

24 March 2020

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: COVID-19 Response (Taxation and Social Assistance Urgent Measures) Bill

Purpose

1. We have considered whether the COVID-19 Response (Taxation and Social Assistance Urgent Measures) 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 (PCO 22802/3.0). 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 19 (freedom from discrimination).

The Bill

4. The Bill is an omnibus Bill introducing amendments to assist in the Government's response to the economic impacts of the COVID-19 outbreak. The Bill includes both measures targeted at providing relief to those that have been economically affected by the outbreak, as well as untargeted measures to address the wider economic impacts of the outbreak.
5. Notably, the Bill amends the Income Tax Act 2007 to:
 - remove the hours of work test from the in-work tax credit scheme, and to expand eligibility to those in receipt of an emergency benefit as per ss 63 and 64 of the Social Security Act 2018;
 - provide for depreciation on non-residential buildings;
 - increase the low value asset threshold (allowing for the full value of the asset to be deducted in the year in which the asset was purchased);
 - bring forward the research and development tax credit by one year, to the 2019-20 income year;
 - allow the Commissioner of Inland Revenue to remit interest on late tax payments if the taxpayer's ability to pay tax was significantly adversely affected by the COVID-19 outbreak;
 - increase the threshold before a person is required to pay provisional taxes; and

- allow Inland Revenue to share information with other government departments to assist those agencies in their response to the COVID-19 outbreak.
6. The Bill makes other minor changes to the Income Tax Act 2007, along with consequential amendments to the:
- Tax Administration Act 2007,
 - Goods and Services Tax Act 1985
 - Social Security Act 2018,
 - Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020, and
 - Commissioner's Table of Depreciation Rates.

Consistency of the Bill with the Bill of Rights Act

Section 19 – Freedom from discrimination

7. Clauses 15 – 18 of the Bill amend the in-work tax credit scheme. These provisions remove the existing eligibility requirement that a person or their partner must be employed full-time in order to receive the credit.
8. Clause 16 of the Bill also amends the in-work tax credit residency requirement, so that those in receipt of an emergency benefit under ss 63 and 64 of the Social Security Act 2018 can also be eligible for the tax credit. Notably, emergency benefits are available in cases of hardship (s 63) and during epidemics (s 64) where a person would not otherwise be eligible for other main benefits in the Social Security Act 2018, for example, because they do not meet the residency requirements set out in s 16 of that Act.
9. The Bill does not amend s MC 6 of the Income Tax Act 2007, which excludes those in receipt of an income-tested benefit from the in-work tax credit.
10. Section 19(1) of the New Zealand Bill of Rights Act 1990 affirms that everyone has the right to freedom from discrimination on the prohibited grounds in s 21 of the Human Rights Act 1993. The grounds of discrimination under the Human Rights Act include marital status, family status, and employment status which means being unemployed or being a recipient of a benefit under the Social Security Act or an entitlement under the Accident Compensation Act 2001.
11. We do not consider that the amendments proposed by this Bill engage the right to be free from discrimination. While the in-work tax credit scheme, as set out in the Income Tax Act 2007, does treat people differently based on their family and employment status, the Bill does not amend the core parts of the scheme which give rise to different treatment based on prohibited grounds, notably s MC 6. The Bill merely removes an hours of work threshold and expands eligibility to those in receipt of emergency benefits.

12. Further, the whole of the in-work tax credit scheme has previously been assessed as being consistent with the Bill of Rights Act.¹

Conclusion

13. 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 Ministry of Justice, “Consistency of the New Zealand Bill of Rights Act 1990: Income Tax Bill”, 25 October 2006.