

24 September 2021

Attorney-General

COVID-19 Response (Management Measures) Legislation Bill (PCO 24110/4.0)
Consistency with the New Zealand Bill of Rights Act
Our Ref: ATT395/345

1. We have been asked to consider the following provisions in the COVID-19 Response (Management Measures) Legislation Bill (**the Bill**) for consistency with the New Zealand Bill of Rights Act 1990 (**the Bill of Rights Act**):
 - 1.1 Schedule 6, Amendment to the Coroners Act 2006;
 - 1.2 Schedule 6, Amendment to the Criminal Procedure Act 2011;
 - 1.3 Schedule 6, Amendment to the Epidemic Preparedness Act 2006;
 - 1.4 Schedule 6, Amendments to the Property Law Act 2007.
2. In our opinion, the provisions in Schedule 6 are not inconsistent with any of the rights and freedoms that are affirmed by the Bill of Rights Act.
3. All the above Acts, apart from the Epidemic Preparedness Act, are administered by the Ministry of Justice. Although the Epidemic Preparedness Act is not administered by the Ministry of Justice, the amendments relate to rules of Court. Accordingly, the Crown Law Office has vetted, for consistency with the Bill of Rights Act, the amendments to legislation administered by the Ministry of Justice and the amendments related to rules of Court.

Schedule 6: Proposed section 102A of the Coroners Act

4. This provision authorises a coroner to permit remote participation through the use of audio or audio-visual links if satisfied this is in the interests of justice. If the Coroner permits remote participation the Courts (Remote Participation) Act 2010 applies. We do not consider the proposed amendment to be inconsistent with the rights and freedoms affirmed by the Bill of Rights Act. In reaching this conclusion we have considered s 27(1) which provides that every person whose interests are affected by a decision of a Tribunal or public authority has the right to the observance of the principles of natural justice. One of the principles of natural justice is the right to be heard. The right to be heard would still apply under the proposed amendment, but with interested parties appearing by audio or video link. Safeguards to ensure the discretion is exercised fairly are provided by the application

of the Courts (Remote Participation) Act 2010. Section 5 of that Act specifies matters that must be considered when deciding whether to authorise use of AVL. Section 7(3)(b) of that Act provides that when deciding whether to allow use of AVL in civil proceedings, the judicial officer must also take into account whether or not the parties consent to the use of AVL for the appearance of the participant and s 7A applies to the use of audio links in civil proceedings. We consider the proposed amendment to be not inconsistent with the rights and freedoms affirmed by the NZ Bill of Rights Act. This conclusion is consistent with advice previously given by this office on (broadly) similar amendments last year.

Schedule 6: Proposed section 68A Criminal Procedure Act

5. This amendment authorises a High Court Judge to reconsider an order made under s 68(1) regarding whether the trial of a protocol offence (specified types of offences that may warrant transfer to the High Court) is to be held in the District Court or the High Court. We do not consider this raises an issue regarding Bill of Rights Act compliance. We understand the amendment would enable greater use of the High Court to help reduce District Court backlogs to which COVID-19 has contributed. Reducing such backlogs would be consistent with s 25(b) of the NZ Bill of Rights Act which provides for the right to be tried without undue delay.

Schedule 6: Proposed s 24 (5) and (6) Epidemic Preparedness Act

6. This authorises a specified Judge to modify Rules of Court during an epidemic. We consider the proposed change to s 24 of the Epidemic Preparedness Act to be not inconsistent with the rights and freedoms affirmed by the NZ Bill of Rights Act. Like the language in the existing s 24, the language of proposed s 24(5) is discretionary. This means that in order to comply with their obligations under s 3(a) of the NZ Bill of Rights Act, the specified Judge must consider whether the modification would unjustifiably limit the rights and freedoms protected by the Bill of Rights Act and not modify those requirements if they considered the modification would have such effect. Again, these conclusions are consistent with the advice previously given by this office on (broadly) similar amendments last year.

Schedule 6: Proposed sections 245F – 245I and clause 4A of Schedule 3 of the Property Law Act

7. These amendments apply to enforcement action taken in relation to a lease for non-payment of rent during the affected period. Such action cannot be taken before the lessor and lessee have agreed on a fair proportion of rent which will cease to be payable for a rental period during which the lessee is unable to access the leased premises because of restrictions imposed during an epidemic. The lessor and lessee can agree to negative, vary or extend this requirement.¹ The requirement does not apply if the lease already addresses such circumstances.² The amendments are repealed on expiry of the Epidemic Preparedness (COVID-19) Notice 2020.

¹ Proposed s 245G(3).

² Proposed clause 4A(1)(b) of Schedule 3 of the Property Law Act.

8. These provisions may have an adverse effect on the property rights of lessors. However, the Bill of Rights Act provides no substantive protection for property rights. We consider them to be not inconsistent with the Bill of Rights Act.

Review of this advice

9. In accordance with Crown Law's policies, this advice has been peer reviewed by Crown Counsel and Constitutional and Human Rights Team Manager, Peter Gunn.



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Noted / Approved /Not Approved

Encl.

Hon David Parker
Attorney-General
/ /2021