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Legislation Act 2012 – first Statutes Revision Programme 2015 – 2017

The New Zealand Law Society (Law Society) appreciates the opportunity to respond to the Parliamentary Counsel Office consultation on the first revision programme under Subpart 3 of Part 2 of the Legislation Act 2012 (Act).

Overview

The Law Society understands that selected New Zealand statutes will be revised “to make them more accessible, readable, and easier to understand” and that revision can change the form of the legislation but not its substantive legal effect.¹ The Act stipulates that a revision Bill must not change the effect of the law, but can make “minor amendments to clarify Parliament’s intent, or reconcile inconsistencies between provisions” (s 31(2)(i)) or to update monetary amounts (s 31(2)(j)).

Views are sought on the suitability of the Acts selected for revision, and whether they might benefit from revision. A number of commercial statutes have been selected for revision.

Comments

The revision programme has been considered by the Law Society’s Commercial and Business Law Committee, with a particular focus on the Contracts and Commercial Revision Bill which is expected to be enacted during the 3-year revision period (2015-17). That Bill will revise and consolidate the following Acts:

- Carriage of Goods Act 1979
- Contracts (Privity) Act 1982
- Contractual Mistakes Act 1977
- Contractual Remedies Act 1979
- Electronic Transactions Act 2002
- Frustrated Contracts Act 1944
- Illegal Contracts Act 1970
- Mercantile Law Act 1908
- Minors’ Contracts Act 1969

¹ Consultation materials, p1.

- Sale of Goods Act 1908
- Sale of Goods (United Nations Convention) Act 1994

The revision programme states that these are “largely older Acts that are expressed in language that is out of date and many provisions have been repealed. Their consolidation in a modern form will make them more accessible and reduce regulatory costs for business”.²

The Law Society makes the following brief comments.

1. We express caution about changing statutory language which supports well-established judicial interpretation. Although at face value comfort might be taken from the intention that revision may change the form of the legislation but not its substantive legal effect, the recent history of updating statutes with the intention of making them more accessible, readable and easier to understand indicates that unintended consequences can result.³ It is acknowledged however that the independent certification process – in which a panel of eminent lawyers certifies that the revision powers have been exercised appropriately and the Bill does not change the effect of the law except as authorised by the Legislation Act (s 33) – seeks to avoid any unintended consequences. However, whether or not changes to well-understood provisions would affect future judicial interpretation of those provisions cannot be predicted with certainty. There is a real concern that a change in wording could change established legal principles, particularly where statutory drafting is already clear on its ordinary reading, even though its language is more formal than common parlance today.⁴
2. Most (if not all) of the Acts listed above work well and do not need to be altered. The Electronic Transactions Act could be simplified but the Law Society is not aware of any significant problems with that Act in its current form. However, if the Contracts and Commercial Revision Bill is to proceed, the Law Society would be very willing to look at the draft Bill before it is introduced to the House, if that would be of assistance.
3. The consultation materials note that the Parliamentary examination of revision Bills will be streamlined (because the Bills will have no element of new policy in them and will not make substantive changes to the law), and that the Parliamentary process is yet to be finalised. The Law Society considers there will still need to be select committee scrutiny and the opportunity for public input (particularly from the legal profession), even if this is done on a fast-track.

² Ibid, p3.

³ *How not to reform the Wills Act*, D F Dugdale, New Zealand Law Journal, October 2007, 322.

⁴ See for example the Sale of Goods Act 1908.

If you wish to discuss the comments, please do not hesitate to contact the convenor of the Commercial and Business Law Committee, Stephen Layburn, through the committee secretary Vicky Stanbridge (04 463 2912, vicky.stanbridge@lawsociety.org.nz).

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line extending to the right.

Chris Moore
President