

# Bail Amendment Bill

01 December 2008

Attorney-General

## LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990

BAIL AMENDMENT BILL (PCO 13496/5.0) (2-1)

OUR REF: ATT395/83

I have reviewed the draft Bail Amendment Bill (in its above form) for consistency with the New Zealand Bill of Rights Act 1990.

The Bill proposes to amend the Bail Act 2000 by making changes to s 8, which sets out the considerations to be taken into account by the Court in assessing whether the court is satisfied under s 7(5) that there is just cause for continued detention. In particular, the Bill proposes to make the following changes:

- To alter the wording of the mandatory considerations so that the test of “a real and significant risk” is changed to “a risk” (restoring the position prior to the 2007 amendments).
- Removing the avoidance for doubt provision (about the impact of the discretionary considerations) in subsection (3).

While the effect of these provisions is to alter the factors to be considered by the Court in assessing whether to grant bail, the basic question of whether there is just cause for continued detention remains under s 7(5). This is consistent with s 24(b) of the Bill of Rights Act, and the proposed amendments therefore do not give rise to any apparent inconsistency.

In accordance with Crown Law practice, this opinion has been peer reviewed by Ben Keith, Crown Counsel.

Yours faithfully

Victoria Casey  
Crown Counsel

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