

## LAW REFORM

### *A NOVEL PROCEDURE FOR LAW REFORM PROPOSALS FOR SECURITIES REGULATIONS*

Section 70 of the Securities Act 1978 authorises the making of regulations for a number of purposes, primarily in connection with the issuing of prospectuses and the advertising of financial offers. The section contains some novel provisions viz:

Section 70(1). The Governor General may from time to time, by Order in Council, in accordance with the recommendations of the Commission, make regulations for all or any of the following purposes . . .

and

Section 70(3) Before making any recommendation for the purposes of subsection (1) or subsection (2) of this section, the Commission shall —

- (a) Do everything reasonably possible on its part to advise all persons and organisations, who in its opinion will be affected by any Order in Council made in accordance with the recommendation, of the proposed terms thereof; and give such persons and organisations a reasonable opportunity to make submissions thereon to the Commission; and
- (b) Give notice in the Gazette, not less than 14 days before making the recommendation, of its intention to make the recommendation and state briefly in the notice the matters to which the recommendation relates; and
- (c) Make copies of the recommendation available for inspection by any person who so requests before an Order in Council is made in accordance therewith;

Provided that this subsection shall not apply in respect of any particular recommendation if the Commission considers that it is desirable in the public interest that the recommendation be made urgently:

Provided also that failure to comply with this subsection shall in no way affect the validity of any Order in Council made under this section.

One commentator has noted “The procedure for consultation is a real advance on anything tried in New Zealand before and it is to be hoped that the example will be adopted in other fields” (Geoffrey Palmer, *Unbridled Power* 103).

The Securities Act was introduced into Parliament as the Securities (Advertising) Bill and in this form contained no provisions for a Securities Commission, although in his introduction speech the Honourable D. F. Thomson, the then Minister of Justice, did say that he would welcome submissions on the question whether there should be a Commission. The Bill was referred to the Statutes Revision Committee.

In the event the weight of submissions overwhelmingly favoured the introduction of a Commission, and once that had been accepted, it became clear that many of the detailed provisions of the Bill could be dropped, and replaced by a power to recommend regulations. This carried not only the advantage of increased flexibility, but also the fact that the wide commercial experience of the yet-to-be appointed Commissioners could be harnessed to the task of framing the recommendations.

Concern was expressed in some quarters that the extensive use of regulation in these important areas could lead to accusations of “legislation by stealth”. This was met by the introduction of the statutory procedure

for consultation referred to above. The writer of this note can contrast favourably the ability to consult widely on both a formal and informal basis conferred on the Commission by the Securities Act, with the situation of a public servant, bound by the Official Secrets Act, and once the drafting of statutory provisions had commenced, by the constraints of Parliamentary privilege.

In preparing the *Proposals for Securities Regulations* recently released, the Commission consulted widely both formally and informally. A background paper on *Financial Advertising Control* was issued in September 1970 and invitations to interested parties attracted 27 submissions of which 17 were heard in person by the Commission at meetings held during November.

The prospectus proposals were developed internally, with the assistance of a chartered accountant seconded to us by a major accounting firm for a period of 3 months and of a parliamentary counsel. Informal assistance was given by a number of accountants and stockbrokers. Successive drafts were debated at meetings of the Commission. The "proposals" were issued at the end of March containing the text of the regulations proposed to be recommended and supported by an extensive essay discussing the principles and giving reasons. The Commission has invited submissions on this document by the end of May.

While it is too much to hope that complete agreement will be attained, this procedure does have the advantage of exposing, in the formative stages, proposed laws on very complex matters to the views of those who will be affected by the legislation. This can only lead to better law.

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### *LAW REFORM IN NEW ZEALAND—THE STATE OF PLAY\**

The main purpose of this article is modest — it is to provide up to date information about the machinery of law reform in New Zealand to mark the beginning of a regular feature in this review on law reform activities in New Zealand. What we understand today as law reform i.e. accelerated legislative intervention<sup>1</sup> is a relatively modern concept only dating back as far as Bentham and the Utilitarian movement.<sup>2</sup> New Zealand in that sense, though a new country, has had a long history of law

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<sup>1</sup> See J. H. Farrar, *Law Reform and the Law Commission*, 1 but c.f. David B. Collins "Law Reform: A New Procedure for New Zealand" (1976) N.Z.L.J. 441.

<sup>2</sup> See J. H. Farrar "Law Reform Now—A Comparative View" (1976) 25 I.C.L.Q. 214.