

2 September 2015

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Wildlife (Powers) Amendment Bill

Purpose

1. We have considered whether the Wildlife (Powers) Amendment 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').
2. 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), s 21 (unreasonable search and seizure) and s 22 (liberty of the person). Our analysis is set out below.

The Bill

3. The Bill amends the Wildlife Act 1953 (the principal Act) to reduce offending against wildlife by improving the powers available to effectively detect and investigate offences and apprehend offenders.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

4. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression.
5. Clause 9 of the Bill inserts new s 66A into the principal Act, which relates to information that an authorised person or ranger can require a person to provide if they believe on reasonable grounds that a person has committed, is committing, or is about to commit an offence against the principal Act or regulations made under the Act. An authorised person can require the person to provide their name and residential address. A ranger can require a person to give their date of birth and produce evidence of their full name, date of birth, and residential address.
6. Failure to provide this information is an offence carrying a penalty of:
 - a. in the case of an individual, imprisonment for a term not exceeding one year or a fine not exceeding \$100,000, or both, and
 - b. in the case of a body corporate, a fine not exceeding \$200,000.

7. Freedom of expression includes the right to say nothing or the right not to say certain things.¹ The Bill's new requirements to provide information could therefore limit freedom of expression where a person is required to provide personal information and make certain statements.
8. To the extent the requirement to provide this information could be considered to engage the right to freedom of expression, we consider the limitation is justified under s 5 of the Bill of Rights Act. This is because:
 - a. the Bill serves an important objective – to reduce offending against wildlife
 - b. there is a rational connection to the objective - the required information will enable authorised persons to identify people who have committed offences against wildlife
 - c. the right is minimally limited - the information required is factual in nature and can only be compelled where there are reasonable grounds to suspect a person has committed, is committing, or is about to commit an offence, and
 - d. the limitation is in due proportion to the importance of the objective.
9. We therefore conclude the Bill appears to be consistent with the rights affirmed in s 14 of the Bill of Rights Act.

Section 21 – Security against unreasonable search & seizure

10. Section 21 of the Bill of Rights Act affirms the right to be secure against unreasonable search and seizure.
11. Clause 6 of the Bill amends s 39 of the principal Act to provide that a ranger may seize any other evidential material² they reasonably believe relates to the investigation of an offence against the principal Act or any regulations made under that Act.
12. We consider that the search and seizure provisions of the Bill are not unreasonable for the purposes of s 21. The powers are limited to the regulatory purpose of the Bill and contain requirements indicating that any seizure must be a reasonable one or would need to be exercised consistently with s 21 of the Bill of Rights Act.

Section 22 – Liberty of the person

13. Section 22 of the Bill of Rights Act affirms the right not to be arbitrarily arrested or detained.
14. Clause 7 of the Bill establishes powers which may be said to engage s 22. These powers include that:
 - a. a ranger may, in investigating a suspected offence, stop and keep stopped for a period that is reasonable in the circumstances any person or thing, or any article in transit (new s 39A), and

¹ *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

² As defined in the Search and Surveillance Act 2012, section 3(1).

- b. an authorised person may arrest a person without a warrant if the authorised person believes that the person has committed or is committing specific offences against the principal Act (new s 39D).
15. The Court in *Nielsen v Attorney-General* found that "An arrest or detention is arbitrary if it is capricious, unreasoned, without reasonable cause: if it is made without reference to an adequate determining principle or without following proper procedures."³
 16. The Bill requires that authorised persons and rangers must have reasonable cause or reasonable grounds to exercise the powers. We therefore conclude that the powers to arrest or detain are not arbitrary, and that the Bill appears to be consistent with the rights affirmed in s 22 of the Bill of Rights Act.

Conclusion

17. 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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³ (2001) 19 CRNZ at [34].