

14 May 2019

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Social Assistance Legislation (Budget 2019 Welfare Package) Amendment Bill

1. We have considered whether the Social Assistance Legislation (Budget 2019 Welfare Package) 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 (PCO21833/1.19). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. The Bill amends the Social Security Act 2018 ('the principal Act') to:
 - a. remove the benefit deductions, under ss 192 to 194 of the principal Act, for sole parents who do not identify the other parent of the child, apply for child support, or both; and
 - b. provide for mandatory annual adjustment of the rates of main benefits by the percentage of any increase in average ordinary time weekly earnings.
4. The Bill also creates a new regulation-making power under the Veterans' Support Act 2014 in relation to the abatement of veteran's pensions. Currently, s 171 of the Veterans' Support Act 2014 provides for the abatement of a veteran's pension.
5. We note that s 453(2) of the principal Act currently lists a number of types of benefits which are subject to mandatory inflation adjustment. The Bill categorises these further into main benefits; and certain benefits that are not main benefits. Under the Bill, main benefits¹ will be required to be adjusted by any percentage movement upwards in average ordinary time weekly earnings (i.e. the rate of adjustment will no longer be measured by reference to the Consumer Price Index). Certain benefits that are not main benefits will continue to be adjusted for inflation only.² We understand that main benefits are a person's main source of income, and the purpose of the change is to ensure that rates of main benefits are maintained relative to wages. Whereas the types of benefits that continue to be inflation adjusted are supplementary payments to meet particular costs, rather than for the purpose of income replacement. We consider that this distinction does not engage the right to freedom from discrimination, and that even if it did, it would be justified because of the different purposes of these benefits.

¹ These are rates of jobseeker support, sole parent support, supported living payment, youth payment and young parent payment, and generally abolished former widows' benefits and generally abolished former DPB for solo parents.

² These are the orphan's benefit, unsupported child's benefit, and rates of benefits payable to long-term hospital patients.

6. 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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