

# **MEDIA RELEASE**

## **ENTRY, SEARCH AND SEIZURE POWERS UNDER DISCUSSION**

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The Law Commission has published its first discussion paper of an intended comprehensive examination of central and local government agency powers to enter private property, carry out searches, and seize goods for use as evidence.

The discussion paper expresses the tentative view that some powers should be abolished and others modified.

In relation to police powers, the paper asks whether there should be a change to the rule that search warrants be available only where the offence is punishable by imprisonment.

The paper suggests the need to rationalise the rules that prevent the police when searching premises because one offence is suspected from seizing evidence of a different offence chanced upon in the course of the search.

It proposes a more precise definition of police search powers on arrest and of police powers to enter premises, without a warrant, to effect an arrest.

It suggests in relation to most powers (other than police powers) that they be made subject to a uniform set of rules. One advantage of this being it would then be easier for those scrutinising new legislation (such as select committees) to spot departures from standard powers.

The difficulties that result from the Bill of Rights provision as to “unreasonable search and seizure” are discussed. This provision originates in the opposition of the American colonists in the reign of George III to certain Crown investigatory practices. Its application in New Zealand in the twenty-first century is a continuing source of difficulty. Care is taken by the United States Supreme Court to ensure that front-line police have clear rules under which to operate. In New Zealand, by contrast, the police are left uncertain as to just what the extent of their powers is in any given case. The Law Commission invites consideration of whether the Bill of Rights should be amended to substitute some test other than the vague test of reasonableness.

“The present state of the law” says Commissioner Donald Dugdale “is productive of endless litigation resulting, on occasion, in acquittals on grounds that bear little relation to the merits of the case. Surely we can do better. No doubt it adds to the sporting

attraction of criminal processes if there is a chance of the accused being restored to his friends and his relations on the grounds of some Bill of Rights technicality. But it does little to improve law enforcement”.

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