

6 October 2016

Robert McKenzie
Email: fyi-request-4644-21480478@requests.fyi.org.nz

Dear Mr McKenzie

Official Information Act 1982 request

I refer to your email of 22 September 2016 seeking information, under the Official Information Act 1982 (OIA), about the application of section 26 of the New Zealand Bill of Rights Act 1990 (NZBORA) to the Student Loan Scheme Amendment Act 2014.

You asked:

Under section 26 of the New Zealand Bill of Rights Act 1990:

"26 Retroactive penalties and double jeopardy (1) No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred.

How can an individual be charged and convicted of a crime when at the time of signing the student loan contract defaulting on the said loan was not a crime?

This is like fining a motorist for going 60km in a 60km zone that was later changed to a 50km zone then retrospectively fining them after the fact.

Does not the retrospective law change only apply to loans that were taken out after the law change?

One could argue that many students had they known that they could be arrested leaving New Zealand would never have signed up for these insidious loans.

Also do the IRD still have copies of all the original signed student loan contracts dating back to 1992 as proof of claim should the need arise?

The Ministry of Justice does not hold the information you have requested. Also, the Ministry of Justice cannot provide you with legal advice about the application of the NZBORA. You may wish to seek independent legal advice on NZBORA and the Student Loan Scheme Amendment Act at a Community Law Centre, which provide initial advice free of charge. Information on how to contact an office near you can be found at www.communitylaw.org.nz. Citizen's Advice Bureaus also provide free advice. Information on how to contact a Citizen's Advice Bureau can be found at www.cab.org.nz.

We have transferred part of your request to the Ministry of Social Development. Part of the information to which your request relates, namely whether IRD still have copies of all original signed student loan contracts dating back to 1992 as a proof of claim, is not held by us but is believed to be held by the Ministry of Social Development. In these circumstances, we are required by section 14 of the Official Information Act to transfer your request.

You will hear further from the Ministry of Social Development concerning that part of your request.

Yours sincerely

A handwritten signature in black ink that reads "David Crooke". The signature is written in a cursive style with a small dot above the 'i' in David.

David Crooke
Acting Policy Manager
Civil Law and Human Rights