

Fisheries Act 1996 Amendment Bill

14 February 2007

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990: FISHERIES ACT 1996 AMENDMENT BILL

1. We have assessed whether the Fisheries Act 1996 Amendment Bill ('the Bill'), (PCO 7710/5) 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 15 February 2007.
2. The purpose of the Bill is to clarify the law by providing clearer direction to persons making fisheries management decisions where there are gaps or flaws in the available information.
3. We have concluded that the Bill does not appear to be inconsistent with the Bill of Rights Act. In reaching this conclusion, we considered potential issues of inconsistency with section 27(1) of the Bill of Rights Act. Our analysis of these potential issues is set out below

CONSISTENCY OF THE BILL WITH THE RIGHT TO NATURAL JUSTICE

4. Section 27(1) of the Bill of Rights Act provides that every person whose interests are affected by a decision by a public authority has the right to the observance of the principles of natural justice.
5. Clause 4 of the Bill amends current section 10(c) and (d) of the Fisheries Act 1996 by collapsing them into a single paragraph and expressly referring to sustainability rather than the purpose of the Fisheries Act 1996. Arguably, this clause raises an issue of natural justice as it directs the decision maker not to use information put before it to postpone or fail to take measures to promote sustainability where that information is uncertain. Nevertheless, this amendment does not limit the factors that the decision maker can take into account in making a decision under the Fisheries Act 1996. Its purpose is to ensure that proper weight is given to the sustainability of fishery resources. Accordingly we have concluded that this provision does not limit the right to natural justice affirmed in section 27 of the Bill of Rights Act.
6. For completeness, we note clause 5 of the Bill, a transitional provision which provides that consultation required under the Fisheries Act is to be treated as complying with the consultation requirements of the Act even though some or all of it occurred before the commencement of the Bill. This provision does not appear to alter any obligation the Minister of Fisheries might have to consult with interested parties.

CONCLUSION

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

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