



NEW ZEALAND
FOREIGN AFFAIRS & TRADE



New Zealand Ministry of
Foreign Affairs and Trade
Manatu Aorere

11 August 2015

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Grant Cheesman
Borello Legal
Perth, Western Australia

Grantc@Borrellolegal.com.au

Dear Grant Cheesman

I refer to your email of 3 June 2015 in which you request the following under the Official Information Act 1982 (OIA):

"...Was the New Zealand Government consulted by the Australian Government over the SUPERANNUATION GUARANTEE (ADMINISTRATION) AMENDMENT BILL (Cth-Australia)?

The Bill will remove the requirement for employers to offer a choice of superannuation fund to temporary residents of Australia. A 'temporary resident' under the Migration Act 1958 (Cth - Australia) will be extended to include New Zealand citizens,

If yes, please provide a copy of all correspondence between the New Zealand Government and the Australian Government as relates to SUPERANNUATION GUARANTEE (ADMINISTRATION) AMENDMENT BILL (Cth- Australia)"


Attached are the documents relevant to your request. Some portions of the documents are withheld under sections 6 and 9 of the OIA.

- Section 6(a): To avoid prejudicing international relations of the New Zealand Government.
- Section 9(2)(a): To protect individuals' privacy

Where the information has been withheld under section 9 of the OIA, no public interest in releasing the withheld information has been identified that would be sufficient to override the reasons for withholding it.

You have the right under section 28(3) of the OIA to seek a review of this response by the Ombudsman.

Yours sincerely

A handwritten signature in black ink, appearing to read "Mark Talbot", with a long horizontal flourish extending to the right.

~~Mark Talbot~~
for Secretary of Foreign Affairs and Trade

From: s9(2)(a)
Sent: Monday, 11 May 2015 1:29 p.m.
To: s9(2)(a)
Cc: s9(2)(a)
Subject: RE: Consultation on superannuation guarantee compliance and NZ residents [SEC=UNCLASSIFIED]

Thanks . s9(2)(a) I apologise for the late response, I was on leave last week.

| s9(2)(a) Policy Analyst, Policy and Strategy | Inland Revenue
s9(2)(a)

From: s9(2)(a)
Sent: Monday, 11 May 2015 11:36 a.m.
To: s9(2)(a)
Cc: s9(2)(a)
Subject: RE: Consultation on superannuation guarantee compliance and NZ residents [SEC=UNCLASSIFIED]

No need to worry about this now s9(2)(a)
s6(a)

Regards,

s9(2)(a)

s9(2)(a)

Analyst

Personal and Retirement Income Division
The Treasury, Langton Crescent, Parkes ACT 2600

s9(2)(a)

From: s9(2)(a)
Sent: Monday, 4 May 2015 1:17 PM
To: s9(2)(a)
Cc: s9(2)(a)
Subject: RE: Consultation on superannuation guarantee compliance and NZ residents [SEC=UNCLASSIFIED]

Hi s9(2)(a)

We are currently in the process of arranging for submissions to be placed on the Treasury website regarding the superannuation consultation.

s6(a)

Thanks

s9(2)(a)

Analyst

Personal Retirement and Income Division
The Treasury, Langton Crescent, Parkes ACT 2600

s9(2)(a)

From: s9(2)(a)
Sent: Thursday, 23 April 2015 2:50 PM
To: s9(2)(a)
Cc: s9(2)(a)
Subject: RE: Consultation on superannuation guarantee compliance and NZ residents [SEC=UNCLASSIFIED]

Hi s9(2)(a)

Thank you for your email, I can confirm your understanding is correct, the proposed legislation will not impact on the operation of the Trans-Tasman Portability arrangement.

As noted in your email, under the proposed legislation an employer will no longer be required to provide an employee with a choice of fund form when they begin employment if the employee is a temporary resident. This will mean that the superannuation contributions by the employer will be made into the employer's nominated fund (compliant with default rules) unless the employee informs the employer of their choice.

Kind regards

s9(2)(a)

s9(2)(a)

Senior Adviser Contributions and Accumulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
Parkes ACT 2600

s9(2)(a)

From: s9(2)(a)
Sent: Wednesday, 22 April 2015 10:17 AM
To: s9(2)(a)
Cc: s9(2)(a)
Subject: RE: Consultation on superannuation guarantee compliance and NZ residents [SEC=UNCLASSIFIED]

Hi s9(2)(a)

Thanks again for informing us regarding this proposed legislation. I've had a look through the draft legislation and the explanatory note that you linked to, and would appreciate if you could confirm that my understanding is correct.

Under the proposed legislation an employee will no longer be required to provide an employee with a choice of funds form when they begin employment if the employee is a temporary resident. This will mean that the superannuation contributions by the employer will be made into the employer's nominated fund (compliant with default rules) unless the employee informs the employer of their choice.

From my understanding this doesn't impact the operation of the Trans-Tasman Portability arrangement.

Kind regards,
s9(2)(a)

s9(2)(a) | Policy Analyst, Policy and Strategy | Inland Revenue
s9(2)(a)

From: s9(2)(a)
Sent: Tuesday, 7 April 2015 12:11 p.m.
To: s9(2)(a)
Cc: (2)(a)
Subject: Consultation on superannuation guarantee compliance and NZ residents [SEC=UNCLASSIFIED]

Hi s9(2)(a)

As discussed, last week we went out for public consultation on proposed legislation regarding superannuation compliance for employers. As part of this proposed legislation, employers will no longer have to provide a choice of superannuation fund form for New Zealand residents; however, New Zealand residents can still choose their superannuation fund.

The proposed legislation and the accompanying explanatory memorandum regarding can be found on the Treasury website [here](#).

Please contact me if you would like to discuss further.

Kind regards
s9(2)(a)

s9(2)(a)
Senior Adviser | Contributions and Accumulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
Parkes ACT 2600

s9(2)(a)

(Emails between NZ High Commission and Australian Treasury)

From: s9(2)(a)
Sent: Wednesday, 3 June 2015 7:54 p.m.
To: s9(2)(a)
Cc: s9(2)(a)
Subject: RE: Meeting tomorrow may be cancelled [SEC-UNCLASSIFIED]

Hi s9(2)(a)

Thank you for your email and the heads up on the possibility of the meeting being cancelled.

It would be useful to discuss the inclusion of all special category visa holders in the definition of temporary resident, I am interested in understanding better the rationale for this as they are distinct from other temporary visa holders in that they can reside indefinitely in Australia. I appreciate from the explanatory memorandum that this is based on the Migration Act. But the Social Security Act, which annexes the Aus/NZ Social Security Agreement (and includes provisions for the disbursement of superannuation in Australia and New Zealand) has a definition of protected Special Category Visa holders which defines these visa holders as Australian residents (in the same category as Australian Citizens and Permanent Residents under section 7 of the Act).

I would also be interested in understanding better how the changes will work in practice and how many "temporary residents" the new provisions are likely to apply to. Will the bulk be New Zealanders?

It would also be useful to hear about your discussions with Inland Revenue Department.

Warm regards, s9(2)(a)

s9(2)(a)

s9(2)(a)

New Zealand High Commission Canberra | Te Aka Aorere

s9(2)(a)

Commonwealth Avenue
Canberra
ACT 2600

www.mfa.gov.au | www.nzembassy.com | www.aid.govt.nz | www.safetravel.govt.nz

From: s9(2)(a)
Sent: Wednesday, 3 June 2015 4:08 p.m.
To: s9(2)(a)
Cc: s9(2)(a)
Subject: Meeting tomorrow may be cancelled [SEC=UNCLASSIFIED]

Hi s9(2)(a)

I called and left a message on your phone but I thought I might follow up with an email as well.

I just thought I would give you a heads up that there is a good chance we may have to move the meeting tomorrow to another day. Some legislation I have been working on is to be debated in Parliament house tomorrow (we thought it was going to be debated today but it has slipped). I will let you know what is happening as soon as possible tomorrow. I do apologise about this happening at the last minute but unfortunately what has happened was out of our control. It is out of Treasury's control.

Also, it would be great if you could send through to me just some quick points about what you hope to get out the meeting with Treasury if that's ok.

Thanks so much and happy to chat if you have any questions.

s9(2)(a)

s9(2)(a)

Analyst

Personal and Retirement Income Division
The Treasury, Langton Crescent, Parkes ACT 2600
phone: s9(2)(a)
fax: s9(2)(a)
email: s9(2)(a)

Thanks s9(2)(a) It was great meeting with you too.

Happy to chat if you have any further questions.

s9(2)(a)

s9(2)(a)

Analyst

Personal and Retirement Income Division
The Treasury, Langton Crescent, Parkes ACT 2600
s9(2)(a)
s9(2)(a)

s9(2)(a)

From: s9(2)(a)
Sent: Thursday, 4 June 2015 3:39 PM
To: s9(2)(a)
Subject: FW: SUPERANNUATION GUARANTEE (ADMINISTRATION) AMENDMENT BILL 2015

[UNCLASSIFIED]

Dear s9(2)(a)

Thank you very much for setting up that meeting. It was very much appreciated.

As discussed, here is that submissions on the Bill that copied to me. I understand this has been sent to the Secretariat of the Joint Parliamentary Committee on Human Rights.

For your information.

Warm regards, s9(2)(a)

From: s9(2)(a)
Sent: Tuesday, 2 June 2015 1:29 p.m.
To: s9(2)(a)
Subject: SUPERANNUATION GUARANTEE (ADMINISTRATION) AMENDMENT BILL 2015

Dear s9(2)(a),

I wish to draw the Committee's attention to the amendment to the *Superannuation Guarantee (Administration) Amendment Bill 2015 (SGGA)* – see <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr5469%22;rec%3D>.

This Bill amends Part 3A of the SGAA in a manner that discriminates against New Zealand citizens permanently residing in Australia. All other groups permanently residing in Australia (Australian citizens and permanent visa holders) will be unaffected. This represents direct discrimination based on nationality.

Additionally, there appears to be a strong component of indirect racial discrimination based upon NZ national origins, as this legislation affects the majority of NZ born in Australia – as described in detail on page 11 of the attached document:

“The statistics become even more disturbing for laws/policies that exclude all SCV holders. With fewer than 12,000 permanent visas issued to some half a million New Zealand born in Australia, and with a mere 32.5% uptake of citizenship regardless of year of arrival, some 60% of this cohort are affected compared to <5% for all other birthplaces combined”

The associated Explanatory Memorandum attempts to justify this direct discrimination by labelling New Zealand citizens who hold Special Category Visas (SCV) as ‘temporary residents’ – despite acknowledging that the SCV grants the right of indefinite residence:

1.23 A ‘temporary resident’ under the Migration Act 1958 would also include a New Zealand citizen, even though New Zealand citizens can generally stay indefinitely in Australia.

However, it is important to note that neither the *Migration Act 1958* nor the underlying *Regulations* define (or even contain) the term 'temporary resident' as incorrectly claimed by the EM ('temporary visa' yes, 'temporary resident' no). As detailed in the attached paper, the only reason the SCV meets the definition of 'temporary visa' is that it is conditional upon NZ citizenship status. The mere fact that the SCV is automatically cancelled on departure and automatically reinstated upon re-arrival also does not justify the arbitrary classification of its holders as 'temporary residents' as for example, the Permanent Resident of Norfolk Island permanent visa operates in precisely the same manner but these people are not classed as 'temporary residents'.

The only reason for the imposition of this discrimination appears to be due entirely to mere administrative convenience:

1.23 ... Including New Zealand citizens in the definition of a 'temporary resident' will further reduce complexity and compliance costs for small businesses. This is because small businesses would otherwise have to distinguish between New Zealand citizens and other temporary residents.

Firstly, New Zealand citizens are NOT temporary residents – as explained above and in some detail in the attached paper.

Secondly, the ICCPR has held that mere administrative convenience cannot be a justification for discrimination.

Thirdly, and most importantly, this supposed 'reason' is patently not true – as any employer will already have, or can easily obtain a non-citizens VEVO document online from Immigration to verify their work rights. The VEVO document clearly describes the SCV as visa class TY444 and the stay as "INDEFINITE". It is therefore an easy matter for any employer to differentiate between NZ citizens and actual temporary residents. In any case, the mere production of an NZ passport would suffice just as well. The inclusion of New Zealand citizens in such a definition of 'temporary resident' can therefore be seen as entirely unjustified.

Finally, in case there was any doubt, the justification given for this difference of treatment clearly does not generally apply to New Zealanders in Australia, the majority of whom are classed by Immigration as either permanent or long term residents:

1.24 Many temporary residents do not have existing superannuation arrangements and given the short term nature of their employment are unlikely to choose a fund.

I note the EM claims that no human rights issues are raised by the Bill.

Sincerely,

s9(2)(a)

RELEASSED UNDER THE
OFFICIAL INFORMATION ACT