



Report of the

ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act
1990 on the Alcohol Reform Bill

*Presented to the House of Representatives pursuant to
Section 7 of the New Zealand Bill of Rights Act 1990
and Standing Order 261 of the Standing Orders of the
House of Representatives*

1. I have considered this Bill for consistency with the New Zealand Bill of Rights Act 1990. I conclude that several provisions appear to be inconsistent with the affirmed rights, and are not justified under s 5 of the Bill of Rights Act.
2. As required by s 7 of the Bill of Rights Act and Standing Order 261, I draw these apparent inconsistencies to the attention of the House.
 - 2.1 The proposal for a power of arrest in respect of an infringement offence appears to be inconsistent with the right against arbitrary arrest or detention under s 22.¹
 - 2.2 The obligation to answer questions relating to the conduct of other persons appears to be inconsistent with the right of freedom of expression affirmed by s 14.²
 - 2.3 The reversal of the onus of proof in relation to entitlement to buy, receive, consume, procure, or possess alcohol or to be on licensed premises,³ and proof that a substance found in an alcohol ban area was not alcohol,⁴ appears to be inconsistent with the presumption of innocence affirmed in s 25(c).
 - 2.4 The disqualification provisions for appointment as a member of a Licensing Committee or a Licensing Trust appear to be inconsistent with the right against discrimination affirmed by s 19.⁵
 - 2.5 The restriction on judicial review of a decision to remove a licensing trustee appears to be inconsistent with the right to justice affirmed in s 27.⁶

Arrest for infringement offence (breach of alcohol ban)

3. The Bill proposes to amend provisions of the Local Government Act 2002 relating to breaches of an alcohol ban.⁷ Currently breach of an alcohol ban is a summary offence carrying a penalty of \$20,000.⁸ The Bill proposes to change this so that the offence may only be prosecuted as an infringement offence,⁹ but also proposes

¹ Clauses 403, 405 and 406.

² Clause 408, inserting new s 245A into the Local Government Act 2002.

³ Clause 260(3).

⁴ Clause 404, inserting new s 169A into the Local Government Act 2002.

⁵ Clauses 179(6)(c), 307(1)(d)(iii) and 307(1)(f)(iii).

⁶ Clause 313(4).

⁷ Alcohol bans are by-laws constituted under s 147(2) of the Local government Act 2002; breach of an alcohol ban is a summary offence under s 239 and new s 239A (inserted by clause 405).

⁸ Section 239 of the Local Government Act 2002.

⁹ Section 244(2) of the Local Government Act 2002, as amended by clause 406.

to allow Police power to arrest a person for that offence¹⁰ (I note that the current drafting of the Bill is unclear as to its effect, but I understand that this is the intention).

4. The power to arrest for an infringement offence raises an issue of inconsistency with s 22 of the Bill of Rights Act, which provides:

Everyone has the right not to be arbitrarily arrested or detained.

5. A power of arrest interferes with the liberty of the subject, and accordingly there must be a proper basis for it. The High Court of Australia expressed the principle in the following terms:¹¹

It would, for example, be beyond the legislative power of the Parliament to invest the Executive with an arbitrary power to detain citizens in custody notwithstanding that the power was conferred in terms which sought to divorce such detention in custody from both punishment and criminal guilt. ...the involuntary detention of a citizen in custody by the State is penal or punitive in character and, under our system of government, exists only as an incident of the exclusively judicial function of adjudging and punishing criminal guilt.

There are some qualifications... [t]he most important is... the arrest and detention in custody, pursuant to executive warrant, of a person accused of crime to ensure that he or she is available to be dealt with by the courts.... Even where exercisable by the Executive, however, the power to detain a person in custody pending trial is ordinarily subject to the supervisory jurisdiction of the courts, including the "ancient common law" jurisdiction, "before and since the conquest", to order that a person be committed to prison while awaiting trial be admitted to bail.

6. The power of arrest in New Zealand is currently limited to court-issued warrants for arrest and express statutory powers of arrest without warrant. Arrest without warrant is generally restricted to offences carrying a term of imprisonment or for a breach of the peace,¹² with limited express statutory powers of arrest for summary offences where the penalty falls short of imprisonment.¹³ In cases where a power of arrest is provided for summary offences which can also be the subject of infringement notices, the power of arrest is expressly excluded where the offence is treated as an infringement offence.¹⁴

¹⁰ Section 169 of the Local Government Act 2002.

¹¹ *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1, 27ff.

¹² Section 315(2) of the Crimes Act 1961. Noting that arrest for breach of the peace carries specific protections around warning; see *Morse v R* [2010] 2 NZLR 625, para [42].

¹³ See for example s 39 of the Summary Offences Act 1981 relating to drinking in public.

¹⁴ Section 38B(2) of the Summary Offences Act 1981 expressly prohibits proceeding by infringement notice following arrest.

7. A power to arrest without warrant must be exercised reasonably, and for proper purposes.¹⁵ In an individual case, the arbitrariness of an arrest or detention will depend on:¹⁶
- [t]he nature and extent of any departure from the substantive and procedural standards involved. An arrest or detention is arbitrary if it is capricious, unreasoned, without reasonable cause: if it is made without reference to an adequate determining principle or without following proper procedures.
8. A power of arrest for an infringement offence raises an issue of arbitrariness on several counts.
9. First, infringement offences are not sufficiently serious to justify a power to arrest. The infringement procedure provides an efficient mechanism by which Police can deal administratively with common, minor breaches of the law, without involving the judicial process. The process is low key and such offending does not result in a recorded conviction for the defendant.¹⁷ Court oversight of Police intervention and prosecution of such offences is kept to a minimum and it is rare that a defendant will appear before a court on such a charge.¹⁸
10. The infringement process is considered appropriate for offences of strict liability that are committed in large numbers; offences that involve misconduct generally regarded as being of comparatively minor concern to the general public; and acts or omissions that involve straightforward issues of fact.¹⁹
11. By its very nature, an infringement offence lacks the seriousness, evidential concerns or risk to public order that might justify an arrest. The Law Commission report describes an infringement offence as “too small a matter to warrant the use of coercive power”.²⁰
12. Secondly, the purpose of the arrest and consequent detention is unclear. Such a power does not appear to be necessary for the recognised purposes of arrest, such as to bring the suspect before the court through the machinery of the criminal process, prevent absconding or interference with evidence. On the contrary, the prosecution of an infringement offence is effectively completed once the infringement notice is issued.
13. Nor is the proposed power necessary to manage high risk situations. Where issues of public disorder arise, alternative powers of arrest already exist and are more

¹⁵ *R v Briggs* [2009] NZCA 244, [34].

¹⁶ *R v Goodwin (No 1)* (1992) 9 CRNZ 1, 40 per Richardson J.

¹⁷ Section 78A Summary Proceedings Act 1957.

¹⁸ An infringement offence is only brought before the court where either the defendant requests a hearing under s 21(6)-(8) of the Summary Proceedings Act 1957 or the prosecution seeks leave to lay an information under s 21(1).

¹⁹ Guideline on Processing Content of Legislation, Legislation Advisory Committee, 2001, para 12.5.3.

²⁰ *Alcohol in Our Lives: Curbing the Harm*, Law Commission report E31 (114), para 21.38.

properly directed at such concerns. These include powers to arrest for breach of the peace,²¹ offensive and disorderly behaviour,²² fighting in public,²³ and care and protection of intoxicated people.²⁴ In those cases, the public safety and public order concerns are reflected in the specific requirements of the provisions and justify the detention. By contrast, the proposed power in this Bill is directed at less serious concerns: the mere possession or consumption of alcohol in a specified alcohol ban area.

14. Finally, the power of arrest in this context appears to be incompatible with the rights of arrested persons and the usual protections arising from the supervision of the courts. For example, under s 23(2) of the Bill of Rights Act an arrested person is to be charged promptly or released. Once charged, the arrested person must be brought before the court as soon as possible to be dealt with in accordance with the law.²⁵ As the criminal process for infringement offences is effectively completed once the infringement notice is issued, it is not apparent how s 23(2) or the subsequent protections could be applied. Presumably compliance would require an immediate release of the offender, which calls into question the coherence of the proposed scheme. The alternative, of arrest without a clear obligation of release or the protection of court supervision, raises further concerns under s 22.

Powers to demand particulars in alcohol ban area

15. The Bill proposes a power for police to direct that a person suspected of committing an infringement offence give the constable the name, address and whereabouts of "any other person connected in any way with the alleged offence".²⁶
16. The clause provides for compelled expression under the threat of criminal sanction,²⁷ which raises potential issues with the right to silence and the right to be free from unreasonable search and seizure.²⁸ The specific application of those

²¹ Section 42(2) of the Crimes Act 1961.

²² Sections 3-5A and 39 of the Summary Offences Act 1981.

²³ Sections 7 and 39 of the Summary Offences Act 1981.

²⁴ Section 36 of the Policing Act 2008.

²⁵ Section 316(5) Crimes Act 1961.

²⁶ Clause 408. The provision is equivalent to an inspector's power to request particulars under s 178 of the Local Government Act 2002.

²⁷ See section 238 Local Government Act 2002 which makes failure to comply with a relevant direction or prohibition an offence punishable by a fine of \$5000 under s 242(2).

²⁸ The application of these rights in situations of compelled expression is the subject of some debate. The Court of Appeal has confirmed that every person has a general common law right to refuse to answer questions posed by an official: *Taylor v New Zealand Poultry Board* [1984] 1 NZLR 349. Rishworth in *The New Zealand Bill of Rights*, OUP, 2003, p333 considers this right to have been affirmed by s 14 of the Bill of Rights Act. Butler & Butler *The New Zealand Bill of Rights Act. A Commentary*. LexisNexis NZ Limited, 2005, paras 18.11.6 – 18.14.19 analyse compelled expression in terms of a search or seizure, following the Canadian case of *R v Edwards* [1996] 1 SCR 128, taking into account the privacy interests of the third party about whom information was provided, and the person whose rights were breached. This type of power has been considered in New

rights to this power is not entirely clear, particularly given the proposed unusual power of arrest discussed above.²⁹ In any event, compelled expression also engages the right to freedom of expression, which includes a right to refrain from expression.³⁰

17. A limit on the right to freedom of expression can be justified in terms of s 5 if the proposed restriction on the right is rationally connected to an important objective and is proportionate to that objective.³¹
18. The lack of an explanation for either the purpose of the power or the basis upon which it is considered necessary raises a question as to whether the proposed power is justifiable. This is further compounded by the lack of clarity in the power itself, which is vague as to the scope of the information that can be demanded and which must be provided to avoid criminal sanctions.

Reverse onus provisions

19. Section 25(c) of the Bill of Rights Act affirms the right of everyone charged with an offence to be presumed innocent until proved guilty according to law. The right to be presumed innocent requires the prosecution to prove an accused person's guilt beyond reasonable doubt. A reverse onus provision, which shifts the burden of proof from the prosecution to the accused, infringes the right to the presumption of innocence.
20. The Bill contains a number of reverse onus provisions which shift the burden of proof. In my view, many of these will be justifiable under s 5 as rationally connected to an important objective and as proportionate to that objective. However, two provisions do not appear to be justified:
 - 20.1 Clause 260(3), which places the onus on an accused to prove entitlement to buy, receive, consume, procure, or possess alcohol or to be on licensed premises; and
 - 20.2 Clause 404, which places the onus on the accused, in respect of a breach of an alcohol ban, to establish that a substance was not alcohol.

Entitlement to buy, receive, consume, procure, or possess alcohol or to be on licensed premises

21. Clause 260(3) provides:

In any proceedings for an offence against any of the provisions of ss 222 to 228, 230, 231, 238 and 239, the onus of proving that any person was at the

Zealand in relation to provision of tax information, in which case it was found to be justified as information on a regulated activity: *NZ Stock Exchange v CIR* [1992] 3 NZLR 1.

²⁹ The right to silence of persons arrested or detained under s 23(4) of the Bill of Rights Act would be engaged if a person was arrested pursuant to the proposed power.

³⁰ *Taylor v New Zealand Poultry Board* supra note 28.

³¹ *R v Hansen* [2007] 3 NZLR 1 (SC) per Blanchard J [63] – [65], [70], Tipping J [103] – [104], [120] – [123], McGrath J [203]–[205] and Anderson J [272].

time of the alleged offence entitled to have alcohol supplied to him or her, or to consume or procure it or have it in his or her possession on the licensed premises, or to be on the licensed premises or any particular part of the licensed premises, is on the person alleging the fact.

22. In most instances, a person's entitlement to buy, receive, consume, procure, or possess alcohol or to be on licensed premises will depend on their age. A reverse onus which requires a defendant to prove his or her own age is likely to be justifiable on the basis that he or she has particular knowledge of that fact and ought to be in possession of, and easily able to produce, evidence of age.
23. However, for most of the offences specified in clause 260(3) the accused will not be the person whose age is at issue. The offences include:
 - 23.1 the sale or supply of alcohol to any person under the buying age by either a licensee, manager, or other person (clause 222);
 - 23.2 the supply of alcohol to minors (clause 224);
 - 23.3 the employment of a minor in any restricted area on a licensed premises while that area is open for sale of alcohol (clause 225);
 - 23.4 permitting minors to be in restricted or supervised areas by licensee or manager (clause 228);
 - 23.5 the sale or supply of alcohol to any person by a licensee or manager of any licensed premises outside of licensing hours (clause 230);
 - 23.6 the sale or supply of alcohol to an intoxicated person by a licensee, manager, or other person (clause 231); and
 - 23.7 permitting a person to be on licensed premises outside of licensing hours in contravention of s 238 by a manager or licensee (clause 239).
24. For these offences, the accused is likely to be a licensee, manager, or employee who, by virtue of clause 260(3), will be expected to prove the entitlement to buy, receive, consume, procure, or possess alcohol or to be on licensed premises of a third party customer or minor. Further, the matters establishing entitlement may also include other statutory grounds such as a minor no longer being subject to guardianship by operation of s 28 of the Care of Children Act 2004,³² of which the accused may have no knowledge.
25. There is no apparent rational basis to support a shift of the burden of proof to the accused in these circumstances.

Proof that a substance contained alcohol

26. Clause 404 inserts a new s 169A into the Local Government Act 2002 to clarify matters of proof relating to bylaws prohibiting alcohol in a public place. The new s 169A will provide that where:

³² Clause 224(7).

- 26.1 a substance has been found in a trade container labelled as alcohol;
- 26.2 a substance has not been found in a labelled trade container but appeared to contain alcohol and smelled like alcohol; or
- 26.3 the defendant has at any time made an admission to a constable that the substance contained alcohol;

“the substance must be presumed to be alcohol unless the defendant proves that it was not.”

- 27. The Ministry of Justice have advised that the purpose of this provision is to improve the efficient enforcement of alcohol control bylaws by avoiding the cost of proving that a substance contains alcohol in each case (approximately \$200 per analysis). The Ministry have advised that many thousands of these prosecutions are processed each year.
- 28. I also note that in each of the three circumstances which engage the provision, there is a high probability of the substance in fact being alcohol. In these circumstances, the possibility of wrongful convictions is low.³³
- 29. However, the offences to which this provision relates are infringement offences,³⁴ which do not involve formal proof by the prosecution except in the small number of cases where the offender requests a hearing, or the prosecution seeks leave to lay an information.³⁵ There is therefore likely to be only a small number of cases where the prosecution would be required to prove the alcohol content of the substance.
- 30. More importantly, this would not appear to be a situation where the accused is in a better position than the prosecution to provide the evidence. On the contrary, particularly if the substance has been seized by the Police, the accused will in many cases be unable to meet that burden and the only party who could be expected to establish the fact in issue is the prosecution.
- 31. I am therefore of the view that this reverse onus provision is not justified in terms of s 5.

Disqualification for licensing committees and licensing trusts

- 32. A person is barred from appointment to a licensing committee, whose spouse, civil union partner, de facto partner, child, or parent is involved in the production, importation, or sale of alcohol, or has a more than an insubstantial financial interest in the alcohol industry.³⁶

³³ See *R v Hansen*, *supra* note 31, for example Tipping J at [143].

³⁴ The ability to proceed summarily against a defendant for an alleged offence under s 239A of the Local Government Act 2002 is removed by the new s 244(2) of that Act (inserted by clause 406 of the Bill).

³⁵ Section 21 of the Summary Proceedings Act 1957.

³⁶ Clause 179(6)(c).

33. A person is barred from election to a licensing trust whose spouse, civil union partner or de facto partner is a shareholder or employee of a company that carries on business related to alcohol,³⁷ or owns an estate in licensed premises.³⁸ A person who becomes disqualified (for example upon marriage) vacates their trusteeship; and commits an offence if they continue acting while disqualified.³⁹
34. These provisions raise an issue of discrimination on the basis of family status⁴⁰ under s 19(1) of the Bill of Rights Act, as they prevent certain people from taking up an office for which they might otherwise be qualified, on the basis of their family relationships.
35. The purpose of the distinction is to preserve the integrity and objectivity of licensing committees and licensing trusts. The Law Commission Report emphasised the need for licensing committee members to have knowledge of the alcohol industry, but not be currently participating in it.⁴¹ Licensing trusts have a monopoly on, and therefore significant control of, sale and supply of alcohol within the trust area.⁴²
36. The Bill proposes to use family status as a proxy measure for establishing whether a person has a level of involvement with the industry through their family relationships that would make their appointment inappropriate. The issue in terms of s 19 is whether those proxies are rational, and not overly broad.
37. In my view the proxies are overly broad. For example, the breadth of the prohibition in relation to licensing trusts is such that a person may be disqualified if their spouse has an interest in a company that owns the property on which an industry business is located, even if the spouse has no involvement with the industry at all. Similarly, the prohibition in relation to licensing committees would disqualify a person who had a child working in a bar in another centre, away from the area of the licensing committee's operations.
38. Further, there is an issue with the rationality of the prohibitions, as they vary considerably between the different bodies, without apparent reason. As noted above, the prohibitions affecting appointment to licensing committees and licensing trusts are in different terms. In addition, a person becomes disqualified from a licensing trust (and commits an offence if they continue to act) if their family status changes (for example if they marry, or their spouse acquires shares

³⁷ Clause 307(1)(d)(iii).

³⁸ Clause 307(1)(f)(iii).

³⁹ Clauses 309 and 310.

⁴⁰ Family status under s 21(1)(i)(ii) and (iv) of the Human Rights Act 1993 includes being married to, or being in a civil union or de facto relationship with a particular person, or being a relative of a particular person.

⁴¹ Law Commission Report *supra* note 20, para 10.11.

⁴² Clause 335.

in a company), but this is not the case for those serving on a licensing committee.⁴³

39. Community trusts (who may perform similar functions to licensing trusts) are not subject to the same restrictions on family status. The grounds for disqualification are narrower, and trustees may only be removed by the Minister.⁴⁴
40. I am therefore of the view that the difference in treatment based on family status in these provisions raises an apparent inconsistency with the right to freedom from discrimination under s 19, which is not justified in terms of s 5.

Restriction on judicial review – removal of licensing trustees

41. Clause 313 provides for removal of licensing trustees by the District Court. Clause 313(4) purports to oust the jurisdiction of the High Court:

The High Court must not determine any question that may be determined under this section, and a proceeding under this section (including the issue of a removal summons under s 312) must not be removed into the High Court by certiorari or otherwise.

42. This provision is carried over from the Sale of Liquor Act 1989⁴⁵ and dates back to the Licensing Trusts Act 1949.⁴⁶ Its age is reflected in the reference to the common law remedy of certiorari, which pre-dates the Judicature Amendment Act 1972.
43. This restriction raises an apparent inconsistency with the right to justice in s 27(2) of the Bill of Rights Act, which provides:

Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.

44. There is no apparent justification for the limit on the right in the context of this legislation.

Other issues raised by the Bill

45. Although I am obliged to report to the House when a Bill is introduced that appears to be inconsistent with any of the rights and freedoms in the Bill of Rights Act, Standing Order 261 and Speaker's Ruling 95/3 make it clear that I am not required to report on a provision that is not inconsistent. I have however chosen to advise the House that the following issues are not inconsistent.

⁴³ The Territorial Authority may remove licensing committee members under clause 181(3) for inability to perform, bankruptcy, neglect of duty or misconduct.

⁴⁴ Clauses 361 to 365 provide for removal following bankruptcy, conviction of certain offences, or orders under the Companies Act 1993 or Protection of Personal and Property Rights Act 1988.

⁴⁵ Section 203.

⁴⁶ Section 17.

Age-related limits

46. Various provisions in the Bill propose differential treatment on the basis of age,⁴⁷ which raises an issue of discrimination in terms of s 19(1) of the Bill of Rights Act and s 21(1)(i) of the Human Rights Act 1993.
47. Age based distinctions necessarily involve a degree of generalisation without regard for the particular abilities, maturity or other qualities of individuals within the age group. An age distinction may be discriminatory where the differential treatment reflects a prejudicial stereotype, or otherwise has the effect of perpetuating or promoting the view that the individual is less capable, or less worthy of recognition or value as a human being or as a member of society.⁴⁸
48. Age restrictions on access to alcohol broadly reflect the greater vulnerability of young people to alcohol related harm,⁴⁹ It is empirically established that younger people are physically and mentally more impaired by alcohol than older people and more likely to engage in harmful use of alcohol.⁵⁰
49. While reflecting vulnerability, the age distinctions drawn in the Bill may also reflect a stereotype that younger people are less responsible in their approach to alcohol than those over the age of 18 or 20. The distinction between these age groups, particularly in the context of the different age limits permitted in on-license and off-licenses, reflects concerns of that nature.⁵¹
50. Any age limit is necessarily arbitrary. However, where it is not practical to engage in individualised assessments it is legitimate to use a bright line, imposing age restrictions which are rationally connected and proportionate to an important objective.⁵² In addition, where the legislation is aimed at addressing complex social problems, significant latitude is allowed in the policy choices made in the means to achieve the objectives. The Supreme Court of Canada has accepted that in addressing such problems the answers may not be simple or evident; there may be room for debate about what will work and what will not, and the outcome may not be scientifically measurable.⁵³
51. To the extent that they raise an issue of discrimination under s 19, I consider that the age based distinctions in the Bill are justified under s 5.

⁴⁷ Clauses 9 to 11 relate to the legal purchasing age; clause 31 relates to eligibility to hold a license; clauses 222 to 229 provide for offences relating to people under the buying age.

⁴⁸ *Gosselin v Quebec* [2002] 4 SCR 429; *Law v Canada* [1999] 1 SCR 497.

⁴⁹ Law Commission Report, *supra* note 20, chapter 16.

⁵⁰ Law Commission Report *supra* note 20, paras 3.76-3.96 and chapter 16.

⁵¹ The purchase age is 20 for off-licenses (clause 9) and 18 for on-licenses (clause 10).

⁵² *R v Secretary of State for Work and Pensions ex parte Reynolds* [2005] UKHL 37, [41] per Lord Hoffmann and [91] per Lord Walker.

⁵³ *Canada v JTI-MacDonald* [2007] 2 SCR 610, paras [41] to [44].

Restrictions on trading hours on specified holidays

52. The Bill proposes to prohibit on-licences and off-licences from selling alcohol on Good Friday, Easter Sunday and Christmas Day and on ANZAC Day morning, subject to specified exceptions.⁵⁴ Breach of these provisions is an offence.⁵⁵
53. To the extent that these clauses appear to treat holidays that are significant to Christianity in a manner different from other religious festivals, they raise an issue of consistency with the right to be free from discrimination on the grounds of religious belief under s 19(1).
54. However, the targeted days are recognised as common pause days of rest and recreation. Despite the historical religious significance of three of the days, their status as common pause days has been continued for secular reasons (to give the labour force a shared day of rest and recreation) rather than religious ones, and do not engage s 19.⁵⁶

Regulation of advertising

55. The Bill proposes to restrict advertising and promotion of alcohol. The Bill does not propose a complete prohibition on alcohol advertising, rather, it prohibits irresponsible advertising which promotes excessive consumption, or is aimed specifically at young people.⁵⁷
56. Section 14 of the Bill of Rights Act protects the right to “freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form”. The right is extremely broad, extending to all types of communication including commercial speech such as advertising.⁵⁸ However, different types of expression are recognised as having different value: “moving from political and social speech, to commercial speech, to pornography...” which will in turn influence the question of whether any limitation on the expressive conduct is justified in terms of s 5.⁵⁹
57. The proposed restriction on expression is targeted to those areas of particular harm and vulnerability. The proposals in the Bill follow the recommendations of the Law Commission,⁶⁰ and reflect a reasonable and proportionate response to a

⁵⁴ Clauses 44, 48, and 49, carried over from ss 14 and 37 Sale of Liquor Act 1989.

⁵⁵ Clauses 242 to 244.

⁵⁶ For Canadian authority accepting that Sunday closing provisions have a secular rather than religious purpose see *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd* (1991) 78 DLR (4th) 333 (Ont CA) at [13].

⁵⁷ Clause 220.

⁵⁸ *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 (CA), 15-16; *Hosking v Runting* [2005] 1 NZLR 1 (CA), [258] per Tipping J; see also *RJR-MacDonald Inc v Canada (Attorney-General)* [1995] 3 SCR 199 at [71]-[75].

⁵⁹ Geoffrey Palmer *A Bill of Rights for New Zealand: A White Paper* [1984-85] 1 AJHR A6 at [10.58].

⁶⁰ See Law Commission Report, *supra* note 20, paras 19.144-175.

complex social problem.⁶¹ I consider that the limit on the right to freedom of expression is therefore justified under s 5 of the Bill of Rights Act.



Hon Christopher Finlayson

Attorney-General
8 November 2010

⁶¹ *Canada v JTI-MacDonald supra* note 53, para [44].