NEW ZEALAND BUSINESS ROUNDTABLE

SUBMISSION ON THE SUPREME COURT BILL

APRIL 2003

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1 Introduction

1.1 This submission is made by the New Zealand Business Roundtable (NZBR), an organisation comprising primarily chief executives of major New Zealand businesses. The purpose of the organisation is to contribute to the development of sound public policies that reflect overall New Zealand interests.

1.2 The proposal to replace appeals to the Judicial Committee of the Privy Council with appeals to a domestic Supreme Court is the most important constitutional issue raised in New Zealand since the mixed member proportional (MMP) voting system was introduced following a 1993 referendum.[1] A change in New Zealand's final appellate court could have profound consequences for business and future generations of New Zealanders. It has the potential to significantly alter the role of the courts and the public perception of their role, and to alter the relationship between the courts and the political branches of government. The tendency for the higher courts consciously to make law rather than allow the law to evolve from their case-by-case decisions could increase. There are likely to be demands for open political involvement in judicial appointments which will be difficult to resist in the long term.

1.3 Major commercial enterprises constitute the most significant group of users of the Privy Council's services. Of the 11 cases from New Zealand in which the Privy Council gave 12 judgments in 2002, seven were commercial cases, two more – to do with roading and rating respectively – were of great potential importance for business, and two were important for the effective functioning of the legal system. There does not seem to be any fall-off in recourse to the Privy Council. Three New Zealand judgments have already been delivered this year, one dealing with a basic aspect of contract interpretation and another with a fundamental matter relating to equitable remedies. The commercial community therefore has a vital interest in the

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[1] There seems to be general acknowledgment of the constitutional nature of the proposal. Dr Michael Cullen, on behalf of the Labour Party, expressed satisfaction in 1997 at the National-led government's decision to retain Privy Council appeals, saying it "is a very important constitutional matter" (*Evening Post*, 17 January 1997).

bill.

1.4 Given the constitutional nature of the change, the way in which it is being carried out is unsatisfactory. The time for making submissions has been short. The fundamental issue, whether to sever appeals to the Privy Council, has never been considered in proper depth and the select committee deserves credit for bringing it back into focus. The government's December 2000 discussion document, *Reshaping New Zealand's Appeal Structure*, was a perfunctory treatment of the issues and appeared to take it as a forgone conclusion that appeals should be abolished. The Advisory Group established in November 2001 was only asked to consider the details of the best alternative to the Privy Council, not the substantive issue of whether appeals should be discontinued. The consultation process has therefore been confused and incomplete.

1.5 In our view a constitutional change of this sort should not take place without very broad support, both in parliament and among the public as a whole. As things stand, if the Supreme Court Bill passes it seems likely to pass by only a bare majority, assuming one or both of the two minor parties supporting the government vote for it. There is also no public clamour for change. A poll of Auckland District Law Society members found a large majority of respondents opposed the proposal. No pressing need for change is apparent. Changes of a constitutional nature should only be made when clearly needed and with broad public and political support. These conditions are not currently met. We totally disagree with the Attorney-General's undemocratic view that the public are not competent to decide on the issue because "a referendum just asks a very simplistic question". So does a general election ballot paper. The MMP issue, which was rightly put to a referendum, was much more complex. If the government wishes to proceed, we strongly believe that, as with MMP, it should set up a mechanism to provide unbiased information to the public and allow time for extensive debate, following which a referendum which should require more than a simple majority for adoption should be held.

2 The government's arguments

2.1 It is pleasing to note that the argument that retention of the Privy Council somehow diminishes New Zealand's sovereignty is no longer being made by the government. The argument clearly has no substance at a time when the government is signing up to numbers of international conventions with major implications for New Zealand such as the Kyoto Protocol. Some of the human rights conventions include reporting requirements and complaints procedures to committees which may then comment on New Zealand legislation. These are more far-reaching derogations of national sovereignty. The Privy Council, on the other hand, has to take New Zealand legislation as its starting point and interpret and enforce it. Maintaining appeals to the Privy Council is itself an exercise in sovereignty, and a decision which New Zealand is at liberty to change at any time.

2.2 Instead the government's case for change has been based on four main arguments: allowing more use of the top tier court; the fact that a smaller number of countries now maintain appeals to the Privy Council; reducing costs to litigants; and judicial knowledge of 'societal conditions'. We consider each in turn.

Greater use of a final appellate court

2.3 It is unclear why increased usage of the top tier court is considered a good thing in itself. The government's argument is that few New Zealanders can make use of the Privy Council. When the role of top tier courts is examined, this is evidently not correct. New Zealand appeals roughly three cases per million people to the Privy Council each year, while the United Kingdom appeals only one case per million people to the House of Lords. Appeals in criminal cases are rare, but this is the case in most English-speaking countries; criminal appeals to the House of Lords are always on distinct and narrow points of law and criminal appeals to the US Supreme Court are only concerned with the constitutionality of process or penalty. Given that at present only about 10 or so Court of Appeal decisions a year are appealed to the Privy Council and the Supreme Court's workload is expected to be about 40-50 cases, it is unclear which additional 30-40 cases the Attorney-General thinks should have been subject to further appeal in recent years and why. Part of

the answer may be that the proposed system would allow appeals in cases originating in the Employment Court and other bodies whose decisions cannot currently be appealed beyond the Court of Appeal. The answer to this is simple: appeals should be allowed in these cases to the Privy Council and the NZBR has consistently urged such a step. The fact that the Attorney-General is now prepared to countenance such appeals demonstrates that there was never any reason not to allow them to go to the Privy Council.

Decreased use of the Privy Council

2.4 The government has alleged that by the end of 2003 only six countries will maintain appeals to the Privy Council as 10 Caribbean nations will withdraw during the year and set up a regional court. The situation in the Caribbean is in fact far from clear and we understand that there is still vigorous debate going on both within and between jurisdictions. Furthermore, the government statement leaves out of account Crown Colonies such as Bermuda, British Virgin Islands, Cayman Islands and Turks and Caicos Islands, which, because they are tax havens, send major commercial, trusts and company law cases to the Privy Council. Already this year there has been a Privy Council decision delivered on appeal from the Crown Colony of Bermuda which is of major importance for commercial arbitration in common law jurisdictions.

2.5 The value of the Privy Council is obviously much greater for small countries, both because larger countries have a deeper pool of judicial talent to draw from and because of the confidence that the linkage to a major international court provides for commercial parties engaged in international transactions. Many foreign business people do not have the time or inclination to make detailed inquiry about the New Zealand legal system. From an overseas viewpoint the fact that the final interpretation of New Zealand commercial law is by a highly respected court with an international outlook is a strong positive factor. If this disappears it will be a strong negative one.

The cost issue

2.6 So far as costs are concerned, there is little evidence for the government's position, and the outcome could even be an increase in costs. For commercial parties the additional costs of an appeal to London, over and above those incurred in litigation in the domestic courts, are typically not large. Logically, the only difference between taking an appeal to the Privy Council and one to the Supreme Court should be air fares and accommodation costs. Counsel who appear in both charge at much the same rate and much the same amount of time would be expended. One indicative figure given to us by litigants is that the costs of $850,000 in a major commercial case in the High Court and Court of Appeal were topped off by another $150,000 for the appeal to the Privy Council. As the major users of the Privy Council, New Zealand businesses have shown themselves to be willing to meet the costs involved where the issue to be resolved is of sufficient importance.

2.7 It is also not clear why costs should be any less in a domestic Supreme Court. If the areas of law that might be argued at the top level are widened, costs overall could well increase. It may also be predicted that there will be an increase in appeals by legally aided litigants and by long-run litigants such as government departments. In addition, of course, the services of the Privy Council are provided without charge by the British government whereas the costs of the Supreme Court, which will be expensive to set up and run – figures of $10 million for set-up costs and around $5 million for annual running costs have been suggested – will fall on the New Zealand taxpayer

'Societal conditions'?

2.8 The argument about judicial understanding of New Zealand 'societal conditions' is, frankly, disturbing. The role of a judge is to apply the law as it is to the facts of the case at hand. The end result should be increasing refinement and certainty. It ought to mean that a member of the public can consult a statute, and perhaps take limited legal advice, and be reasonably sure what the law on a common topic is. Such a person may have no idea what 'societal conditions' mean and how they might be taken into account by a court. This will increase uncertainty and

therefore resort to litigation. It will also increase the amount of material that may have to be considered by the court and therefore the cost of arguing a case. The suspicion must be that the government wishes to pass legislation that is vaguely worded and avoids serious debate in parliament in the hope that like-minded judges will interpret it the way the government wants. We are already seeing the practice of members of parliament reading statements in the House that are designed to influence the courts in interpreting statutes. This is an abuse as it entails the executive taking over from the courts the job of interpreting legislation.

2.9 There is a widespread fear amongst those who oppose severing appeals to the Privy Council that a New Zealand Supreme Court could become an activist policy-making body, supplanting the law-making role of a democratically elected parliament. It is a positive feature of the Privy Council that it is uninfluenced by New Zealand politics and conditions. The mere existence of appeal rights to the Privy Council has had a restraining impact on the conduct of our courts. Jim Farmer QC has made the point that the degree of influence exhibited by the Privy Council exceeds by many multiples the number of cases it has heard from New Zealand. Once there are no appeals beyond a New Zealand court, and if that court habitually sits as a single bench including all or nearly all the judges, there will be little to prevent the court behaving in this way. The temptation to do so will present itself and the Court of Appeal has been prone to succumb to such temptation.[2]

2.10 This is evident from areas of law where there is already no appeal or where appeals can only be mounted with difficulty. For example, in *Brighouse v Bilderbeck* [1995] 1 NZLR 158, a controversially composed Court of Appeal wrote new law in the area of redundancy compensation, and the members of the majority admitted that they were doing so. Since the case concerned an appeal from the Employment Court, there was no appeal to the Privy Council. This case was effectively reversed by the current Court of Appeal in *Aoraki Corp v McGavin* [1998] 3 NZLR 276. The fact that the law on the subject is on a more even keel today is beside the point.

The business world does not want major changes of direction by an appellate court depending upon who is on the bench.

2.11 Likewise, in *Z v Z* [1997] 2 NZLR 258, dealing with an interlocutory issue that had arisen in a case before the High Court, the current Court of Appeal engaged in extraordinary procedures to enable it to decide issues the parties did not want argued but which the court wished to rule upon. The court then refused leave to appeal to the Privy Council, as it had the power to do because the matter was an interlocutory decision and not a final determination. This challenged the parties to mount an application for special leave to appeal on an interlocutory issue in a proceeding which still had not come to a substantive hearing in the High Court. The Court of Appeal could have predicted not only that the parties would not apply for special leave to appeal but also that the parties might settle the case so that no substantive appeal occurred. That is what eventually happened.

2.12 These cases demonstrate that the central issue is whether our courts can be relied upon to apply the law without fear or favour and only on the basis of the arguments of parties. If 'societal conditions' are promoted as an aspect of judicial law-making, there is a serious risk that courts will move beyond their proper role and that judges will become politicised.

3 Major difficulties with the bill

3.1 A major practical difficulty with the proposal is its effect on the requirements for suitable judges and on the structure of the courts. The former Chief Justice, Sir Thomas Eichelbaum, is on record as saying that New Zealand cannot hope to match the overall calibre of judicial appointments to the Privy Council: "The special qualities of learning, experience, depth of legal culture, and refinement of style will not foreseeably be replaced."[3] Recent judicial appointments do not inspire confidence that there are large numbers of available and suitable

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[2] Dyson Heydon, a newly appointed judge of Australia's High Court, recently criticised judicial activism in Australia but noted that "Our present state is much less bad than that of the United States, Canada and New Zealand ('Judicial Activism and the Rule of Law', *Quadrant*, January-February 2003).

[3] Thomas Eichelbaum, 'Brooding Inhibition – or Guiding Hand? Reflections on the Privy Council Appeal', in Philip Joseph (ed), *Essays on the Constitution*, 1995, p 128.

appointees. There is already difficulty getting commercial QCs to accept appointment. How is the government to deal with the sudden creation of four vacancies in the system? Besides remuneration disadvantages, it seems likely that some senior counsel are not willing to undergo the political vetting and training required under the guise of understanding of the "principles of the Treaty of Waitangi" – which the government has been unable to clarify.

3.2 The creation of the Supreme Court has important implications for the rest of the court system. There are at present effectively three levels of Court of Appeal bench: a bench of five Court of Appeal judges; a bench of three Court of Appeal judges; and a bench of three judges including a mix of Court of Appeal and High Court judges. The new Supreme Court will effectively be the existing five-judge bench which currently hears 40-50 cases a year. The effect of the proposed change therefore is simply that the level of appeal above the five-judge bench has been lopped off and the 40-50 litigants who currently get a case dealt with by a five-judge bench will in future have to appeal through a three-judge bench beforehand.

3.3 In the structure proposed in the Bill, the Court of Appeal will remain pivotal (as it is in the United Kingdom). However, the reconstituted Court of Appeal is likely to be made up largely of judges who have sat on divisional courts. These have produced a number of frankly weak decisions, including some disastrous ones. A Companies Act case, *Carter Holt Harvey v McKernan* [1998] 3 NZLR 403, for example, was particularly embarrassing and, but for a procedural stratagem (the Court of Appeal turned an application to appeal to the Privy Council into a substantive hearing) would have resulted in the inadequacies of a divisional court being exposed in the Privy Council. *R v Sew Hoy*, a criminal case, is an example of the divisional court system preventing the court from clearing up confusion on an important matter as to do so would have involved over-ruling the decision of a 'proper' bench of the Court of Appeal. Whether a new Court of Appeal of the requisite calibre can be put in place must be a matter of some doubt.

3.4 Further down the chain, extra High Court judges will have to be appointed in an environment in which it is far from clear that there are suitable and available appointees. Further promotions from the district court bench raise the spectre of

an increasingly politicised judiciary currying favour with the government in order to be promoted. Overall, the effect of this proposal on the court system as a whole does not seem to have been thought through. It will result in a generally lower level of service and greater costs and delays in order to reach appropriate levels of expertise. The Law Commission is currently reviewing the structure of the courts. This work ought to be completed before any decisions on the Privy Council are made.

3.5 We have major concerns about the system proposed in the bill for appointing the judges of the Supreme Court. A government should not be able to appoint the whole of a new top-tier court. This was not done by the governments of Australia or Canada when they severed appeals to the Privy Council. Nor was the appointment of the first permanent New Zealand Court of Appeal a precedent, since that was not a top-tier court. Any new court should simply consist of the most senior current judges. It is not clear why the Attorney-General has failed to keep to the entirely proper recommendations of the Advisory Group in this regard. Perhaps the intention is to defuse opposition by changing back again, but this would be an unprincipled political strategy on the part of the Attorney-General who is supposed to be the guardian of constitutional values.

3.6 Similarly, we believe that when it is necessary for an additional judge to be called upon to sit, that judge should be selected by the operation of a rule and not on a discretionary basis. For this reason we are opposed to the idea of drawing on part-time judges to serve on the Court. Such a provision opens the way to the stacking of a court, as arguably occurred with the *Brighouse* case, and was not recommended by the Advisory Group. An alternative solution would be to appoint a seven-judge court, comprising all the present judges of the Court of Appeal. If the Supreme Court is expected to sit as five judges on most occasions, there are obvious difficulties in coping with problems of ill-health, leave and conflicts. A seven-judge bench is common in other jurisdictions, and the additional cost would be offset by the greater administrative flexibility, variety of viewpoints and expertise that it would provide.

3.7 Another point of concern is the Attorney-General's intention that one judge should have knowledge of 'tikanga Maori'. The reason for this is unclear. If a case involves understanding of Maori cultural matters, these matters should be the subject of expert evidence and argument in open court. If a judge has, or is selected for, special knowledge of these matters, what is that judge's role to be? Are the other members of the court to defer to that judge on these matters? If the matters are controversial within Maori, which view of tikanga is to prevail? The effect of this proposal is that counsel may be arguing against a case they have not heard. This is not in keeping with the proper judicial role. In our view all judges should be appointed strictly on the basis of their overall merit and capacity to interpret and apply the law without fear or favour.

3.8 A final concern is with the grounds for appeal. The sole ground for appeal to the top level court is normally that the case raises a point of law of general public importance. The list of grounds for appeal in clause 13(1) of the bill smacks of pandering to interest groups. If matters of commercial or Maori cultural interest do not raise points of general public importance it is unclear why they should be appealed to this new court. The proposal for miscarriage of justice to be a ground of appeal raises the prospect of the Supreme Court hearing appeals on the facts in criminal cases. This would be unique in the Commonwealth, so far as is known, and is not appropriate. The appropriate course is to reform the procedures involved in criminal appeals and references to the Court of Appeal so that that court can examine the case in full.

3.9 Some have argued that the commercial community should not fear the loss of appeal rights to the Privy Council because a substitute for judging by a possibly inferior New Zealand court is arbitration. It is true that some businesses have been resorting to arbitration because of the costs, delays and uncertainties of litigation. However, this is at most a partial solution. Arbitration is confidential and therefore does not produce the public good of refining and clarifying points of law which can then be applied to future transactions. Further moves away from the normal legal system would be unfortunate; the proper course is to improve the operation of the courts.

3.10 We have heard other criticisms of the proposed Supreme Court structure that seem to us to have merit. An important matter is the concurrent proposals to change the method of appointing judges, on which Sir Geoffrey Palmer has now reported to the government. We see problems with his recommendations, but in any case they should logically be considered before a new Court is appointed. The argument for detachment of the judiciary from the legislature and the executive suggests an Auckland rather than Wellington location for the Court would have merit. The appointment of the Chief Justice to the Supreme Court has the disadvantage that in all likelihood that judge would no longer be able to sit as a High Court judge, and thus would be unable to preside over cases at first instance and would lose the benefits of close contact with colleagues and the administration of the justice system.

3.11 Ultimately, what many of these issues highlight are the difficulties of creating an efficient, detached and high quality final appellate court in a small-country environment, and the almost serendipitous availability of the Privy Counsel as a superior arrangement, at least for the foreseeable future. Among other things, it is a strong constitutional safeguard against the temptation of any future government to try to stack New Zealand courts with political appointees, since there is much less incentive to do so when governments cannot influence the composition of the Privy Council as a final appellate court. This reinforces the vital separation of powers between the judiciary and the other branches of government.

4 Other issues

4.1 There has been mention of the idea of New Zealand setting up some sort of Pacific court which would also be available for appeals from Pacific Island and other Commonwealth countries. This is not a genuine alternative avenue for appeals from New Zealand. Most Pacific Island states already use New Zealand, Australian and British judges to staff their judiciary. Their final courts of appeal are often entirely composed of distinguished former judges from those countries. It is evident, therefore, that these states would not be contributing any judges to a Pacific court. Nor would New Zealand businesses be interested in having appeals

on complex commercial matters heard by courts including judges from such states. This proposal amounts to no more, then, than saying that New Zealand would make its Supreme Court available for appeals from those states as an alternative to the current ad hoc arrangements. It has nothing to do with the issue of whether New Zealand should sever appeals to the Privy Council. We see no prospect of Australia wishing to join in a Pacific court, nor of the Chinese government allowing Hong Kong to take part, nor of Singapore, whose politicised judiciary would in any case be a source of concern, acquiescing in the idea. If the feasibility of such a court were to be taken seriously, the bill would obviously need to be set aside while a concrete proposal was developed for public and parliamentary scrutiny and prospective governments were consulted about their interest in such a project.

4.2 Lastly, it is worth noting that in all the debate on the Privy Council issue little consideration, if any, has been given to the possibility that some aspects of its operation from a New Zealand perspective could be 'fine-tuned' to advantage. A non-exhaustive list of possible measures would include:

- A practice whereby one New Zealand judge sits on each New Zealand appeal to the Privy Council wherever possible. This would not mean a change from the current practice whereby one Court of Appeal judge spends time sitting on the Privy Council each year, but obviously that judge could not sit on appeals from decisions in which he or she was a participant. That judge would also continue to sit on non-New Zealand appeals heard by the Privy Council. This may require a move towards a 'season' for New Zealand appeals to be heard.

- There could be a revision of the threshold for Privy Council appeals which is, at present, fractured and incongruous.[4] There is a need for a standard special leave formula, to be sought in the first instance from the Court of Appeal, but also with a right to seek leave from a panel of three Law Lords, as is the case in United Kingdom appeals.

- For preliminary matters, including the seeking of leave (where it has been declined by the Court of Appeal), the use of video links and prior exchange of submissions would recognise technological developments and remove a layer of costs in at least some proceedings.
- The somewhat 'self-denying' role of the Privy Council – to defer to the New Zealand courts where it thinks local factors should be given weight – could warrant some degree of reconsideration, which might be the topic of a Practice Note to be issued jointly by the senior Law Lord and the Chief Justice of New Zealand.
- The role of Privy Council agents could be reviewed to establish whether it is still necessary or could be carried out in less expensive ways.

Obviously fine tuning aspects of the Privy Council appeals system cannot be unilaterally determined by the relevant New Zealand authorities, but would require consultation and joint decision-making with those responsible for the operation of the Privy Council itself. Nevertheless, we have no reason to doubt that the New Zealand link with the Privy Council is appreciated in London, and that sensible 'fine tuning' measures to make it more 'user friendly' and efficient for New Zealand appellants would be carefully and constructively considered there.

5 Conclusions and recommendations

5.1 In the Business Roundtable's view, a change in New Zealand's final court of appeal should only be made if it is clear that we will get better administration of law as a result. This was the position taken by the Beattie Royal Commission on the Courts which stated (at paragraph 280):

> The right of appeal to the Judicial Committee should not lightly be abandoned. The sole criterion must be whether the abolition of such appeals will be beneficial to the New Zealand judicial system.

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4 For example, no procedure is laid down for appeals on criminal cases and cases under the Maori Land Act, and there are no appeal rights on employment cases.

We submit that in the present and foreseeable circumstances this basic test is not met.

5.2 As the major users of the Privy Council's services, we believe the views of the New Zealand commercial community, including professional services firms which are particularly concerned about the implications for liability insurance, should be given substantial weight in considering proposals to abandon it.[5] The views of some politicians and judges as 'producers' of judicial services should not be allowed to dominate. We are unaware of any significant elements of the business community that support the proposals. We also know that significant numbers of the legal profession have deep misgivings about them, even though these are not always voiced publicly for obvious reasons.

5.3 In summary, our argument is that New Zealand's economic stability and growth, which the government has said are its top priority, are very dependent on confidence in its laws and institutions. New Zealand has been criticised for weaknesses in constitutional rules and attitudes that create uncertainty for business. The clear separation of powers which the Privy Council provides is a vital constitutional feature which is not easy to achieve in small, intimate societies. The Privy Council carries out a significant function in correcting errors by our court system, the most egregious recent case being *Taito* on the Court of Appeal's own procedures. From a business perspective, the Privy Council is a high quality court; there is still limited commercial expertise in the higher reaches of the New Zealand judiciary; and the talent pool for top judges is quite small. More generally, New Zealand benefits from the detachment of the Privy Council and the global connectedness it offers; the chances of political influence over the judiciary and of judicial activism would both be increased without the anchor of the Privy Council; and the government's arguments for abolition are not compelling, certainly for commercial cases. Its claim that the Privy Council is no longer relevant because it now frequently refers cases back to New Zealand is quite incorrect.

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5 The Attorney-General has accepted this point: "The business community must be confident with the outcome … We need maximum agreement if there is to be any changes" (Margaret Wilson, *The Independent*, 10 October 2001). We believe submissions on the bill will confirm that there is no such level of agreement.

5.4 We are aware that there are counter-arguments to these views. Of potentially greater long-run importance than the arguments put forward by the Attorney-General is the point that British law is moving in some different directions from New Zealand law insofar as it is being influenced by European Union and human rights developments. However, there are no real signs that these trends are as yet influencing the Privy Council's administration of New Zealand law. Our firm 'on balance' judgment is that for the foreseeable future there is inestimable value in retaining the Privy Council's services. This value could be enhanced by discussing with the British authorities the possibility of changes along the lines suggested in paragraph 4.2 above.

5.5 If the desire to sever links with the Privy Council were confirmed by a properly constituted referendum after a process of informed public debate, we would readily accept that verdict. Currently there are no indications of broad-based public and political support for such a move. We would regard it as frankly outrageous for such a measure to be passed by a narrow parliamentary majority. If, contrary to the views expressed in this submission, the select committee favours the basic proposal in the bill, we call on it and other parliamentarians to insist that it is put to the test of public opinion via a referendum.

5.6 Accordingly, we submit that:

(i) no strong case has been made for the basic proposal in the bill and that New Zealand's interests at this point of time are best served by retaining appeals to the Privy Council;

(ii) the bill should therefore be dropped and instead New Zealand should explore with the UK authorities improvements to the services provided by the Privy Council;

(iii) if the government disagrees with that view, the bill should not be taken further pending consideration of related proposals affecting the overall structure of the courts and the appointment of judges; and

(iv) if the government is still of a mind to proceed after resolving these issues, modifications should be made to the bill to alleviate concerns expressed in

section 3 of this submission, and the proposal should then be put to a public referendum, requiring more than a simple majority for approval, following a proper public information programme and debate.