

14 March 2018

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Land Transport Management (Regional Fuel Tax) Amendment Bill

Purpose

1. We have considered whether the Land Transport Management (Regional Fuel Tax) 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 in relation to the latest version of the Bill (PCO 20824/6.7). We will provide you with further advice if the final version of the Bill 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 ss 14 (freedom of expression), 21 (unreasonable search and seizure), and 26(2) (double jeopardy). Our analysis is set out below.

The Bill

4. The Bill amends the Land Transport Management Act 2003 to create a regulatory regime for regional fuel tax schemes (new Subpart 3 of the Act). These schemes are to enable regional councils to fund capital projects that cannot reasonably be fully funded from other sources. The Bill provides for the establishment, review, variation, administration, and enforcement of such schemes.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

5. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.¹
6. The Bill creates a regulatory regime for regional fuel taxes. As is common with regulatory legislation, the Bill contains provisions compelling the provision of information, which *prima facie* engages the right to freedom of expression. However, we consider the

¹ *RJR-MacDonald Inc. v Canada (Attorney General)* 1995 3 SCR 199.

restrictions on the right to freedom of expression in the Bill are clearly justified for the efficient administration of the regulatory regime.

Section 21 – Unreasonable search and seizure

7. Section 21 of the Bill of Rights Act provides that everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, correspondence or otherwise.
8. Clause 5, new s 65ZB, of the Bill provides for an enforcement officer to apply for a search warrant in respect of suspected offences under new s 65ZC. As the provision provides that the application for, and execution of, the warrant is pursuant to the relevant provisions of the Search and Surveillance Act 2012, we do not consider there to be any issue of unreasonableness.

Section 26(2) – Double jeopardy

9. Section 26(2) of the Bill of Rights Act provides that no one who has been convicted of an offence shall be punished for it again.
10. Clause 5, new s 65ZC, of the Bill makes it an offence to knowingly or recklessly refuse or fail:
 - a. to file a monthly return in accordance with new s 65Q; or
 - b. to pay any regional fuel tax in accordance with new subpart 3.
11. New ss 65R(2) and 65S(2) and (3) provide for additional tax to be paid if a monthly return is not filed on time or a regional fuel tax is not paid on time.
12. It is possible for a person to be prosecuted and be liable to additional tax for the same conduct in respect of late filing or late payment. However, we do not consider that this engages the right against double jeopardy as that right is concerned with criminal sanctions, whereas the additional tax is civil in nature.

Conclusion

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

Jeff Orr
Chief Legal Counsel
Office of Legal Counsel