

10 May 2017

Hon Christopher Finlayson QC, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Budget Measures: Family Incomes Package) Bill**

### **Purpose**

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1. We have considered whether the Taxation (Budget Measures: Family Incomes Package) 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 19(1) (freedom from discrimination). Our analysis is set out below.

### **The Bill**

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3. The purpose of the Bill is to give effect to tax and tax credit reforms to be announced in Budget 2017. To this end, the Bill amends the:
  - a. Income Tax Act 2007
  - b. Tax Administration Act 1994
  - c. Taxation (Annual Rates and Budget Measures) Act 2011, and
  - d. Customs and Excise (Tobacco Products – Budget Measures) Amendment Act 2016.
4. The amendments include increasing the two lowest personal income tax thresholds, repealing the Independent Earner Tax Credit, and increasing the younger child payment rates of the Family Tax Credit. The changes are intended to provide better rewards for hard work, improve incomes for those with young children or high housing costs, and simplify the tax and transfer system.

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

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#### **Section 19(1) – Freedom from discrimination**

5. Section 19(1) of the Bill of Rights Act affirms the right to be free from discrimination on the prohibited grounds set out in the Human Rights Act 1993 ('the Human Rights Act').

6. The key questions determining whether legislation limits the freedom from discrimination are:<sup>1</sup>
  - a. does the legislation draw a distinction on one of the prohibited grounds of discrimination under the Human Rights Act?
  - b. if so, does the distinction involve material disadvantage to one or more classes of individuals?
7. 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.<sup>2</sup>
8. Taxation legislation necessarily draws distinctions based on a number of factors, including on the prohibited grounds of discrimination in s 21 of the Human Rights Act. For example, such distinctions might include marital status, family status, age, and employment status. It is not clear, however, that any such distinctions in the Bill would result in material disadvantage for any class or classes of person, as any disadvantage appears to be minimal. For the purposes of this advice, we assume that some material disadvantage could arise.
9. To the extent the Bill may give rise to discrimination, however, we consider that any such limits are demonstrably justified under s 5 of the Bill of Rights Act.
10. The objective of the Bill is sufficiently important to justify some limit on s 19(1) and any limits appear rationally and proportionately connected to that objective. Parliament is entitled to appropriate latitude to achieve its objectives.<sup>3</sup> Achieving a fair and efficient tax system is a complex social policy matter and there can be 'many ways to approach a particular problem, and no certainty as to which will be the most effective.'<sup>4</sup> Having established basic tax rates and tax credits, it is a matter of legitimate policy choice as to where the thresholds are drawn.
11. We therefore consider the Bill appears to be consistent with the right to be free from discrimination affirmed in s 19(1) of the Bill of Rights Act.

## **Conclusion**

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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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<sup>1</sup> 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.

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

<sup>3</sup> *Hansen* at [126] per Tipping J.

<sup>4</sup> *Canada (A-G) v JTI-McDonald Corp* [2007] 2 SCR 610 at [43].