

The Treasury

Statutes Repeal Bill Consultation Submissions Information Release

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From: Fergus Whyte [1]
Sent: Sunday, 22 November 2015 4:00 a.m.
To: Regulation [TSY]
Subject: Submission - Statutes Repeal Bill
Attachments: SUBMISSION ON DRAFT STATUTES REPEAL BILL.pdf

Categories:

Please find **attached** my submission on this bill.

Regards

Fergus Whyte

SUBMISSION ON DRAFT STATUTES REPEAL BILL

Introduction

1. My name is Fergus Whyte. I am currently a student at the University of Edinburgh studying towards a masters degree in law. I am a New Zealand citizen and an enrolled barrister and solicitor of the High Court of New Zealand. I was previously a judges' clerk at the High Court (2011 – 2013) and then a solicitor in practice in Auckland (2013 – 2015). This submission reflects my personal views on the draft Statutes Repeal Bill (**Bill**).
2. The majority of the Bill is unobjectionable and commendable in attempting to minimise unnecessary material remaining a part of New Zealand legislation.
3. There is, however, one troubling aspect of the Bill both procedurally and substantively. This relates to the Bill's intended repeal of the Sentencing Council Act 2007 (**SCA**).

Background to the SCA

4. The SCA was intended to create a body to assist in consistent and fair sentencing decisions being reached by the courts. Sentencing is an important part of the work of the courts and occupies considerable time and resources of the District Court, High Court and appeal courts. Just sentencing is also a matter which is of serious importance both to the administration of justice and those involved in the process (victims, law enforcement and corrections and offenders). There are serious substantive arguments as to merits of the creation and role of a body such as the sentencing council both in terms of:
 - a. The consistent and fair administration of justice; and
 - b. The avoidance of unnecessary appeals or wastage of court time.
5. The SCA received the Royal Assent in 2007 but its provisions have never been implemented in substance. This appears to have been a deliberate act of Government policy.

Comments on the Bill

6. The proposed repeal of the SCA through the Bill raises a number of concerning issues.
7. In procedural terms, the repeal of the SCA through the Bill is questionable in that:
 - a. The SCA is a more substantial, contemporary and complete piece of legislation than the other provisions/statutes that are proposed to be repealed.
 - b. The Bill treats the repeal of a contemporary, substantive piece of legislation as akin to an act of editorial redaction of obsolete provisions rather than the repeal of an Act of Parliament articulating substantive policy.

- c. The inclusion of the SCA in an “omnibus” bill containing so many proposed repeals means that the issue of the repeal of the SCA risks being concealed by the sheer number of Acts that are proposed to be repealed.
 - d. Because of the “omnibus” character of the Bill, the repeal of the SCA through the Bill means that the Government will not be required to comprehensively address:
 - i. The constitutional propriety of the Executive’s choice not to implement the provisions of an Act of Parliament (the SCA) for a number of years; and
 - ii. The substantive question of whether the SCA should be repealed as a matter of policy.
8. Regarding the substantive question of whether the SCA should be repealed, there is an ongoing need for debate about the mechanisms through which the New Zealand courts develop consistent policies for the sentencing of offenders and the effect that those policies have both on users of the criminal justice system and on the effectiveness of the courts. The proposed repeal of the SCA should provide an occasion on which to debate this issue properly.

Recommendation

9. In my submission, the Bill should proceed in separate parts:
- a. A Statutes Repeal Bill dealing with all matters save for the SCA;
 - b. A SCA Repeal Bill.
10. The separation of the Bill into these two parts will allow for the proper airing of the procedural and substantive issues that are apparent in the present course of incorporating repeal of the SCA into a Bill whose purpose appears ill suited to the more substantial issues arising from the proposed repeal of the SCA.
11. Please feel free to contact me if any clarifications are required.

Fergus Whyte