

21 October 2021

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Māori Purposes Bill

1. We have considered whether the Māori Purposes 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 20426/1.33). 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), s 18 (freedom of movement) and s 21 (unreasonable search and seizure) of the Bill of Rights Act. Our analysis is set out below.

The Bill

4. The purpose of the Bill is to contribute to Māori wellbeing and development by providing Māori with greater autonomy and decision making, addressing previous technical issues within legislation, and reducing administrative compliance. To achieve this, the Bill enables minor, technical and non-controversial amendments to be made to Māori development legislation.
5. Specifically, the Bill:
 - a. amends Te Ture Whenua Maori Act 1993 to ensure the Ruapuha Uekaha Hapū Trust can continue to exist and exercise powers, rights, and duties in a manner consistent with the 1990 settlement of the Wai 51 claim in relation to the Waitomo Caves;
 - b. amends the Maori Purposes Act 1959 to give the Rotoaira Trust (the Trust) more autonomy and flexibility in managing Lake Rotoaira (the Lake)¹ and its trout fishery; and
 - c. makes technical amendments to the Maori Trust Boards Act 1955 and the Maori Community Development Act 1962.
6. The Bill also consequentially amends the Maori Assembled Owners Regulations 1995, the Rotoaira Trout Fishing Regulations 1979, and the Maori Trust Boards Regulations 1985.

¹ Lake Rotoaira is defined in s 3 of the Maori Purposes Act 1959 as meaning “the body of water known as Lake Rotoaira; and includes the adjoining waters forming part of the Lake.”

Consistency of the Bill with the Bill of Rights Act

Clause 15 and 16 of the Bill

7. The Lake is Māori freehold land with over 11,000 beneficial owners and the Trust, an ahu whenua trust, administers the Lake on behalf of the beneficial owners.
8. Section 3 of the Maori Purposes Act defines the Lake to mean the body of water known as Lake Rotoaira and includes the “adjoining water forming part of the Lake” which is also defined in s 3 of the Maori Purposes Act.
9. Clause 15(2) of the Bill amends the definition of “adjoining waters forming part of the Lake” to include “those portions of the natural tributaries of Lake Rotoaira situated within the area bounded by longitude 175°42.000'E, State Highway 46, and State Highway 47”.
10. Clause 16 replaces s 4 of the Maori Purposes Act 1959 which provides that, unless an exception applies, a person must not enter or remain in or on any part of the Lake, unless that person holds an entry permit. The trustees of the Trust, or their agents, may issue entry permits authorising the holders to enter in and on the Lake.

Section 18(1) of the Bill of Rights Act

11. Section 18(1) of the Bill of Rights Act affirms the right of people legally in New Zealand to freedom of movement within New Zealand. Freedom of movement entails the right to be able to go where one pleases and along a route of one's choosing.²
12. Where a provision found to limit a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if it can be considered reasonably justified in terms of s 5 of that Act. The s 5 inquiry asks whether the objective of the provision is sufficiently important to justify some limitation on the freedom of expression, and if so, whether the limit on the right is rationally connected and proportionate to achieving that objective and limits the right no more than reasonably necessary to achieve the objective.³
13. This provision may be seen to limit the right to freedom of movement. However, to the extent that it engages the right in s 18(1), we consider it to be rationally connected to the objective, which is to empower the Trust to exercise kaitiakitanga and effectively control entry and fishing on the Lake on behalf of its beneficiaries. The entry requirements are, in our view, proportionate and limit the right no more than reasonably necessary.

Schedule 3 of the Bill - Rotoaira Trout Fishing Regulations

14. Schedule 3 of the Bill, which amends the Rotoaira Trout Fishing Regulations 1979, replaces reg 19 to require every person fishing, or in possession of a rod or gear suitable for fishing, in or in the near vicinity of the Lake, on demand of specified persons, to—
 - a. give his or her true name and place of residence; and
 - b. produce his or her entry permit; and

² Andrew Butler and Petra Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [16.5.5].

³ *Hansen v R* [2007] NZSC 7 at [123].

- c. if fishing for trout or in possession of a rod or gear suitable for fishing for trout, produce his or her trout-fishing licence; and
- d. produce and show the contents of his or her creel or container and any lure or bait in his or her possession.

Section 21 – Unreasonable search and seizure

- 15. Section 21 of the Bill of Rights Act affirms that everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.
- 16. There are two limbs to the section 21 right. First, section 21 is applicable only in respect of those activities that constitute a “search or seizure”. Secondly, where certain actions do constitute a search or seizure, section 21 protects only against those searches or seizures that are “unreasonable” in the circumstances.
- 17. We consider that the power to compel information under reg 19 of the Bill constitutes a search for the purposes of s 21 of the Bill of Rights Act.²
- 18. The next question is whether this search power is reasonable. In assessing this, we have considered the place of the search, the degree of intrusiveness into privacy, and reasons why it is necessary.³
- 19. We consider that the search powers in reg 19 of the Bill appear to be for legitimate and appropriate purposes and are therefore reasonable in terms of s 21 of the Bill of Rights Act. As we have already identified above, the Lake is Māori freehold land and the Trust manages the Lake, and the surrounding areas, on behalf of its beneficiaries and needs to be able to do so effectively. We consider this power to be necessary for the Trust to ensure individuals who are around or on the lake, and are, or appear to be, fishing have the necessary permit to enter and/or licence to fish.

Section 14 – Freedom of expression

- 20. In addition to engaging s 21 of the Bill of Rights Act, we consider that the new reg 19 also *prima facie* limits the freedom of expression under s 14 of the Bill of Rights Act.
- 21. Section 14 of the Bill of Rights Act affirms the right to freedom of expression including the freedom to seek, receive and impart information and opinions of any kind in any form. The right to freedom of expression has also been interpreted as including the right not to be compelled to say certain things or to provide certain information.⁴
- 22. It is clear that the purpose of this regulation is to enable the Trust to ensure people who are fishing on the Lake have the necessary permissions to do so. To the extent that this provision engages the right in s 14 (as to whether such information is truly ‘expressive’ in nature), we consider that the requirement is rationally connected to the objective, which is to empower the Trust to exercise kaitiakitanga and the effective entry and fishing on the Lake on behalf of its beneficiaries. The requirements are, in our view, proportionate and limit the right no more than reasonably necessary.

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

Schedule 4 – Maori Trust Boards Regulations 1985

23. The Bill is making amendments to the Maori Trust Boards Act 1955 and the Maori Trust Boards Regulations 1985 to provide for electronic voting.
24. Schedule 4 of the Bill replaces reg 10 of the Maori Trust Boards Regulations 1985 to require a beneficiary,⁵ who casts a vote, to inform the Returning Officer in writing of their usual place of address and their age. This replaces the current provision which requires the beneficiary to make a declaration when casting their vote.
25. To the extent that this engages s 14, we consider it to be clearly justified. The information is necessary to verify a beneficiary's vote.

Conclusion

26. 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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⁵ A beneficiary means any person for whose benefit the assets of a Board (Māori Trust Board referred to in Part 1 of the Maori Trust Boards Act 1955) are administered under that Act.