

28 April 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Income Insurance Scheme Enabling Bill

Purpose

1. We have considered whether the Income Insurance Scheme Enabling 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 the consistency of the Bill with s 19 (freedom from discrimination). Our analysis is set out below.

The Bill

3. The Bill enables the Accident Compensation Corporation (ACC) to undertake preparatory work to bring an income insurance scheme into operation (Scheme). A Scheme would provide income replacement for certain persons who suffer a loss of employment. The Bill is not intended to be the statutory authority that establishes the Scheme. Should the government wish to establish the Scheme it will be done through subsequent legislation.
4. The Bill includes a te Tiriti o Waitangi provision that recognises the Crown's commitment to te Tiriti o Waitangi principles (cl 4). It also creates an obligation on ACC to engage with Māori and be purposeful in developing the Scheme that will work for Māori (cl 9(3)).
5. The Bill also enables ACC to request personal and non-personal information from specified government agencies in order to setup, test, and implement the Scheme (cls 10-15). The Bill also provides a number of provisions that provide robust protections on ACC's ability to request information and agencies may also refuse to provide information in some circumstances (cls 10-16).

Consistency of the Bill with the Bill of Rights Act

Section 19 – Freedom from discrimination

6. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the grounds set out in the Human Rights Act 1993 (the Human Rights Act).

7. The key questions in assessing whether there is a limit on the right to freedom from discrimination are:¹
- a. does the legislation draw a distinction on one of the prohibited grounds of discrimination under s 21 of the Human Rights Act; and, if so
 - b. does the distinction involve disadvantage to one or more classes of individuals?
8. A distinction will arise if the legislation treats two comparable groups of people differently on one or more of the prohibited grounds of discrimination. Whether disadvantage arises is a factual determination.² We have considered whether clauses 4, 9(3), and 9(4) treat Māori and non-Māori in a manner that amounts to discrimination on the basis of race.
9. The Bill requires ACC to prioritise the views and interests of Māori. This reflects the status of Māori as the Crown's Treaty partner and gives effect to the Crown's duties under Te Tiriti o Waitangi. We do not consider that any other group is in a comparable position to Māori in this regard.
10. We have concluded that giving greater emphasis to Māori views and interests does not amount to discrimination on the ground of race or ethnic origins. Rather, this emphasis is necessary to give effect to the Crown's commitment under te Tiriti o Waitangi in a meaningful and practical way.

Conclusion

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



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¹ See, for example, *McAlister v Air New Zealand* [2009] NZSC 78, [2010] 1 NZLR 153; *Ministry of Health v Atkinson* [2012] NZCA 184, [2012] 3 NZLR 456; and *Child Poverty Action Group Inc v Attorney-General* [2013] NZCA 402, [2013] 3 NZLR 729.

² See, for example *McAlister v Air New Zealand* above n 14 at [40] per Elias CJ, Blanchard and Wilson JJ