

11 September 2003

ATTORNEY-GENERAL

LEGAL ADVICE
CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
MEMBERS OF PARLIAMENT (PECUNIARY INTERESTS) BILL

1. We have considered whether the Members of Parliament (Pecuniary Interests) Bill 2003 (PCO 4763/9) (the Bill) is consistent with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). We understand that this Bill is to be considered by Cabinet on Monday, 15 September 2003.
2. On 27 February 2003, we provided you with advice on an earlier version of the Bill (PCO 4763/5). However, prior to its consideration by the Cabinet Legislation Committee, it became apparent that the Bill did not include all the pecuniary interests of Members of Parliament (MPs) that should be disclosed and, as a result, certain amendments were made to the Bill.
3. The stated purpose of the Bill is to require MPs to disclose their pecuniary interests, and by doing so, to highlight and avoid possible conflicts of interest between their public duties and private interests. The Bill, therefore, promotes greater transparency, openness and accountability in the parliamentary process by:
 - requiring MPs to declare and register their pecuniary interests;
 - establishing a register of pecuniary interests of MPs; and
 - providing for the publication of returns and the presentation of returns to the House of Representatives.

To this end, the Controller and Auditor-General will have a role in compliance, by reviewing the compiled returns and by having the power to conduct inquiries into individual returns either on the Auditor-General's own initiative or in response to a complaint.

Section 21 - Right to be secure from unreasonable search and seizure

4. The Bill applies certain provisions of the Public Audit Act 2001 to the exercise and performance of the Auditor-General's functions, powers and duties under the Bill. The relevant provisions in the Public Audit Act include a power to inspect bank accounts as well as a power to access premises and carry out searches for documents.
5. We have considered whether these provisions are consistent with section 21 of the Bill of Rights Act, which provides the right to be secure against

unreasonable search and seizure. In our opinion, the search and seizure powers accorded to the Auditor-General are reasonable in terms of section 21, particularly in light of the objectives of the Bill. The Public Audit also provides the following protections:

- (a) the circumstances in which the Auditor-General's search and seizure powers may be invoked are limited to the exercise of his or her functions, duties or powers under the Bill;
- (b) the powers conferred on the Auditor-General to inspect bank accounts or to access premises and carry out a search may only be exercised under the authority of a warrant issued by a District Court Judge;
- (c) the relevant provisions in the Public Audit Act include a protection against the use of self-incriminating material in criminal proceedings.

Conclusion

- 6. We have concluded that the provisions in this revised version of the Bill appear to be consistent with the rights and freedoms contained in the Bill of Rights Act.
- 7. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. A copy is also attached for referral to the Leader of the House, if you agree.

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CC Minister of Justice
Leader of the House

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