

Health Practitioners (Replacement of Statutory References to Medical Practitioners) Bill

5 March 2015

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Health Practitioners (Replacement of Statutory References to Medical Practitioners) Bill

1. We have considered whether the Health Practitioners (Replacement of Statutory References to Medical Practitioners) 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'). We understand the Bill will be considered by the Cabinet Legislation Committee at its meeting on 11 March 2015.

2. We have concluded 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 possible inconsistency with section 21 (search and seizure).

The Bill

3. The Bill is an omnibus Bill amending seven statutes to increase the range of functions that can be performed by health practitioners under those statutes. The amendments will allow health practitioners to lawfully perform functions which could previously only be performed by medical practitioners.

4. Health practitioners are people registered with authorities appointed under the Health Practitioners Competence Assurance Act 2003. A person so registered may provide health services which are within the scope of practice for their profession. Medical practitioners are a subset of health practitioners – those registered with the Medical Council of New Zealand as practitioners of the profession of medicine, and practising medicine in accordance with their scope of practice.

5. The Bill will amend the following Acts:

- Accident Compensation Act 2001
- Burial and Cremation Act 1964
- Children, Young Persons, and Their Families Act 1989
- Holidays Act 2003
- Land Transport Act 1998
- Mental Health (Compulsory Assessment and Treatment) Act 1992
- Misuse of Drugs Act 1975

Consistency with the Bill of Rights Act

[Section 21 – Security against unreasonable search and seizure](#)

6. Section 21 of the Bill of Rights Act protects against unreasonable search and seizure. There are two limits to the section 21 right. Section 21 is applicable only in respect of those activities that constitute a "search or seizure", and protects only against those searches or seizures that are "unreasonable" in the circumstances.

7. Section 73 of the Land Transport Act allows (and in some cases requires) a medical practitioner to compel a person to provide a blood specimen if he or she has reasonable grounds to suspect that the person is in the hospital or doctor's surgery as a result of an accident or incident involving a motor vehicle. Clause 31 of the Bill extends the power in section 73 to health practitioners.

8. The Ministry of Health has advised that it does not envisage any significant increase in the use of section 73. Rather, the effect of the amendment will be to free up doctors' time to allow them to use their expertise for the benefit of those requiring health services. On this basis, we do not consider that the amendment materially alters the reasonableness of the existing power.

Conclusion

9. 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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