



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

WILDLIFE (POWERS) AMENDMENT BILL

12/05/2016

Submission on the Wildlife (Powers) Amendment Bill

Introduction

- 1 The New Zealand Law Society (Law Society) welcomes the opportunity to comment on the Wildlife (Powers) Amendment Bill (the Bill).
- 2 The objective of the Bill¹ is to reduce offending against wildlife by improving the powers available to effectively detect and investigate offences and apprehend offenders.
- 3 In this submission the Law Society makes recommendations that:
 - (a) proposed section 39A be amended to use language that is consistent with the language used in the Search and Surveillance Act 2012 (S&S Act);
 - (b) the basis on which a ranger may stop, and keep stopped, a person, thing or article under proposed section 39B be clarified; and
 - (c) proposed section 39D be amended to remove the reference to a warrant.

Power to seize evidential material

- 4 Clause 5 inserts proposed section 39A into the Wildlife Act 1953 (the Act) to empower a ranger to seize evidential material in certain circumstances:

A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, may seize any evidential material (as defined in section 3(1) of the Search and Surveillance Act 2012) that he or she reasonably believes relates to the investigation of an offence against this Act or any regulations made under this Act.

- 5 The express incorporation of the meaning of “evidential material” from the S&S Act creates an inconsistency. Under proposed section 39A, the evidential material must “relate” to the investigation of an offence against the Act. But the S&S Act definition of “evidential material” uses slightly different phrasing:

Evidential material, in relation to an offence or a suspected offence, means evidence of the offence, or any other item, tangible or intangible, of relevance to the investigation of the offence.

(Emphasis added)

- 6 The power to seize evidential material in proposed section 39A should be more closely aligned with the definition of “evidential material” in the S&S Act.
- 7 A further precondition to the exercise of the power to seize evidential material is that the ranger must be investigating an offence. In contrast, the precondition to the power to stop in proposed section 39B is that the ranger must be investigating a suspected offence. The reason for the inconsistency is not clear. Proposed section 39A should be amended to refer to the investigation of a suspected offence.

¹ Explanatory Note to the Bill, p2.

Recommendation:

8 Amend proposed section 39A (inserted by clause 5), as follows:

A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, may seize any evidential material (as defined in section 3(1) of the Search and Surveillance Act 2012) that he or she reasonably believes ~~relates~~ is of relevance to the investigation of a ~~an~~ suspected offence against this Act or any regulations made under this Act.

Power to stop and keep stopped

9 Clause 5 inserts proposed section 39B into the Act to empower a ranger to stop, and keep stopped, a person, thing or article in certain circumstances:

(1) A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, who is investigating a suspected offence against this Act or any regulations made under this Act may, if there is reasonable cause, stop, and keep stopped for a period that is reasonable in the circumstances, any person or thing or any article in transit.

10 A precondition to the exercise of the power is that there must be “reasonable cause” to stop, and keep stopped, a person, thing or article in transit. Other New Zealand statutes use the phrase “reasonable cause” but only in relation to a defined state of mind, such as suspicion or belief. For example, a constable’s power to stop a vehicle without a warrant to arrest in section 9 of the S&S Act provides that:

A constable may stop a vehicle without a warrant to arrest a person if the constable has reasonable grounds—

(a) to suspect that a person—

(i) is unlawfully at large; or

(ii) has committed an offence punishable by imprisonment; and

(b) to believe that the person is in or on the vehicle.

(Emphasis added)

11 In the case of proposed section 39B, it may be that a state of mind (i.e. a reasonable cause to suspect the commission of an offence) is intended to be incorporated in the requirement that the ranger is investigating a suspected offence. However, this is not clear and should be made explicit. The Law Society considers that proposed section 39B should be redrafted to align more closely with the drafting used in the S&S Act.

12 In addition, the current drafting of proposed section 39B is problematic for two reasons:

(a) It precludes a situation where a ranger is not investigating a suspected offence, but witnesses or happens on behaviour in circumstances that give reasonable cause to suspect an offence is being or has been committed.

(b) It also means that as long as the ranger is investigating a suspected offence, they can stop any person, even if that person is not the subject of the investigation. This is too broad. The proposed power to stop, and keep stopped, engages the right to freedom of movement under section 18 and the right not to be arbitrarily arrested or detained under section 22 of the New Zealand Bill of Rights Act 1990 (Bill of Rights). The Law Society considers that a power to stop and keep stopped any person, regardless of their involvement in the

suspected offence, is not demonstrably justified in terms of section 5 of the Bill of Rights. The scope of the power must be more carefully and precisely defined.

- 13 The power to stop under proposed section 39B could also address offences that are in the course of being committed or are about to be committed. That would be consistent with other powers in the Bill (the power to intervene: proposed section 39C, and power to arrest: proposed section 39E).

Recommendation:

- 14 Amend proposed section 39B (inserted by clause 5) to define the basis of the power to stop more clearly. One way of doing so would be:

A ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies may stop, and keep stopped for a period that is reasonable in the circumstances:

- (a) any person if the ranger has reasonable cause to suspect that the person has committed, is committing, or is about to commit, an offence against this Act or any regulations made under this Act;
- (b) any thing or article in transit if the ranger has reasonable cause to suspect that an offence against this Act or any regulations under this Act has been, is being, or is about to be, committed.

Power of arrest

- 15 Clause 5 inserts proposed section 39D to state the people who may exercise the power of arrest under proposed section 39E. There is a reference to “warrant” in both sections but with a different meaning in each case. Proposed subsection 39D(1) provides that:

(1) The Director-General may issue to a ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, a written warrant stating that the person is authorised to exercise the power of arrest under section 39E.

(Emphasis added)

- 16 Proposed subsection 39E(1) provides that:

(1) A person authorised under section 39D (an authorised person) may arrest a person without warrant if—

...

(Emphasis added)

- 17 In proposed section 39D, the “warrant” is written authority to exercise the power of arrest. In proposed section 39E, the “warrant” is a court-issued warrant to arrest. There is a risk of confusion and the Law Society recommends proposed section 39D be amended to remove the reference to a warrant.

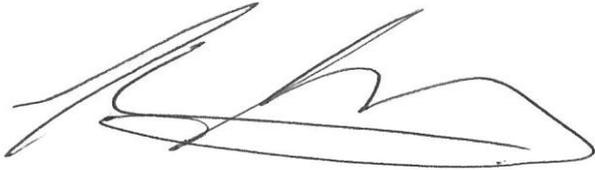
Recommendation

- 18 Amend proposed subsection 39D(1) (inserted by clause 5) as follows:

(1) The Director-General may issue to a ranger, other than a fish and game ranger or a ranger to whom section 38(2) applies, ~~a written warrant stating that the person is authorised~~ authority to exercise the power of arrest under section 39E.

Conclusion

19 The Law Society does not wish to be heard, but is available to meet with the officials advising on the Bill if the Committee considers that this would be of assistance.

A handwritten signature in black ink, appearing to be 'K. Beck', written in a cursive style.

Kathryn Beck
President
12 May 2016