

Coroners Bill

2 November 2004

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

Coroners Bill

Our Ref: ATT114/1299

1. I have reviewed the Coroners Bill and conclude that it is not inconsistent with the *New Zealand Bill of Rights Act 1990*.

2. I discuss below the issues raised by the Bill in respect of:

2.1 religious and cultural beliefs (ss13, 15, 19 and 20 BORA);

2.2 freedom of expression (s14 BORA)

2.3 unreasonable search and seizure (s21 BORA);

2.4 the right to silence of persons arrested or detained under any enactment (s23(4) BORA); and

2.5 the right of persons charged with an offence not to be compelled to be a witness or to confess guilt (s25(d) BORA).

Religious and cultural beliefs

3. As set out in the explanatory note the Bill is the product of a review, one of the objectives of which was to take better account of the diverse cultural and spiritual needs of families (see also clause 3(2)). It may be that particular religious and cultural beliefs are such that any post-mortem or investigation into a death would offend such beliefs. However, the importance of investigation deaths is such that limitations upon the rights set out in ss13, 15, 19 and 20 of the *New Zealand Bill of Rights Act* may be justified. The Bill balances the need to recognise and accommodate religious and cultural beliefs with the importance of investigating and identifying the cause(s) of deaths. In particular, the Bill takes into account religious and cultural beliefs by:

3.1 Imposing obligations upon the Coroner to notify certain persons, including immediate family members and family representatives, of 'significant matters' including a directions that a post-mortem be carried out or a body part or bodily sample be retained (clauses 21-22);

3.2 Providing for procedures for viewing, touching or remaining near the body (clauses 23-24);

3.3 Requiring the Coroner to take into account 'the desirability of minimising the causing of offence to people who, by reason of their ethnic origins, social attitudes or customs, or spiritual beliefs, find post-mortems of bodies offensive' when considering whether or not to direct a post-mortem (clause 30);

3.4 Providing a procedure by which persons can object to a post-mortem (clauses 31-33);

3.5 Providing a procedure for immediate post-mortem (clause 35);

3.6 Limiting the removal and retention of body parts and bodily samples (clauses 43-46).

Freedom of expression

4. Some of the provisions of the Bill raise issues of freedom of expression. In particular:

4.1 Clauses 11 to 13 require reporting of deaths and therefore amount to forced expression. However, such limitation upon freedom of expression is clearly justifiable having regard to the purposes of the Act set out in clause 3.

4.2 Clause 61 imposes restrictions upon the publication of matters relating to self-inflicted deaths or cases in which there is reasonable cause to believe a death is self-inflicted. Where an inquiry into the death has not been completed, no details can be made public without the permission of the Coroner. Where an inquiry has been completed and a death is determined to have been self-inflicted only limited details can be published without the Coroner's permission. In the circumstances that the Coroner is able to grant permission to publish such details and given the interests of protecting the privacy of persons connected with the deceased such prior restraint on publication is a justifiable limit upon freedom of expression.

4.3 Clause 64 enables a coroner to prohibit publication of any evidence given at any part of the proceedings of an inquiry. Where such an order is made, freedom of expression will be restricted. There will be cases when such restriction would be a justifiable. Accordingly, the clause is not inconsistent with the *New Zealand Bill of Rights Act*.

Search warrants, removal of bodies and witness summonses

5. The Bill contains powers to issue and execute search warrants, remove bodies, require provision of information and issue summonses to witnesses. It is necessary to consider whether these provisions raise issues relating to unreasonable search and seizure (s21), the right to silence of persons arrested or detained under any enactment (s23(4)) and the right of persons charged with an offence not to be compelled to be a witness or to confess guilt (s25(d)). In particular:

5.1 Section 112 confers upon District Court judges a power to issue search warrants. Clause 113 enables police to execute those warrants. Clause 115 limits the use of

information obtained from the search warrant to the inquiry. As the provisions confer a discretion which must be exercised consistently with the *New Zealand Bill of Rights Act* they do not breach s21 of the Act.

5.2 Similarly, clause 18 enables coroners to give directions about the removal of bodies. Where negotiation and all other reasonable means have failed to secure the release of the body, clause 116 empowers District Court judges to issue warrants for the removal of bodies and enables police to execute those warrants. Again, the provisions confer a discretion that must be exercised consistently with the *New Zealand Bill of Rights Act* and do not breach s 21 of the Act.

5.3 Clause 117 empowers police when removing a body pursuant a direction by a coroner under clause 18 or a warrant issued by a District Court judge under clause 116 to seize any thing on or in the immediate vicinity of the body that the police believe on reasonable grounds to be relevant to the post-mortem of the body. Given the internal constraints of the provision (i.e. immediate vicinity of the body and relevance to the post-mortem), the fact that there must have either been a direction by the Coroner or a warrant issued by the Court to remove the body and the direct relationship between the items seized and the purposes of the Act (including the identification of the causes and circumstances of sudden and unexplained deaths), the seizure of such items does not breach s21 of the *New Zealand Bill of Rights Act*.

5.4 Clause 107 gives coroners the power to issue summonses for the attendance of witnesses and to issue warrants to enforce such summonses. Section 21 of the *New Zealand Bill of Rights Act* extends to seizure of persons. However, the power of the coroner is discretionary. Clause 68 ensures that witnesses giving evidence have the same privileges and immunities as witnesses in courts of law. Accordingly, the rights protected by ss 23 and 25 of the *New Zealand Bill of Rights Act* are not infringed.

5.5 Clause 110 confers a power upon the coroner to require the provision of information. However, pursuant clause 68, persons upon whom notices are served under clause 110 have the same privileges and immunities as witnesses in courts of law. Accordingly the rights set out in ss 23 and 25 of the *New Zealand Bill of Rights Act* are preserved and no issue arises.

Yours sincerely

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