

# Employment Relations (Workers' Secret Ballot for Strikes) Amendment Bill

17 MARCH 2010

ATTORNEY-GENERAL

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

EMPLOYMENT RELATIONS (WORKERS' SECRET BALLOT FOR STRIKES) AMENDMENT BILL

1. We have considered whether the Employment Relations (Workers' Secret Ballot for Strikes) Amendment Bill ("the Bill"), a Member's Bill in the name of Hon Tau Henare MP is consistent with the New Zealand Bill of Rights Act 1990 ("Bill of Rights Act"). The Bill was introduced into the House of Representatives on 23 February 2010 and is currently awaiting its first reading. It is our understanding that the next Members' Day has been rescheduled for today, Wednesday 17 March 2010.
2. The stated purpose of the Bill is to require unions to hold a secret ballot vote of their members to approve a strike before undertaking any strike action. Clause 6 of the Bill provides that a strike may not proceed, unless the question of whether to strike has been submitted to a secret ballot of those employees who are members of the union that would become parties to the strike if it proceeded.
3. Central to the ability to strike are the rights to freedom of expression, freedom of peaceful assembly, and freedom of association. Accordingly, we have considered the Bill for consistency with sections 14 (freedom of expression), 16 (freedom of peaceful assembly) and 17 (freedom of association) of the Bill of Rights Act. We have concluded that the Bill does not place unreasonable limitations on the ability of unions or their members to express themselves through strike action or to peacefully assemble or associate for the purposes of strike action.
4. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. This advice has been prepared by the Public Law Group and the Office of Legal Counsel.

Jeff Orr  
Chief Legal Counsel  
Office of Legal Counsel

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assess whether the Bill complies with the minimum guarantees contained in the New Zealand Bill of Rights Act. The release of this advice should not be taken to indicate that the Attorney-General agrees with all aspects of it, nor does its release constitute a general waiver of legal professional privilege in respect of this or any other matter. Whilst care has been taken to ensure that this document is an accurate reproduction of the advice provided to the Attorney-General, neither the Ministry of Justice nor the Crown Law Office accepts any liability for any errors or omissions.