

6 September 2016

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Companies (Annual Report Notice Requirements) Amendment Bill

Purpose

1. We have considered whether the Companies (Annual Report Notice Requirements) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression). Our analysis is set out below.

The Bill

3. The Bill amends the Companies Act 1993 to make changes to the requirements for the board of a company to provide shareholders with printed copies of the annual report, or a written notice asking if they would like a printed copy of the annual report. Instead, the Bill would require the board to notify shareholders that they may elect to receive each year a printed or electronic copy of the annual report. The board must then provide copies, or access to the electronic version, of the annual report, according to the shareholder's request.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

4. Section 14 of the Bill of Rights Act affirms the right to freedom of expression. This includes the freedom to seek, receive, and impart information and opinions of any kind in any form. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.¹
5. The Bill compels companies to provide certain information to shareholders. If the board does not comply with s 209A (Board must send copy of annual report or concise annual report on request) or s 209B (Annual report and concise annual report made available by electronic means) every director commits an offence and is liable on conviction to a fine not exceeding \$10,000.
6. We have concluded that these provisions engage s 14 of the Bill of Rights Act. However, we consider the limits on the right to be free from discrimination are minimal and clearly justifiable under s 5 of the Bill of Rights Act.

¹ *RJR MacDonald v Attorney-General of Canada* (1995) 127 DLR (4th) 1.

7. The objective of the provisions is to ensure that shareholders can access information about a company in which they have shares. Requiring the company to provide access to the annual report is rationally connected to that objective. The interests of the company also need to be balanced against the rights of shareholders to access that information, as the right to receive information is itself an element of freedom of expression.
8. The information required to be provided to shareholders is limited to factual information about the company that is already included in annual reporting requirements. The Bill does not impose any additional requirements to provide further information. Rather, it provides alternative methods of meeting the existing obligations. We consider that the right is limited no more than is reasonably necessary and is in due proportion to the importance of the objective. Therefore, we conclude that the limitation is justified under s 5 of the Bill of Rights Act.

Conclusion

9. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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