

Chair

Cabinet Legislation Committee

Partnership Law Bill: Approval for Introduction

Proposal

1. This paper seeks approval to introduce the Partnership Law Bill into Parliament.

Executive summary

2. The Government is required under the Legislation Act 2012 (the Act) to revise the New Zealand statute book to make the law more accessible, without changing the substantive effect of the law.
3. As Attorney-General I am required to prepare, and consult publicly on, a draft 3-yearly revision Bill programme for each new Parliament. I presented the current programme to the House at the beginning of April 2018.
4. The Partnership Law Bill (the Bill) is on the revision programme. The Bill revises and re-enacts the Partnership Act 1908, which contains rules that govern business partnerships. By restating the rules in modern plain language, the Bill makes them clearer and easier for people to understand and apply. Rules in the Partnership Law Bill cover, for example, the rights and obligations of partners to each other and to third parties.
5. The Bill has been certified by four revision certifiers who are appointed under section 33 of the Act. They are satisfied that the revision powers have been exercised appropriately in the preparation of the Bill and that the Bill does not change the effect of the law, except as authorised under section 31(2)(i) or (j) of the Act. Those provisions permit minor amendments to clarify Parliament's intent or to reconcile inconsistencies between provisions. Those amendments have been separately identified in the Bill.

6. The revision certificate will be presented to the House on the introduction of the Bill as required by the parliamentary procedure set out in Standing Orders of the House of Representatives (Standing Orders).
7. The Bill holds a priority 4 category (to be referred to a select committee in the year) on the 2019 Legislation Programme. I seek agreement to introduce the Bill in May 2019.
8. I seek agreement also that, after the Bill's first reading, the government propose that the Bill be:
 - 8.1. referred to the Justice Committee for consideration, as indicated in its explanatory note (which is required under Standing Order 271(3));
 - 8.2. enacted by December 2019.

Policy

Background

9. The Legislation Act 2012 (the Act) requires the Government to undertake the systematic revision of the New Zealand statute book. The purpose is to make the law that is contained in older or heavily-amended Acts, clearer and more accessible by updating and re-enacting it in a more up-to-date form. A revision Bill cannot, as introduced, propose any changes to the substantive legal effect of any provisions. Only small amendments are permitted to clarify Parliament's intent or to reconcile inconsistencies between provisions.
10. The Law Commission identified the need for revision in 2008. The Commission commented then that our statutes are in a more disorderly state than in 1908, when the last big revision exercise was undertaken. The New Zealand Productivity Commission noted in 2014 that the initiatives to improve the stock of regulation needed to build on and work with other initiatives already underway, such as the revision reforms. It noted also that revision will reduce regulatory costs by assisting individuals and businesses to understand more easily the rules that apply to them.
11. The Attorney-General is required under section 30 of the Act to prepare, and present to the House, a 3-year statute revision programme for each new Parliament. A programme is released for public consultation before being approved by the Government and presented to the House. The Parliamentary Counsel Office manages the programme and,

working with the agencies that administer the legislation, prepares the Bills on the programme.

12. Revision Bills can, under the statutory revision powers, be used to:

- 12.1. combine or divide Acts or their Parts;
- 12.2. omit redundant and spent provisions;
- 12.3. renumber and rearrange provisions;
- 12.4. change the current drafting style and format, and generally to express better the spirit and meaning of the law;
- 12.5. include new purpose or overview provisions and examples, diagrams, and other devices to aid accessibility and readability;
- 12.6. correct typographical, punctuation, and grammatical errors;
- 12.7. make minor amendments to clarify Parliament's intent or to reconcile inconsistencies between provisions.

13. Before introduction, four statutorily-appointed revision certifiers must certify a revision Bill confirming that they are satisfied that the statutory revision powers have been exercised appropriately. They also certify that the revision Bill does not change the substantive effect of the law. The certifiers for this Bill were, as are required by the Act, a retired High Court Judge (Hon John Priestley CNZM QC), the President of the Law Commission (Hon Sir Douglas White KNZM), the Solicitor-General (Ms Una Jagose QC), and the Chief Parliamentary Counsel (Ms Fiona Leonard).

14. When a revision Bill has been certified, the Chief Parliamentary Counsel provides the Bill and certificate to the Attorney-General for the Bill to be introduced. The Bills must be suitable for introduction as required under Standing Order 271. The explanatory note of a revision Bill sets out:

- 14.1. a general policy statement about revision – including the statutory revision powers and a statement that the Bill must not change the effect of the law except as allowed under section 31(2)(i) or (j) of the Act;
- 14.2. a statement setting out, in general terms, the inconsistencies, anomalies, discrepancies, and omissions that were identified in the course of preparing the Bill, and how they have been remedied in the Bill;
- 14.3. the subject select committee that will consider the Bill.

15. Revision Bills are exempt from Regulatory Impact Assessment and Legislative Disclosure Statement requirements. However, Bills are vetted under the New Zealand Bill of Rights Act 1990 before introduction.
16. The parliamentary process for enacting revision Bills is fast-tracked under Standing Orders. Because these Bills as introduced can have no element of new policy in them and cannot make substantive changes to the law, the parliamentary examination of them is narrower. The Standing Orders Committee noted in 2011 that the scope of a revision Bill is limited to restating the existing law and to clarifying its intent. Amendments that go beyond that purpose may be outside the scope of the Bill and would require an instruction from the House.

Comment

17. I presented the current revision programme to the House in April 2018. The Ministry of Business, Innovation and Employment proposed that the Partnership Act 1908, which governs business partnerships, be included on the programme because of its age, dated language and structure.
18. By restating its important rules in a modern form, partnership law will become clearer and easier for people to understand and apply. The partnership rules cover the rights and obligations of partners to each other and also to third parties. Improved accessibility will help reduce costs for partnership businesses.
19. The Parliamentary Counsel Office and the Ministry of Business, Innovation and Employment consulted the public on an exposure draft of the Partnership Law Bill last year. They sought submissions from the judiciary, legal practitioners, academics, community law centres, citizen advice bureaus, and dispute resolution services. They received three submissions from lawyers, which addressed issues in specific clauses and responded to questions in the explanatory material. Subsequently, Chartered Accountants Australia and New Zealand provided supportive feedback on some changes. The former Chief Justice also provided helpful comments on behalf of the judicial heads of Bench.
20. The Bill is not contentious. However, when the first revision Bill was being prepared (now the Contract and Commercial Law Bill), the New Zealand Law Society at the time expressed general caution about changing statutory language that supports well-established judicial interpretation. This is a risk that needs to be balanced against the significant benefits of revision and the risks of leaving the legislation in an inconsistent and outdated form.

21. I think that any risk of inadvertent change is minimised through the Parliamentary Counsel Office's prudent approach to the drafting of this Bill and safeguards, such as careful departmental and peer review scrutiny, the public consultation on an exposure draft, and the certification requirement before introduction. Select committee scrutiny provides another safeguard.
22. In the event of a dispute about the meaning of a revised provision, a court is likely to refer to the interpretation rule in section 35 of the Act (that a provision of a revision Act is not intended to change the effect of the law). A court may hesitate to find that the meaning had been inadvertently changed. In comments on the first revision Bill, the former Chief Justice noted that it may be assumed that a court would interpret the new words in the same way as the old words have been interpreted, given that the Act is a revision Act and so should not be materially changing the law.
23. The certifiers for this Bill are satisfied that the revision powers set out in section 31 of the Act have been exercised appropriately in the preparation of the revision, and that the effect of the law has not been changed except as authorised by section 31(2)(i) or (j) of the Act. Accordingly, they provided their certificate for the purposes of section 33 of the Act on 17 April 2019.
24. The Bill nominates the Justice Committee as the subject select committee for the Bill (as required under Standing Order 271(3)). The Bill is expected to be enacted in this current parliamentary period and holds a priority 4 category (to be referred to a select committee in the year) on the Government's 2019 Legislation Programme.
25. The Ministry of Justice has reviewed the Bill for consistency with the New Zealand Bill of Rights Act 1990 and advises that the Bill appears to be consistent with that Act.

Impact analysis

26. The regulatory impact assessment (RIA) requirements do not apply to revision Bills because they make no policy changes.

Compliance

27. The Bill complies with each of the following:
 - 27.1. the principles of the Treaty of Waitangi;
 - 27.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 27.3. the principles and guidelines set out in the Privacy Act 1993;
 - 27.4. relevant international standards and obligations;

27.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee (LDAC).

28. A disclosure statement is not required for a revision Bill.

Consultation

29. The Ministry of Business, Innovation and Employment, which administers the Partnership Act 1908, worked closely with the Parliamentary Counsel Office on the revision Bill.

30. There are no policy issues in the Bill to consult agencies on. The government agencies that administer legislation were consulted fully during the development of the revision programme, and there was a public and targeted consultation on the programme before I presented it to the House in April 2018.

31. As noted above in paragraph 19, the Parliamentary Counsel Office and the Ministry of Business, Innovation and Employment consulted publicly on an exposure draft of the Bill in 2018. The Bill was not referred to the Legislation Design and Advisory Committee for design advice because it does not make substantive law changes.

32. The Treasury, the States Services Commission, and the Department of the Prime Minister and Cabinet have been informed about the paper.

33. The Government caucus and other parties have been consulted on the paper.

Binding on the Crown

34. The Bill cannot, as a revision Bill, change the substantive legal effect of the 1908 Act. The 1908 Act does not contain an express statement about whether it binds the Crown, and there is some uncertainty about the legal position as to whether it impliedly binds the Crown. Silence is the best way of preserving the legal effect of the current Act. Therefore, the Bill as introduced will be silent on this matter.

35. However, the Crown is able today to enter into commercial arrangements with private parties. The Crown is bound by other general commercial rules under the Companies Act 1993 and the Limited Partnership Act 2002. Officials have indicated that the issue in relation to the Partnership Bill binding the Crown will require substantial policy work,

which is unlikely to be completed before the enactment of the Bill. Consideration will be given to addressing the issue at a later date, subject to other priorities.

Creating new agencies or amending law relating to existing agencies

36. The Bill will not create any new agencies or alter the function of existing agencies.

Allocation of decision-making powers

37. The Bill will not allocate decision-making powers between the Executive, the Courts, and the Tribunals.

Associated regulations

38. No regulations will be needed to bring the Bill into operation.

Other instruments

39. The new Act does not include any provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

Definition of Minister/department

40. The Bill does not contain a definition of Minister, department, or chief executive of a department.

Commencement of legislation

41. The Bill commences 6 months after Royal assent. This is assessed as being a good lead-in time for existing partnerships to consider and update their arrangements and documents where necessary. This is also consistent with the Contract and Commercial Law Act 2017.

Parliamentary stages

42. There is a streamlined parliamentary process for revision Bills under Standing Order 271. There is no amendment or debate on the question for the first or third readings, or on the question that the Bill be considered by the subject select committee nominated in the Bill. Following the select committee's report on the Bill, the Bill proceeds to the third reading without a committee stage unless the Business Committee determines otherwise or, as the Minister in charge, I require the House to resolve itself into committee to consider an amendment. The House may also resolve itself into committee to consider an amendment circulated or lodged with the Clerk of the House at least 24 hours before the Bill is read a second time.

43. It is proposed that the Bill be introduced into Parliament in May 2019 and be referred to the Justice Committee. The Bill has a category 4 priority on the 2019 Legislation Programme (to be referred to a select committee in the year). It is recommended that the Bill be enacted no later than December 2019.

Publicity

44. I will issue a media statement when the Partnership Law Bill is introduced into Parliament.

Proactive release

45. I intend to proactively release this paper on the Parliamentary Counsel Office's corporate website, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982.

Recommendations

46. The Attorney-General recommends that the Committee:

1. **note** the Legislation Act 2012 (the Act) requires the Government to systematically revise New Zealand's Acts to make the law clearer and more accessible, without changing its substantive legal effect;
2. **note** I presented the Government's current 3-year programme of statute revision for the 52nd Parliament to the House in April 2018;
3. **note** the Partnership Law Bill (the Bill) is on the current revision programme, and revises the Partnership Act 1908 to make it more readable and easier to understand, without making any substantive changes to the law;
4. **note** public submissions and feedback on an exposure draft of the Bill have helped to inform the Bill;
5. **note** the Bill's revision certifiers certified on 17 April 2019 that the revision powers have been exercised appropriately and that the effect of the law has not been changed except as authorised;
6. **note** the revision certificate must be presented to the House on the introduction of the Bill, in order that the streamlined parliamentary procedure set out in Standing Order 271 applies to the Bill;
7. **note** the Justice Committee is nominated in the Bill's explanatory note as the subject select committee for the Bill (as required under Standing Order 271(3));
8. **note** the Bill holds a category 4 priority (to be referred to a select committee in the year) on the 2019 Legislation Programme;
9. **note** at the appropriate time, I propose to discuss with the Business Committee how to streamline the consideration of the Bill when it is reported back to the House;
10. **note** that:
 - 10.1. the Partnership Act 1908 does not expressly bind the Crown;

10.2. there is uncertainty about the legal position as to whether the Act impliedly binds the Crown;

10.3. to best preserve the legal effect of the 1908 Act, the Bill as introduced will be silent on this matter;

11. approve the Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;

12. agree that the Bill be introduced in May 2019;

13. invite the Attorney-General to present the revision Bill certificate to the House on the introduction of the Bill;

14. agree the Government propose that the Bill be:

14.1. referred to the Justice Committee for consideration, as nominated in the Bill's explanatory note;

14.2. enacted by December 2019.

Authorised for lodgement

Hon David Parker
Attorney-General

Attachment: Revision Bill certificate for the Partnership Law Bill