

9 December 2017

Deborah Russell
Chair, Environment Committee
Parliament Buildings
Wellington

By email: Megan.Robins@parliament.govt.nz

Dear Ms Russell

Christ Church Cathedral Reinstatement Bill

The New Zealand Law Society has received the Environment Select Committee's invitation to make a submission on the Christ Church Cathedral Reinstatement Bill.

Concerns arising from inadequate time for making a submission

The invitation was received yesterday afternoon and requires submissions to be filed by midnight Sunday – allowing a little over one working day. This is simply insufficient time for considered and constructive input from the public, including the Law Society (relying as it does on the input of lawyers whose time and expertise is provided on a pro bono basis). In the Law Society's view, nothing damages the quality of legislation more than passing it too quickly, without sufficient consideration and consultation.

Select committee examination of Bills in a unicameral legislature such as New Zealand's effectively substitutes for the scrutiny functions ordinarily performed by a second parliamentary chamber. Select committees are therefore a crucial bastion of democracy in our legislative process. Unrealistic deadlines imposed on the select committee process seriously hinder the public's input into legislation.

Furthermore, it is unclear as to what circumstances justify the urgent passage of this Bill. The Bill was introduced on Monday 4 December, had its first reading in the House on Tuesday, the invitation to submit was issued on Thursday afternoon, and submissions are required by midnight Sunday.

The timetable is unreasonably short given the absence of any recent emergency. The principled approach referred to in the Law Society's submission in December 2016 on the Hurunui/Kaikōura Earthquakes Recovery Bill¹ applies to this Bill. The use of delegated legislation to amend primary legislation and to add further Acts to Schedule 2, which allows for Orders in Council to grant exemptions from, modify or extend any Act referred to in the Schedule (clause 7) remains objectionable. Likewise, the time restriction on the right to judicial review (clause 22). The proposal to

¹ http://www.lawsociety.org.nz/data/assets/pdf_file/0014/107330/Hurunui-Kaikoura-Earthquakes-Recovery-Bill-5-12-16.pdf

add further Acts to this Schedule by orders is not an appropriate or even necessary way of legislating outside of an emergency, notwithstanding that an order to add Acts to the Schedule is revoked within specified periods unless approved by Parliament within the specific period (clause 19). It is worrying to see this type of approach being used again, especially without the opportunity for considered public input.

As the Law Society said in its submissions on the Hurunui/Kaikōura Earthquakes Recovery Bill, while it is accepted that recovery from that recent earthquake required emergency legislation and powers, the impact on normal democratic, legal and administrative rights should be limited to what is absolutely required and only for so long as required. Again, it is difficult to understand how that can apply to the reinstatement of Christ Church Cathedral nearly seven years after the earthquake in February 2011 which damaged it.

While there are restrictions and controls as to the making of orders (clause 8), it is difficult to understand why the normal processes provided for in the Acts referred to in Schedule 2 should not be required to be adhered to. Nor that such orders may remain in force for up to 15 years (clause 15).

A mechanism such as the broad "Henry VIII" Orders in Council mechanism (clause 7) allows primary legislation to be amended by the Executive without the effective scrutiny of Parliament. Such a mechanism is normally reserved for situations where it is demonstrably essential, such as to deal with national emergencies. The use of an emergency powers framework for non-emergency situations is not considered to have been adequately justified in respect of the Bill.

The justification offered in the Regulatory Impact Statement (RIS) suggests that the primary reason for the proposed approach is simply to override any anticipated opposition to progressing the reinstatement of the Cathedral.

An alternative option

Legislation streamlining processes for major development projects is not uncommon and would provide a better model. A recent example is the National War Memorial Park (Pukeahu) Empowering Act 2012. This Act is referred to in the RIS as a basis for Option 2, allowing for an expedited "controlled activity" consenting framework, in which a resource consent could not be refused but conditions could be placed on it.

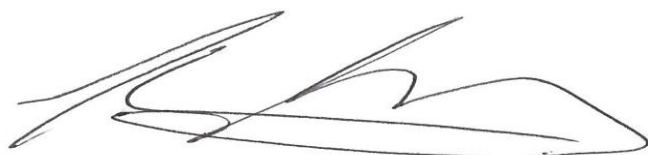
But even then, as identified in the RIS, the difficulty with this option is that it requires "a level of information about the project that is not currently available, and will not be available for some time".

Conclusion

That statement encapsulates the Law Society's primary problem with the Bill. It is rushed, without adequate opportunity for consultation. Adopting the Pukeahu Empowering Act model would require the details of the proposed reinstatement to be better fleshed out than they are currently. This would allow a better quality and more considered legislative solution to be tailored, with better protections for the rule of law, than are afforded in the Bill as presently drafted.

The Law Society is not seeking to debate the merits of progressing the reinstatement of the Christ Church Cathedral or that such progress needs to be made more quickly than it has to date. Rather, its concern is that the form of legislation proposed to be adopted has not been adequately justified.

Yours sincerely

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

Kathryn Beck
President