

Protected Disclosures Amendment Bill

20 June 2006

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990: PROTECTED DISCLOSURES AMENDMENT BILL

1. We have assessed whether the Protected Disclosures Amendment Bill ('the Bill'), (PCO 7736/13) is consistent with the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act'). We understand that this Bill will be considered by the Cabinet Legislation Committee at its meeting on 28 June 2007.
2. The Bill clarifies and extends the group of people who can make disclosures of serious wrongdoing and gives the Ombudsman:
 - More explicit information requesting and advising powers;
 - More substantial managing and coordinating role in relation to disclosures of serious wrongdoing;
3. We have concluded that the Bill appears to be consistent with the rights and freedoms contained in the Bill of Rights Act. In reaching this conclusion, we considered potential issues of inconsistency with Section 21 of the Bill of Rights Act. Our analysis of these potential issues is set out below.

Section 21: Unreasonable search and seizure

4. Section 21 of the Bill of Rights Act provides the right to be secure against unreasonable search and seizure. The requirement to produce documents and information under statutory authority constitutes a search for the purposes of section 21 of the Bill of Rights Act.[\[1\]](#)
5. The inquiry relating to a search and seizure is two fold. Having established that this does constitute a search, the next question is to determine whether the search is reasonable.
6. Clause 6 (new section 6C) allows an Ombudsman to request an organisation to provide information about its internal procedures. Under 8 (new section 15E), an Ombudsman can require public sector organisations to provide information, documents, papers or things that would assist him or her to act under new section 6C.
7. The objective of the relevant clauses of the Bill is to facilitate the disclosure and investigation of alleged serious wrongdoing and to protect the disclosures of

information. This is to aid people who do not always wish to come forward, or those who do not feel protected in disclosing wrongful acts within an organisation to have sufficient protection to enable them to do so.

8. We consider that the powers to require the provision of certain documents and information in the Bill are reasonable. The powers are consistent with the purposes of the Protected Disclosures Act 2000 which are to facilitate the disclosure and investigation of alleged serious wrongdoing and to protect the disclosers of information.
9. We note also that the powers will be exercised subject to the protections afforded by sections 19 & 20 of the Ombudsmen Act 1975.
10. We therefore conclude that these provisions do not constitute unreasonable searches in terms of section 21 of the Bill of Rights Act.

CONCLUSION

11. We have concluded that the Bill appears to be consistent with the Bill of Rights Act.

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Footnotes

1. *New Zealand Stock Exchange v Commissioner of Inland Revenue* [1992] 3 NZLR 1 (PC)

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