



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Outer Space and High-Altitude Activities Bill

01/12/2016

Outer Space and High-Altitude Activities Bill

1 Summary

- 1.1 The New Zealand Law Society welcomes the opportunity to comment on the Outer Space and High-altitude Activities Bill (Bill). The Law Society has identified some matters that it considers should be addressed before the Bill is reported back. These are outlined below.

2 General comments

- 2.1 The Bill establishes an orthodox legislative framework for the licensing and enforcement of a space industry. However, the Technology Safeguards Agreement (TSA) entered into between the New Zealand and United States Governments imposes obligations that appear to extend beyond those provided for in the Bill. For example, the TSA provides express obligations on the New Zealand Government in relation to access to US launch vehicles and equipment. It is unclear how those obligations fit with the proposed functions of enforcement officers under clause 61 of the Bill. The Law Society recommends clarifying this to ensure the functions of enforcement officers are either expressly subject to or unfettered by the externally agreed obligations.
- 2.2 As noted, the Bill creates a licensing regime. However, it does not provide for appeal rights for persons affected by decisions of the Minister in relation to licensing. Persons whose livelihood and investment may be affected by decisions of the Minister will have no recourse to judicial oversight. Preferably, a right of appeal to the District or High Court should be provided for those affected by such decisions of the Minister. Alternatively, at the very least, an internal review process should be provided in respect of licensing decisions, or there should be provision for those affected by decisions to make a complaint to the Office of Ombudsman.
- 2.3 Unless appeal rights (or an internal review process) are expressly included in the Bill, the only recourse for parties affected by licensing decisions will be to apply for judicial review in the High Court. Relying on judicial review as the sole ground of challenge for administrative decisions is generally not considered to be legislative best practice.¹
- 2.4 The Law Society notes that an internal review mechanism would be consistent with the approach taken in clause 57, which provides a review procedure in relation to the issuance of a certificate by the Minister for National Security and intelligence.

3 Specific drafting comments

Definitions

"National security"

- 3.1 The expression "national security" is used in several places in the Bill. For clarity and consistency, the Law Society recommends that "national security" should have the same definition as that contained in clause 5 of the New Zealand Intelligence and Security Bill.

¹ See LAC Guidelines 2014 at [25.2]: <http://www.ldac.org.nz/guidelines/lac-revised-guidelines/>

"Outer space"

- 3.2 There is no definition of "outer space" in the Bill. This makes the distinction between "high-altitude" and "outer space" unclear. The Committee may wish to seek advice from officials on inclusion of an appropriate definition of "outer space".²

Issues regarding licensing decisions and conditions

- 3.3 The powers of the Minister under clause 14 to vary, revoke or suspend a launch licence do not adequately provide for the fair treatment of licence holders.³ The Law Society recommends that these provisions should contain additional procedural protections such as a requirement to give affected parties prior notice, with an opportunity to comment, before making decisions to vary, revoke or suspend a licence.
- 3.4 As a breach of licence conditions is a ground for suspension of the licence, the Law Society recommends greater clarity be provided in the Bill in relation to the content of such conditions. For example, clause 10(1)(c)(ii) makes launch licences conditional on consultation with Airways Corporation and Maritime New Zealand. However, it is not clear from the Bill what that consultation relates to, nor what it is intended to achieve. If consultation with Airways Corporation is intended to deal with airspace matters, for instance, then this should be expressly stated.

Clause 56(4) – certificate of significant risk to national security

- 3.5 Clause 56(4) of the Bill provides that a certificate by the Minister for National Security and Intelligence that an activity or proposed activity poses a significant risk to national security is "conclusive evidence of the matters stated in it" and the advice given to a Minister "must not be challenged, reviewed, or called in question in any court".
- 3.6 The Law Society considers that this provision will unduly restrict the ability of an affected party to bring a meaningful challenge to a decision, for example, to revoke a launch licence in the interests of national security under clause 14(1)(c)(ii). The Law Society recommends that consideration be given to including provision for a summary of reasons underlying a certificate to be provided to an affected party so they can assess whether there are grounds for challenging the issue of the certificate, as in sections 37 – 39 of the Immigration Act 2009.

Clause 76(1)(a) – Taking photographs, etc, or samples from debris recovery area

- 3.7 Clause 76(1)(a) creates an offence if a person, without permission, takes any photograph, makes any sketch, plan, model, or note, or otherwise records any image of anything that the person knows or ought to know is in a debris recovery area. No advice was provided to the Attorney-General on this provision.⁴ On its face, it appears to be inconsistent with section 14 of the New Zealand Bill of Rights Act 1990, which protects the right to freedom of expression (including the freedom to seek and receive information). Unlike clause 76(1)(b) of the Bill (prohibiting taking of a sample of anything from a debris recovery area), the activities in clause 76(1)(a) do not appear likely to compromise an investigation of an accident and so it is not clear what justification exists for such a constraint.

² For example, the Karman line is accepted by the Federation Aeronautique Internationale (FAI) as the boundary between the Earth's atmosphere and outer space. The Karman line lies at an altitude of 100 km above the Earth's surface.

³ This issue is also applicable to the proposed clauses 21, 30, 37, 44 and 50.

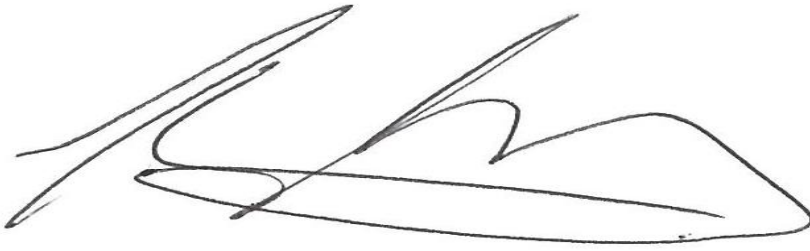
⁴ See Bill of Rights vetting letter dated 7 September 2016 from Jeff Orr, Ministry of Justice to Hon Christopher Finlayson QC, Attorney-General.

Clauses 64(4)(b) and 78(1) – identity cards

3.8 The Law Society submits that clause 64(4)(b) may need rewording to make it clear that the person wearing the identity card is the person to whom it was issued. As currently drafted this is open to alternative interpretations. A similar change would also need to be made to clause 78(1) in relation to the offence of failure to display the identity card.

4 Conclusion

4.1 The Law Society does not seek to be heard on this submission.

A handwritten signature in black ink, appearing to read 'K. Beck', written in a cursive style.

Kathryn Beck
President
1 December 2016