

21 June 2017

Attorney General

Tribunals Powers and Procedures Legislation Bill (PCO 18392/8.0) – consistency with the New Zealand Bill of Rights Act 1990
Our Ref: ATT395/220

1. We have examined the Tribunals Powers and Procedures Legislation Bill for consistency with the New Zealand Bill of Rights Act 1990 (“Bill of Rights Act”). We have concluded that whilst the Bill raises some issues under the Bill of Rights Act, it is not inconsistent with that Act.
2. The Bill is an omnibus Bill that intends to make amendments to 22 different Acts, and is a cognate Bill with the Courts Matters Bill. The latter has also been analysed for consistency with the Bill of Rights Act, and that advice accompanies the current advice.

Analysis of Bill

3. The Bill amends a significant number of Acts that govern the operation of tribunals and/or authorities administered by the Ministry of Justice. Various amendments are of the minor and technical kind, but some are more substantial. The amendments affect the following tribunals/authorities:
 - 3.1 Copyright Tribunal;
 - 3.2 Customs Appeal Authority;
 - 3.3 Disputes Tribunal;
 - 3.4 Student Allowance Appeal Authority;
 - 3.5 Human Rights Review Tribunal;
 - 3.6 Immigration and Protection Tribunal;
 - 3.7 Immigration Advisers Complaints and Disciplinary Tribunal;
 - 3.8 Legal Complaints Review Officer;
 - 3.9 New Zealand Lawyers and Conveyancers Disciplinary Tribunal;
 - 3.10 Legal Aid Tribunal;

- 3.11 Legal Aid Review Authority;
- 3.12 Victims' Special Claims Tribunal;
- 3.13 Private Security Personnel Licensing Authority;
- 3.14 Real Estate Agency Disciplinary Tribunal;
- 3.15 Tenancy Adjudicators and the Tenancy Tribunal;
- 3.16 Alcohol Regulatory and Licensing Authority;
- 3.17 Licensing Authority of secondhand dealers and pawnbrokers;
- 3.18 Social Security Appeal Authority;
- 3.19 Taxation Review Authority;
- 3.20 Weathertight Homes Tribunal.

Additional powers to assist with functioning and regulation of tribunals

- 4. The Bill introduces further provisions to assist with the smooth functioning and regulation of tribunals to complement the standard powers and procedures that currently exist. This includes a power for a chairperson or equivalent to delegate his/her functions to a member of the tribunal, the ability to use electronic facilities to hear matters, a power to issue practice notes, a power to summon witnesses, a power to award costs, and a general requirement to publish final written decisions online. We do not consider these provisions present issues of consistency with the Bill of Rights Act.

Section 27 issues

- 5. The following provisions, which affect certain but not all of the listed tribunals, raise issues relating to consistency with s 27 of the Bill of Rights Act, which confirms the right to natural justice:
 - 5.1 A power for the Tribunal to determine a proceeding on the papers if it considers it appropriate and after having given the parties a reasonable opportunity to comment on whether the proceeding should be dealt with in that manner;
 - 5.2 A power for the Tribunal to strike out, in whole or in part, a proceeding if it discloses no reasonable cause of action, or is likely to cause prejudice or delay, or is frivolous or vexatious, or is otherwise an abuse of process;
 - 5.3 A power for the Tribunal to strike out a proceeding or determine a proceeding in the absence of a party, if the party is neither present nor represented at the hearing.
- 6. The objective of the provisions is to ensure the efficient and effective conduct of tribunal proceedings. The Tribunal will have to act in a manner that is consistent with the Bill of Rights Act when exercising one of these powers. As such, while s 27 is

engaged, we consider any limitation on the right is demonstrably justified in terms of s 5 of the Bill of Rights Act.

7. Provisions conferring immunities on certain of the tribunals, chairpersons, and members of the tribunals for acts/omissions done in good faith in performance of their functions/duties, again raise s 27 issues in that they restrict the right to bring civil proceedings against the Crown. However, enabling Tribunals to exercise their statutory jurisdiction in good faith without fear is an important social objective and an immunity for good-faith actions is a proportionate means of giving effect to it.
8. The Bill also creates new offences, such as an offence of failing to comply with a summons issued by the tribunal and an offence of breaching a suppression order. Relevant to this vetting advice, we note that in relation to various tribunals, the Bill proposes an offence of contempt of tribunal and a related power to exclude. The offence will be committed where a person wilfully assaults, insults, or obstructs the tribunal or a person in attendance at the tribunal; or wilfully interrupts or otherwise misbehaves at a sitting of the tribunal; or wilfully and without lawful excuse disobeys an order or direction of the tribunal in the course of the hearing. Further, where the behaviour of any person constitutes an offence in this way, the tribunal may order that person's exclusion from a sitting of the tribunal (and any officer of the tribunal or constable may take reasonable steps to enforce that exclusion). The exclusion of a party from proceedings, and continuation in his/her absence, could limit that party's right to natural justice but the Tribunal members on whom the power is conferred are themselves persons to whom s 3 of the Bill of Rights Act applies and are required to exercise their powers consistently with the Bill of Rights Act. There is therefore no inconsistency with s 27.
9. Finally, the Bill confers a power for certain tribunals to order that any part of any evidence or names of witnesses must not be published. While this limits the right to freedom of expression in s 14 of the Bill of Rights Act, suppression orders of this kind are a justified limitation given the objective of protecting private information or interests of victims or parties to proceedings. Further, tribunal members will have to exercise this power in a rights-consistent way.

Review of Advice

10. This advice has been reviewed in accordance with Crown Law protocol by Austin Powell, Senior Crown Counsel.



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