

7 June 2018

Hon David Parker, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill**

### **Purpose**

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1. We have considered whether the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) 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 14 (freedom of expression) and s 21 (unreasonable search and seizure). Our analysis is set out below.

### **The Bill**

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3. The Bill is a taxation omnibus Bill which amends the Tax Administration Act 1994, the Income Tax Act 2007, and twelve other pieces of legislation.
4. The main objectives of the Bill are to set the annual rates of income tax for the 2018-19 tax year, and modernise key aspects of the Taxation Administration Act 1994 in relation to information collection, use, and disclosure.
5. The Bill also proposes to reform the administration of individuals' income tax and contains remedial changes and amendments to the tax treatment of not-for-profits, the Families Package, GST, land sale rules, and foreign investment and fund rules.

### **Consistency of the Bill with the Bill of Rights Act**

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#### **Section 14 – Freedom of Expression**

6. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.<sup>1</sup>
7. Clause 15 of the Bill inserts new subpart 3A, which restates the Commissioner's existing powers under the Tax Administration Act 1994 for the collection, use and disclosure of revenue information. New subpart 3A also inserts a number of requirements relating to the collection, use and disclosure of revenue information, including to:
  - a. allow the Commissioner to require information from large multinational groups;

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<sup>1</sup> See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

- b. provide a regulation-making power for the regular collection of bulk data;
  - c. describe how information may be used;
  - d. protect the confidentiality of sensitive revenue information, and;
  - e. to allow permitted disclosures of sensitive revenue information for certain specific or appropriate purposes.
8. These provisions may be seen to limit s 14 of BORA, noting that many of the Commissioner's powers to collect revenue information that are contained in the Bill are not new powers but are restated from the Tax Administration Act 1994.
9. We consider that the limitations contained in the Bill are justified under s 5 of the Bill of Rights Act because:
- a. the objective of collecting revenue information and bulk data to efficiently and effectively administer the tax system is sufficiently important to justify some limitation on s 14;
  - b. requiring the people who hold that information to provide it to the Commissioner is rationally connected to that objective;
  - c. subpart 3A impairs s 14 no more than is reasonably necessary (for example, it only requires the provision of certain revenue information that is relevant to its specific objectives); and
  - d. given the importance of taxation, and the efficiency of its administration to the function of Government, the above limits are proportionate to the importance of the objective.
10. For these reasons, we conclude that any limits to the freedom of expression imposed by the Bill are justified under s 5 of the Bill of Rights Act.

## **Section 21 – Unreasonable search and seizure**

11. Section 21 of the Bill of Rights Act affirms that everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, correspondence or otherwise. The right to be secure against unreasonable search or seizure protects a number of values including personal privacy, dignity, and property.<sup>2</sup>
12. Clause 15 of the Bill inserts new s 17, which contains a power for the Commissioner to access any property or documents. That power may be exercised for the purpose of inspecting a document, property, process, or matter that the Commissioner considers is likely to provide information that would otherwise be required for the purposes of the Inland Revenue Acts and any function lawfully conferred on the Commissioner. New s 17 does not confer a new power on the Commissioner but simply restates s 16 of the current Tax Administration Act. For completeness, we have assessed it afresh for compliance with the Bill of Rights Act. This amounts to a search and seizure for the purposes of s 21 of the Bill of Rights Act.

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<sup>2</sup> See, for example, *Hamed v R* [2012] 2 NZLR 305 at [161] per Blanchard J.

13. Ordinarily a provision found to limit a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if it can be considered reasonably justified in terms of s 5 of that Act. However, the Supreme Court has held an unreasonable search logically cannot be demonstrably justified and therefore the inquiry does not need to be undertaken.<sup>3</sup> In assessing whether the search and seizure powers in the Bill are reasonable, we have considered the importance of the objective sought to be achieved and whether the provisions are rationally connected and proportionate to that objective.
14. We consider that the powers of access and inspection that have been restated in new s 17 are reasonably required to allow the Commissioner to perform their functions and duties, which are aimed at the important objective of ensuring effective enforcement of tax standards. We note that in order to exercise the power of entry, the Commissioner must not enter a private dwelling to access any property or documents except with the consent of an occupier or under a warrant issued under new s 17D.
15. We therefore consider the powers of access and inspection that have been restated in new s 17 to be reasonable for the purposes of s 21 of the Bill of Rights Act.

## **Conclusion**

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

Edrick Child  
**Acting Chief Legal Counsel**  
**Office of Legal Counsel**

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<sup>3</sup> *Hamed v R* [2011] NZSC 101, [2012] 2 NZLR 305 at [162] per Blanchard J.