

12 September 2018

Hon David Parker, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: High-power Laser Pointer Offences and Penalties Bill**

1. We have considered whether the High-power Laser Pointer Offences and Penalties Bill ('the Bill'), a member's Bill in the name of Hamish Walker MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. The purpose of the Bill is to amend existing offence provisions and increase penalties for the use and possession of high-power laser pointers. Clause 4 of the Bill amends s 13B of the Summary Offences Act 1981 to increase the penalty for possession of a high-power laser pointer, extend the offence to possession in any place, and require mandatory forfeiture of the high-power laser pointer on conviction.<sup>1</sup>
3. Clause 6 inserts a new s 136A into the Health Act 1956 to provide higher penalties relating to the breach of regulations under the Health (High-power Laser Pointers) Regulations 2013. Clause 9 amends the Crimes Act 1961 to make it explicit that interference with a transport facility includes using a high-power laser pointer to reduce the ability of aircraft crew to perform their duties.
4. We note that cl 4(4) amends s 13B(2) to provide that on conviction a court "must" (rather than "may") order that the high-power laser pointer be forfeited to the Crown. Although no process to appeal the forfeiture is expressly provided, defendants will be able to appeal their convictions in the ordinary way. Additionally, to the extent that this provision may engage s 21 of the Bill of Rights Act (right to be secure from unreasonable search or seizure), we consider that forfeiture is reasonable in light of other restrictions on importation, supply and acquisition of high-power laser pointers,<sup>2</sup> and as it may only be ordered by a court upon conviction.
5. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

Jeff Orr  
**Chief Legal Counsel**  
**Office of Legal Counsel**

---

<sup>1</sup> Our November 2012 advice relating to the insertion of s 13B considered it created a reverse onus that was a justified limitation on s 25(c) (the presumption of innocence). The repeal of s 67(8) of the Summary Proceedings Act 1957, however, means that "without reasonable excuse" provisions, such as s 13B, can now be interpreted consistently with s 25(c), by requiring the prosecution to prove beyond a reasonable doubt that a defendant did not have a reasonable excuse (in this case to possess a laser) once an evidential burden is met: see *King v Police* [2016] NZHC 977 at [24].

<sup>2</sup> See the Health (High-power Laser Pointers) Regulations 2013 and the Customs Import Prohibition (High-power Laser Pointers) Order 2017.