

Student Loan Scheme Amendment Bill

17 October 2006

Attorney-General

LEGAL ADVICE

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

1. We have considered whether the Student Loan Scheme Amendment Bill ('the Bill'), (PCO 7099/5) is consistent with the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act'). We understand that this Bill will be considered by the Cabinet Legislation Committee at its meeting on 26 October 2006.
2. We understand that the Bill is likely to be subject to further amendments before it is submitted to Cabinet, and we will provide you with further advice should this prove necessary.
3. The Bill amends the Student Loan Scheme Act 1992 ('the Act'), which provides for the assessment and collection of loan payments under the student loan scheme. The Bill, *inter alia*, extends the amnesty on student loan penalties, and redefines 'borrowers overseas'.
4. The Bill also provides the Commissioner with access to the information recording system used by the New Zealand Customs Service to store arrival or departure information.

Section 21: Unreasonable Search and Seizure

5. Clause 36 of the Bill provides the Commissioner of the Inland Revenue Department with direct access to any information recording system used by the New Zealand Customs Service to store arrival or departure information. The purpose of these provisions is to assist the Commissioner to verify:
 - borrowers' entitlements to a full interest write-off
 - whether borrowers are New Zealand based or overseas based
 - whether borrowers are resident or non-resident.
6. We have considered whether these provisions are consistent with section 21 of the Bill of Rights Act, which provides the right to be secure against unreasonable search and seizure. In our opinion, the search powers accorded to the Commissioner are reasonable in terms of section 21. The Bill provides the following protections on the use of the search power:
 - the Commissioner may only search information relating to pre-selected borrowers;
 - the Commissioner must not search for information other than arrival and departure information, and must not search for information about a person who is not a borrower;

- the Commissioner must take reasonable steps to ensure only persons with appropriate powers access the database, and that a record of access to the database is kept.

CONCLUSION

7. We have concluded that the provisions in the Bill appear to be consistent with the rights and freedoms contained in the Bill of Rights Act.

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