

24 April 2018

Hon David Parker, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Health (Drinking Water) Amendment Bill**

### **Purpose**

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1. We have considered whether the Health (Drinking Water) 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 not yet received a final version of the Bill. This advice has been prepared with the latest version of the Bill (PCO 21116/1.2). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. 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 (right to be secure against unreasonable search and seizure). Our analysis is set out below.

### **The Bill**

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4. The purpose of the Bill is to amend the drinking-water provisions in the Health Act 1956 ('the principal Act') in response to the *Government Inquiry into the Havelock North Drinking-Water Outbreak*. The amendments will enable more rapid amendments to the Drinking-Water Standards for New Zealand ('the Standards') issued under the principal Act. In particular, the Bill will:
  - a. replace specified consultation requirements with a general requirement that the Minister be satisfied that adequate consultation has been carried out, and shorten the notice period required prior to making changes to the Standards;
  - b. clarify that suppliers' water safety plans must include implementation timetables;
  - c. streamline processes for the appointment of drinking-water assessors; and
  - d. make other minor and technical amendments.

### **Consistency of the Bill with the Bill of Rights Act**

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#### **Section 21 – Right to be secure against 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, their property or correspondence, or otherwise.

6. A search or seizure which is unreasonable in terms of s 21 cannot be justified in terms of s 5 of the Bill of Rights Act.<sup>1</sup>
7. Section 69ZP of the principal Act sets out the powers granted to drinking-water assessors and designated officers. This includes powers to enter property for the purposes of assessing and inspecting records, documents and information. These powers overlap with those granted to designated officers under s 128, and we understand this has caused some confusion among people performing official functions under Part 2A of the principal Act. Clause 10 of the Bill therefore amends s 69ZP to clarify the powers of entry and inspection in that section.
8. In assessing whether the search and seizure powers in clause 10 of the Bill are reasonable, we have considered the importance of the objective sought to be achieved and whether the provisions are rationally connected and proportionate to that objective.
9. We consider that the power in clause 10 of the Bill is not unreasonable for the purposes of s 21 of the Bill of Rights Act. Powers of entry and inspection are required to verify compliance by, and take enforcement action against, suppliers, with respect to the suppliers' obligations under the principal Act, the Standards, or the supplier's water safety plan. We understand that where a supplier is a small network supply, or is a self-employed water carrier, relevant records may be kept in a dwellinghouse rather than an office. Powers of entry and inspection, therefore, help to achieve the important objective of maintaining the health and safety of people and communities.
10. The Bill also contains safeguards that require the powers to be used only for the purpose of performing a function as drinking-water assessor or designated officer, and require a warrant to be obtained in order to enter a dwellinghouse.
11. We consider the powers of entry and inspection are rationally connected and proportionate to the objective. We have therefore concluded that the powers are not unreasonable for the purposes of s 21 of the Bill of Rights Act.

## **Conclusion**

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

Jeff Orr  
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<sup>1</sup> *Cropp v Judicial Committee* [2008] 3 NZLR 774 (SC) at [33].