

28 February 2020

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Child Support Amendment Bill

Purpose

1. We have considered whether the Child Support Amendment 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 22406/4.0). 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 (the right to be free from discrimination).

The Bill

4. The Bill amends the Child Support Act 1991 ("the principal Act") with the overarching goals of modernising the child support regime to improve administrative efficiency, reduce complexity, improve fairness and encourage compliance.
5. Specifically, the Bill:
 - a. simplifies penalty rules, removes minimum rates for penalties and introduces grace periods for late payment penalties for new clients;
 - b. enables payments by compulsory employer deduction;
 - c. widens the definition of income used for child support purposes;
 - d. provides Inland Revenue with greater discretion to adjust repayment and expenditure calculations in unusual custody circumstances;
 - e. internationalises exemptions for payment concerning those in prison, those in hospital and those suffering long-term illness; and,
 - f. makes other minor technical amendments to improve the administration of the scheme.

Consistency of the Bill with the Bill of Rights Act

Section 19 – Freedom from discrimination

6. Section 19 of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the grounds of discrimination 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
9. Clause 5(3) of the Bill amends Section 5 of the principal Act to change the end date of a secondary school-attending child's eligibility for child support from the date of the child's nineteenth birthday to 31 December in the year in which the child turns 18, regardless of whether the child continues to attend school after this date.
10. The end date for child support eligibility is intended to act as a proxy for financial independence. Children who leave secondary school are automatically ineligible for child support under the principal Act, due to their ability to enter employment and/or receive main government benefits.
11. The effect of this change will be that students who remain in school past the end of the year they turn 18 are ineligible for child support, while children in school up until the end of the year they turn 18 are eligible. This distinction constitutes *prima facie* discrimination on the basis of age under s 19 of the Bill of Rights Act. There is no rational connection to financial independence to justify this distinction, as children still in school cannot seek full time employment or receive main benefits.
12. However, this discrimination already exists within the principal Act, which limits eligibility for child support to those 18 years of age and younger, irrespective of whether the child stays at school once they reach the age of 19. It is outside of the purview of this vet to examine the principal Act. The only effect of proposed cl 5(3) is to amend the date on which a school-attending child ceases to be eligible for child support from the date of their nineteenth birthday to 31 December of the previous year. It is this amendment which will need to be justified with regard to section 5 of the Bill of Rights Act.
13. Where a provision is found to limit a right affirmed in the Bill of Rights Act, under s 5 of the Bill of Rights Act, this limit may be justifiable where the limit serves an important objective, and where the limits on the right are rationally connected to achieving that

¹ See, for example, *Atkinson v Minister of Health and others* [2010] NZHRRT 1; *McAlister v Air New Zealand* [2009] NZSC 78; and *Child Poverty Action Group v Attorney-General* [2008] NZHRRT 31.

² See, for example, *Child Poverty Action Group v Attorney-General* above n 1 at [179]; and *McAlister v Air New Zealand* above n 1 at [40] per Elias CJ, Blanchard and Wilson JJ.

objective, limit the right no further than necessary and are proportional to its importance.

14. The purpose of the eligibility change in clause 5(3) is to align eligibility criteria for child support with the eligibility criteria for other regimes, such as Working for Families benefits,³ unsupported child benefits, and eligibility for the child to be classed as a dependent child for main benefits,⁴ all of which may only be claimed by eligible parents until 31 December of the year in which a child turns 18. The Inland Revenue Department (IRD) administer all of these schemes. The intent behind standardising the eligibility criteria of the schemes is to improve customer understanding of their IRD entitlements and obligations. IRD also consider that improved customer understanding will likely improve compliance by liable parents.
15. We acknowledge that having a customer-focused system of benefits and obligations is an important objective for IRD, and that optimising compliance with child support payments by liable parents is essential to ensuring the fair and efficient maintenance and administration of the scheme.
16. There is a rational connection between the proposed change in eligibility and aligning the principal Act with other IRD-administered financial assistance schemes. This consistency is rationally connected to the objectives of greater customer understanding of eligibility requirements and, potentially, greater compliance from liable parents.
17. The change to eligibility is targeted in scope and goes no further than required to achieve the desired consistency. We consider that the change in entitlement for a small number of customers is proportionate to the potential gains from increased customer engagement and compliance with the child support scheme.
18. For these reasons, we consider that any restrictions within the Bill on the right to be free from discrimination are justified under s 5 of the Bill of Rights Act.

Conclusion

19. 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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³ See Income Tax Act 2004, KD 2AA(7)

⁴ See Social Security Act 2018, cl 103

