

# Electoral Matters Bill

Electoral Matters Bill

14 June 2004

Attorney-General

Electoral Matters Bill PCO 5571/7

Our Ref: ATT114/1298(3)

I have considered the abovenamed Bill for compliance with the New Zealand Bill of Rights Act 1990 ("BORA") the final copy of which I received on 11 June 2004 and am pleased to advise that nothing in it appears to be inconsistent with BORA.

The Bill amends s 55 Electoral Act 1993 and in particular provides a new regime as to how an MP loses his or her parliamentary seat because of associations with an overseas state. Under the Bill an MP loses his or her seat if he or she takes an oath or makes a declaration or acknowledgement of allegiance, obedience or adherence to a foreign state or power; or ceases to be a New Zealand citizen; or becomes a candidate for election as a member of parliament in any other country other than New Zealand. Consistent with advice previously given to you in respect of the Electoral (Vacancies) Amendment Bill (PCO 5352/7), advice of 7 August 2003, I am of the view that to the extent that the new vacancy provisions affect a person's freedom of expression, the limit created is a reasonable and justified one in terms of s 5 BORA. In particular, to the extent that the new provisions identify conduct that *might* be regarded as disloyal to New Zealand, and therefore properly capable of disqualifying a person from claiming to be a representative of the New Zealand people, the Bill strikes a fair balance. On the one hand, there is a need to give fair notice to electors (only potentially disloyal acts that occur post-election create a vacancy). On the other hand, the Bill is fair to the MP since the potentially disloyal conduct does not disqualify the MP from standing again for Parliament and any alternative scheme which attempted to assess the potential disloyalty would be likely to be politically charged and incapable of objective assessment. In the result it is fair and reasonable to leave that assessment in the hands of the electorate at the relevant by-election.

The Bill also amends the Broadcasting Act 1989. In particular, it amends Part 6 of the 1989 Act relating to the broadcasting of parliamentary election programmes and follows the recommendations of various Electoral Law and Justice and Electoral Select Committees in that regard. The Bill alters the way in which free election broadcasting time is made available to political parties and allocated by the Electoral Commission. Nothing in the proposed new provisions raises serious BORA-consistency concerns.

Yours faithfully

Andrew Butler  
Crown Counsel

In addition to the general disclaimer for all documents on this website, please note the following: This advice was prepared to assist the Attorney-General to determine whether a report should be made to Parliament under s 7 of the New Zealand Bill of Rights Act 1990 in relation to the Electoral Matters Bill. It should not be used or acted upon for any other purpose. The advice does no more than assess whether the Bill complies with the minimum guarantees contained in the New Zealand Bill of Rights Act. The release of this advice should not be taken to indicate that the Attorney-General agrees with all aspects of it, nor does its release constitute a general waiver of legal professional privilege in respect of this or any other matter. Whilst care has been taken to ensure that this document is an accurate reproduction of the advice provided to the Attorney-General, neither the Ministry of Justice nor the Crown Law Office accepts any liability for any errors or omissions.