

A paper for the
LAW REFORM AND POLITICIANS
session 3 at the *Access to Justice: Rhetoric or Reality* conference
of the Australasian Law Reform Agencies

Tim Barnett
Member of Parliament for Christchurch Central
Chair, Justice and Electoral Committee, New Zealand Parliament
03/04

Introduction

The process of law reform is as many-edged as a highly polished diamond. It can be an internalised and academic exercise or - at the polar extreme - it can be a popular and even populist exercise which breaks down some of the significant barriers around Parliamentary democracy. I am an unashamed fan of the latter, and to that end have based this paper on two experiences of mine as a Member of Parliament. Those experiences are:

- i) ongoing involvement as a volunteer in training voluntary organisations and individual activists in basic lobbying skills, and providing one-off advice on lobby strategies; *and*
- ii) my work as sponsor of the Prostitution Reform Bill, which passed into New Zealand law in June 2003.

I have arranged my conclusions into 10 specific points, and begin with a general commentary on my viewpoint and experiences.

Commentary

Law reform is a somewhat abused term. I understand it to mean the review and subsequent amendment of law relating to a defined area of policy, possibly also straying into associated policy development. In terms of its scope, it can be a passive process (for example, a relatively minor tweaking of law which is essentially working well) or it can be a roots-and-branch rewriting of law which generates a significantly different environment for the future. The concept of law reform implies that the introduction of legislation is preceded by some process of public engagement and consultation, since that is now considered a necessary precursor to good law. I believe that the very spread of what may be covered by the term "law reform" is deceptive since the public perception would tend towards the latter, more rigorous process, whereas often politicians and officials tend towards something considerably narrower and less fundamental. In this paper I have adopted the assumption that law reform involves:

- Something of significance to public policy,
- Which contains choices for future direction,
- Which has been consulted on in a meaningful way, prior to legislation being produced, *and*
- Results in a noteworthy change of direction.

Examples of that in my experience would include:

- Homosexual law reform (1985);
- Electoral law reform (1990s);
- Prostitution law reform (2003);
- Relationship law reform (to come - 2004?);
- Adoption law reform (to come - 2005/6?)

The process of law reform is lifeblood both for politicians of a certain character and for the multiplicity of voluntary organisations which exist solely or primarily to achieve a better legal environment for their particular concerns. To those two potential polar opposites in the process I would add, maybe most appropriately as junior partners, public servants working in a Ministry setting, or indeed private sector employees working on contract for the public sector. For politicians and lobbyists, law reform is a means to an end. To officials, it is a process which may consume years of detailed policy work; but their input is essentially that of a servant to the political and wider world. Obviously much may be achieved by them in a subtle way, but their input does not afford the validity of “law” and “reform” in the same way as the input of the other two parties does.

New Zealand democracy is remarkably close to voters. The reasons are multiple - they include small electorates, 40% of Members of Parliament having non-geographic “electorates” (e.g. defined population groups nationwide), a limited amount of non-political domestic news, a politically literate population and some larger-than-life politicians. However, there is in my experience an unacceptable lack of practical and accessible information on how Parliament can work in the interests of a cause, or a mentoring programme to help groups develop such skills.

As MMP beds in, a generally accepted rule of thumb on how best to approach the institution of Parliament is emerging from a combination of professional lobby consultants, committed voluntary organisations and interested Members of Parliament. My summary of that is as follows:

- See lobbying as a core activity, not an optional casual project, for the organisation;
- Make sure that the issue is valid, that the organisation delivering it is credible with those who it is lobbying and that presentation of the issue is timed well (for example, in relation to the budget/policymaking cycle);
- Those presenting the lobby should know and believe in the cause and in themselves, since lobbying can be very exposing;
- The issue should be marketed well, since the art of lobbying is largely about good and clever communication;
- Opponents’ motivations should be recognised, and their beliefs should be regarded as genuinely held;
- The information needs of and pressures on the people being targetted for lobbying should be appreciated when the lobby is being designed and implemented;
- The energy of lobbyists should be sustained - some campaigns can take a long time, and should be paced carefully;
- Partnerships should be created whenever possible to promote and pursue lobby aims - there is strength in numbers;
- Support or opposition from any particular person should not be assumed unless proven - lobbyists can be pleasantly or unpleasantly surprised; *and*
- Lobbyists should be negotiators and not beggars - the lobby process should be approached by the lobbyist on the basis that they are an equal to their target, that they have a taonga/treasure to offer their target, and that the target has resources which the lobbyist needs access to.

MMP is, of course, immensely lobby-friendly. Factors behind this include the wider range of parties; the greater diversity of Members of Parliament both in terms of personal characteristics and background prior to their Parliamentary career; the coalition nature of governing arrangements; the strengthening of Select Committees which has followed the general abandonment of single-party majorities on Committees; the single Chamber, unconstrained by a written constitution. A small number of Members of Parliament can promote or block an issue, and there are multiple entry points for issues of concern. It should be remembered that MMP was introduced as a response to political party arrogance born of the two-party system. Its potential is still being explored.

The open nature of MMP has encouraged many voluntary organisations to learn the lobby ropes. Law reform matters are starting to generate large volumes of communication. E-mail means that all MPs can be contacted with remarkable ease (although the response from MPs may not be great). During 2003, I received about 900 written communications (letters and e-mails) about the Prostitution Reform Bill, particularly coming in the final weeks before the key votes. Only about 20 were from my Electorate; many could not easily be traced to an Electorate (e-mails are not of course geographically traceable, without checking with the sender). I replied to each one, and to the subsequent 50 or so responses to my replies. The overwhelming impression I got was that very few of the lobbyists were knowledgeable on the issue at hand; indeed, very few had contributed to the Select Committee submission process. That may well be unimportant. The spectre of post-Select Committee lobbying by volume is with us. And it will be here to stay if proven to change the minds of politicians by sheer quantity of communications.

Other factors often present in debate on law reform matters include the internationalisation of the lobby (with both examples and communication coming from overseas), the introduction of the "visiting expert" on the matter at hand and endless competition for the truth on any aspect of the matter. Many lobby letters are polemic and threatening, a reflection of the degree to which some lobbyists do not think they will be listened to, and to the emotive nature of the matters under discussion. It may also reflect a popular belief that MPs need to have applied to them the written equivalent of an electric cattle prod if they are to understand the point being made.

My parting comment relates to the role of law reform work in the life of a politician. Whatever level they reach in the hierarchy, politicians are likely to be involved in such work. It is a legislators bread and butter. The skills involved in contemporary law reform - lateral thinking, an innate understanding of voluntary organisations in their varied forms, an appreciation of Maori values - are not necessarily the ones which got people into Parliament. This can raise tensions and create gulfs, between MPs and between MPs and lobbyists, although one impact of MMP has been to widen the skill base of people who become MPs.

10 conclusions

From the experiences alluded to in the Commentary above, I would like to draw some specific conclusions in regard to politicians and law reform, as follows:

1. Tertiary institutions are opening up more to supporting **research required by voluntary organisations** to test their beliefs and to evaluate their services. The latter is important if, for example, the outcome of such services is important to the development of legislation. This happened in the case of the Prostitution Reform Bill, when there were valid questions about what interventions best help people to leave prostitution and move on with their lives. Tertiary institutions need to be encouraged to do more of such work.
2. Many voluntary organisations remain ignorant of the workings of our democracy. Government and trusts should consider the establishment of stand-alone **“Democracy Centres”** on a regional and virtual basis. They would act as training, information and mentoring centres for groups, to make democratic engagement easier for them, and to improve the quality of their output (helping those who they are targeting).
3. The quality of **research available to politicians** making decisions on law reform matters - both in terms of analysis of overseas solutions, and of the attitudes and needs of the population groups involved - needs to be improved. This is a matter for Parliamentary libraries and for relevant Government departments.
4. Law reform initiatives in one country are often paralleled by those in others. The **networking between Members of Parliament with similar concerns from a variety of Parliaments** is often poor or non-existent. In these days of cutting-edge IT, it should be made much easier.
5. Much law reform is based on **fundamentals** (e.g. harm minimisation) which often lack adequate policy analysis because they lie outside the established parameters of law and policy development. These need to be researched and evaluated more effectively, to create a firmer base for law development.
6. The **public consultation** process is sorely tested by many aspects of law reform. Officials conducting departmental consultation often fail to appreciate the subtlety of messages from some organisations, particularly those at the grassroots; sometimes those messages are withheld at that stage because MPs would be thought to be a more receptive audience. The Select Committee process, involving in the New Zealand situation a single consultation loop and subsequent face-to-face/video link hearings followed by analysis, may also be inadequate to the task. Subsequent amendments (by Select Committee or amendment at the Committee of the Whole House) can make the law look very different to how it came in, and the changes can be made in only a marginally accountable way. A second loop, maybe of selected groups, might be needed.

7. A particular aspect of public consultation which requires separate mention to avoid being sidelined is **Maori consultation and input into law reform**. Unless the matter is of exceptional interest to Maori (e.g. the proposed creation of a New Zealand Supreme Court), submissions from Maori are few and far between. Departmental advice is also often light in this area. A heavy reliance is put on Maori Members of Parliament, as a default position. This exposes a weakness in the policy development system which requires addressing.
8. The **resourcing of Select Committees** is tested by law reform. Committees do have access to independent advisers, but this is a right still used sparingly and largely when specific technical skills are sought. Regular Committee staff do not have a particular research brief. Parliamentary Library staff can plug the gap, and are increasingly involved in the process.
9. Parliaments need to be more overt in advising **how and when lobbying should take place**. This may need to be developed to the stage of protocols about when lobbyists can meet with MPs involved at sensitive stages of law development, and the registration of lobbyists working in the Parliamentary environment in order to channel their energy a little.
10. Law reform matters may well continue to be contentious even once law is passed; the Prostitution Reform Act is a good example of that. The concept of a **Review Committee** established under the law to examine its success and associated matters (as that Act has) may be worth serious consideration. It could at least channel future debate somewhat.