

# Māori Purposes Bill 2007

**Note — the Māori Purposes Bill 2007 was subsequently split into the Māori Purposes Bill (No 2) and the Māori Trustee and Māori Development Amendment Bill at Cabinet Committee stages.**

9 November 2007

Attorney-General

## LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

MĀORI PURPOSES BILL 2007

1. We have assessed whether the Māori Purposes Bill 2007 ('the Bill'), (PCO 8012/3) 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 November 2007.
2. We understand that the Bill is likely to be subject to further amendments before it is submitted to Cabinet, and we will provide you with further advice should this prove necessary.
3. The Bill is an omnibus piece of legislation that amends five existing pieces of legislation relating to Māori Affairs matters. The Bill:
  - Changes the name of the Maniapoto council of elders;
  - Formalises the establishment of a seventh Regional Management Committee for the Kawhia Harbour region;
  - Specifies a minimum voting age of 18 years for Māori Trust Board elections and validates the voting of beneficiaries aged 18 and 19 years prior to the commencement of this amendment; and
  - Increases the statutory cap on the membership of the Waitangi Tribunal from 16 to 20;
  - Establishes the Māori Trustee as a stand-alone organisation;
  - Establishes a new statutory corporation with the primary function of furthering Māori economic development;
  - Makes technical amendments to the Treaty of Waitangi Act 1975 and updates and corrects minor drafting errors in other legislation.

4. We have concluded that the Bill appears to be consistent with the rights and freedoms contained in the Bill of Rights Act. In reaching this conclusion, we considered a potential issue of inconsistency with section 19(1) of the Bill of Rights Act. Our analysis of this issue is set out below.

## **THE RIGHT TO BE FREE FROM DISCRIMINATION**

5. Section 19(1) of the Bill of Rights Act affirms the right to freedom from discrimination on the grounds set out in section 21 of the Human Rights Act 1993. These grounds include age, which means any age commencing with the age of 16 years, and race.
6. In our view, taking into account the various domestic and overseas judicial pronouncements as to the meaning of discrimination, the key questions in assessing whether discrimination under section 19(1) exists are:
  - Does the legislation draw a distinction based on one of the prohibited grounds of discrimination?
  - Does the distinction involve disadvantage to one or more classes of individuals?
7. If these questions are answered in the affirmative, we consider that the legislation gives rise to a *prima facie* issue under section 19(1) of the Bill of Rights Act.
8. Where a provision is found to be *prima facie* inconsistent with a particular right or freedom, it may nevertheless be consistent with the Bill of Rights Act if it can be considered a reasonable limit that is justifiable in terms of section 5 of that Act. The section 5 inquiry is essentially two-fold: whether the provision serves an important and significant objective; and whether there is a rational and proportionate connection between the provision and the objective.<sup>[1]</sup>

### *Minimum voting age*

9. Clause 10(1) of the Bill specifies a minimum voting age for Māori Trust Board elections as it defines “adult beneficiary” as a beneficiary who is 18 years of age or over.
10. This clause therefore draws a distinction between those aged 16 or 17 and those aged 18 years and above for the purpose of eligibility to vote in Māori Trust Board elections.
11. This clause disadvantages 16 and 17 year olds, because it does not allow these persons to vote in Māori Trust Board elections. Accordingly, we consider this clause to be *prima facie* inconsistent with section 19(1) of the Bill of Rights Act.

### *Is this a justified limitation under section 5?*

12. We have concluded that clause 10(1) is justified in terms of section 5 of the Bill of Rights Act for the reasons set out below.
13. The Ministry of Māori Affairs advises that 18 was chosen to correspond with society's common understanding of 'adult', to ensure consistency with the standard voting age for general and other elections, and to reflect the minimum voting age adopted by most iwi organisations.
14. Ensuring consistency with the standard voting age and with the age adopted by most iwi organisations is a significant and important objective. The standard voting age reflects that a certain level of maturity and decision-making capacity is necessary before the right to vote is conferred.
15. Age limits necessarily involve a degree of generalisation, without regard for the particular abilities, maturity or other qualities of individuals within that age group. In this clause, age is being used as a proxy measure of the maturity and decision-making capacity of an individual, which is necessary in a voting situation.
16. It is reasonable for Parliament to set an age limit reflecting its assessment of when most persons will have sufficient maturity and the decision-making capacity to make responsible decisions during Māori Trust Board elections. The alternative would be for the Trust Board to assess each individual aged 16 or 17 years to determine whether they have sufficient capacity and maturity to vote and this does not appear to be a workable solution.
17. Finally, specifying a minimum voting age of 18 years or over is also consistent with section 12 of the Bill of Rights Act that gives the right to vote to those who are of or over the age of 18.

#### *Māori Business Aotearoa New Zealand*

18. For completeness we note that Part 2 of the Bill establishes Māori Business Aotearoa New Zealand (MBANZ), a new statutory corporation with the primary function of furthering Māori economic development.
19. Although, in this regard the Bill draws a distinction on the basis of race, our view is that it does not appear to create any disadvantage for a particular group. MBANZ is intended to address particular issues related to current and future Māori business needs. Other organisations such as NZ Trade and Enterprise, and the Economic Development Association of New Zealand are available to address the issues related to the general public.
20. Accordingly, our view is that the Bill does not create any disadvantage to Māori or non-Māori and therefore does not give rise to discrimination on this ground.

#### **CONCLUSION**

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

Jeff Orr  
Chief Legal Counsel  
Office of Legal Counsel

Stuart Beresford  
Acting Manager, Bill of Rights/Human Rights  
Public Law Group

#### Footnote

1 *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9.

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 Māori Purposes Bill 2007. 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.