Financial Reporting Bill

20 July 2012

ATTORNEY-GENERAL

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
FINANCIAL REPORTING BILL

1. We have considered whether the Financial Reporting Bill (PCO 15606/8.0) (‘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 is likely to be considered by the Cabinet Economic Growth and Infrastructure Committee at its meeting on 25 July 2012.

2. The Bill seeks to reduce compliance costs, strengthen some current reporting requirements and make other changes to encourage financial reporting when there is a public interest. It consolidates core financial reporting principles and definitions in one place. We understand that specific substantive reporting requirements will be included in specific Acts. It is also intended that specific provisions relating to issuers and some other financial market participants may be included in the Financial Markets Conduct Bill.

3. The Bill’s reporting requirements could engage section 14 (freedom of expression) of the Bill of Rights Act; however, these limits are clearly justified under section 5 of that Act.

4. The Bill also contains strict liability offences. These engage section 25(c) (presumption of innocence) of the Bill of Rights Act because an accused person is required to prove a defence or disprove a presumption to escape liability, instead of merely raising a defence in an effort to create reasonable doubt. This means a person may be convicted despite reasonable doubt existing.

5. In determining whether or not the strict liability offences can be justified we have considered:

   a. the nature and context of the conduct to be regulated. (The offences relate to various reporting requirements, which are important to maintaining transparency and accountability in commercial activities)
   b. the ability of the defendant to exonerate themselves and the risk of conviction of an innocent person. (There are defences based on the reasonableness of the person’s actions)
   c. the penalty level. (The maximum penalties for these offences are fines of $10,000 and $50,000, which are within a reasonable range for commercial regulatory offences)
6. In view of these factors, we consider the strict liability offences in the Bill are justified.

7. We have therefore concluded that the limits on the right in 25(c) of the Bill of Rights Act are clearly justified under section 5 of the Act. This advice has been prepared by the Public Law Group and the Office of Legal Counsel.

Melanie Webb
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Office of Legal Counsel

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