

17 September 2018

Hon David Parker, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: Regulatory Systems (Economic Development) Amendment Bill (No 2)**

**Purpose**

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1. We have considered whether the Regulatory Systems (Economic Development) Amendment Bill (No 2) ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act'). The Bill replicates the Regulatory Systems (Economic Development) Amendment Bill, which we advised was consistent with the Bill of Rights Act in June 2018.
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 21638/4.0). 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 14 (freedom of expression). Our analysis is set out below.

**The Bill**

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4. The purpose of the Bill is to improve regulatory systems by ensuring that they are effective, efficient, and accord with best regulatory practice.
5. To that effect, it makes minor amendments to the following Acts:
  - a. Building Societies Act 1965;
  - b. Companies Act 1993;
  - c. Continental Shelf Act 1964;
  - d. Credit Contracts and Consumer Finance Act 2003;
  - e. Fair Trading Act 1986;
  - f. Financial Reporting Act 2013;
  - g. Geographical Indications (Wine and Spirits) Registration Act 2006;
  - h. Insolvency Act 2006;
  - i. Limited Partnerships Act 2008;
  - j. Personal Properties Securities Act 1999;
  - k. Plant Variety Rights Act 1987;
  - l. Takeovers Act 1993;
  - m. Trade Marks Act 2002; and
  - n. Weights and Measures Act 1987.

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

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### **Section 14 – Freedom of Expression**

6. 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.<sup>1</sup>
7. Clause 50 of the Bill amends the Insolvency Act 2006 and replaces s 165(1)(b) to require a bankrupt or specified other person to produce and surrender to the Assignee or District Court Judge any document or information about the bankrupt's property, conduct or dealings. These provisions may be seen to limit s 14 of the Bill of Rights Act as they compel the provision of certain information.
8. Ordinarily a provision found to limit a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if it can be considered reasonably justified in terms of s 5 of that Act. The s 5 inquiry asks whether the objective of the provision is sufficiently important to justify some limitation on the freedom of expression; and if so, whether the limitation is rationally connected and proportionate to that objective and limits the freedom of expression no more than reasonably necessary to achieve that objective.<sup>2</sup>
9. We consider that the limitations contained in the Bill are justified under s 5 of the Bill of Rights Act because:
  - a. the objective of collecting information and assistance from the bankrupt or specified other person to efficiently and effectively administer bankruptcy and insolvency is sufficiently important to justify some limitation on s 14;
  - b. requiring the people who hold that information to provide it to the Assignee or District Court Judge is rationally connected to that objective; and
  - c. clause 50 impairs s 14 no more than is reasonably necessary to achieve its objective (for example, it only requires the provision of certain information that relates to the bankrupt's property, conduct, or dealings) and is proportionate to the importance of that objective.
10. For these reasons, we conclude that any limits to the freedom of expression imposed by the Bill are justified under s 5 of the Bill of Rights Act.

### **Conclusion**

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11. 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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<sup>1</sup> See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

<sup>2</sup> *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1 at [123].