

Regulatory Responsibility Bill

21 August 2006

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990: REGULATORY RESPONSIBILITY BILL

1. We have considered the Regulatory Responsibility Bill ('the Bill') for consistency with the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act'). The Bill, a Member's Bill in the name of Rodney Hide MP, was introduced into the House of Representatives on 3 August 2006 and is currently awaiting its first reading. We understand that the next Members' day is scheduled for Wednesday, 23 August 2006.
2. We have concluded that the Bill appears to be consistent with rights and freedoms affirmed in the Bill of Rights Act. In reaching this conclusion, we have considered the Bill for possible inconsistencies with sections 19 (freedom from discrimination) and 27(2) (right to judicial review) of the Bill of Rights Act.

PURPOSE OF THE BILL

3. The Bill sets out principles for responsible regulation by which the Government must be guided in the pursuit of its policy objectives. The Bill also imposes reporting requirements on the Crown with respect to those principles.

CONSISTENCY WITH THE BILL OF RIGHTS ACT

Section 19: Freedom from Discrimination

4. Section 19(1) of the Bill of Rights Act affirms the right of everyone to be free from discrimination on the grounds set out in the Human Rights Act 1993 including sex, race and religious belief. Section 19(2) clarifies that measures taken in good faith for the purpose of assisting or advancing persons or groups disadvantaged because of discrimination do not themselves constitute discrimination.
5. Clause 6(2)(f)(vi) of the Bill requires that legislation does not confer rights or benefits on particular categories of persons on the basis of gender, race, creed, religion, time, place, or otherwise. This clause does not appear to limit the ability of Government to undertake temporary measures for the purpose of assisting or advancing disadvantaged persons or groups, although the Government might be required to justify such measures under the reporting procedures set out in the Bill. Clause 6(5) of the Bill provides for temporary departures from the principles in specified Acts or Regulations. Accordingly, this provision appears to be consistent with section 19 of the Bill of Rights Act.

Section 27(2): Right to Judicial Review

6. Section 27(2) of the Bill of Rights Act affirms that every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination. We have considered whether clause 11 of the Bill is consistent with the right to judicial review affirmed in section 27(2) of the Bill of Rights Act.
7. Clause 11 of the Bill states that:

An Act or regulation, a statement, decision or any other action of the Government, a Minister, an agency, an official, or any other person under this Act, and the principles of responsible regulatory management and their application or non-application whether in whole or in part, and whether in general or in any particular case, must not be questioned, reviewed, or restrained by or on an application for judicial review or other process or proceeding in any court.

8. Clause 11 would prevent any judicial review of the application of the principles in developing primary and secondary legislation, as well as any decision made in respect of the reporting functions under the Bill. However, clause 11 would not prevent individuals affected by a decision made under a particular Act or Regulation from bringing judicial review proceedings on established grounds including that the decision is outside the authority of the Act or regulation (*ultra vires*).
9. The Court of Appeal has held that section 27 of the Bill of Rights Act is only engaged when the "determination" in question is adjudicative in nature. Section 27 does not apply to a decision which might have an indirect impact on the rights of an individual.^[1] Matters of high government policy, which do not involve an assessment of rights in individual cases, are therefore not a determination for the purposes of section 27.^[2] Decisions made under the Bill, or in the application of the principles, would not involve determinations in individual cases. Accordingly, we have concluded that clause 11 does not limit the right to judicial review as affirmed in section 27(2) of the Bill of Rights Act.

CONCLUSION

10. Based on the analysis set out above, we have concluded that the Regulatory Responsibility Bill appears to be consistent with rights and freedoms affirmed in the Bill of Rights Act.

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Footnotes

1 *Chisholm v Auckland City Council* [2005] NZAR 661, 668

2 *Lumber Specialties Ltd v Hodgson* [2000] 2 NZLR 347, 375

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