

23 February 2024

Hon Judith Collins KC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Companies (Address Information) Amendment Bill

Purpose

1. We have considered whether the Companies (Address Information) Amendment Bill (the Bill), a member's Bill in the name of Hon Dr Deborah Russell MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. An application to the Registrar of Companies (the Registrar) to register a company under the Companies Act 1993 (the Act) requires each director named in the application to provide their residential address information (amongst other particulars) to the Registrar. This information is then made available to the public for inspection on the Companies Register (the Register).
3. The purpose of the Bill is to amend the Act to enable directors to apply to the Registrar to replace their residential address with an address for service where the director has serious concerns regarding the impact of the availability of their residential address information on their personal safety, or of a person the director resides with.
4. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with section 14 of the Bill of Rights Act. Our analysis is set out below.

The Bill

Existing provisions under the Act

5. Section 12 of the Act requires that an application for registration of a company includes the residential address of every director. Documents recorded on the Register are generally publicly accessible.¹
6. Sections 215 and 217 also require a company to record its directors' residential addresses and to make these available for public inspection at the place where the company's records are kept.
7. The Registrar does not currently have a discretion to remove a director's residential address information from the Register unilaterally. Part 9 of the Family Violence Act 2018 permits a director to apply to an agency that maintains a public register (in this instance, the Companies Office) to have information withheld from that register where they are a "protected person" under that Act. The agency has the discretion to decide whether to grant the application to withhold the specific information from the register, but one of the criteria for exercising that discretion is that the agency is satisfied that a protection order is in place for the applicant.

¹ An exception to this is a director's date and place of birth, which the Registrar must treat as confidential: see s 367A.

Analysis of the Bill

8. The Bill amends the Act to provide a director of a company with the ability to apply to the Registrar to update that director's residential address in the Registrar's records of that company (and, where applicable, the Register) with a replacement address for service. The director's application must:
 - a. be made by the director personally; and
 - b. include a statutory declaration from the director that the availability of their residential address information is likely to result in physical or mental harm to the director, or a person they reside with; and
 - c. specify a replacement address for service, which must not be the company's registered office or address for service.
9. The Bill also amends the Act to require the Registrar, following receipt of an application from a director, to update the director's residential address information (and the Register, if applicable) with the address for service specified by the director in their application.
10. The Bill also amends the Act to provide a company with the ability to update its records that are made available for public inspection by replacing the director's residential address with the address for service specified by the director.²

Consistency of the Bill with the Bill of Rights Act

11. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind and in any form.
12. The right to receive information prevents the state from impeding that person's efforts to access public information.³ This right could include the provision of a director's residential address information to a member of the public requesting that information, given that there is a statutory requirement for the company to make this information available for public inspection following registration.
13. However, the right to receive information has not been interpreted as conferring a right on an individual to be given access to information or to require a government entity to impart information to that individual.⁴ We consider the same conclusion would apply to the provision of a director's residential address information to an individual requesting it when a replacement address for service is being provided.
14. The Bill does not seek to require a company or the Registrar to remove or to withhold a director's residential address information from public inspection generally but provides a means for this information to be replaced with a different address for service where certain criteria are met. To the extent that the Bill might engage section 14 of the Bill of Rights Act, we consider that the limitation would be justified because it is responding to the safety

² Section 215.

³ Andrew Butler and Petra Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at 13.7.45 and 13.7.51.

⁴ Butler and Butler at 13.7.47.

concerns of individual directors and the Bill requires that applicants provide an alternative address, which still allows for members of the public to contact individual directors.

Conclusion

15. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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