

# Local Government (Auckland) Bill 2004

22 March 2004

Attorney-General

Legal Advice

Consistency With The New Zealand Bill Of Rights Act 1990:  
Local Government (Auckland) Bill 2004

1. We have considered the Local Government (Auckland) Bill (PCO version 5780/1) for consistency with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). We understand that this Bill is to be introduced into the House on Monday, 29 March 2004. We have been asked to consider this Bill under some urgency.
2. This Bill proposes a number of changes to the structure of transport governance for Auckland, including the disestablishment of Infrastructure Auckland and the transfer of its assets and liabilities to a new council controlled organisation, Auckland Regional Holdings ("ARH"). ARH will be a subsidiary of the Auckland Regional Council. Finally, the Bill improves the management of Auckland's transport and storm-water funding and assets, and regional and district planning under the Resource Management Act 1991.
3. Even though we have come to the conclusion that this Bill does not appear to be inconsistent with the Bill of Rights Act, we wish to draw one aspect of the Bill to your attention.

## ISSUES OF CONSISTENCY WITH THE BILL OF RIGHTS ACT

### Section 17 of the Bill of Rights Act – Right to freedom of association:

4. Clause 7 of the Bill establishes a new organisation called the Auckland Regional Transport Authority ("ARTA"). ARTA is a subsidiary of the ARC. The principal objective of ARTA is to "plan, fund, and develop the Auckland regional transport system in a way that contributes to an integrated, safe, responsive, and sustainable land transport system for the Auckland region" (clause 8(1) refers).
5. All decisions made relating to the operation of ARTA are to be made by or under the authority of the board of ARTA (clause 10(1)). Clauses 11 and 12(1) set out the process for making appointments to the board.
6. Clause 12(3) qualifies clause 12(1) by providing that "no elected member or employee of an Auckland local authority, or person who has a financial interest in any contract or arrangement entered into by ARTA, may be a director of ARTA."
7. We consider that, on the face of it, clause 12(3) of the Bill appears to be inconsistent with the right to freedom of association because it prevents certain persons from being appointed to a statutory body. Section 17 recognises that persons should be free to enter into consensual arrangements with others and to

promote the common interest objectives of the associating group<sup>[1]</sup>. We have therefore gone on to consider whether clause 12(3) is able to be justified in terms of section 5 of the Bill of Rights Act.

### **Section 5 justification**

8. The objective of clause 12(3) appears to be to prevent conflicts of interest arising in respect of members of ARTA that would undermine the body's ability to achieve its principle objective of "plan[ning], fund[ing], and develop[ing] the Auckland regional transport system in a way that contributes to an integrated, safe, responsive, and sustainable land transport system for the Auckland region". Clause 12(3) therefore appears to serve a significant and important objective.

9. In considering whether clause 12(3) is a rational and proportionate measure, we have paid particular regard to clause 12(3)(a)- the fact that no employee of a local authority is able to be appointed to the ARTA Board. We have considered whether such a prohibition is cast too broadly as the prohibition may apply to employees of local authorities who are employed in positions where they are not decision-makers and who do not have an apparent conflict of interest. However, we consider that given the nature of the role of the directors, and the function of ARTA it is likely that appointees will be persons with decision-making experience in areas such as local government. The potential for a conflict of interest to arise is high.

10. We understand that one of the difficulties that clause 12(3) seeks to address is regional factionalism. We understand that one issue that has inhibited the development of an integrated safe, responsive, and sustainable land transport system for the Auckland region is the conflicting regional interests. These differing interests have been promoted by the representatives of the local authorities. Clause 12(3) will therefore meet the objectives of the Bill by putting in place a quality decision-making body that will progress the interests of the entire Auckland region.

### **Conclusion**

11. On balance, we consider that the qualification on the appointments to the Board of ARTA provided in clause 12(3) of the Bill do not appear to be inconsistent with the right to freedom of association. In reaching this conclusion, we have given particular emphasis to the purpose of this legislation, and the need to create an integrated, safe, responsive, and sustainable land transport system for the Auckland region.

12. We have concluded that the Bill does not appear to be inconsistent with the Bill of Rights Act.

13. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. We also attach a copy for referral to the Minister of Internal Affairs, if you agree.

Allison Bennett  
Principal Legal Adviser  
Office of Legal Counsel

Boris van Beusekom  
Senior Legal Adviser  
Bill of Rights/Human Rights Team

CC: Minister of Justice  
Minister of Internal Affairs

In addition to the general disclaimer for all documents on this website, please note the following: This advice was prepared to assist the Attorney-General to determine whether a report should be made to Parliament under s 7 of the New Zealand Bill of Rights Act 1990 in relation to the Local Government (Auckland) Bill. It should not be used or acted upon for any other purpose. The advice does no more than assess whether the Bill complies with the minimum guarantees contained in the New Zealand Bill of Rights Act. The release of this advice should not be taken to indicate that the Attorney-General agrees with all aspects of it, nor does its release constitute a general waiver of legal professional privilege in respect of this or any other matter. Whilst care has been taken to ensure that this document is an accurate reproduction of the advice provided to the Attorney-General, neither the Ministry of Justice nor the Crown Law Office accepts any liability for any errors or omissions.

---

#### Footnotes

1. *Collymore v Attorney-General* [1970] AC 538, at 548