

Statutes Amendment Bill - 2007

8 February 2007

Attorney-General

LEGAL ADVICE

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

1. In accordance with current arrangements, we have considered the non-justice items in this year's Statutes Amendment Bill for consistency with the New Zealand Bill of Rights Act 1990 ("the Bill of Rights Act") (PCO 7070/2). The Crown Law Office has similarly considered the Justice items in the Bill. We understand that this Bill will be considered by the Cabinet Legislation Committee at its meeting scheduled for 15 February 2007.
2. We have concluded that the Bill appears to be consistent with the Bill of Rights Act.
3. In reaching this conclusion, we have analysed potential issues of inconsistency with section 21 of the Bill of Rights Act. Our analysis of these potential issues is set out below.

PURPOSE OF THE BILL

4. The Statutes Amendment Bill is an omnibus Bill amending various Acts.

NON-JUSTICE ITEMS

5. We have considered the proposed amendments to the following pieces of legislation which are intended to be included in the Bill, and advise that they are consistent with the Bill of Rights Act:

Ministry of Economic Development

- Broadcasting Act 1989
- Building Societies Act 1965
- Charitable Trusts Act 1957
- Companies Act 1993
- Corporations (Investigations and Management) Act 1989
- Electricity Act 1992
- Engineering Associates Act 1961
- Friendly Societies and Credit Unions Act 1982
- Gas Act 1992
- Industrial and Provident Societies Act 1908
- Ministry of Energy (Abolition) Act 1989
- Personal Properties Securities Act 1999
- Radio-communications Act 1989
- Securities Act 1978
- Securities Transfer Act 1991

Ministry of Defence

- Armed Forces Discipline Act 1971
- Defence Act 1990

Ministry of Agriculture and Fisheries

- Animal Products Act 1999
- Biosecurity Act 1993

Ministry of Foreign Affairs and Trade

- Cook Islands Act 1915
- Niue Act 1966
- Tokelau Act 1948

Department of Conservation

- Trade in Endangered Species Act 1989

Ministry for the Environment

- Hazardous Substances and New Organisms Act 1996
- Resource Management Act 1990

Department of Internal Affairs

- Fencing of Swimming Pools Act 1987
- Local Government Act 1974
- Racing Act 2003

Ministry of Social Development

- Children, Young Persons and their Families Act 1989
- New Zealand Superannuation and Retirement Income Act 2001
- Social Welfare (Transitional Provisions) Act 1990

Department of Labour

- Volunteers Employment Protection Act 1973

State Services Commission

- State Sector Act 1988

Treasury

- Public Audit Act 2001
- Reserve Bank of New Zealand 1989

Ministry of Education

- Education Act 1989

Ministry of Health

- Health and Disability Commissioner Act 1994

Ministry of Transport

- Land Transport Act 1998

Department of Building and Housing

- Retirement Villages Act 2003

Ministry of Fisheries

- Fisheries Act 1996

ISSUES OF INCONSISTENCY WITH THE BILL OF RIGHTS ACT

Section 21: the right to be secure from unreasonable search and seizure

6. Section 21 of the Bill of Rights Act provides the right to be secure against unreasonable search and seizure. There are two limbs to the section 21 right. First, section 21 is applicable only in respect of those activities that constitute a "search or seizure". Second, where certain actions do constitute a search or seizure, section 21 protects only against those searches or seizures that are "unreasonable" in the circumstances.
7. Two amendments were identified as giving rise to prima facie issues of inconsistency with section 21 of the Bill of Rights Act.

Biosecurity Act 1993

8. The proposed amendment to section 30A of the Biosecurity Bill (part 3) provides a new power of seizure and disposal to a biosecurity inspector when seizing processing unaccompanied goods. The amendment provides that, in addition to the current power to seize any risk^[1] goods present, the inspector can also seize any unauthorised goods. The Biosecurity Act already provides for unauthorised goods to be seized in a number of other situations.
9. The purpose of these provisions is to provide a search power to enable biosecurity officers to protect New Zealand's environment from the risks of introduced pests and diseases, as well as controlling those that are already in New Zealand. We understand that the expansion of this aspect of the seizure powers is necessary in order to ensure that when an inspector conducts an inspection of a transitional facility or biosecurity control area under section 30A for the purpose of discovering whether risk goods are present, she or he may, in addition to seizing any risk goods present, also seize any unauthorised goods.

10. In our view, the expanded seizure power appears to be reasonable in terms of section 21 of the Bill of Rights Act. In reaching this view, we note the goods are detained while the importer obtains a biosecurity clearance and in such a case the estimated costs and expenses of the custody and maintenance of the goods must be paid in advance to the Director-General. A chief technical officer may offer the importer or owner of any goods imported into New Zealand and seized under subsection 30A(1) of the Biosecurity Act the option of exporting or returning the goods to their place of origin provided that the importer or owner undertakes the payment of any costs associated with the export or return of the goods. In exercising the powers, a chief technical officer must, so far as is practicable while achieving the purpose of Part 3 of the Biosecurity Act, act in a manner that is consistent with avoiding or minimising loss to the importer or owner of goods seized.

Land Transport Act 1988

11. Part 27 of the Bill proposes to insert a subsection 3A in section 30 of the Land Transport Act. The proposed subsection requires that a person surrenders his or her licence to an enforcement officer after that officer has suspended this person's driver licence in accordance with section 90(2) of the Act. We consider this obligation to surrender a driver licence to be a seizure within the meaning of section 21 of the Bill of Rights Act.

12. Because the obligation to surrender the licence is directly connected to the driver licence being suspended under the demerit points system in accordance with section 90 of the Act, this seizure power appears to be reasonable. Part 30 of the Bill therefore appears to be consistent with section 21 of the Bill of Rights Act.

JUSTICE ITEMS

13. The Crown Law Office has considered the proposed amendments to the following pieces of legislation, and advises that there are no inconsistencies with the Bill of Rights Act arising from the proposed amendments:

- Care of Children Act 2004
- Civil Union Act 2004
- Family Courts Act 1993
- Films, Videos and Publications Classification Act 1993
- Human Assisted Reproductive Technology Act 2004
- Human Rights Act 1993
- Lawyers and Conveyancers Act 2006
- Legal Services Act 2000
- Privacy Act 1993
- Real Estate Agents Act 1976
- Status of Children Act 1969

Conclusion

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

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Footnote

1 See Appendix A for definition

APPENDIX ONE

[Risk goods means any organism, organic material, or other thing, or substance, that (by reason of its nature, origin, or other relevant factors) it is reasonable to suspect constitutes, harbours, or contains an organism that may -

(a) Cause unwanted harm to natural and physical resources or human health in New Zealand; or

(b) Interfere with the diagnosis, management, or treatment, in New Zealand, of pests or unwanted organisms:]

[Unauthorised goods means any goods that are -

(a) Uncleared goods in a place that is not a transitional facility or a biosecurity control area (other than goods that, in accordance with the authority of an inspector, are -

(i) Proceeding from a transitional facility or a biosecurity control area to a transitional facility, biosecurity control area, or a containment facility; or

(ii) Being exported from New Zealand); or

(b) Uncleared goods that are in a transitional facility or a biosecurity control area to which those goods proceeded, other than in accordance with the authority of an inspector, from some other transitional facility, or biosecurity control area, and have not later received the authority of an inspector to remain there; or

(c) Goods which have been given a biosecurity clearance by an inspector following receipt by that inspector of false, incomplete, or misleading information concerning the goods; or

(d) A restricted organism in a place that is not a containment facility (other than an organism that, -

(i) In accordance with the authority of an inspector, is proceeding from a transitional facility, biosecurity control area, or a containment facility to another transitional facility, biosecurity control area, or containment facility; or

(ii) Is in a transitional facility or biosecurity control area to which it has proceeded in accordance with the authority of an inspector; or

(iii) In accordance with the authority of an inspector, is being exported from New Zealand);
or

(e) A restricted organism that is in a containment facility to which it proceeded other than in accordance with the authority of an inspector, and has not later received the authority of an inspector to remain there:]

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