

12 November 2021

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Taxation (COVID-19 Support Payments and Working for Families Tax Credits) Bill

Purpose

1. We have considered whether the Taxation (COVID-19 Support Payments and Working for Families Tax Credits) Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (IRD 24229/2.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression) of the Bill of Rights Act. Our analysis is set out below.

The Bill

4. The Bill makes amendments to the Tax Administration Act 1994 (TAA) and the Income Tax Act 2007 (ITA).
5. Part 1 of the Bill amends the TAA to replace the existing COVID-19 Resurgence Support Payment Scheme, adapting the previous scheme into a more generalised COVID-19 support payment framework. The amendments reflect the planned shift from the COVID-19 Alert Level framework to the COVID-19 Protection Framework, and are intended to ensure the TAA remains fit for purpose and provides the Government with the flexibility to continue supporting businesses under a variety of scenarios.
6. The Bill:
 - a. inserts a definition of COVID-19 support payments scheme (cl 4);
 - b. provides for activation of a COVID-19 support payments scheme by Order in Council. The Order may include the period or circumstances for which the scheme is available and classes of persons who may apply for a grant under the scheme. It may also be amended or extended by Order in Council (cl 5, new s 7AAC);
 - c. provides for the Commissioner of Inland Revenue (Commissioner) to make grants under a COVID-19 support payments scheme. The Commissioner is also responsible for:
 - i. setting out the procedure for applications for grants;

- ii. determining the eligibility requirements that a person must meet to qualify for a grant (which must be published on a website administered by the Commissioner); and
 - iii. determining the terms and conditions that apply to a grant (cl 5, new s 7AAB);
- d. provides for other requirements in relation to a COVID-19 support payments scheme including placing a requirement on applicants (including persons who apply on behalf of others) to provide information as required by the Commissioner. Applicants are bound by the terms of the grant and must keep records referred to in s 22 of the TAA to demonstrate the eligibility requirements are met and the terms of the grant are not breached (cl 5, new s 7AAB); and
- e. includes other consequential amendments to the TAA relating to payments under a COVID-19 support payments scheme.
7. Part 2 of the Bill makes amendments relating to Working for Families tax credit settings. This amends the ITA to increase the family tax credit, family credit abatement rate, Best Start tax credit, and minimum family tax credit threshold. It also makes a minor amendment to the indexation settings for the family tax credit and Best Start tax credit.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of expression

8. Section 14 of the Bill of Rights Act affirms the right to freedom of expression. This includes the freedom to seek, receive, and impart information and opinions of any kind and in any form. This right has been interpreted as including the right not to be compelled to say certain things or provide certain information.¹
9. Clause 5 inserts a new s 7AAB(4) in the TAA which provides that ‘If a person applies for a grant on behalf of another person, both the person and the person in whose name the application is made must provide information as required by the Commissioner’. Compelling an individual to provide information *prima facie* engages s 14 of the Bill of Rights Act.

Is the limitation justified and proportionate under s 5 of the Bill of Rights Act?

10. Where a provision is found to limit a particular right or freedom, it may nevertheless be consistent with the Bill of Rights Act if it can be considered a reasonable limit that is demonstrably justifiable in terms of s 5 of that Act. The s 5 inquiry is approached as follows²:
- a. does the provision serve an objective sufficiently important to justify some limitation of the right or freedom?
 - b. if so, then:

¹ See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

² *Hansen v R* [2007] NZSC 7.

- i. is the limit rationally connected to the objective?
 - ii. does the limit impair the right or freedom no more than is reasonably necessary for sufficient achievement of the objective?
11. The purpose of the Bill is to provide financial support where necessary due to the impacts of COVID-19. We consider this to be a sufficiently important objective. We infer that the provision to require information only relates to information relevant to support a determination regarding whether to make a grant under a COVID-19 support payment framework. We consider this is rationally connected to the objective and proportionate. Accordingly, we consider it is a justifiable limit on freedom of expression.

Conclusion

12. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



Jeff Orr
Chief Legal Counsel
Office of Legal Counsel