

13 March 2018

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Earthquake Commission Amendment Bill

Purpose

1. We have considered whether the Earthquake Commission 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) and s 27(1) (right to justice). Our analysis is set out below.

The Bill

3. The Bill amends the Earthquake Commission Act 1993 ('the principal Act'). Part 1 of the Bill sets out circumstances in which the Earthquake Commission ('the Commission') may release information; and extends the time limits for claimants to notify the Commission when insured property is damaged, so that notice can (in most circumstances) be given up to 2 years after the damage occurs. Part 2 of the Bill increases the monetary cap on residential building insurance and discontinues insurance cover for personal property.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

4. For completeness, we note that we have considered whether cl 5 of the Bill limits s 14, which affirms the right to freedom of expression. Clause 5 sets out the circumstances in which the Commission may release information in its possession. We have determined that the freedom of expression is not engaged as the Commission's ability to release is discretionary rather than compelled.

Section 27(1) – Right to justice

5. Section 27(1) of the Bill of Rights Act provides that every person whose interests are affected by a decision of a public authority has the right to the observance of the principles of natural justice. Section 27 is concerned with procedural fairness and what will be procedurally fair depends on the facts of each case.¹ Natural justice includes the right to a fair hearing.

¹ *P v Department of Child Youth and Family Services* [2001] NZFLR 721.

6. Clause 7(2) of the Bill re-enacts the existing three-month timeframe within which claims can be made. It also allows claims to be filed after three months but within 2 years of the damage occurring, unless the lateness of the claim materially prejudices the Commission's ability to assess the claim. The objective of the provision is to ensure the assessment of the claim is not prejudiced by the passing of time, for example, where weathering makes it difficult to assess if the damage is earthquake related or simply due to wear and tear.
7. This may be considered to engage s 27(1) on the basis that the time limits, and the exception, may in some circumstances affect a claimant's right to be heard. However, without this limitation the workability of the scheme would be undermined, and we consider the Bill's settings achieve an appropriate balance between the right to be heard and the practical considerations such a scheme must take into account. To the extent that it does engage this right, we consider that the Bill appears to be consistent with s 27(1) of the Bill of Rights Act.

Conclusion

8. 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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