Student Loan Scheme Bill

13 August 2010

ATTORNEY-GENERAL

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
STUDENT LOAN SCHEME BILL

1. We have considered whether the Student Loan Scheme Bill (PCO 13816/17.0) (the “Bill”) is consistent with the New Zealand Bill of Rights Act 1990 (the “Bill of Rights Act”). We understand that the Bill is likely to be considered by the Cabinet Legislation Committee at its meeting on Thursday, 19 August 2010.

2. The purpose of the Bill is to replace the Student Loan Scheme Act 1992 and reform the way student loans are repaid and administered. It is not intended as a wider review of student loan scheme policy.

3. The changes to the administration of the student loan scheme are characterised by three elements:
   - implementing a new electronic loan management system;
   - substituting the annual assessment (for most borrowers) with a pay-period assessment; and
   - replacing the current interest and penalties rules with those that apply for other taxes.

Clause 155 of the Bill imports certain offences from the Tax Administration Act 1994, including those contained in s 143 which creates absolute liability offences. We considered this provision in light of the right to be presumed innocent affirmed in s 25(c) of the Bill of Rights. Section 143(1)(b) provides that a person is guilty of an offence for not providing information to the Commissioner of Inland Revenue when required to do so by a tax law.

Section 143(2) contains a defence for failing to provide information to the Commissioner, if a person proves that they did not have the information in their knowledge, possession or control. This arguably requires a defendant to disprove an element of the offence.

It can be a justifiable limit in terms of s 5 of the Bill of Rights to place such an onus on the defendant where the reasons for the failure to comply with the regulatory requirements are peculiarly within the knowledge of the person concerned. The penalty upon conviction under this provision is by way of a fine only. For these reasons we conclude that no issue of inconsistency with s 25(c) of the Bill of Rights Act arises.

We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. This advice has been prepared by the Public Law Group and the Office of Legal Counsel.
In addition to the general disclaimer for all documents on this website, please note the following: This advice was prepared to assist the Attorney-General to determine whether a report should be made to Parliament under s 7 of the New Zealand Bill of Rights Act 1990 in relation to the Student Loan Scheme Bill. It should not be used or acted upon for any other purpose. The advice does no more than assess whether the Bill complies with the minimum guarantees contained in the New Zealand Bill of Rights Act. The release of this advice should not be taken to indicate that the Attorney-General agrees with all aspects of it, nor does its release constitute a general waiver of legal professional privilege in respect of this or any other matter. Whilst care has been taken to ensure that this document is an accurate reproduction of the advice provided to the Attorney-General, neither the Ministry of Justice nor the Crown Law Office accepts any liability for any errors or omissions.