

4 May 2021

Attorney-General

BORA Vet Advice: Secondhand Dealers and Pawnbrokers (Electronic Records) Amendment Bill

Our Ref: ATT395/332

1. We have considered the Secondhand Dealers and Pawnbrokers (Electronic Records) Amendment Bill (the **Bill**) for consistency with the New Zealand Bill of Rights Act 1990 (the **Bill of Rights Act**). We advise that the Bill is consistent with the Bill of Rights Act.

The Bill

2. The Bill is a Member's Bill. It seeks to amend the Secondhand Dealers and Pawnbrokers Act 2004 (the **Act**) to enable the New Zealand Police to recover and trace stolen property, as well as apprehend offenders involved in this activity. It amends the Act to require secondhand dealers, pawnbrokers, and Internet auction providers to keep electronic records which are electronically readable and usable by Police computers.¹ The Act already requires secondhand dealers, pawnbrokers, and Internet auction providers to keep records and to provide them to a constable on request, with criminal sanctions for failure to comply without reasonable excuse.
3. The Explanatory Note provides that the legislative requirements have not kept up with technological advances and that most dealers appear to keep only handwritten records or print computer copies of their records. Provision of electronic records would allow for automated analysis of those records to assist Police in tracing stolen property and resolving burglaries.
4. The Bill would enable the expansion of an initiative by Counties Manukau Police, who have developed a computer program which is able to read and mass-process dealer records. The program has already been responsible for resolving 99 burglaries and recovering 177 stolen items in the past 2 years, with 24 dealers participating.
5. In order to effect these changes, the Bill:
 - 5.1 inserts, in s 4 of the Act, definitions of "dealers record", "Internet auction providers record", and "pawnbrokers record" to mean "an electronic computer record or database required to be kept" by the relevant agent;
 - 5.2 replaces ss 45, 54 and 69(4) to enable Police access to each type of electronic record;

¹ Secondhand Dealers and Pawnbrokers (Electronic Records) Amendment Bill (Member's Bill), Explanatory Note at 1-2.

- 5.3 removes the requirements for signatures to be kept in the records in ss 42, 47 and 51; and
- 5.4 makes it an offence to fail to comply with the requirements regarding keeping an electronic record “without reasonable excuse” in ss 45 and 54 (previously it was an offence not to keep a record, not necessarily electronic).

Discussion

6. This Bill does not expand Police powers, as the licenced dealers covered by the Act are already required to keep records and provide them to Police when requested. The Bill merely requires dealers to change the method by which they keep these records. While it is likely in practical terms to increase the searches by Police of the records kept by licenced dealers, it does not as a standalone measure engage any rights protected by the Bill of Rights Act that are not already engaged by the Act. In any event, we consider that providing for searches of business records in the context of regulation of commercial activity of this kind does not authorise unreasonable searches in terms of s 21 of the Bill of Rights Act.² This is because the Bill merely extends an express statutory power that is necessary and proportionate to the aim of investigating and deterring the sale of stolen goods.
7. The offence provisions in the Bill that use the “without reasonable excuse” formulation are limits on the presumption of innocence affirmed in s 25(c) of the Bill of Rights Act because they place the persuasive burden on the defendant. However, as with the search powers, we see this limit as justified under s 5 because it is necessary and proportionate to the aim of investigating and deterring the sale of stolen goods. Secondhand dealers are themselves best placed to know why they have not kept the required records and requiring the prosecution to prove a deliberate failure would be unduly onerous in this context.

Review of this advice

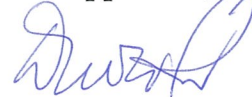
8. In accordance with Crown Law’s policies, this advice has been peer reviewed by Daniel Jones, Crown Counsel.



Kim Laurensen / Camille Wrightson
Crown Counsel / Assistant Crown Counsel
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Encl.

Noted / Approved / Not Approved



Hon David Parker
Attorney-General
5/5 /2021

² The vetting advice on the Act did not address this issue.