

Code for a simpler, better contract law is presented

Three academics have completed the project begun by Labor

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A TEAM of academics from Newcastle University has presented the federal government with a draft code for the law of contract that seeks to cut compliance costs for business and reduce legal bills.

The code, which was initiated by former attorney-general Nicola Roxon, is the work of professors Ted Wright, Fred Ellinghaus and David Kelly. It seeks to codify all of the rules of contract law and replaces case law with legislative text that aims to simplify and modernise the law.

In a report they have presented to the Attorney-General's Department, the authors write that the code seeks to state the law in the form of simple principles expressed in plain English, omitting much of the detail of the existing case law while preserving the essential features.

"We are trying to replace the very unmanageable current system in which the only way in which you can ascertain the law of contract is by consulting a legal adviser, who then has to consult many volumes of case law and volumes of commentaries on that case law and when they come up with an answer there will be some degree of uncertainty," said Professor Ellinghaus.

He said the code would be capable of being understood by ordinary people after 15 minutes.

The code, which contains 109 articles, also aims to harmonise Australian contract law with international contract law and make it compatible with the systems used by the nation's major trading partners.

Professor Wright said the scheme, if enacted, would eliminate much of the "dross work" for lawyers determining the law but Professor Ellinghaus said disputes over the facts, not the law, were at the heart of most contract disputes.



Newcastle academics Ted Wright, left, Fred Ellinghaus and David Kelly advocate a more intelligible code for contract law

DAVID GERAGHTY

Their report says the effect would be to do away with "an indefinitely large number of technical and intiquated rules, distinctions and definitions that clutter up the law and make its application uncertain".

It makes 15 major reforms, including the replacement of case law, the introduction of a universal obligation to act in good faith

and conscience and the abolition of the requirement of consideration.

Professor Wright said the underlying degree of legal commonality with Australia's major trading partners had been high and while some anachronisms and outdated rules had been abolished, aligning Australian law with that of our trading partners

required fewer changes than many would imagine. He said he would like to see the code become the focus of a renewed debate about reforming contract law.

"The debate has been going on for a few hundred years but what has been lacking has been a draft model," he said.

The code would help small and medium-sized enterprises by en-

abling them to simplify the requirements of commercial relations. "It will be a lot easier for businesses to contract without the same degree of legal input that they currently require," he said.

The code and the authors' report is available online at <http://ssrn.com/abstract=2403603>