC considers that donors would save money by directing the resources that are expended annually on engaging consultants on an ad hoc basis to draft legislation for countries, and using these resources to employ in-house legislative counsel in those countries. Those in-house legislative counsel could not only draft the legislation required for a particular project, but also draft a substantial amount of other legislation for the same overall cost, helping to clear the backlogs of legislative proposals that often exist in small jurisdictions.

26. The experience of CALC members in a number of countries is that draft legislation prepared by consultants who are not properly trained legislative drafters is rarely of a standard that can be introduced, and that it can in fact add to the workload of the government legislative counsel who are expected to prepare the draft for the enactment process. CALC believes that the preparation of draft legislation in aid projects by persons other than legislative drafters should be strongly discouraged.

27. In this context, CALC would like to draw a distinction between the assistance given by the Commonwealth Secretariat and others. CALC acknowledges that the Commonwealth Secretariat is not a donor organisation. CALC recognises that the technical assistance that the Secretariat renders through the Commonwealth Fund for Technical Cooperation (CFTC), is at the request of member countries. This applies equally in the field of legislative drafting where CFTC-funded legislative drafters are selected by and work according to the agenda of the receiving government. Most of the CFTC drafters are qualified legislative drafters and many are CALC members. CALC is very appreciative of the technical assistance that the Secretariat provides to member countries.

28. CALC also stands ready to work with the Commonwealth Secretariat to look at ways in which CALC might help smaller jurisdictions with the training of legislative drafters. From time to time, CALC is approached to provide information about the availability of experienced legislative drafters to conduct very short training sessions in legislative drafting for smaller jurisdictions, often at short notice. In CALC's view, short training sessions like this are unlikely to build capability to any great extent. What is needed is a better understanding of the kind of assistance that will be most useful in building capability and who might be best placed to provide it.

29. CALC considers that this work might be best initiated by assessing what drafting offices want and then exploring what the Commonwealth Secretariat could do (with CALC, if appropriate) to assist them. In order to do this, CALC suggests that it assists the Commonwealth Secretariat to devise a survey to assess what drafting offices might want or need. The survey would be sent to heads of drafting offices across the Commonwealth.

30. CALC seeks the support of the Senior Officials of Commonwealth Law Ministries (SOLM) for the activities of CALC and the work of CALC in assisting the development of legislative drafting across the Commonwealth. In particular, CALC invites SOLM to formally recognise:

- (a) the importance of legislation being drafted properly so as to recognise and strengthen the Rule of Law;
- (b) the utility and desirability of having a centralised and properly staffed legislative drafting office in each Commonwealth jurisdiction;
- (c) the nexus between lack of policy development capacity and challenges in legislative drafting and the need for governments (and donors) to understand this nexus;
- (d) the serious issues that currently exist with lack of donor coordination in the provision of legislative drafting assistance;
- (e) that CALC, made up of over 2,200 legislative counsel covering most Commonwealth countries, provides a very substantial network of legislative counsel and is a valuable resource that can assist with the resolution of these issues;

(f) that CALC stands ready to work with the Commonwealth Secretariat to look at the ways in which CALC might help smaller jurisdictions to build capability in legislative drafting.

Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX

2019