

# Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Bill

20 April 2010

ATTORNEY-GENERAL

Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Bill (PCO 14274/2.8)  
Our Ref: ATT395/131

I have reviewed the current draft of this Bill for consistency with the New Zealand Bill of Rights Act 1990. The Bill does not raise any apparent inconsistency, apart from one issue that I understand will be addressed by the Cabinet Legislation Committee when it considers the Bill on 22 April 2010.

The Bill will provide for a number of matters relating to management of the Waikato River. It will provide for recognition of a vision and strategy for the River, and for involvement of the named iwi in management of the River. The Bill will also provide for a Waikato River Clean-up Trust and for establishment of a Waikato River Authority, which will act as trustee and perform advisory and management functions.

The Bill is a counterpart to the joint management provisions of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill, which relates to the involvement of Waikato-Tainui in management of the River and also provides for the Trust and the Authority. Both Bills give iwi rights of participation of a kind that the Resource Management Act contemplates for iwi authorities.

The issue relating to consistency with the Bill of Rights concerns clause 4(5)(e) of Schedule 4. This paragraph provides that a member of the Waikato River Authority may be removed if the member "is under a legal incapacity". Separate provision is made for removal in the case of bankruptcy or inability to perform the functions of office. In this context, paragraph (e) could confer a power to remove a member who is subject to an order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or an interim order under the Protection of Personal and Property Rights Act 1988, even if the member is in fact able to perform the functions of office. Paragraph (e) therefore appears to be inconsistent with the right to be free from discrimination on the ground of disability.

This issue has been raised with the Ministry of Justice and Parliamentary Counsel Office. The Ministry will ask the Cabinet Legislation Committee to direct the deletion of paragraph (e). Once this has been done, the Bill will not raise any issue of inconsistency with the Bill of Rights.

In accordance with Crown Law practice, this opinion has been peer reviewed by Victoria Casey, Crown Counsel.

Yours sincerely

Peter McCarthy  
Crown Counsel

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