

# Secondhand Dealers and Pawnbrokers Bill

9 May 2003

Attorney-General

Secondhand Dealers and Pawnbrokers Bill (PCO 4128/17): Consistency with New Zealand Bill of Rights Act 1990  
Our Ref: ATT114/1197 (1)

1. We have considered the above Bill ("the Bill") for consistency with the New Zealand Bill of Rights Act 1990 ("BORA") and have concluded that the Bill is consistent with the rights protected by that Act. In reaching that conclusion, two issues of *prima facie* inconsistency arose in respect of the Bill that we wish to draw to your attention.

## *Age restrictions (s 19(1) BORA)*

2. First, there were two provisions that raised issues of potential age discrimination. Clause 21(b) prohibits persons under the age of 18 years from holding certificates or licences as pawnbrokers, secondhand dealers or agents. Clauses 56(1) and 57(1)(f) prevent pawnbrokers from accepting pledges from persons under that age.
3. These age restrictions are *prima facie* inconsistent with the freedom from discrimination on the grounds of age affirmed by s 19 BORA and s 21(1)(i) of the Human Rights Act 1993, which is defined as any age commencing with the age of 16 years. It is therefore necessary to consider whether such inconsistencies can be justified in terms of s 5 BORA.
4. Age limits necessarily involve a degree of generalisation, without regard for the particular abilities, maturity or other qualities of individuals within that age group. As here, age may be seen to be used as a proxy measure of maturity and capacity to act responsibly. In broad terms, the use of age in that way can be understood as a necessary alternative to the assessment of each individual's maturity and responsibility, which would be plainly unworkable in some contexts and contrary to the interests that particular legislation seeks to promote. However, it is necessary to identify specific justification for the imposition of an age limit in each instance.
5. In relation to the limit imposed by cl. 21(b) in relation to certificates and licences, we consider that it is justified on two specific grounds. The first is that the age of 18 years is considered appropriate as a lower age limit for positions involving trust and responsibility: see, for example, s 151(2)(a) of the Companies Act 1993, which fixes 18 as the minimum age of company directors. Further, the risk of criminal involvement in pawnbroking and secondhand dealing requires that holders of certificates and licences be

sufficiently mature to withstand pressure to fail to comply with the requirements contained in the Bill.

6. The age limit imposed by cl. 56(1) and 57(1)(f) in relation to the pledging of articles raises different issues. While the pledging of articles does involve the conclusion of credit contracts, it is not possible to justify an age limit by reference to the need to protect young persons in relation to such contracts given the protection afforded by s 6 of the Minors' Contracts Act 1969, under which contracts with minors may not be enforced.
7. However, it is possible to justify the limit on the basis that pledges are made in a potentially difficult commercial environment with little scope for advice or warnings to those making them.
8. As such, it is reasonable for Parliament to set an age limit reflecting its assessment of when most persons making pledges will have sufficient maturity to ensure fair treatment in such an environment. The alternative would be for Government to assess the individual capacities of persons aged 16 or 17 years, or any other age for that matter, so as to determine whether they have sufficient maturity to enter into pledging contracts, and we do not consider that this is an alternative that Government must adopt in order to act reasonably. Further, it is also reasonable, in the context of pledges of articles under the Bill, to accept that the protection afforded by the Minors' Contracts Act may be of limited practical assistance.
9. While we consider that this matter is more finely balanced than that under cl. 21(b), we are of the view that the age restrictions contained in cl. 56(1) and 57(1)(f) is justified.

*Reverse onus (s25(c) BORA)*

10. Secondly, cl. 15(4), 16(4), 19(3), 29(4), 30(2), 31(4), 34(3), 35(5), 36(3), 37(3), 39(2), 40(6)(a), 41(4), 42(3), 47(4), 48(4), 57(2) and 58(6) all include reverse onus provisions under which acts or, more frequently, omissions are unlawful in the absence of a reasonable excuse. Such provisions are *prima facie* inconsistent with the presumption of innocence affirmed by s 25(c) BORA. However, these provisions, which relate to the documentary requirements of the Act, are justified as necessary elements of the administration of a regulated commercial activity in which individuals choose to participate.

Yours Sincerely,

Andrew Butler  
Crown Counsel

Ben Keith  
Associate Crown Counsel

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