

13 October 2021

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Plain Language Bill

1. We have considered whether the Plain Language Bill (the Bill), a member's Bill in the name of Rachel Boyack 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 Bill creates the Plain Language Act 2021 (the Act), which seeks to improve the effectiveness and accountability of the public service by requiring their communications to be clear and accessible to the public.
3. In order to do so, the Act:
 - a. requires reporting agencies to ensure that all certain types of documents they are responsible for ("relevant documents") use plain language;
 - b. requires those agencies to appoint individuals to the role of plain language officers to monitor and encourage compliance with the provisions of the Act;
 - c. includes reporting requirements on compliance with the Act for those agencies and the Public Service Commissioner.
4. On its face, the Bill appears to engage section 14 of the Bill of Rights Act. Section 14 affirms that everyone has the right to freedom of expression and extends to all forms of communication that attempt to express an idea or meaning.¹
5. Before considering whether any limits on section 14 may be justified, we have first considered whether public actors can invoke the benefit of rights protected under the Bill of Rights Act. Commentary suggests that this is subject to the concepts of "practicability" and "reasonable limits". For example, natural justice rights may be invoked by a public actor in a criminal prosecution.² In this case, where the Bill places limits on how certain public agencies may do the work they are required to do, it is hard to see why the Bill engages section 14.
6. In any case, to the extent that section 14 is engaged by the Bill, we consider any limit on this right is justified under s 5 of the Bill of Rights Act. We note the requirement only applies to certain public-facing documents of specified governmental agencies, and they have discretion about how they comply with the requirement (subject to any guidance issued by the Public Service Commissioner³).

¹ *R v Keegstra* [1990] 3 SCR 697.

² Andrew Butler and Petra Butler, *The New Zealand Bill of Rights Act: A Commentary* 2nd Edition (online ed, LexisNexis NZ), at [5.12.2], [5.12.3].

³ Clause 3 of the Bill.

7. 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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