



# Newsletter

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

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

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

## CALC President's Report: November 2016



### CALC Conference—Melbourne and Sydney 2017

- 1 The preparations for the CALC conference and workshop are progressing smoothly with registrations rolling in.
- 2 The main part of the conference will be in Melbourne on March 29 to 31 (with the CALC General Meeting on 30 March). The workshop will be in Sydney on Tuesday 4 April.
- 3 You can register now through the CALC website at [calc.ngo](http://calc.ngo).
- 4 **Registrations will close on Friday 13 January 2017.**
- 5 Further information about the conference is later in this *CALC Newsletter*.
- 6 I encourage all CALC members to consider attending.



### New CALC Website

- 7 The new website is up and running and going well. It is at [calc.ngo](http://calc.ngo) (with no www).
- 8 Many CALC members have already logged on and obtained access to the member only areas of the page. If you haven't already done this, I suggest that you do so. If you have any problems, contact us at [calc@opc.gov.au](mailto:calc@opc.gov.au).

- 9 The level of activity on the forum on the webpage is a bit disappointing as there is very little traffic. The forum is something that has been requested at a number of CALC conferences, so it would be great to see members posting some queries or comments there.

## Electoral changes

- 10 At the CALC Conference in Edinburgh, the Council agreed to investigate the use of electronic voting for future CALC meetings and elections.
- 11 Since then, the Council has spent a substantial amount of time discussing the matter. The Council has decided that it will not attempt electronic voting for Melbourne but will put forward a Constitutional amendment and also provide some draft electoral rules.
- 12 There are a number of reasons that the Council decided not to go forward with the proposal for electronic voting for Melbourne. These include:
- the Constitutional basis for rules enabling electronic voting and the interaction of those rules with the proxy voting provisions of the Constitution were not certain;
  - the issues that we have seen with the move to the new website have highlighted the technological challenges involved;
  - there were concerns that some forms of electronic voting could place an undue burden on the Secretary.
- 13 While some CALC members will be disappointed that electronic voting will not be available in Melbourne, the Council considers that the Constitutional changes that are proposed will make it possible for it to be introduced for future meetings if a suitable system is agreed upon.
- 14 A copy of the draft Constitutional amendment and an example of the sort of electoral rules that could be made under it are later in this *CALC Newsletter*.

## Projects

- 15 Some time ago, Eamonn Moran and Duncan Berry put forward a number of proposals to the CALC Council. Since then, the CALC Council has been working on these.
- 16 A number have been completed and implemented.
- 17 These include the CALC online drafting advice service and the office organisation advice service. Details of these were included in the March 2016 *CALC Newsletter*. There is also detailed information on the CALC Website ([calc.ngo](http://calc.ngo)).

- 18 Another suggestion related to the provision of distance training in drafting. Since the suggestion was made, a number of course (including the Athabasca course) have become more prominent and it was decided that CALC's involvement should be to encourage members to be involved in those courses (as staff or students).
- 19 The other suggestions were:
- to develop a list of expenses that would be expected to be provided to CALC members providing assistance that is organised through CALC; and
  - to investigate the provision of insurance cover to be provided to CALC members providing assistance that is organised through CALC.
- 20 We are just finalising a report about expenses.
- 21 We have had less success in relation to the provision of insurance cover to be provided to CALC members providing assistance that is organised through CALC as it appears to be both jurisdiction and project specific. We will keep investigating to see if we can find some general information.
- 22 I would like to thank all of the Council members who have worked on these projects and, in particular, Vice President Katy Le Roy who has had overall oversight of the project and done a substantial amount of work on individual working groups.

### **Advertising drafting jobs**

- 23 We are continuing to get a steady stream of drafting jobs to advertise on the CALC website (see [calc.ngo/employment](http://calc.ngo/employment)).
- 24 The feedback that we have received from users of this service is that is a very effective and cost efficient way of advertising drafting jobs.
- 25 If you are interested in advertising a position through CALC, please contact us at [calc@opc.gov.au](mailto:calc@opc.gov.au) for details of how to go about it and the costs involved.

## Liaison with Commonwealth Secretariat

- 26 As you would know, CALC is affiliated with the [Commonwealth](#). Our main contact is through the Commonwealth Secretariat (known as ComSec).
- 27 Adrian Hogarth (CALC Council member—Europe) who is based in London has been doing a lot of work liaising with ComSec. This included a presentation about CALC to the Meeting of Senior Officials of Commonwealth Law Ministries and Meeting of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions. The presentation provoked a lively discussion.
- 28 I would like to acknowledge Adrian’s work on this as it has been very useful in ensuring that we have good connections with ComSec.



**Peter Quiggin PSM**

CALC President

November 2016

## CALC General Meeting on 30 March 2017 in Melbourne

The CALC Constitution (see cl 12(5)) requires the CALC Secretary to give at least 3 months' written notice to all members of the date and place of a general meeting of CALC.

This item gives all CALC members notice in writing that a general meeting of CALC will occur during the 2017 CALC conference in Melbourne from March 29 to 31, and in particular,—

- on the afternoon of Thursday **30 March 2017**; and
- at the Conference venue: [RACV City Club](#) at [501 Bourke Street in Melbourne's CBD](#).

Early in 2017, the CALC Secretary will also send CALC members the following:

- a call for nominations for members of the 14-member CALC Council 2017-2019:
- details of any special resolutions (including proposed constitutional changes).

Notice of a motion from a member for a special resolution must be given to the CALC Secretary on or before **15 February 2017**—that is, not less than 6 weeks (16 February 2017 to 29 March 2017) before the meeting: (CALC Constitution, cl 16(1)(b)).

**Ross Carter**  
CALC Secretary  
10 November 2016

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## Secretary Contact Details

If you wish to contact the CALC Secretary, Ross Carter, regarding membership or any other CALC matters (for example, to suggest or send items for this *CALC Newsletter*), his email address is:

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



## **Wales: The multiple roles of legislative counsel in the emerging Welsh legal jurisdiction**

**Talk to the Commonwealth Association of Legislative Counsel Conference, Edinburgh, Scotland, April 2015**

*Dylan Hughes, First Legislative Counsel to the Welsh Government*

### ***Introduction***

It is the first time that the CALC conference has featured a speaker from Wales. This is partly because the Welsh Legislative Counsel Office is one of the newest drafting offices in the Commonwealth, having only been formed in 2007.

Like the Scottish Parliament and the Northern Ireland Assembly, the National Assembly for Wales was formed in 1999. It was formed, however, as a single body corporate which had roles as both an executive and limited legislature. The legislature was limited as it only had the power to pass subordinate legislation using powers previously held by the Secretary of State for Wales, a member of the UK Government.



National Assembly for Wales

Unsurprisingly this novel system of government had its weaknesses and did not last long. Within a short period a more traditional model of government was created, separating the executive and the legislature. This was initially done informally and later put on a statutory basis by the Government of Wales Act 2006. The 2006 Act created the National Assembly for Wales and Welsh Government as a legislature and executive respectively in accordance with the traditional Westminster model.



Welsh Government offices, Cardiff

The National Assembly for Wales' role as a law-making legislature has, however, remained somewhat limited. It was also subject, initially, to further constitutional novelty. From 2007 onwards it was able only to pass 'Measures' in relation to specific subject matter devolved to Wales on a piecemeal basis by UK Parliament Acts or Orders in (the Privy) Council known as 'Legislative Competence Orders'. Again perhaps unsurprisingly this process proved to be difficult and troublesome, and, again, it did not last long. Following a 'yes' vote in a referendum on the National Assembly's law making powers in 2011, the National Assembly now passes its own Acts on a range of 20 devolved subjects – but the extent of those subject areas remains significantly narrower than the case in Scotland and Northern Ireland. (And questions are, again, being asked as to how sustainable the model is as a result.)

### ***Historical background***

I have referred to examples of constitutional novelty in Wales' devolution arrangements. Possibly the most novel aspect, however, is the absence of a separate Welsh legal jurisdiction and a distinct body of Welsh law. Rather we have a single legal jurisdiction for England and Wales and a shared body of law – some of which is the responsibility of the National Assembly for Wales and Welsh Government, some the responsibility of the UK Parliament and Government. As a matter of constitutional theory, therefore, there is strictly speaking no such thing as 'Welsh law' (and on that basis there is no such thing as 'English law' either). Notable also are limitations on the Welsh legislature's ability to modify the criminal law and private law, which are linked to the absence of a separate legal jurisdiction.

Devolution of power to Wales is more limited than devolution to Scotland partly for historical reasons. As part of the union of the Crowns of England and Scotland affected by the Act of Union of 1707, the Scottish system of law (and Scots law itself) was retained. There was also some degree of administrative and executive devolution of power to Scotland for more than 100 years prior to 1999, the Scottish Office having been created in 1885 as a Department of the UK Government. A Scottish legal jurisdiction and a significant body of Scots law existed, therefore, prior to the creation of the Parliament by the Scotland Act 1998. In Wales by contrast, although often referred to as 'Acts of Union', the Laws in Wales Acts of 1535

and 1542 were of a very different nature to their Scottish equivalent. Their effect was an assimilation of Wales into England, a process that had begun in 1282 with the conquest of Welsh Prince Llewellyn the Last ('Llywelyn ein Llyw Olaf') by English King Edward II (who incidentally was nicknamed the 'Hammer of the Scots'). The remaining native laws of Wales were repealed and the Welsh courts were abolished (though they were not long afterwards replaced by distinct Welsh 'Courts of Session' partly for practical linguistic reasons as the vast majority of the population spoke no English). The title of the first of the two Laws in Wales Acts was: "An Acte for laws and justice to be ministred in Wales in like fourme as it is in this Realme" and its effect was that:

*"...the dominion, principality, and country of Wales justly and righteously is and ever hath been incorporated, annexed, united, and subject to and under the imperial crown of this realm as a very member and joint of the same..."*

In more modern times administrative and executive devolution was also limited and occurred only relatively recently. Although a Board of Health, for example, was established for Wales early in the 20<sup>th</sup> century, it wasn't until 1964 that the office of Secretary of State for Wales was created. Wales had very little constitutional or legal presence within the United Kingdom; Wales shared the legal jurisdiction of England, had limited executive devolution (more limited than the Scottish Office) and only a handful of Acts of Parliament had effect in Wales only. Even where different laws applied to Wales they tended to be on more cultural aspects of life, such as the Welsh language and the church. Prior to 1999, therefore, by comparison to Scotland the Welsh system of government was considerably less advanced; and that has continued.

In constitutional terms where Scotland goes today Wales often follows tomorrow, and there is no doubting that we are still some way behind. This wasn't always the case, however, and in fact the land upon which we stand and the city in which we sit once formed part of what was referred to as the 'Old North' (or 'Yr Hen Ogledd'), where the language spoken was an early form of Welsh. Indeed the name of this city derives from the Welsh name 'Din Eidyn', which became 'Dun Edin', which became Edinburgh. The oldest example of Welsh language poetry dates back to the 6th century and refers to a battle at Catterick between the Celtic people of the 'Gododdin' – this area - and the incoming Angles who were later to form what became England. I don't think I need to tell you who won.



## Ancient Welsh laws

I referred earlier to the creation of the (Welsh) Office of the Legislative Counsel in 2007, when modern primary legislation began to be developed and drafted in Wales. The members of our office aren't, however, the first people to draft Welsh laws. As previously mentioned one of the effects of the Laws of Wales Acts of 1536 and 1542 was to abolish the native Welsh laws that still applied in Wales. These laws had been codified at the time of King Hywel Dda (Howell the Good) in the 10th Century.



Hywel Dda (Howell the good), reign: 942-950

Famously – or famously amongst Welsh legislative drafters at least – Hywel convened a 'Cynulliad' (an Assembly) for the purpose of codifying Welsh law:

*"the King selected from that assembly the twelve most skilled laymen of his men and the one most skilled scholar who was called Master Blegywryd, to form and interpret for him and for his kingdom, laws and usages..."*

(Conventional thought has it that the first Parliamentary Counsel started their work in Whitehall in the 18th century – but I contend that such an office had been created in Wales several centuries earlier!)

The product of this exercise was a comprehensive code of law brought together in a series of books. Take as an example this translation of Hywel's laws on 'ysgariad' (divorce):

*"If anyone send away his wife without lawful cause and take another in her place, by judgment the woman who has been put out is entitled to come to her home, and be in her home until the ninth day. And if on that day she is sent away, first let all things which are hers go out from the house, and after the last of the number, let herself go out of the house. The husband shall have all of the pigs, the wife, the sheep. The husband shall have all the horses and mares, the oxen and cows, bullocks and heifers: the wife shall have the goats. Next the household equipment shall be divided as follows: all the vessels of milk, except one baeol [pitcher] are the wife's and all the dishes, except one meat dish, that is gigddysgl [meat dish] are the husband's..."*

Hywel was known as 'the Good' because for the standards of the day his laws were (and still are) considered to be liberal, focusing for example on restitution for crimes rather than (violent) punishment. They were also ahead of their time in relation to the status of women, who could divorce their husbands as easily as men could divorce them. And as we can see above if a man "sent away" his wife "without good cause", although the wife would only be allowed to stay in their house for 9 nights, the couple's possessions were then to be shared fairly equally – and there is detailed provision about this. Looking at this through the eyes of a modern day legislative drafter we would no doubt have looked to break the provision up to bring about more 'white space', used a Schedule or even taken a power to make Regulations... I'm also not sure of its compliance with the European Convention on Human Rights but it isn't bad considering it's over a thousand years old!

Interestingly the achievements of King Hywel are still relevant today, essentially because what he did was bring order to the law, codifying it into what later became a system of books. This is relevant because of increasing concerns about the huge numbers of UK statutes and the difficulty in accessing up-to-date law.

### ***Problems of access to legislation***

The current Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd – (incidentally a Welshman), commented on this issue in a recent speech:

*"When there is a discussion of access to justice, it is generally a discussion about the availability of legal advice and representation... or the location of courts at a convenient point for the delivery of local justice. These are two vital considerations, but I do not*

*think we should lose sight of two others, one of general application and one of particular application in Wales.*

*The first is good, well-drafted law. Earlier this year the Government in Whitehall announced its Good Law Project. The objective is to try and ensure that statutes are better drafted, easier to understand and organised in a way that is at least in good part intelligible to persons other than trained lawyers. If legal aid is not available and lawyers are too expensive for the ordinary person to afford, then there cannot be access to justice, unless the laws that govern us are first written in language that is intelligible and second organised in a way such as the laws on a particular subject can be found in one place and in an organised manner. That is to say, we need better-drafted law and better-organised law.*

*Although this is primarily a matter for the legislature and the executive in Wales, it is essential that all of the judiciary, professions and academics in Wales support and press for the attainment of these objectives. In Wales, there is the huge advantage that Welsh legislation has but a short history. There is no reason, therefore, why it cannot develop its own innovative style. There is no doubt that the style of Westminster drafting can be improved. Furthermore, Wales can begin its own sensible organisation of Welsh law into a Code with chapters into which new laws can be inserted and old laws amended, much along the lines of what is done in most states. Westminster is burdened by history. It is therefore a model that does not have to be followed. Progress has been made ... but very much more needs to be done.*

The Lord Chief Justice's call for well-drafted law is one familiar to all legislative counsel. In Wales, however, we faced a situation in which we had no recent history or experience of drafting primary laws. In 2007 a drafting office had to be set up more or less from scratch. I say "more or less" for two reasons: the first is that the Welsh Government could call upon public lawyers expert in constitutional matters and with experience of drafting subordinate legislation, and the second is that we were fortunate enough to receive considerable assistance in the early years from the oldest drafting office of them all, the Parliamentary Counsel's Office in London. Developing a drafting office remained, however, a daunting task; something that in my view was not initially fully understood. This task became yet more difficult as it became apparent that the capacity of the office was not sufficient to meet the legislative demands of Ministers. Having attempted to staff the office primarily from lawyers converting from the Welsh Government's legal department, it became clear that further restructuring was required in order to be able to attract experienced drafters from elsewhere. The office was eventually expanded from the 4 drafters it had in the early years to the 14 we have today. Crucially, in doing so we were able to recruit experienced drafters from among our friends in the other UK drafting offices, with whom we have excellent relations.

The Lord Chief Justice also called for something that may be taken for granted in many jurisdictions, which is for the law to be well organised and available in one place. For many

years concerns have been expressed about the extent to which UK laws are accessible. The 'statute book' is vast, and is growing rapidly. The law on a particular subject does not tend to be available in one place – either in form or location. Legislation is in general poorly published; ordered only chronologically and not by subject, with much of it not being available in its up-to-date form (i.e. incorporating amendments to it made by subsequent legislation). Although this is a UK-wide problem, since the creation of the Welsh legislature its impact is greater in Wales.

This is partly because – unlike in Scotland and Northern Ireland – very little stand-alone 'Welsh law' existed prior to devolution. Rather it is intertwined with the law that also applies to England or to the rest of the UK. This remains so in the majority of subject areas, making it difficult to ascertain what is devolved and how the law may differ in Wales. In the absence of a Welsh legal jurisdiction, this legislation can only extend to England *and* Wales (or to Great Britain or to the UK as a whole) and it cannot (as I have said), therefore, be conveniently labelled and signposted as 'Welsh law' (or indeed as 'English law' despite the emergence of an 'English votes for English laws' procedure in the UK Parliament). Laws that have effect in Wales (or England) are instead identified (or not, as is often the case) by reference to the *application* of the law. In other words the concept used to delineate the persons or matters to which the provision relates has been adapted, essentially to delineate a territory.

This is a distinction many find confusing. Take the Care Act 2014, a UK Parliament Act on the provision of social care. This is an Act, the penultimate section of which tells you, that "extends to England and Wales only". Most would assume, therefore, that the law has effect in both countries. But on the second page of the Act, a short and seemingly innocuous subsection tells you that a "local authority" means "a county council in England" – and that is how you are told that the Act has effect (subject to two very minor incidental provisions) in England only.

Also problematic is the piecemeal manner in which power has been devolved. The limited nature of the legislative competence devolved – and the fact that there is often little rationale behind what is devolved and what is not – can make it difficult to ascertain what falls within the power of the National Assembly for Wales. Also difficult to understand and follow is the means by which executive power was transferred upon devolution in 1999. This was done generally by way of Order in Council, transferring powers of the Secretary of State to the National Assembly (as it was originally constituted). By virtue of the Government of Wales Act 2006 (paragraph 30 of Schedule 11 on page 174 no less) these powers were subsequently transferred to the Welsh Ministers. The process of transfer was in itself problematic (with many of the transfers subject to exceptions and limitations), but the absence of textual amendments on the statute book at the time (and the subsequent change in the devolution arrangements) makes it even more difficult to follow. By way of example in sections 29, 30 and 31 of the School Standards and Framework Act 1998 (an Act of the UK Parliament) there are references on the face of the Act to the "Secretary of State", the

“Assembly” and the “Welsh Ministers” which all, in law, mean the Welsh Ministers. Similarly section 10 of the Education Act 1996 provides as follows:

*“The Secretary of State shall promote the education of the people of England and Wales.”*

when what it actually means is this:

*“The Secretary of State shall promote the education of the people of England and the Welsh Ministers shall promote the education of the people of Wales.”*

This is something that many lawyers find difficult, let alone the untrained citizen. The Welsh Government, through the guise of its Law Officer, the Counsel General Theodore Huckle QC – (and of course our drafting office), hopes to improve the situation. As part of this process the Welsh Government and the Welsh Advisory Committee of the Law Commission of England and Wales, have asked the Law Commission, to consider –

*“...the current arrangements for the form, accessibility and presentation of the law applicable in Wales, and make recommendations to secure improvements of those aspects of both the existing law and future legislation.”*

### ***The multiple roles of legislative counsel***

In Wales we as legislative counsel have traditional roles familiar to most if not all drafting offices though with certain differences caused largely by the nature of the Welsh devolution system. We also have others specific to tackling the issue of improving access to Welsh legislation previously mentioned. I will take each of these roles in turn.

#### ***Role 1: lawyer***

I refer first not to the role of drafter but the role of being a lawyer. This is partly because many of us in the office have converted from being Welsh Government lawyers to being legislative counsel, and also because we probably have a more prominent role in providing legal advice than in many jurisdictions. This is because of an expectation that we will assist in the process of advising on the National Assembly’s legislative competence. Advising on such matters is primarily a matter for our Legal Services Department and the Office of the Counsel General, but we contribute also. We do so because the system is a complex one that is difficult to make work – largely in my view because the power devolved is too narrow. (It is not by chance that three Welsh Bills have been referred to the Supreme Court in three years.)

### *Role 2: drafter*

Our primary role is of course drafting, and I need not explain what that involves to this audience. As I suspect is the case elsewhere, we do occasionally come across colleagues who believe us to be legal ‘scribes’, but that is rare and there is a general appreciation of the specific expertise we bring and the value we add. This is partly because across the Welsh Government have sought to avoid taking a ‘linear’ approach to Bill development, under which the development of policy, provision of legal advice on that policy and drafting are compartmentalised and happen in sequence. What has developed is more a collaborative approach to developing law:



Although all remain clear about their specific responsibilities, some degree of overlap in roles is inevitable and in my view should be encouraged. Much can be taken from the perspective and expertise of others in what is, after all, a difficult process. We will, therefore, challenge where appropriate and encourage others to challenge us as part of the iterative process of developing good law.

### *Role 3: linguist*

To state that a drafter must have expert linguistic skills is a statement of the obvious – an ability to write clearly, economically, accurately and grammatically correctly being an essential part of the job. In Wales, however, we have an added challenge of drafting our laws bilingually in both Welsh and English. This is of course not unique to Wales, and we have learnt much from how our colleagues in drafting offices elsewhere, most notably in Canada, approach this task. However, this has been a particularly difficult challenge because in Wales the Welsh language, to all intents and purposes, ceased to be a language of the law nearly 500 years ago. Although the language has continued to be used in the courts (and since the 1940s we have had rights to do so), much has had to be done over the last 15 years or so to develop and standardise Welsh language legal terminology. In consequence the need for high level Welsh language skills is a prominent feature of our recruitment policy, and at least half of the drafters in the office are required to have such skills.



## Deddf Trawsblannu Dynol (Cymru) 2013

Deddf gan Gynulliad Cenedlaethol Cymru i wneud darpariaeth ynglŷn â'r cydsyniad sy'n ofynnol ar gyfer tynnu, storio a defnyddio organau a meinweoedd dynol at ddiben trawsblannu; ac at ddibenion cysylltiedig. [10 Medi 2013]

Gan ei fod wedi ei basio gan Gynulliad Cenedlaethol Cymru ac wedi cael cydsyniad Ei Mawrhydi, deddfir fel a ganlyn:

### *Cyflwyniad*

#### 1 Trosolwg

Mae prif ddarpariaethau'r Ddeddf hon—

- (a) yn gosod dyletswydd ar Weinidogion Cymru i hyrwyddo trawsblannu (adran 2);
- (b) yn darparu bod gweithgareddau penodol a wneir yng Nghymru at ddiben trawsblannu yn gyfreithlon os cânt eu gwneud â chydsyniad (adran 3);
- (c) yn nodi sut y caiff cydsyniad ei roi i weithgareddau trawsblannu, gan gynnwys yr amgylchiadau lle yr ystyrir bod cydsyniad wedi ei roi yn absenoldeb cydsyniad datganedig (adrannau 4 i 9);
- (d) yn ei gwneud yn drosedd i weithgareddau trawsblannu gael eu cyflawni yng Nghymru heb gydsyniad (adran 10);

A law in Welsh

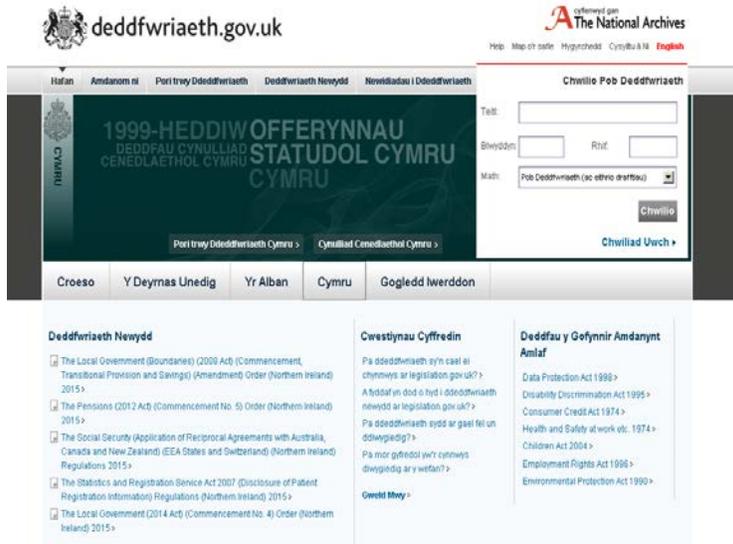
### *Role 4: editor*

The role of editor is closely associated with the role of drafter and linguist. Our system involves Bills being drafted in one language by legislative counsel (normally in English, but not always) before being passed to jurilinguists who produce a draft of it in the second language (normally Welsh). There then follows another iterative process during which the drafter and jurilinguists seek to ensure the equivalence of both drafts. Although the main purpose here is to ensure that the correct terminology is used in both texts and to ensure parity in legal meaning, in practice the main focus is often actually on the syntax of the language and the style adopted. Converting drafting from one language to the other often exposes ambiguities. Where drafting in the second language looks clumsy or unclear, more often than not that is because it was poorly or ambiguously drafted in the first language. In working with the jurilinguists, therefore, legislative counsel perform an editorial role which improves the clarity of our drafting.

### *Role 5: publisher*

Although the Welsh Office of the Legislative Counsel does not have a formal role in publishing legislation, we do work with the National Archives to improve the way Welsh laws are accessed. Two members of the office work with the *legislation.gov.uk* team on their project of updating the site by incorporating amendments to legislation made by subsequent legislation. We have also contributed to exercises undertaken by the National Archives to better understand how members of the public use the site, and, therefore, how they access the law. Much of the focus here has been on the specific issue of how readers look at both language versions of Welsh law. We have also worked with the National Archives to assist

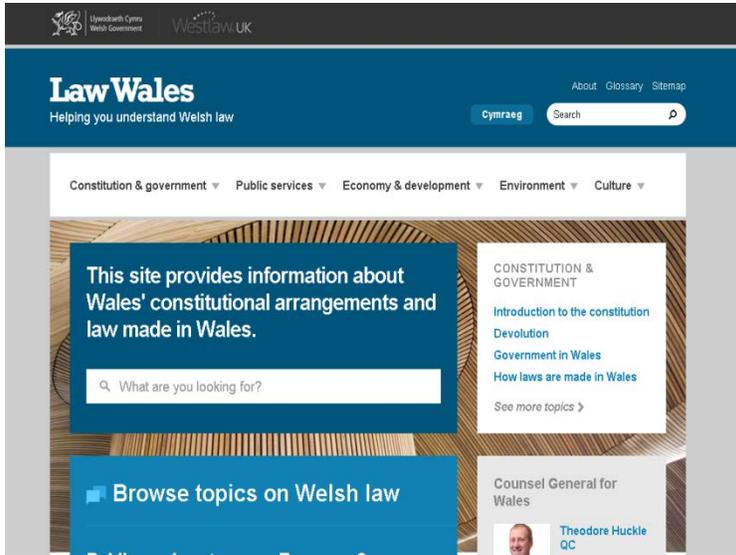
them in making the legislation.gov.uk website available in Welsh – and it is notable that nearly 20% of the hits on Welsh legislation are to the Welsh language version of the text.



legislation.gov.uk in Welsh

### Role 6: web designer

Recently our online ventures expanded beyond publication of the law when we created a new website. ‘*Cyfraith Cymru Law Wales*’ is a collaboration between the Welsh Government and legal publishers Westlaw UK. Developed largely because of the lack of commercial publications on the law in Wales, it aims to provide explanatory narrative and commentary on all areas devolved to Wales. The Welsh Government is very grateful to Westlaw UK for providing, free of charge, articles that relate to devolved areas from its ‘Westlaw UK Insight’ encyclopaedia service to the Law Wales site. In addition to the articles edited and provided by Westlaw UK, Law Wales also provides a navigable topic structure and overviews of the law on devolved topics. The site remains a work in progress and we are considering whether we can expand upon the service it provides.



[www.law.gov.wales](http://www.law.gov.wales)

### *Role 7: codifier?*

Although much can be done to improve access to legislation through better publication and commentary, there are obvious limitations if the main source of the law – the statutes themselves – are poorly organised. There is no doubt that, taken as a whole, the ‘statute book’ in the UK is in much need of reform. For the reasons set out above the problems are particularly acute in relation to Wales (and indeed to England). This is not merely because of the proliferation of Acts and amendments to Acts, but also because of their clash with the line drawn to separate power between the legislatures and executives of Wales on the one hand, and the UK (mainly in their role in relation to England) on the other.

In drafting Welsh Government Bills we have committed where practicable to restate all of the law on a particular topic in its entirety rather than merely amending law that normally applies to both Wales and England. As an example, therefore, when changing the law on consent for organ donation we restated all of the law on consent for transplantation into a new Welsh Act rather than amending the existing Human Tissue Act 2004 which extends to England, Wales and Northern Ireland. The latter would have been technically easier from the drafter’s perspective but much less easy to access and understand.

Restating the law in relatively small measures, however, will only take you so far. Ultimately to deal with the issues properly, wholesale consolidation of the law is necessary, as was done at the time of King Hywel. As the preamble to the Book of Iorwerth (1240) refers:

*“...by the common counsel and agreement of the wise men who came there they examined the old laws, and some of them they allowed to continue, others they amended, others they wholly deleted, and others they laid down anew.”*

These codified ancient laws are still available today:

The screenshot shows the website for 'Cyfraith Hywel', which is dedicated to the Ancient Laws & Institutes of Wales. The page title is 'The Contents of Ancient Laws and Institutes of Wales'. A navigation menu on the left includes links for Home, News, A guide to Welsh Law, The manuscripts, Texts and publications, Bibliography, Ancient Laws & Institutes of Wales, About us, Cyfraith Hywel Seminar, and Links. The main content area features a portrait of a man in a dark coat and white cravat, with a caption 'Click for a larger image'. To the right of the portrait, the text reads: 'Volume I' and 'Volume I presents the three Codes.' Below this, there are three links: 'The Venedotian Code - Dull Gwynedd', 'The Dimetian Code - Dull Dyfed', and 'The Gwentian Code - Dull Gwent'. Further down, 'Volume II' is mentioned, with the text 'The 'Anomalous Laws''. Below this, there are links for 'Book IV', 'Book V', 'Book VI', 'Book VII', 'Book VIII', 'Book IX', and 'Book X'. At the bottom, there are links for 'Book XI', 'Book XII', 'Book XIII was a forgery by Iolo Morganwg', and 'Book XIV'. The website logo 'Cyfraith Hywel' is in the top left, and the text 'Cymraeg Home Manuscripts index Damweiniâu' is in the top right.

Repeating the task and producing consolidated and codified Welsh laws all published together in an accessible fashion is a daunting prospect. Committing scarce drafting resource to consolidation is challenging when inevitably issues of a higher political priority arise. It would be time-consuming and would unearth legal and cross border issues that will be difficult to address. Securing the path of consolidation bills efficiently through the National Assembly may also be problematic, and there can be no guarantee that our efforts would not unravel when Ministerial priorities change. But in my personal opinion doing nothing is also a difficult choice and I draw inspiration from the fact that we in Wales have done this before - and I hope we will do it again.

## **Conclusion**

These are exciting times for the law in Wales and we as legislative counsel are very conscious of our responsibilities in developing Welsh law in an emerging legal jurisdiction. Equally we are very aware that we are at the forefront of resurrecting the Welsh legal language as a language of law.

We are living through history and hope history will judge us well.



**Dylan Hughes**  
**Prif Gwnsler Cyffredinol Llywodraeth Cymru**  
**First Legislative Counsel to the Welsh Government**  
**April 2015**



**Swyddfa'r Cwnsleriaid Deddfwriaethol**  
**Office of the Legislative Counsel**



The Senedd: Home of the National Assembly for Wales: Public Gallery to Siambr

## Jersey: Retirement of Jersey's Law Draftsman

The Law Draftsman for Jersey, Pam Staley, retired from her post in July. Pam came to the Law Draftsman's Office in Jersey in 1994 from the Department of the Environment in the United Kingdom. She served for a number of years as the Senior Assistant Law Draftsman under Bill McGregor, when she was largely responsible for the internal handling of the project that led to Jersey's first Law Revision in 2004. In that same year she succeeded him to the post of Law Draftsman. As Law Draftsman Pam ensured that there was an annual Law Revision for Jersey to incorporate the amendments made during the previous 12 months, meticulously undertaking much of the work herself and enabling the legislation to be updated on the [Jerseylaw website](#) once a year. She recruited a new team of assistant law draftsmen to work under her, primarily from the UK, but together they also boast experience of drafting in Cyprus (Sovereign Base Areas), St Lucia, Cayman and the Isle of Man.

Liz Walsh, who was senior assistant law draftsman under Pam, has been appointed acting Law Draftsman pending a review as to whether the Law Draftsman's Office should become part of the Law Officers' Department. Neither Pam nor Liz are members of CALC, though the rest of the Jersey drafters are mostly active members.



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

Lucy Marsh-Smith



## Items of Interest

### ***Wales: Office of the Legislative Counsel, Wales – Dylan Hughes***

One of the newest drafting offices in the Association, the Welsh Office of the Legislative Counsel, has recently completed its restructuring and expansion. The office was created in 2007 following the conferral of limited legislative competence on the National Assembly for Wales by the Government of Wales Act 2006. The office was originally a small one of only four drafters, and expansion was required after expanded legislative competence was backed by the people of Wales in a 2011 referendum. A decision was taken, however, to expand the office gradually in order to ensure the right balance of experience and capacity. This process was eventually completed last year when the office reached its agreed complement of 14 drafters. Two of the office's new drafters (Clemency Macnamara and Neil Martin) were recruited from the UK Parliamentary Counsel's Office and another (Terry Kowal) from the Scottish Parliamentary Counsel.



The Office has recently been working closely with the Law Commission of England and Wales on a project considering the “Form and Accessibility of the Law Applicable in Wales”. The project was instigated due to long standing concerns about access to Welsh law. Although the size and complexity of the ‘statute book’ is a UK wide problem, since the creation of the Welsh legislature its impact is greater in Wales. This is because – to a far greater extent than in Scotland and Northern Ireland – very little stand-alone ‘Welsh law’ existed prior to devolution, rather it is intertwined with the law that also applies to England or to the rest of the UK. This remains so in the majority of subject areas, making it difficult to ascertain what is devolved and how the law may differ in Wales. Also relevant is the complexity of the model of devolving power, a complexity caused in part by the absence of a distinct Welsh legal jurisdiction. The issue has become a prominent one and the Lord Chief Justice, among others, has called for Wales to codify the law and not follow the “Westminster model”. The Law Commission has recently published its [report](#), and has recommended (among other things), that the Welsh Government promote a comprehensive programme of consolidation and codification of statute law within the devolved competence of the National Assembly for Wales. The Welsh Government will be responding to the report before the end of the year.

The Office of the Legislative Counsel also led on a project undertaken on behalf of the Counsel General for Wales to develop a bilingual website ([Cyfraith Cymru Law Wales](#)) providing information and commentary on Welsh law. The content for the site is being developed in conjunction with Westlaw UK who are making articles available from their ‘Westlaw Insight’ service. The Law Commission has recommended that the website be further developed and include a portal to make Welsh legislation available in one place, ordered by subject.

***New Zealand: Appointment of Deputy CPCs (Cassie Nicholson, Jonathan Robinson)***

***Deputy Chief Parliamentary Counsel (Director Drafting Legislation) – Cassie Nicholson***

On 17 June 2016, New Zealand Chief Parliamentary Counsel, Fiona Leonard, was pleased to announce the appointment of Cassie Nicholson as Deputy Chief Parliamentary Counsel (Director Drafting Legislation). Cassie heads the PCO's four drafting teams. She stepped into the role on 7 June 2016.

Cassie is a senior Parliamentary Counsel, having been with the Parliamentary Counsel Office for 17 years. She began her career as a commercial lawyer in the private sector and joined the public sector after completing postgraduate study in law and regulation at the London School of Economics. She gained experience leading complex policy reform on secondment to the Ministry of Business, Innovation, and Employment from 2013 to 2015. She has been the acting Drafting Team Manager leading the Resources and Treaty team for the past 12 months.



Cassie Nicholson



Jonathan Robinson

***Deputy Chief Parliamentary Counsel (Director Access to Legislation) - Jonathan Robinson***

On 1 August 2016, New Zealand's Chief Parliamentary Counsel, Fiona Leonard, was pleased to announce the appointment of Jonathan Robinson as Deputy Chief Parliamentary Counsel (Director Access to Legislation), with effect from 29 August 2016.

Jonathan Robinson was, when appointed, the Executive Director of Resources and Legal Services with the Environment Agency in England. He has significant experience in the development of policy and legislation, including drafting secondary legislation and instructing on Bills. Jonathan was formerly the Chief Legal Adviser with New Zealand's Ministry of Social Development from 2006 to 2008.

## New Zealand: giving and serving notices – Solicitor-General's reference No 1 of 2016



*Notice not given by duty holder or delegate (who may serve notice duly given) is nullity*

On 5 September 2016, New Zealand's Court of Appeal (Kós J) gave a decision on demerit points, and on the first Solicitor-General's reference (Criminal Procedure Act 2011, s 313(3)). It agreed with the High Court (Joseph Williams J) that the Land Transport Act 1998 s 90 had not been complied with: "[I]t does not suffice, without delegation, for the Agency simply to 'cause' the notice to be given by someone else, as a result of automated data sharing...[the 2011 amendments] did not alter the fact that it remained for the Agency to give the notice. The only 'technical difficulty' was that it attempted to do so, and got the delegation process wrong [(the Solicitor-General told the Court the purported delegation lacked the Ministerial approval required by the Crown Entities Act 2004 s 73(1)(d))]. That does not justify judicial subversion of the plain meaning of the statutory provision" (at [30]-[31]). A regularizing provision (Criminal Procedure Act 2011, s 379) did not apply, Kos J said (at [39]), because: "[T]he defect was that the wrong authority generated the notice. The Agency had failed to give notice to the driver at all", so there was no defective notice to regularize under the provision.

The defective delegation to the Police was fixed in 2015, and a Bill introduced on 12 September 2016 is to amend s 90 of the 1998 Act to clarify that a notice of a suspension under the demerit points system can be created and served by either the Transport Agency or the Police:

*Solicitor-General's Reference (No 1 of 2016)* [2016] NZCA 417:

<http://www.courtsofz.govt.nz/cases/solicitor-generals-reference-no-1-of-2016-v-from-criminal-procedure-act-2011-485-52-and-high-court-at-christchurch/@images/fileDecision>

Land Transport Amendment Bill (173—1), *clause 82*:

<http://www.legislation.govt.nz/bill/government/2016/0173/latest/DLM6960897.html>

("Clause 82 amends section 90 to eliminate doubt as to whether the Police can serve a notice of suspension before an offender has received written notice of suspension from the Agency. The amendment makes it clear that either the Police or the Agency may create or serve the notice."

## **New Zealand: ‘three strikes’ legislation case – meaning(s) of “manifestly unjust”**

On 10 August 2016, the New Zealand Court of Appeal gave judgment on 2 appeals by the Solicitor-General that raised, for the first time in that court, questions of the interpretation and application of the so-called “three-strikes” mandatory sentencing regime introduced by the Sentencing and Parole Reform Act 2010: [R v Harrison and R v Turner \[2016\] NZCA 381](#). The appeals were against High Court decisions to the effect that it would be “manifestly unjust” to impose life imprisonment without parole for murders committed as a stage-2 or “second strike” offence. The decision helps make clear the legal meaning(s) of “manifestly unjust” in these provisions of the Sentencing Act 2002:

- section 102 – Where the generally required sentence for murder, life imprisonment, would be “manifestly unjust”, given the circumstances of the offence and the offender, the sentencing judge may instead impose, as an exception, an appropriate finite sentence. If life imprisonment is imposed, a minimum term of imprisonment of not less than 10 years must be ordered, and a longer minimum term of imprisonment may be ordered.
- section 104 – In sentencing for murder where specified aggravating circumstances are present (for example, the murder was committed with a high level of brutality, cruelty, depravity, or callousness), the judge must impose a minimum term of imprisonment of at least 17 years, unless that would be “manifestly unjust”.
- section 86E (part of the 2010 “three-strikes” regime) and which, if applicable (when the stage 2 offence is murder), requires the court to sentence the offender to imprisonment for life for the murder and to order that the offender serve that sentence of imprisonment for life without parole unless the court is satisfied, given the circumstances of the offence and the offender, it would be “manifestly unjust” to do so.

Giving the Court’s decision, Stevens J said (at [94]):

“the [s 86E(2)(b)] discretion must be exercised by reference to the inherent risk of gross disproportionality arising from the application of s 86E”. The court was especially mindful of the broad catchment of the 3-strikes regime and the New Zealand Bill of Rights Act 1990 s 9 right not to be subjected to disproportionately severe punishment. Stevens J acknowledged (at [98]-[101]) that the court’s proposed approach to s 86E(2)(b) differed from that followed under ss 102 and 104 despite all 3 provisions using the language of “manifestly unjust”. The s 86E(2)(b) three-strikes regime discretion involves vast differences from usual sentencing practice and entails far more extreme outcomes. Under ss 102 and 104, the choices open both involve parole eligibility. However, under s 86E, if the exception does not apply, there is no eligibility for parole. Also, s 86E involves a much wider range and variation of cases, some of which are not in the worst category of murders. “Therefore the guidance that can be taken from the use of the phrase ‘manifestly unjust’ in ss 102 and 104 is minimal”, Stevens J said (at [101]). Despite statements ...to the contrary in some of the legislative materials, the stark differences in the purposes, qualifying requirements and effects of the mandatory

provisions do not support the application of a similar interpretative approach to s 86E...we consider that the phrase ‘manifestly unjust’ must be interpreted to make s 86E work as Parliament intended without contravening s 9 of the Bill of Rights Act.”

### ***New Zealand: Marino v R – Sentence calculation – deductions for pre-sentence detention***



On 22 September 2016, the New Zealand Supreme Court gave judgment on appeals relating to sentence calculation and, in particular, on credits for pre-sentence detention: [Booth v R and Marino v The Chief Executive of the Department of Corrections \[2016\] NZSC 127](#). The Supreme Court held unanimously that the Parole Act 2002 has been misinterpreted and as a result, in some instances – including those involving the appellants – parole and release dates have been calculated on an inappropriate basis. Justice Young’s decision at [117] refers to “eliminating all anomalies from...the pre-sentence detention regime which I consider warrants legislative reconsideration”. The Supreme Court’s decision, which differs from the earlier holdings on the matter of lower courts, affects the lawfulness of the detention of many prisoners over many years. It has therefore attracted considerable news media attention. See, for example, the following items:

[www.radionz.co.nz/news/national/313959/corrections-wrongly-calculated-release-dates,-court-rules](http://www.radionz.co.nz/news/national/313959/corrections-wrongly-calculated-release-dates,-court-rules)

[www.radionz.co.nz/news/national/313988/release-date-blunder-affects-500-inmates](http://www.radionz.co.nz/news/national/313988/release-date-blunder-affects-500-inmates) [www.radionz.co.nz/news/national/314049/thousands-of-prisoners-potentially-affected-by-ruling-collins](http://www.radionz.co.nz/news/national/314049/thousands-of-prisoners-potentially-affected-by-ruling-collins)

[www.radionz.co.nz/news/national/314118/prison-time-error-could-see-pay-out-for-victims](http://www.radionz.co.nz/news/national/314118/prison-time-error-could-see-pay-out-for-victims)

[www.radionz.co.nz/news/political/314263/cabinet-still-considering-sentence-length-ruling-pm](http://www.radionz.co.nz/news/political/314263/cabinet-still-considering-sentence-length-ruling-pm)

## Scotland: online drafting guidance – Drafting Matters!

On 8 August 2016, the Parliamentary Counsel Office in Scotland published online the first edition of its drafting guidance, [Drafting Matters!](#)



In his foreword to the drafting guidance, Chief Parliamentary Counsel Andy Beattie says: “The manual is not a guide on how to draft a Bill or on how to interpret statutes. It is a collection of the internal guidance which parliamentary counsel use when drafting Bills for the Scottish Government. Its main purpose is to allow drafters to inject a degree of cohesion and consistency into the overall Scottish statute book, with a view to helping users of legislation to understand it better.

“Legislative drafting is a highly creative activity and parliamentary counsel need to be free to evolve and adjust drafting practice to ensure that modern legislation continues to improve and adapt to the needs of those who use it. Each topic covered is no more than a snapshot of our guidance as at the date of publication. All the material is kept under constant review and we hope to engage and involve others to help us to develop new ways of making law more accessible.

“It is a great privilege to be responsible for helping shape the law of Scotland. We hope that sharing this drafting manual will give some insight into how a Bill is prepared and will encourage comments on our approach to drafting legislation and suggestions for how we should continue to improve the quality of Scotland's law.”



## ***New Zealand: Advancing Better Government Through Legislative Stewardship Conference, November 2016, Wellington***



Brenda King and Fiona Leonard (New Zealand Chief Parliamentary Counsel)

Brenda King, First Legislative Counsel for Northern Ireland, was a keynote speaker at this recent New Zealand Conference about how best to design legislative and regulatory systems.

## ***New Zealand: Clarity 2016 Conference, 3-5 November 2016, Wellington***

CALC members visiting Wellington to present at or attend this Conference included Adam Bushby (Victoria), Ben Piper (Victoria), Brenda King (Northern Ireland), Eamonn Moran QC (Victoria), Elaine Ng (Hong Kong SAR), and Paul O'Brien (Northern Territory). Richard Wallace of New Zealand's PCO also presented at the Conference. Keynote speakers included Hon Michael Kirby AC CMG (*Clarity* Patron) and Una Jagose QC (New Zealand Solicitor-General):



## **United Kingdom: “Brexit” – Act held to limit foreign affairs prerogative**

Legislation implementing international legal obligations, and how it does or may affect the foreign affairs or treaty-making Royal prerogative, were at issue in a recent EWHC ruling on the European Communities Act 1972 (UK) and Article 50 of the TEU - [R \(Miller\) v The Secretary of State for Exiting the European Union](#) [2016] EWHC 2768 (Admin), [an appeal against which by the Government is to be heard by the UKSC](#), sitting with 11 Justices, from 5-8 December 2016.



## CALC Conference in Melbourne Australia



### **Beginning with the End in Mind — Legislative Drafting in the context of 21st Century challenges**

**29 to 31 March 2017**

- 1 CALC will hold its next bi-annual conference in Melbourne in Australia.
- 2 The conference will be focussed on the challenges that face drafters and others involved in the production of legislation in the 21st Century. This is a broad and fascinating area and the conference will provide the opportunity to examine many aspects of this in depth.
- 3 The conference will cover 3 full days in an attempt to provide sufficient time to examine the theme.
- 4 The main conference will commence on the morning of Wednesday 29 March 2017 and conclude with a dinner on Friday 31 March. There will also be a workshop in Sydney on Tuesday 4 April.
- 5 The conference is open to all CALC members and will also include a General Meeting of CALC and the election of the CALC Council. This will be held on the afternoon of Thursday 30 March.

### **Registration**

- 6 You can register now through the CALC website at [calc.ngo](http://calc.ngo).
- 7 **Registrations will close on Friday 13 January 2017**, although you are encouraged to register as early as possible.

### **Sponsors**

- 8 This conference is being sponsored by LexisNexis and Irosoft.



## Conference program

- 9 An outstanding array of speakers from across the Commonwealth have agreed to present papers at the Conference. An initial draft program for the Conference will be available shortly.

## Conference venue

- 10 The Conference will be held at the RACV Club in Bourke Street in Melbourne's CBD. This is an excellent venue that is very central and offers facilities that are very well suited to the conference.

## Conference accommodation

- 11 The RACV Club is also the official accommodation for the conference.
- 12 A special rate has been arranged for conference delegates. Details are on the OPC website.
- 13 There are numerous other hotels that are nearby. These can be found on sites such as [tripadvisor.com.au](http://tripadvisor.com.au), [hotels.com](http://hotels.com) or [trivago.com.au](http://trivago.com.au).
- 14 March is a popular time in Melbourne and there are often large events held during that month. Therefore, delegates are advised to book early.
- 15 For all hotels, including the RACV Club, bookings need to be made directly with the hotel. When booking with the RACV Club, you should mention that you are with CALC and confirm the rate.

## Conference fees

- 16 The conference fees are **350 UK pounds**. This includes the conference, a reception and the conference dinner. It also includes the Sydney workshop and associated harbour cruise.
- 17 Guests (who are not delegates) may attend the dinner or the receptions. There is an additional charge for guests who are not delegates to attend the various functions.

## Guest charges

- Reception: £30
  - Conference dinner and drinks: £80
  - Harbour cruise: £50
- 18 The main payment facilities will be through PayPal. Delegates will be sent an invoice once they have registered.
- 19 If you are being paid for as part of a group, please make this clear in the relevant part of the registration form.

## Registration

- 20 Registration will be done through an electronic form available on the new CALC webpage at [calc.ngo](http://calc.ngo).
- 21 If you have problems with the form, please contact [calc@opc.gov.au](mailto:calc@opc.gov.au).
- 22 It would be of assistance if forms could be submitted as soon as possible.
- 23 **Registrations will close on Friday 13 January 2017**, although you are encouraged to register as early as possible.

## Conference functions

### *Welcoming reception*

- 24 There will be welcoming drinks on the Wednesday evening.
- 25 This will be held at the RACV Club and is being sponsored by Lexis Nexis.

### *Thursday casual meal*

- 26 There will not be an official function on the Thursday evening.
- 27 However, we are looking to organise a number of venues that groups of delegates can go to for dinner. More information about this will be provided closer to the conference.

### *Conference dinner*

- 28 The Conference dinner is being held at the Melbourne Museum. This is a magnificent looking venue.
- 29 Further details of the dinner will be provided to delegates.

## Social activities

- 30 There is a proposal to have some informal social activities on the Saturday that will be led by staff from the Office of the Chief Parliamentary Counsel of Victoria.
- 31 There is also a proposal to have a bus tour on the Saturday. If you would be interested in doing this, please indicate it on the registration form.

## Information about Melbourne and Sydney

- 32 There is a lot of information about Melbourne and Sydney on the web.
- 33 A good place to start for Melbourne is: <http://www.thatsmelbourne.com.au/placestogo/attractions/pages/attractions.aspx>
- 34 A good place to start for Sydney is: <http://www.sydney.com/>

## Workshop in Sydney

- 35 As a result of the success of the post-conference workshop in Belfast after the last CALC conference, CALC has organised a workshop in Sydney on Tuesday 4 April.
- 36 The theme of the conference is Drafting Downunder: the Australian approach to selected drafting issues.
- 37 The workshop will be held at the Art Gallery of New South Wales, located in The Domain in Sydney, New South Wales, Australia.
- 38 The workshop will be followed by an evening harbour cruise on Sydney Harbour.
- 39 The workshop is covered by the main conference fee.
- 40 Delegates will need to arrange their own transport to Sydney and their own accommodation in Sydney.
- 41 If any drafting office wants to send different delegates to the workshop and to the conference, they should contact [calc@opc.gov.au](mailto:calc@opc.gov.au) to discuss arrangements.

## Visas

- 42 Delegates will need to ensure that they have the appropriate visas.
- 43 A website that will help you with this is: <https://www.border.gov.au/> (Click on Visas and then enter your information in the electronic form. It should show you the visa or travel authority that you will need).

- 44 Any delegates who require a letter from CALC stating that they are attending the conference should send a request to [calc@opc.gov.au](mailto:calc@opc.gov.au).

### **Further information about the conference**

- 45 Some of the further information about the conference (e.g. advance copies of papers and information about the social events) will be included in the part of the [calc.ngo](http://calc.ngo) website that you need to logon to get access to. Therefore, please make sure that you have logged on and set your password on the website.

## Proposal to alter the CALC Constitution to permit electronic voting in the future

### Background

At the CALC Conference in Edinburgh, there was discussion about the desirability of electronic voting. The Council undertook to investigate the matter and to bring a proposal back to members.

After considering the matter the matter, the Council decided:

- that the Council should put forward, and support, changes to the CALC constitution that would enable electronic voting at some time in the future; but
- that that the Council should not attempt to implement an electronic voting system for the CALC General Meeting to be held in Melbourne in 2017.

As a consequence, the CALC Council has developed proposed Constitutional amendments that will be put to the General Meeting in Melbourne.

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

An additional change has been made in clause 12 to make it easier for the provision to work in practice. At the moment it may be difficult for members seeking to call a meeting to determine whether one sixth of members have given notice. The number (100) that is proposed is quite large but is substantially less than the current requirement.

## Proposed revised provisions of Constitution

The underlining and strike-out show changes from the existing CALC Election Rules. Only the clauses that will change have been included.

### 9 Membership of the Council

- (4) The following rules apply to the conduct of an election—
- (a) if there are more nominations for an office than the number to be elected, a secret ballot must be held;
  - (b) a full member may vote for the following number of candidates ~~on a ballot paper~~—
    - (i) for an election for President, Secretary, Vice-President or Treasurer, 1 candidate;
    - (ii) for an election for non-executive members for a region, no more than 2 candidates;
  - (c) if only 1 office of the same kind is to be filled in an election, the candidate with the most formal votes is elected;
  - (d) if 2 offices of the same kind are to be filled, the 2 candidates with the most formal votes are elected;
  - (e) if, in order to determine the outcome of an election, it becomes necessary to resolve a tie, the person presiding at the general meeting must decide which candidate is to be elected by drawing lots.
- (5) The Council may make rules about the conduct of an election that are not inconsistent with subclause (4). The rules may permit the whole or a part of an election or ballot to be conducted electronically and make provision for the conduct of that election or ballot or that part of the election or ballot.
- (6) A election or ballot, or a part of an election or ballot, that is conducted electronically and that is conducted in accordance with rules made under subclause (5) is taken to be a secret ballot.

### 12 General meetings of CALC

- (2) The President must convene an extraordinary general meeting of CALC—
- (a) on being requested to do so by written notice signed by not fewer than ~~one-sixth of the 100~~ members of CALC, or
  - (b) on a resolution of the Council requiring the convening of such a meeting.

**17 Proxies at general meetings of CALC**

- (1) A full member of CALC may, in writing signed by the member, appoint another member of CALC as a proxy to attend and vote instead of the member at a general meeting of CALC. However, such an appointment is not effective unless the document of appointment is lodged with the Secretary no later than 24 hours before the time appointed for the start of the meeting.
- (2) A member holding a proxy for another member is not entitled to exercise the proxy in an election or ballot if the other member has voted electronically in that election or ballot.

## Sample revised electoral rules

Note: These rules are example of the type of rules that the Council could make after the Constitutional amendment has been approved by the CALC members. The final form of the rules (and whether and when they should be made) will be a matter for the Council at the time.

### ***Example of possible CALC Election Rules***

The following Rules are made by the CALC Council under clause 9(4) of the CALC Constitution. The underlining and strike-out show changes from the existing CALC Election Rules.

#### **1 Nominations to be in writing**

- (1) Nominations for offices must be made in writing and sent to the email address specified by the Secretary by the date specified by the Secretary.
- (2) A nomination must specify the name of the candidate, the name of the full member of CALC who is nominating the candidate and the name of the full member of CALC who is seconding the nomination and contain a statement that the candidate accepts the nomination.
- (3) The date specified by the Secretary must be no earlier than ~~3 weeks~~ one month before the ordinary general meeting at which the election is to be held.

#### **2 Nominations to be put on CALC website**

- (1) The Secretary must arrange for details of each nomination that is received to be posted on the CALC website as soon as practicable after the nomination is received.
- (2) The Secretary must arrange for any information that is provided by a candidate in support of the candidate's nomination to be posted on the CALC website as soon as practicable after the information is received.
- (3) The Secretary may arrange for information about candidates to be provided to CALC members in any additional ways that the Secretary determines, however, no speeches in support of candidates are to be made at the CALC general meeting.

Note: It is intended that this information that is included on the CALC website and otherwise made available by the Secretary would be sufficient for CALC members to make an informed choice.

### 3 Process to be followed if insufficient nominations

If there are insufficient nominations made in accordance with Rule 1 to fill an office, any member who has been nominated for that office in accordance with that Rule and has not withdrawn their nomination will be declared elected at the ~~ordinary~~ general meeting. Nominations will then be called for to fill any remaining office. If there are then more nominations for that office than the number to be elected, a secret ballot will be held in accordance with Clause 9(4) of the Constitution.

### 4 Electronic voting

(1) The Council and the Secretary must, by complying with this rule, take all reasonably practical steps to make arrangements for members to vote electronically if:

- (a) there are more nominations under Rule 1 for any office than the number to be elected; or
- (b) there are any matters before a meeting that require a special resolution; or
- (c) both paragraphs (a) and (b) apply.

(2) The Council may determine that any one or more of the following methods may be used by a member to lodge votes electronically for a particular ballot or election:

- (a) the member lodging a vote through the CALC website in a manner that enables the Secretary to determine which members have voted and that each member has only voted once;
- (b) the member sending an email to the Secretary at a specified email address specifying the member's vote.

However, before make a determination, the Council must be satisfied that the method is available, reliable, reasonably secure and is able to be used by most members.

(3) The Council may determine the period during which members may vote electronically. However, the period must be at least 2 weeks.

(4) The Secretary must provide the results of the electronic vote in each ballot or election to the returning officer for the ballot or election. The Secretary must not reveal this information to any other person.

(5) The Secretary must provide a list of all members who have voted electronically in a particular ballot or election to the returning officer for the ballot or election.

Note: The returning officer will use this list to ensure that no member votes twice.

(6) The Secretary, and any person assisting the Secretary, must preserve the secrecy of all votes received.

(7) The Secretary may reveal the total number of votes received electronically on each ballot or election.

## Membership

### New CALC members

The following have been recorded as members of CALC since the publication of the last CALC Newsletter in March 2016, and as at 10 November 2016.

| Name                                   | Country             |
|--|---------------------|
| <b>Ng (Wuheng), Philip Mr</b>          | Singapore           |
| <b>Williams, Catherine</b>             | Cayman Islands      |
| <b>Mwakio, Mariam Shighadi</b>         | Kenya               |
| <b>Otieno, Anthony</b>                 | Kenya               |
| <b>Lange, Sian</b>                     | Barbados            |
| <b>Wry, Jill</b>                       | Canada              |
| <b>Goodwin, Sophie</b>                 | Australia           |
| <b>Graney, Fiona</b>                   | Australia           |
| <b>Lovegrove, Dougals Warren</b>       | Australia           |
| <b>Dabbs, Bhreagh Danielle Harwood</b> | Canada              |
| <b>Brown, Anthony</b>                  | United Kingdom      |
| <b>To, Kin Man Clifford</b>            | Australia           |
| <b>Brown, David</b>                    | Falkland Islands    |
| <b>Ryan, Alison</b>                    | Australia           |
| <b>Travers, Aimee</b>                  | Australia           |
| <b>Uhlmann, Felix</b>                  | Switzerland         |
| <b>Hardwick, Anne-Marie</b>            | Australia           |
| <b>Dufresne, Philippe</b>              | Canada              |
| <b>Mbandu, Sheldon Begisen</b>         | Kenya               |
| <b>Johnson, Morlette</b>               | Bahamas             |
| <b>Parven, Khaleda</b>                 | Bangladesh          |
| <b>Arentsen, Taliska Kiebat</b>        | Australia           |
| <b>Noumea, Teueli</b>                  | Samoa               |
| <b>Chuwa, Nicodemus Peter</b>          | Tanzania            |
| <b>Wase, Cutty</b>                     | Marshall Islands    |
| <b>Fung, Wai Chun Vincent</b>          | Hong Kong SAR       |
| <b>Mulatya, Christine</b>              | Kenya               |
| <b>Mwas, Mbuiya</b>                    | South Africa        |
| <b>Superville, Kimberley</b>           | Trinidad and Tobago |

| Name                             | Country                  |
|----------------------------------|--------------------------|
| <b>Hedley, Christopher</b>       | United Kingdom           |
| <b>Mustafin, Raushan</b>         | Australia                |
| <b>Chekole, Sisay</b>            | Ethiopia                 |
| <b>Clavarino, David</b>          | Australia                |
| <b>Johnson, Ryan</b>             | Antigua and Barbuda      |
| <b>Burmester, Gretel</b>         | Australia                |
| <b>Gardiner, Steven</b>          | Australia                |
| <b>Lewis, Joseph Hew</b>         | Australia                |
| <b>Priest, Jake</b>              | Australia                |
| <b>Thamuku, Oteng</b>            | Botswana                 |
| <b>Campbell, Gaham</b>           | Canada                   |
| <b>Hogeboom, Sheri</b>           | Canada                   |
| <b>Jones, Rachel</b>             | Canada                   |
| <b>Thaver, Lerissa</b>           | Canada                   |
| <b>Zahel, Molly</b>              | France                   |
| <b>Lall, Cheyenne</b>            | Guyana                   |
| <b>Lam, Amy Lai Tim</b>          | Hong Kong                |
| <b>Krishna Reddy, Pavan</b>      | India                    |
| <b>Kelleher, Dan</b>             | Ireland                  |
| <b>Kamar, Belinda</b>            | Kenya                    |
| <b>Mukindia, Susan</b>           | Kenya                    |
| <b>Narawa-Daurewa, Unaisi</b>    | Nauru                    |
| <b>Umar, christopher Adapar</b>  | Nigeria                  |
| <b>Koro, Wanpis Desmond</b>      | Papua New Guinea         |
| <b>Wayne, Ganjiki</b>            | Papua New Guinea         |
| <b>Faasau, Meiapo</b>            | Samoa                    |
| <b>Fong, Jing Heng</b>           | Singapore                |
| <b>Makabo, Anthony</b>           | Solomon Islands          |
| <b>Gatang, Gogontle Keneilwe</b> | Turks and Caicos Islands |
| <b>Dacia, Dacia</b>              | United States            |
| <b>Elliott, Teneille</b>         | Australia                |
| <b>Monotti, Lisa</b>             | Australia                |
| <b>Moore, Elizabeth Anne</b>     | Australia                |
| <b>Barclay, Corlane</b>          | Jamaica                  |
| <b>Akama, Vane</b>               | Kenya                    |
| <b>Workman, Tim</b>              | New Zealand              |
| <b>Hibberd, Paul</b>             | Australia                |

| Name                             | Country                          |
|----------------------------------|----------------------------------|
| <b>Asaduzzaman Nur, Muhammed</b> | Bangladesh                       |
| <b>Sheppard, Randall</b>         | Belize                           |
| <b>Kitegi, Mary Awuor</b>        | Kenya                            |
| <b>Wanjohi, Lucy</b>             | Kenya                            |
| <b>Harris, Kelly</b>             | New Zealand                      |
| <b>Jere Aakala, Olipa</b>        | Zambia                           |
| <b>Laibuta, Antony</b>           | Kenya                            |
| <b>Rachel, Osendo</b>            | Kenya                            |
| <b>Mulaudzi, Ailwei Hilton</b>   | Zambia                           |
| <b>Chan, Ka Man</b>              | Hong Kong SAR                    |
| <b>Wu, Queenie</b>               | Hong Kong SAR                    |
| <b>Hwana, Alice</b>              | Papua New Guinea                 |
| <b>Omwoyo, Annette</b>           | Kenya                            |
| <b>Mtshotshisa, Luyanda</b>      | South Africa                     |
| <b>Benjamin, Vilette</b>         | Saint Vincent and The Grenadines |
| <b>Ramgoolam, Roger</b>          | Trinidad and Tobago              |
| <b>St.Hill, Rommel</b>           | Barbados                         |
| <b>Gunesh, Karuna Devi</b>       | Mauritius                        |
| <b>Schmidt, Edgar Harold</b>     | New Zealand                      |
| <b>Karuru, Michael</b>           | Kenya                            |
| <b>Maring, Habiba Ahmed</b>      | Nigeria                          |