

12 May 2020

Hon David Parker
Attorney-General

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Tēnā koe

Re: Covid-19 Public Health Response Bill

The New Zealand Law Society | Te Kāhui Ture o Aotearoa acknowledges receipt of the consultation draft of the Covid-19 Public Health Response Bill last night and the invitation to make comments on the Bill by 10am today.

The Bill is intended to be introduced and passed through all stages today under urgency and to be enacted tomorrow, before the country moves to Alert Level 2 at 11.59pm tomorrow.

This is a very significant piece of legislation affecting all New Zealanders until May 2022 (unless repealed earlier by Order in Council, if COVID-19 is sooner brought under control). The Bill covers all COVID-19 Alert Levels, and contains profound restrictions on New Zealanders' rights and on New Zealand businesses, and extensive state powers during this period.

The Law Society appreciates the country needs a fit-for-purpose legal framework for managing the COVID-19 epidemic, even if there is no longer a national state of emergency. This is an urgent and unprecedented situation. But in our view it is unacceptable in a democratic system to rush through legislation of this magnitude with no real consultation. Level 2 comes as no surprise – the timing was uncertain, but it was certainly foreseeable and more planning and notice of the legislative changes was expected.

In the extremely short time available the Law Society makes the following key points:

- a. The offence provisions appear draconian.
- b. There is a risk of unjustified breaches of human rights.
- c. As a fallback, a much shorter sunset should be considered, while further consultation and refinement is worked on.

Specific concerns include:

1. The offence provisions appear too broad and draconian, particularly given the sunset provisions mean that these could be in place for up to 2 years.
2. There appear to be provisions that may unjustifiably undermine rights, particularly search and possibly assembly/freedom of expression and movement.

3. There is a longstanding issue with “dual” infringement and criminal provisions (a “two in one”) which needlessly complicates prosecutions, even for serious offences, where those offence happen to have infringements specified as well.
4. The oversight provisions should also be strengthened:
 - a. There should be a provision that the Minister of Health is required to formally report to the House, on a quarterly basis on the exercise of powers under the Act, as there was in s 88 of the Canterbury Earthquake Recovery Act 2011 (the 2011 Act):

88 Quarterly report on operation of this Act

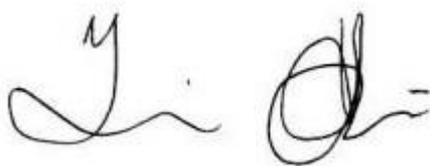
(1) The Minister must prepare and present to the House of Representatives quarterly reports on the operation of this Act.

(2) Each report must include a description of powers exercised by or on behalf of the Minister or the chief executive under this Act during the period reported on.

This was one of the recommendations of the Regulations Review Committee in its inquiry into legislation in response to national emergencies (see **attached** report p 25).

- b. Also, consideration should be given to the appointment of an external review panel, headed by a retired High Court Judge, to review section 11 orders before they are made, as in ss 72 and 73 of the 2011 Act. Alternatively, a draft of the order could be given to the Epidemic Response Committee or Regulations Review Committee, with a duty in each case for the maker of the proposed order to have regard to any comments made by the Review Panel or Committee before the order is made.
5. In short:
 - a. The immediate need to change certain procedures and restrict activities does not necessarily entail immediate criminal enforcement.
 - b. More time is required to consult and properly input on proposed offence and search provisions (along with other aspects of the Bill).
 - c. The Law Society cannot support the Bill as drafted.

Nāku noa, nā



Tiana Epati
President

Encl (1)