

1 February 2017

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Land Transport (Vehicle User Safety) Amendment Bill

Purpose

1. We have considered whether the Land Transport (Vehicle User Safety) Amendment Bill ('the Bill'), a member's Bill in the name of Jami-Lee Ross MP, 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 25(c) (right to be presumed innocent until proven guilty). Our analysis is set out below.

The Bill

3. The Bill amends the Land Transport Act 1998 ('the Act'), the Land Transport (Road User) Rule 2004 ('the Rules'), and the Land Transport (Offences and Penalties) Regulations 1999 ('the Regulations') to prohibit, and establish penalties for, the washing of vehicles in a manner that may be unsafe, that may intimidate or cause a nuisance to any person, or may cause an obstruction to vehicles.

Consistency of the Bill with the Bill of Rights Act

Section 25(c) – Right to be presumed innocent until proved guilty

4. Section 25(c) of the Bill of Rights Act affirms that everyone who is charged with an offence has, in relation to the determination of the charge, the right to be presumed innocent until proved guilty according to law.
5. Clauses 5 and 6 of the Bill establish a strict liability offence for road users who use a road to wash or offer to wash a vehicle, or any part thereof, in a manner that may be unsafe, that may intimidate or cause a nuisance to any person, or may cause an obstruction to vehicles. Strict liability offences raise a *prima facie* issue of inconsistency with s 25(c) because, once the prosecution has proved the defendant committed the act in question, the defendant must prove a defence, or disprove a presumption, on the balance of probabilities in order to escape liability.

6. Where a provision is found to limit a particular right or freedom, it may nevertheless be consistent with the Bill of Rights Act if it can be considered a reasonable limit that is justifiable in terms of s 5 of that Act. The s 5 inquiry may be approached as follows:¹
- a. does the provision serve an objective sufficiently important to justify some limitation of the right or freedom?
 - b. if so, then:
 - i. is the limit rationally connected with the objective?
 - ii. does the limit impair the right or freedom no more than is reasonably necessary for sufficient achievement of the objective?
 - iii. is the limit in due proportion to the importance of the objective?
7. We consider that the limitation is justified under s 5 of the Bill of Rights Act. The objective of ensuring the safety of road users is sufficiently important and cls 5 and 6 appear rationally connected with that objective. We also consider that s 25(c) is limited no more than reasonably necessary and is in due proportion to the objective because of the importance of road safety and the relatively low level of punishment a defendant may face.

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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¹ *Hansen v R* [2007] NZSC 7 [123].