

24 September 2021

Hon David Parker, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: COVID-19 Response (Management Measures) Legislation Bill**

### **Purpose**

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1. We have considered whether the COVID-19 Response (Management Measures) Legislation Bill is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 24110/4.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. 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 s 14 (freedom of expression).
4. Our analysis is set out below.

### **The Bill**

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5. The Bill is an omnibus Bill introducing amendments to assist New Zealand to respond to the wide-ranging effects of COVID-19. The Bill largely re-enacts measures that were previously introduced in the COVID-19 (Further Management Measures) Legislation Bill in 2020 to respond to the impacts of COVID-19, which were later repealed. We provided advice on the consistency of this Bill with the Bill of Rights Act.<sup>1</sup> As a result of this Bill, two pieces of legislation were enacted, namely the COVID-19 Response (Further Management Measures) Legislation Act 2020 and the COVID-19 Response (Requirements for Entities-Modifications and Exemptions) Act 2020.
6. There are 8 schedules to the Bill. These are organised by Ministerial portfolio.
7. We have not considered Schedule 6 (Ministry of Justice). This schedule is being considered by the Crown Law Office.
8. A summary of the amendments made in the Bill are set out below.  
  
*Schedule 1 – Department of Internal Affairs*
9. Schedule 1 amends the Gambling Act 2003 to extend both the duration of the temporary exclusion by an additional 24 months (to 31 October 2023) and the application of the

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<sup>1</sup> Ministry of Justice *Legal Advice – New Zealand Bill of Rights Act: COVID-19 (Further Management Measures) Legislation Bill* (1 May 2020).

temporary exclusion from raffles conducted by named operators to lotteries conducted by gambling operators that hold class 3 operator's licences.

10. Clause 4 amends section 73A of the Local Electoral Act, which provides for the adjournment of electoral processes. The amendments:
  - provide that the relevant orders must be made in the year in which a triennial general election is held or in the year after it; and
  - provide that one or more further orders may be made specifying a later date for a matter that has been the subject of an earlier order; and
  - define several terms used in the section.

*Schedule 2 – Land Information New Zealand*

11. Schedule 2 amends the Ratings Valuations Act 1998 to allow territorial authorities under certain conditions to undertake their general revaluations up to a year after they are due.

*Schedule 3 – Ministry for the Environment*

12. Schedule 3 amends the following Acts:
  - Climate Change Response Act 2002 - to defer the deadline for setting emissions budgets by 5 months.
  - COVID-19 Recovery (Fast-track Consenting) Act 2020 - to change the repeal date of the Act from 8 July 2022 to 8 July 2023.
  - Resource Management Act 1991 - to extend the compliance period specified in National Planning Standards from 3 to 5 years.

*Schedule 4 - Ministry of Business, Innovation, and Employment*

13. Schedule 4 amends the following Acts:
  - Contract and Commercial Law Act 2017 - to enable deeds that create a power of attorney in connection with a security interest to be executed remotely, without the physical presence of a witness, for an initial period of 6 months that can be extended by a further 6 months.
  - COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020 – to allow for certain entities in the specified Acts to perform certain matters by electronic means regardless of the entity's constitution or rules. Matters include voting, calling or holding meetings, giving or receiving information, and the making and keeping of records. The Bill also makes it possible for certain entities to modify certain requirements or restrictions in its constitution or rules, if it is not reasonably practicable to comply with them.
  - Credit Contracts and Consumer Finance Act 2003 - to enable urgent changes to the Responsible Lending Code to take effect sooner than 28 days after their notification in the Gazette.

- Consumer Information Standards (Origin of Food) Regulations 2021 - to defer the commencement date of this regulation until 12 February 2022.

*Schedule 5 – Ministry of Housing and Urban Development*

14. Schedule 5 amends the Residential Tenancies Act 1986 to restrict the rights of landlords to terminate tenancies when a COVID-19 tenancies order is in force. Schedule 5 also includes a consequential amendment to the Secondary Legislation Act 2021.

*Schedule 7 – Ministry of Transport*

15. Schedule 7 amends the Land Transport Act 1998 to allow the service of notices under the Act by fax or email where it is not practicable to serve them personally due to the effects of COVID-19.

*Schedule 8 – Ministry of Business, Innovation, and Employment (amendment commencing 28 October 2021)*

16. Schedule 8 amends the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020 to give the responsible Registrar or Minister, in relation to a specified Act, the power to exempt classes of persons from compliance with a provision of the specified Act.

## **Consistency of the Bill with the Bill of Rights Act**

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### **Section 14 – freedom of expression**

17. We note that at paragraphs 30 to 32 and 35 of our previous advice<sup>2</sup> we identified that s 14 of the Bill of Rights Act was engaged by cls 13 and 19 of the COVID-19 (Further Management Measures) Legislation Bill. These clauses are now sections 12 and 18 of the COVID-19 Response (Requirement for Entities-Modifications and Exemptions) Act 2020 (the Act). We concluded that the limit was justified.
18. Clause 7 of Part 2 of Schedule 4 of the current Bill creates a new s 10A(4)(a) which requires compliance with s 12 of the Act. In addition, cl 10 of Part 2 of Schedule 4 of the current Bill creates a new s 13A(2)(g) which requires compliance with s 18 of the Act.
19. We are of the view that these clauses also prima facie limit the right to freedom of expression but are justified for the same reasons identified in the previous vet. In addition to the reasons provided in our previous advice, we also think the mandatory reporting requirements will help ensure transparency of the entities' actions.

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<sup>2</sup> Ministry of Justice, above n 1.

## Conclusion

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20. 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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