

5 May 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Cost of Living Payments) Bill

Purpose

1. We have considered whether the Taxation (Cost of Living Payments) 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 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 section 19 (freedom from discrimination). Our analysis is set out below.

The Bill

3. The Bill amends the Tax Administration Act 1994 and the Income Tax Act 2007.
4. The amendments create a general legislative framework for the application of a cost-of-living payment scheme. This framework will then be utilised to provide short-term financial support (totalling \$350) to eligible low to middle-income individuals facing increased cost-of-living pressures because of the recent spike in inflation.
5. The Bill itself does not contain the eligibility criteria for the cost-of-living payment scheme; these are contained in the explanatory note. The criteria will be also published by the Commissioner of Inland Revenue on the Inland Revenue Department's website.
6. The Inland Revenue Department will administer the payments and will determine eligibility based on the information that it holds for individuals. Individuals will not need to apply for the payments.
7. The amendments also provide how the payments under the scheme would be treated for income tax and social policy purposes.

Consistency of the Bill with the Bill of Rights Act

Section 19 – Freedom from discrimination

8. The Bill creates a framework that enables cost-of-living payments to be made to eligible persons. The main eligibility criteria for an individual receiving a payment are set out in the explanatory note to the Bill, and are as follows:
 - a. net income of \$70,000 or less for the 2021–22 tax year;¹

¹ This aligns with the tax threshold for the 30% marginal tax rate.

- b. not eligible to receive a qualifying benefit for the Winter Energy Payment (those individuals who receive sole parent support, a supported living payment, jobseeker support, jobseeker support student hardship, an emergency benefit, an emergency maintenance allowance, a youth payment, a young parent payment, New Zealand superannuation, or a veteran's pension) during the payment period;²
 - c. aged 18 or over;
 - d. both New Zealand tax resident and present in New Zealand; and
 - e. not incarcerated.
9. As noted above, the Bill does not contain the eligibility criteria that will likely give rise to differential treatment based on prohibited grounds; the Bill merely establishes the framework. Instead, the eligibility criteria are determined by Government and published on the Inland Revenue Department's website, as required by the new s 7AAA(3) of the Bill. Government has an obligation to ensure the eligibility criteria comply with the Bill of Rights Act.³
10. The eligibility criteria, as identified in the explanatory note, does give rise to differential treatment based on age and employment status and *prima facie* engages s 19 of the Bill of Rights Act. While not contained in the provisions of the Bill, we considered it prudent to turn our minds to the criteria when considering the consistency of the Bill with the Bill of Rights Act.
11. Section 19(1) of the Bill of Rights Act affirms the right to freedom from discrimination on the prohibited grounds listed in s 21 of the Human Rights Act 1993 (HRA).
12. Discrimination under s 19 of the Bill of Rights Act arises where:⁴
- a. there is differential treatment or effects as between persons or groups in analogous or comparable situations on the basis of a prohibited ground of discrimination; and
 - b. that treatment has a discriminatory impact (i.e. it imposes a material disadvantage on the person or group differentiated against).
13. The prohibited grounds of discrimination under the HRA include both age and employment status. Employment status includes being a recipient of a benefit under the Social Security Act 2018 or an entitlement under the Accident Compensation Act 2001.
14. The cost-of-living payment scheme will provide targeted support to those low to middle-income individuals, who are not already in receipt of a qualifying benefit and therefore

² The Winter Energy Payment is an extra payment made to beneficiaries over the winter period to help with the higher costs of heating incurred over that period. Individuals on main benefits and New Zealand superannuation will receive the Winter Energy Payment over the winter period and have recently benefited from increases in main benefit and superannuation rates.

³ Section 3 of the Bill of Rights Act 1990 provides that the Bill of Rights Act applies to the executive, legislature, and judiciary, as well as to the acts done by any other person or body in the "performance of a public function, power, or duty conferred or imposed ... by or pursuant to law".

⁴ *Ministry of Health v Atkinson* [2021] NZCA 184, [2012] 3 NZLR 456 CA at [55].

eligible for the Winter Energy Payment, and who are facing increased cost of living pressures because of the recent spike in inflation.

15. Achieving a fair distribution of financial and social assistance to those most in need is a complex social policy matter and will often require distinctions to be drawn in order to ensure the allocation of limited public funds is as effective as possible. While inflation affects all households, preliminary Treasury analysis suggests that the immediate impact of inflation is greatest for low and middle-income households.
16. The cost-of-living payment is proportionate and necessary to ensure those low and middle-income households who are not in receipt of, or eligible for, the Winter Energy Payment, are supported through the period in which wage growth remains below inflation.
17. As such, the limits on s 19 contained in the criteria do appear to be justified under s 5 of the Bill of Rights Act.

Conclusion

18. 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