



# Meeting Paper

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## Commonwealth Association of Legislative Counsel - Activity report

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Association of Legislative Counsel

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### I. Executive summary

1. This is an activity report to the meeting of Senior Officials of Commonwealth Law Ministries (SOLM), 16 and 17 February 2021. The Commonwealth Association of Legislative Counsel (CALC) invites Senior Officials of Commonwealth Law Ministries (SOLM) to note:

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

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

(c) that 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; and

(d) that CALC stands ready to work with the Commonwealth Secretariat—

(i) to look at ways in which CALC might help smaller jurisdictions to build capability in legislative drafting; and

(ii) to deliver online training programs for legislative drafters.

## **II. Background**

2. 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.
3. 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.
4. 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**

5. 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**

6. CALC has over 2,400 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.

7. The CALC Council is made up of four office bearers (President, Vice President, Treasurer and Secretary), the Immediate Past President 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.
8. The Immediate Past President is Ms Brenda King, First Legislative Counsel, Office of the Legislative Counsel, Northern Ireland. Ms King is currently acting as the Attorney General for Northern Ireland.

#### **V. Activities since Commonwealth Law Ministers Meeting in November 2019**

##### *CALC publications*

9. CALC produces a journal, *The Loophole*, which contains papers on a range of drafting related topics. Generally, three issues are produced each year. Over the years both the number and the quality of the papers published in *The Loophole* have increased.
10. CALC also produces the *CALC Newsletter* at least 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.
11. Since November 2019, CALC has published 3 issues of *The Loophole* and 4 issues of the *CALC Newsletter*.
12. The CALC website ([www.calc.ngo](http://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, and this is regularly updated. For example, the Pacific Islands Law Officers Network (PILON) and the Australian Attorney-General's Department recently produced, for Pacific Islands government officials, a guide to the policy development and legislative drafting processes, called 'Pacific Toolkit: From policy to legislation'. CALC provides a link to the Toolkit on the CALC website.

##### *Other services for CALC members*

13. 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.

14. 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.

*COVID-19 pandemic-related activities*

15. The COVID-19 pandemic created an immediate and very heavy demand from governments for legislative responses. This has been very challenging for legislative drafting offices in every jurisdiction and has resulted in a huge volume of legislation that had to be drafted and enacted or made under huge pressure. Lockdowns and social distancing measures requiring the staff of drafting offices to work remotely have made the challenge and pressure even greater. The professionalism and dedication of legislative drafters throughout the Commonwealth have been well demonstrated during this time, as has the value of having well-trained legislative drafters who can provide objective and high quality drafting advice in very demanding and high-pressure situations.
16. The legislative drafting community throughout the Commonwealth has been very supportive of one another in relation to responses to the pandemic. As part of that support, CALC has provided on its website a collection of material containing legislative responses to the pandemic. This material is intended to provide legislative drafters with examples of legislative approaches from a range of jurisdictions that might be of assistance in developing their own legislative responses. The material is available at: <http://www.calc.ngo/legislative-responses-covid-19>.
17. CALC has also publicised to its members via email and on its website a number of pandemic-related webinars. These include the 6 Commonwealth Secretariat COVID-19 Rule of Law Webinars held between July and November 2020. The President of CALC, Geoff Lawn, participated as a panel member in the Commonwealth Secretariat COVID-19 Rule of Law Webinar 5: Legislative approaches and law enforcement, held on 20 October 2020.
18. One of the suggestions from that webinar is that the Commonwealth Secretariat look to work with CALC to develop model emergency legislation that could be adopted across the Commonwealth. CALC is happy to work with the Commonwealth Secretariat on this initiative.

*CALC webinars*

19. CALC had scheduled two regional conferences in 2020. One was to be held in Canberra, Australia, in April 2020 in partnership with the Australasian Parliamentary Counsel's Committee. The other was to be held in Cardiff, Wales, in June 2020. Travel restrictions and lockdowns meant that both conferences were cancelled.
20. In response to the inability to hold physical conferences, CALC has acquired the necessary software to host webinars for CALC members. The Australasia and the Pacific region of CALC hosted a webinar on Friday, 11 December 2020. Drafting offices from New Zealand, Canberra (Commonwealth of Australia), Queensland, Victoria and Western Australia participated in the webinar. Contributors from each jurisdiction discussed the legislative responses to the pandemic in their jurisdictions, the impact of the pandemic on their offices and lessons learned from the pandemic. CALC members who attended the webinar were able to pose questions for the panel to respond to. This webinar was recorded, and will (if practicable) be made available to CALC members via CALC's website.

21. Feedback from attendees indicates that the webinar format proved very successful, and CALC hopes that it will be possible for similar webinars to be hosted by other CALC regions early in 2021.

*CALC biennial conference postponed*

22. A major activity of CALC is the biennial conference that is usually 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 2019 and was attended by over 130 delegates. CALC also organises workshops on specific issues to supplement the conferences it holds.
23. CALC subsequently began planning for its next biennial conference, and decided to hold it in The Bahamas in July 2021. The decision to hold it then, and not at the same time as the next Commonwealth Law Conference (scheduled for September 2021), was made to avoid the hurricane season in the Caribbean.
24. In the light of the continuing impact of the pandemic on international travel, CALC has now decided to cancel its 2021 biennial conference. Consideration was given to whether a virtual conference (including an ordinary general meeting) should be held instead of a physical conference. The view of the CALC Council was that this would not be a viable substitute for a physical conference with an ordinary general meeting. One of the attractions and great benefits of CALC conferences is the opportunity to meet in person.
25. At an appropriate time in 2021, the CALC Council will consider whether it is feasible to hold a physical conference (with ordinary general meeting) in 2022. It is hoped that this conference can still be held in The Bahamas. The postponement of the 2021 biennial conference and ordinary general meeting means that elections for the CALC Council will not be held in 2021, and the current members of the CALC Council will remain in office until the next ordinary general meeting.
26. In place of holding a biennial conference in 2021, CALC will look to organise a short virtual conference, or a series of short regionally-focussed virtual conferences.

*Other matters*

27. It is noted that Peter Quiggin PSM, a former President of CALC (2011 to 2017) was appointed as a Commonwealth of Australia Queen's Counsel in October 2020. Mr Quiggin PSM is First Parliamentary Counsel, Office of Parliamentary Counsel, Canberra, Australia. He has served as First Parliamentary Counsel since 2004. Mr Quiggin was awarded a Public Service Medal in the 2008 Australia Day Honours List for outstanding public service in delivering the government's legislative agenda at a time of significant legislative change and in a number of critical areas.

**VI. CALC's interaction with the Commonwealth Secretariat**

28. CALC has increased its interaction with the Commonwealth Secretariat over the last 5 years. One of the priorities of CALC 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.

29. 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.

30. 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.

31. At a meeting of SOLM and Law Ministers of Small Jurisdictions in London in October 2018, Law Ministers and Attorneys General expressed their concern about the scarcity of experienced legislative drafters across the Commonwealth. At that meeting the Commonwealth Secretariat told Ministers that they would discuss these matters with CALC. Representatives of the Commonwealth Secretariat and CALC met in February 2019. The main focus of that meeting was to discuss the current training on legislative drafting available to Commonwealth countries. The outcome of that meeting was as follows:

- CALC referred the Secretariat to the list of training courses and providers on the CALC website ([www.calc.ngo](http://www.calc.ngo)). It was CALC's understanding that the Secretariat is particularly interested in online training;
- CALC has access to a number of very experienced drafters who might be available to take on short term projects of a particular type (workshops, peer review or similar). Training competent legislative drafters takes time and is most effective when there is a combination of "on the job" training and specific training on drafting techniques. It was agreed that CALC could explore the possibility of providing access to experienced drafters with the Secretariat if the Secretariat so wished;
- The possibility of running CALC regional drafting conferences in conjunction with the Secretariat was mentioned;
- The Secretariat agreed that it would be appropriate to seek the views of smaller Commonwealth countries on what (if any) training would be useful before taking things further. This could be achieved by sending a survey to the head of each drafting office in the Commonwealth or just the smaller jurisdictions.

32. The following reports on progress with those matters since that meeting.

#### *Survey of small drafting offices*

33. In late 2019 and early 2020 the Commonwealth Secretariat, working in collaboration with CALC, developed a survey (using SurveyMonkey) designed to find out how best to support the legislative drafting offices of small Commonwealth states. CALC provided the Commonwealth Secretariat with email contact details from CALC records, and the survey was emailed in February 2020 to nearly 60 contacts in small Commonwealth states.

34. The survey asked recipients about the constitution and operation of their offices, including what kinds of legislation they draft, whether they engage contract drafters, whether they have formal training programs for their drafters and what resources their drafters have available to them (such as drafting manuals and knowledge databases). The survey also asked drafting offices whether there is anything specific that the Commonwealth Secretariat could do to assist them.
35. Disappointingly, only 2 responses to the survey were received, even after the original email with a link to the survey was recirculated to recipients. It is understood that the Commonwealth Secretariat will bring the matter to the attention of SOLM at its next meeting.

#### *Training of legislative drafters*

36. At a virtual meeting between representatives of the Commonwealth Secretariat and CALC in October 2019, the Commonwealth Secretariat indicated that it has been in discussions with Athabasca University (Canada) about collaboration on an online training program for legislative drafters. It was envisaged that the Commonwealth Secretariat, Athabasca University and CALC would collaborate to deliver online drafting training courses. It was agreed to hold a meeting involving the Commonwealth Secretariat, Athabasca University and CALC to discuss the initiative in more detail, but that meeting has yet to be arranged.

#### *Opportunity for further involvement by CALC with Commonwealth Secretariat welcome*

37. It is noted that the Outcome Statement from the Meeting of Commonwealth Law Ministers and Senior Officials in Colombo, Sri Lanka, 4-7 November 2019, refers specifically to the need for additional support for the Commonwealth Secretariat's rule of law technical assistance programme, particularly in legislative drafting. Paragraph 36 states as follows:

36. Law Ministers reviewed the Secretariat's rule of law technical assistance programme and the increasing demand for it in the face of the limited resources of the Secretariat. Law Ministers expressed their gratitude for the technical assistance received from the Secretariat in their jurisdictions, and requested additional support, particularly on legislative drafting. They agreed that the Secretariat should be supported in its efforts to continue delivering that assistance and strengthening national institutions for sustainability.

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

#### **G. Matters for consideration by SOLM**

39. 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. The legislative response to the COVID-19 pandemic across the Commonwealth demonstrates this very clearly.
40. 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. This issue was discussed in detail in CALC's report to the Meeting of Commonwealth Law Ministers and Senior Officials (CLMM), Colombo, Sri

Lanka, 4-7 November 2019. Rather than repeat that discussion here, the relevant extract from that report is set out in the **Appendix** to this report.

41. 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.
42. CALC therefore 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 support the Commonwealth Secretariat in progressing the following initiatives:
  - (a) identification of ways of helping smaller jurisdictions to build capability in legislative drafting;
  - (b) the delivery of online training programs for legislative drafters.

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2021



## Appendix

### Extract from CALC report to meeting of Commonwealth Law Ministers and Senior Officials (CLMM), Colombo, Sri Lanka, 4-7 November 2019

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 continues to stand 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.