

11 June 2019

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Taxation (Kiwisaver, Student Loans, and Remedial Matters) Bill

Purpose

1. We have considered whether the Taxation (Kiwisaver, Student Loans, 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 not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 21910/1.30). 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 14 (freedom of expression). Our analysis is set out below.

The Bill

4. The Bill amends the KiwiSaver Act 2006, Student Loan Scheme Act 2011, Income Tax Act 2007, Income Tax Act 2004, Income Tax Act 1994, Income Tax Act 1976, Tax Administration Act 1994, Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Act 2019, Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018, Taxation (Research and Development Tax Credits) Act 2019, and the Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995.
5. The overall aim of the proposals is to simplify and modernise the administration of Student Loans and KiwiSaver, improve current tax settings within a broad-base, low-rate framework, and extend the refundability of research and development tax credits to support government objectives relating to increasing firm expenditure on research and development.

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of Expression

6. Section 14 of the Bill of Rights Act affirms the right to freedom of expression. This includes the freedom to seek, receive, and impart information and opinions of any kind and 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.¹

¹ *RJR MacDonald v Attorney-General of Canada* (1995) 127 DLR (4th).

7. There are several provisions in the Bill that compel the provision of specific information, including:
 - a. clause 13, which requires employers to provide the Commissioner with information about its employees' gross salary or wages for employees participating in KiwiSaver, and
 - b. clause 25, which requires that employers provide the Commissioner with information about the rate of superannuation contribution tax it applied to an employee's KiwiSaver contribution.
8. Where a provision is found to limit a particular right or freedom, it may nevertheless be consistent with the Bill of Rights Act if it can be considered a reasonable limit that is justifiable in terms of s 5 of that Act. The s 5 inquiry may be approached as follows:
 - a. Does the provision serve an objective sufficiently important to justify some limitation of the right or freedom?
 - b. If so, then:
 - i. is the limit rationally connected with the objective?
 - ii. does the limit impair the right or freedom no more than is reasonably necessary for sufficient achievement of the objective?
 - iii. is the limit in due proportion to the importance of the objective? ²
9. We consider that the objectives of the Bill are sufficiently important to justify some limitation on the right to freedom of expression, and that the limit proposed by cls 13 and 25 are rationally connected to the Bill's objectives. Clauses 13 and 25 of the Bill enable the Inland Revenue Department to efficiently calculate and collect the correct amount of tax owed by employees.
10. In particular, the information collected at cl 13 allows the Inland Revenue Department to pay out KiwiSaver contributions before they are received from the employer, meaning that members receive the benefit of their contributions being invested sooner. The information collected at cl 25 supports the Inland Revenue Department to more easily verify that the correct tax rate has been applied by employers and reduces the likelihood that employers are subject to penalties in the case of any miscalculation.
11. We consider that the limits are no more than is reasonably necessary for, and proportionate to, the achievement of the Bill's objectives. The Bill only collects information necessary for achieving the objectives, and this information is of a type that is consistent overall with the many other provisions in taxation legislation requiring employers to provide information to the Commissioner.

² *Hansen v R* [2007] NZSC 7 [123].

12. 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.

Conclusion

13. 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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