

19 October 2020

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Companies (Limited Partnerships Identical Names Prohibition) Amendment Bill

Purpose

1. We have considered whether the Companies (Limited Partnerships Identical Names Prohibition) Amendment Bill ('the 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 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). Our analysis is set out below.

The Bill

3. Section 22(2)(b) of the Companies Act 1993 ('the principal Act') prohibits the Registrar of Companies from reserving a new company name that is identical or almost identical to that of another company. The Bill proposes to expand this provision to also prohibit the reservation of a new company name that is identical or nearly identical to that of an existing limited partnership or overseas limited partnership.
4. Section 34(b) of the Limited Partnerships Act 2008 ('the Limited Partnerships Act') already prevents the Registrar from registering a limited partnership with a name that is identical or near identical to a registered company or another limited partnership.

Consistency of the Bill with the Bill of Rights Act

Section 14 – freedom of expression

5. 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 in any form. The right to freedom of expression extends to all forms of communication that attempt to express an idea or meaning.¹ There are very few activities that will not be protected by the freedom of expression because most human activity has an expressive element.²
6. The choice of name of a company is a form of expression for the purpose of s 14. By limiting the range of names from which companies can choose to those that are

¹ R v Keegstra [1990] 3 SCR 697,729,826

² Tipping J, *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9.

not already in use by limited partnerships the expansion of s 22(2)(b) *prima facie* limits the right to freedom of expression.

7. Under s 5 of the Bill of Rights Act, a limit on a right may be justifiable where the limit serves an important objective, the limits on the right are rationally connected to achieving that objective, the limit impairs the right or freedom no more than reasonably necessary, and the limit is proportional to the importance of the objective.
8. The limitation proposed by the Bill is rationally connected to the important objective of ensuring that companies and limited partnerships have distinguishable names, that is already reflected in the current s 22(2)(b) of the principal Act and s 34(b) of the Limited Partnerships Act. The range of names from which companies can choose is limited to the minimum extent necessary to achieve the objective. Further, the Registrar's discretion to determine what counts as "nearly identical" must, by virtue of s 3 of the Bill of Rights Act, be exercised consistently with the freedom expression. In these circumstances, we are satisfied that the limit on the right is minimally impairing, it is proportionate.
9. For these reasons, we conclude that the limit on the right to freedom of expression proposed by the Bill is justified under s 5 of the Bill of Rights Act.

Conclusion

10. 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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