



JustSpeak

SUBMISSION: Statutes Amendment Bill

SUBMISSION: Statutes Amendment Bill

Table of Contents

Introduction

Corrections Act 2004

Victims' Orders Against Violent Offenders Act 2014

Conclusion

JustSpeak Backgrounder

Introduction

JustSpeak has reviewed the changes proposed by the Statutes Amendment Bill 2015 (the Bill). Many of the amendments correct drafting errors, omissions, or incorrect references. Other changes are not contentious. However, there are two changes that we would like to comment on.

Corrections Act 2004

Clause 34 amends s 103 of the Corrections Act 2004. Section 103 empowers a corrections officer to detain a person who is not a prisoner in a prison if he/she has reasonable grounds to believe that the person is in possession of a controlled drug.

At present, s 103(2) provides:

(2) An officer may detain a person under this section only for the purpose of obtaining the attendance of a constable who is entitled to exercise any power conferred by section 18 of the Misuse of Drugs Act 1975 or section 13 or section 13A of the Misuse of Drugs Amendment Act 1978 or section 23 of the Search and Surveillance Act 2012.

The proposed amendment provides:

(2) An officer may detain a person under this section only for the purpose of obtaining the attendance of a constable who is entitled in the circumstances to exercise any statutory search power.

JustSpeak does not support the proposed amendment. The present wording gives corrections officers specific guidance about the circumstances in which they may detain people. It also helpfully sets out the powers that a constable is entitled to exercise in the circumstances. The amendment could lead to ambiguity around when members of the public are allowed to be detained and searched.

The rights not to be arbitrarily detained and to be free from unreasonable search and seizure are fundamental rights enshrined in the New Zealand Bill of Rights Act 1990. Where important rights are involved, JustSpeak supports legislation that is narrowly drafted to prevent ambiguity in exercising statutory powers. Therefore, we recommend the deletion of clause 34 from the Bill.

Victims' Orders Against Violent Offenders Act 2014

This is a recent Act that empowers the court on an application by a victim to make a non-contact order prohibiting the offender from having contact with the victim. A victim cannot make an application if he/she has an existing protection order or restraining order.

The relatively short Act deals with how to apply for non-contact orders, the effect of them, their duration, enforcement issues and miscellaneous matters.

Clause 107 of the Bill amends the Act by inserting new sections 24A, 24B and 24C.

JustSpeak is concerned about the broad language used in new section 24A. It provides that "Where, *in any proceedings*, the court is of the opinion that it is desirable to do so", the court may forbid the publication of any report of proceedings, forbid the publication of the name or affairs of any person or exclude members of the public from proceedings.

The wording "in any proceedings" sits uncomfortably in an Act that deals only with one type of proceeding (applications for non-contact orders). Therefore, the new section 24A should use the language "in any proceeding under this Act" or similar. This aligns with language already used in the Act, in section 27 and rule 44 of the Victims' Orders Against Violent Offenders Rules 2014.

JustSpeak does not oppose the substance of the proposed section 24A. It does not infringe on the right of the offender to be legally represented and present in non-contact order proceedings.

Conclusion

JustSpeak recommends the deletion of clause 34 or an amendment to reflect all relevant statutory search powers and their statutory provisions.

We recommend amending clause 107 to state "Where, in any proceeding under this Act".

JustSpeak Backgrounder

JustSpeak represents a non-partisan network of young people across Aotearoa interested in contributing to the debate on criminal justice in New Zealand. As a new generation of thinkers JustSpeak is working for change in the justice system through imagination, innovation and a belief that we can achieve a just Aotearoa. JustSpeak was formed in early 2011 as the youth branch of the organisation Rethinking Crime and Punishment.

The group is guided by a belief that this new generation has much to offer to the national conversation on criminal justice: an imaginative outlook; a feeling of urgency; and a sense of hope, amongst other things. The group values an informed criminal justice debate based on evidence, experience and ongoing learning. And within its own operations, JustSpeak has a genuine commitment to inclusion and diversity.

The aims of the group are to empower young people to think independently about criminal justice issues, to encourage networking and the engagement of those affected by the justice system, to foster learning from others, to develop a voice for a new generation of thinking on criminal justice, and to allow this next generation to own its rightful place at the policy table in this area.

The name "JustSpeak" reflects the group's desire to encourage people to speak out, without fear of belittlement or ignorance, as well as the goal of the group to contribute to a culture of "speak" about what is "just" in relation to crime and punishment policy.



Email: info@justspeak.org.nz
Website: justspeak.org.nz
Address: P.O. Box 6884, Marion Sq, Wellington
Phone: (04) 803 3930