

29 October 2019

Hon Andrew Little, Acting Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Public Service Legislation Bill

Purpose

1. We have considered whether the Public Service Legislation 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 21 (unreasonable search and seizure) and s 14 (freedom of expression). Our analysis is set out below.

The Bill

3. This omnibus Bill repeals the State Sector Act 1988 and replaces it with a new Public Services Act. The Bill:
 - a. clearly establishes the purpose, principles, and values of an apolitical public service, as well as its role in government formation;
 - b. supports the Crown in its commitment to its relationship with Māori;
 - c. states the powers and functions of the Public Service Commissioner ("the Commissioner");
 - d. legislates for the people working within the Public Service and the minimum standards of integrity and conduct expected;
 - e. provides a more flexible set of options for organisational arrangements to support the public service in better responding to priorities and joining up more effectively by legislating for structures such as joint ventures, interdepartmental executive boards, and interdepartmental ventures;
 - f. increases interoperability across the public service workforce and preserves the future public service as an attractive and inclusive place to work;
 - g. strengthens leadership across the public service and provides for system and future focused leadership.
4. The Bill also makes a small number of related amendments to the Public Finance Act 1989.

Consistency of the Bill with the Bill of Rights Act

Section 21 – Unreasonable Search and Seizure

5. Section 21 of the Bill of Rights Act affirms that everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, correspondence or otherwise. The right protects a number of values including personal privacy, dignity, and property.¹
6. Clause 3 of schedule 3 provides that the Commissioner, or an authorised person, may:
 - a. enter the premises of a public service agency; or
 - b. require the production of information, documents, or files; or
 - c. require an employee of a public service agency answer questions to enable to Commissioner to carry out their functions.
7. We consider that cl 3 of schedule 3 is a reasonable search and seizure power for the purposes of s 21 of the Bill of Rights Act.
8. The search is in respect of an important objective. The Commissioner's general functions are set out at cl 42 of the Bill and include the overall design and operation of all areas of government, the promotion of integrity and conduct, accountability, and transparency throughout agencies in the State services, and acting as the employer of public service chief executives.
9. The privacy implications of the power are minor as information can only be required from public service departments and deals with public information created by public servants in the discharge of their public duties.
10. The Bill also includes safeguards such as a requirement to provide notice to the chief executive or board responsible for the public service agency, and the opportunity for them to consult the Commissioner on the exercise of the powers.

Section 14 – Freedom of Expression

11. Section 14 of the Bill of Rights Act affirms 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 has also been interpreted as including the right not to be compelled to say certain things or to provide certain information.²
12. Various provisions of the Bill require the provision of information from public service departments to the Commissioner. These may engage s 14 but are clearly justified under s 5.
13. The information is clearly necessary as it supports the Commissioner to fulfil their functions outlined in cl 42 of the Bill, particularly as they relate to the overall design and operation of all areas of government, the promotion of integrity and conduct,

¹ See, for example, *Hamed v R* [2011] NZSC 101, [2012] 2 NZLR 305 at [161] per Blanchard J.

² *RJR MacDonald v Attorney-General of Canada* (1995) 127 DLR (4th) 1.

accountability, and transparency throughout agencies in the State services, and acting as the employer of public service chief executives.

14. The provisions are also clearly proportionate as the information can only be required from public service departments and deals with public information created by public servants in the discharge of their public duties.
15. For these reasons, we conclude that any limits on the right to freedom of expression imposed by the Bill are justified under s 5 of the Bill of Rights Act.

Conclusion

16. 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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