Building (Earthquake-Prone Buildings) Amendment Bill

14 November 2013

Attorney-General

Legal Advice

Consistency with the New Zealand Bill of Rights Act 1990:

Building (Earthquake-Prone Buildings) Amendment Bill

1. We have considered whether the Buildings (Earthquake-prone Buildings) Amendment Bill (PCO 17754/v3.0) (‘the Bill’) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (‘the Bill of Rights Act’). We understand that the Bill will be considered by the Cabinet Legislation Committee at its meeting on 21 November 2013.

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 possible inconsistency with s 19 (freedom from discrimination on the grounds of disability). Our analysis under that section is set out below.

THE BILL

3. The Bill proposes amendments to the Building Act 2004 (the Act), which will:

   a) require territorial authorities to undertake assessments of the seismic capacity of non-residential and multi-storey/multi-unit residential buildings within 5 years of the legislation commencing;
   b) require work on existing earthquake-prone buildings to be undertaken within one national timeframe (20 years), subject to a number of exemptions and exceptions; and
   c) provide clarity in relation to the definition of an earthquake-prone building, the level of work required, and the role of central government.

CONSISTENCY WITH THE BILL OF RIGHTS ACT

Section 19 – Freedom from discrimination

4. Section 19(1) affirms the right to freedom from discrimination on the grounds set out in section 21 of the Human Rights Act 1993. Disability is one of the prohibited grounds of discrimination.

5. Clause 20 of the Bill inserts new s 133AW into the Act. New s 133AW suspends the requirement in s 112(1)(a) of the Building Act that a building consent authority may only issue a consent for building alterations if, after the building alteration, the building complies
as nearly as is reasonably practicable with the requirements of the building code relating to fire exits and access and facilities for persons with disabilities.

6. Section 112 of the Act recognises, among other things, that alterations to buildings should incorporate improved access for persons with disabilities wherever this is reasonably practicable. This promotes decision making that is consistent with s 19 of the Bill of Rights.

7. We have considered whether new s 133AW could give rise to discrimination under s 19(1) of the Bill of Rights Act by exempting building owners from the requirement in s 112 of the Act.

8. Although, new s 133AW will allow some buildings to be altered without also providing access for people with disabilities, this will only be possible once the consent authority has balanced the need to earthquake strengthen against the desirability of also improving access for people with disabilities. We consider that where the need to earthquake strengthen demonstrably outweighs the desirability of improving disabled access any resulting discrimination is justifiable in terms of s 5 of the Bill of Rights Act. We therefore consider that new s 133AW does not permit decision-making that results in unlawful discrimination.

CONCLUSION

9. We have concluded that clause 20 of the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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