

16 March 2017

Hon Christopher Finlayson QC, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Youth Employment Training and Education Bill**

### **Purpose**

---

1. We have considered whether the Youth Employment Training and Education Bill ('the Bill'), a member's Bill in the name of Darroch Ball MP, 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 (freedom from discrimination). Our analysis is set out below.

### **The Bill**

---

3. The Bill has the purpose of creating an alternative education/employment opportunity through the New Zealand Defence Force for youth aged 15 to 17 who are disengaging from the formal education system. The Bill amends the Defence Act 1990 and the Education Act 1989 to achieve its purpose.

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

---

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

4. 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').
5. 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 disadvantage to one or more classes of individuals?
6. 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>

---

<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.

7. Section 21(i) of the Human Rights Act prohibits discrimination on the basis of age for persons over the age of 16. By conferring an advantage on 16 and 17 year olds only, the Bill could be seen as unlawfully discriminating against those aged 18 and over. Participants in the programme are not regular forces or civil staff for the purposes of the Defence Act 1990. There is no comparable programme for those aged 18 or over, as they would need to enlist to receive comparable training from the army.
8. To the extent that the Bill creates a material disadvantage to those aged 18 and over, we consider it is justifiable. The objective of the Bill is to provide an alternative education/employment programme to youth who are disengaging from the formal education system. It would be unreasonable to conclude that the Bill unlawfully discriminates because it fails to deal with every case of disadvantage at the same time, effectively inhibiting government from taking steps to alleviate disadvantage of some without doing it for all.
9. We therefore consider that the Bill appears to be consistent with the right to freedom from discrimination affirmed in s 19(1) of the Bill of Rights Act.

## **Conclusion**

---

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

Jeff Orr  
**Chief Legal Counsel**  
**Office of Legal Counsel**

---

<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.