CUSTOMS AND EXCISE (JOINT BORDER MANAGEMENT INFORMATION SHARING AND OTHER MATTERS) AMENDMENT BILL

20 August 2010

ATTORNEY-GENERAL

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
CUSTOMS AND EXCISE (JOINT BORDER MANAGEMENT INFORMATION SHARING AND OTHER MATTERS) AMENDMENT BILL

1. We have considered whether the Customs and Excise (Joint Border Management Information Sharing and Other Matters) Amendment Bill (PCO 14634/7.0) (“the Bill”) is consistent with the New Zealand Bill of Rights Act 1990 (“Bill of Rights Act”). We understand that the Bill is likely to be considered by the Cabinet Legislation Committee on Thursday 26 August 2010.

2. The purpose of the Bill is to implement initiatives to improve the effectiveness of the Customs and Excise Act 1996 (“the Act”). The amendments support achievement of the Government’s priorities relating to the delivery of the Joint Border Management System.

3. The Bill amends the administrative penalties regime in s 128 to 130 of the Act. The Chief Executive of Customs may serve a penalty notice on a person who submits an entry of goods that contains an error or omission and is either materially incorrect or results in a duty not being paid. The person has 20 working days to pay the prescribed fine. Additional penalties will accrue after this time. A person may request a review of the decision to issue the notice by the Chief Executive of Customs. If the review upholds the original decision and the fine has not been paid on time then additional penalties will be imposed.

4. While it is unusual to require payment of a penalty while final liability has yet to be determined, a refund is made where a review finds in the person’s favour. We consider that the administrative penalties regime does not infringe the right to the observance of the principles of natural justice under s 27(1) of the Bill of Rights Act because people who receive a penalty notice can challenge its appropriateness and have recourse to the Courts.

5. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. This advice has been prepared by the Public Law Group and the Office of Legal Counsel.

Jeff Orr
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Office of Legal Counsel
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