



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



**PARLIAMENTARY
COUNSEL OFFICE**
TE TARI TOHUTOHU
PĀREMATA



Contract and Commercial Law Bill Exposure Draft

Questionnaire

SUBMISSIONS PROCESS

The Parliamentary Counsel Office and the Ministry of Business, Innovation and Employment are seeking written submissions on the exposure draft of the Contract and Commercial Law Bill by **7 December 2015**.

Please use this submissions template for providing feedback as this will help us to collate submissions and ensure that your views are fully considered. Please also include your name, the name of the organisation that you represent (if applicable), and contact details.

Please email your submission as an attachment to revisionbill@mbie.govt.nz. Any questions that you have in relation to the submissions process can be directed to the same address.

The information provided in submissions will help with preparing the Bill for introduction to Parliament. We may contact submitters directly if we require clarification of any matters in submissions.

Please note that the Parliamentary Counsel Office intends to publish submissions online at www.pco.parliament.govt.nz. See the Explanatory Material for information about the publication of comments, the Official Information Act and the Privacy Act.

Name: ADLSI Commercial Law Committee

Organisation: Auckland District Law Society Incorporated

Contact details (including email and/or phone):

Helen.young@adls.org.nz

09 306 5744

Questions

Question 1: Do the changes made in those provisions amount only to “minor amendments to clarify Parliament’s intent, or reconcile inconsistencies between provisions” within the meaning of section 31(2)(i) of the Legislation Act 2012?

For the most part we agree with this statement with the exception of the following:

Contractual (Privity) Act 1982:

1. Clause 20 – Savings: reference to the effect of section 7 of the Property Law Act 1952 (repealed) and in particular that it continues to apply, despite its repeal effected by section 13 of the Act, in respect of any deed made before 1 April 1983 – has been omitted.

Contractual Mistakes Act 1977:

2. Clause 31 – Rights of third persons not affected: the definition of “disposition” in this section inserted as from 3 December 2007, by s445 Insolvency Act 2006) - has been omitted.

Contractual Remedies Act 1979:

3. Clause 39 – Parties with substantially same interest: subsections (2) and (3) largely repeat the wording of the current section 7(7) except in respect of the following highlighted words - which have been omitted:

“The Court may, in its discretion, on application made for the purpose, grant leave under subsection (6) of this section, subject to such terms and conditions the Court thinks fit, if it is satisfied that the granting of such leave is in the interests of justice.”

The above changes are much more than just minor amendments to clarify intent or reconcile inconsistencies and arguably do not fall within the ambit of s31(2)(i) of the Legislation Act 2012.

Minors’ Contracts Act 1969

On the whole we consider the amendments proposed in connection with the Minors’ Contract Act to be of a minor nature.

However, we believe the same comment does not apply to the amendment proposed in Section 92 of the Contract and Commercial Law Bill. Section 92 proposes to amend Section 5(1)(c) of the Minors Contract Act 1969, by replacing the term,

“contract of service”, with that of “employment agreement”. We submit that proposed amendment is of a more significant nature and extends beyond clarifying Parliament’s intent or reconciling inconsistencies between provisions. We also submit that if the amendment were to be adopted it may have consequences beyond what is intended by Parliament.

The term, “contract of service” is not defined in the Minors’ Contracts Act 1969. The courts have attempted to define what is a “contract of service” by using various tests. L.J. Denning in *Stevenson Jordan and Harrison Ltd v. McDonald and Evans* [1952] 1 T.L.R 101 made this observation on contract of services, “It is often easy to recognise a contract of service when you see it, but difficult to say wherein the difference lies.”

A contract of service was one of very few categories of contracts which bound a minor at common law. Historically, the courts in England have given themselves latitude to use the tool of analogy to hold enforceable against a minor, contracts which do not fall squarely within the common understanding of the term “contract of service”. These include contracts that are very similar in nature to a contract of service such as a boxer’s licence, a contract between a minor and a publisher and other contracts involving the minor doing work and earning wages or other forms of income. Examples of such decisions include a contract between an under-aged author and a publisher (see *Chaplin v. Leslie Frewin (Publishers) Ltd* [1966] Ch.71) and a contract by which a minor professional sports person bound himself to a sports governing body (see *Doyle v. White City Stadium Ltd* [1935] 1 K.B. 110).

Whilst an employment agreement is a contract of service, not every contract of service is necessarily an employment agreement. “Contract of service” has the advantage of having slightly hazy boundaries. It is this quality that had in the past given judges a degree of latitude in its interpretation of the term.

The term “employment agreement” has a more restrictive meaning. It is a term that is defined in the Employment Relations Act 2000. If the amendment were to be adopted it may leave no room for a New Zealand court to hold enforceable against a minor any type of contract which involves a minor providing services and being paid for such services even if the contract is for the minor’s benefit other than in circumstances where there is a collective agreement or a signed written individual employment agreement (as required by Section 65 the Employment Relations Act 2000).

In our view Section 5(2) of the Minors’ Contracts Act adequately safeguards minors from being bound by harsh or unfair contracts. Accordingly there is no purpose to be served by further limiting the circumstances where a contract can be enforced against a minor.

Sale of Goods Act 1908

We consider the amendments proposed in connection with the Sale of Goods Act 1908 Act to fall within the meaning of Section 31(2)(i) of the Legislation Act 2012 in that they are of a minor nature and for purpose of:

- (1) Replacing outdated language with more modern reader friendly counterparts;

(2) Removal of repealed or spent provisions; and

(3) Reconciling inconsistencies in terminology as between the various sections.

You sought comment on the amendments proposed to S.41 of the Sale of Goods Act. We agree with the amendment proposed in Section 173 of the Contract and Commercial Bill in relation to Section 41 of the Sale of Goods Act on unpaid seller's rights. The proposal is to replace the words, "right of stopping the goods in transitu" at Section 41(1)(b) with words, "right to stop the goods in transit".

We also agree with the proposal to replace the words, "stoppage in transitu" at Section 41(2) with the words, "to stop the goods in transit".

We believe it is a good move to replace Latin phrases with language that can be better understood by the business community and the general public in New Zealand.

Question 2: If the Bill does make "minor amendments" to the effect of the law, is there any reason why the amendments should not be made?

We submit there are reasons for not making the proposed amendment to Section 5(i)(c) of the Minors' Contracts Act 1969. The reasons are set out in our answer to Question 1 above.

Question 3: Are there any other “minor amendments” within the meaning of section 31(2)(i) of the Legislation Act 2012 that should be made? If so, please provide a detailed explanation of any proposed amendment and why it is justified.

No other minor amendments.

Question 4: Are there any other changes that should be made to improve the Bill as a revision Bill? Proposed changes should fall within the powers contained in section 31(2) of the Legislation Act 2012, such as changes to language, format, or punctuation.

If omissions referred to in Question 1 above are accepted as being more than simply minor amendments, the Bill should be revised by including the omitted provisions to align with current legislation.

Re:

Clause 302 (1) (a) – query whether the first use of the word "and" is superfluous?

Clause 314 (3) – query whether "specified" person should refer to a receiver?

Clause 318 – definition of "ship's delivery order" – contains a full stop at the end of the definition and yet other definitions do not. Should this be removed?

You have asked for comment on definition of "goods". A general comment is why does the act not have an interpretation section which contains the definitions used throughout the Act rather than having to repeat definitions in each part?

Clause 318 – definition of "holder" query whether the word "and" should appear after the phrase "possesses the bill"?

Clause 331(4) – you have asked for comment as to the definition of "holiday". Query whether this should include regional holidays?

Clause 339(1) – recommend that the following words appear after "equal to the sum" – "specified in the notice given by the shipowner pursuant to section 337". we believe this would make for clearer drafting.

Question 5: Would accessibility and readability be aided if more legislative examples were given?

Generally, legislative examples are useful and increase accessibility and readability for general public, although where legislative intent is well established and accepted, it is doubtful that inclusion of examples would be useful

Question 6: Is an intention to bind the Crown implied from the terms of any of Parts 1, 4, and 5 of the Mercantile Law Act? Does Schedule 1 of the Crown Proceedings Act 1950 indicate a clear intention that only Part 2 of the Mercantile Law Act binds the Crown?

It is not clear whether it can be implied that there is an intention to bind the crown in Parts 1, 4 and 5 of the Mercantile Law Act. This is because Schedule 1 of the Crown Proceedings Act 1950 only refers to Part 2 of that Act.

Question 7: Is it desirable that any of Parts 1, 4, and 5 of the Mercantile Law Act should bind the Crown? Would expressly providing for these Parts to bind the Crown be a minor amendment within the powers of s 31(2)(i) of the Legislation Act 2012 (ie, the power to “make minor amendments to clarify Parliament’s intent, or reconcile inconsistencies between provisions”)?

We can think of no good reason why Parts 1, 4 and 5 of the Mercantile Law Act should not bind the Crown, however, given that Schedule 1 of the Crown Proceedings Act 1950 only refers to Part 2 of the Mercantile Law Act we consider that this would not be a minor amendment.

Question 8: Should we revise Part 5 of the Mercantile Law Act 1908 or leave it for subsequent reform or repeal?

No comment

Question 9: How should the Bill approach transitional arrangements?

Given that the object of the Bill is simply to make minor amendments to clarify intent and reconcile inconsistencies, it is difficult to see that any transition periods would be necessary or useful. Changes could simply take effect immediately following Royal Assent.

Question 10: Are there other issues in the statutes that may need reform that we have not identified in Part 4 of the Explanatory Material?

No Comment

Question 11: Do you have any other comments relating to the Bill?

No further comment