

# Mauao Historic Reserve Vesting Bill

1 November 2007

Attorney-General

## LEGAL ADVICE

### CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990: MAUAO HISTORIC RESERVE VESTING BILL

1. We have considered the Mauao Historic Reserve Vesting Bill (the 'Bill') (PCO 8259/6), for consistency 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 7 November 2007.
2. We have concluded that the Bill appears to be consistent with the Bill of Rights Act. In coming to this conclusion we considered whether an issue with section 19(1) (freedom from discrimination) arises.

### PURPOSE OF THE BILL

3. The Bill implements an agreement between the Crown; Ngāi Te Rangī, Ngāti Ranginui and Ngāti Pūkenga; The Trustees of the Mauao Trust; and, Waitaha (the 'Agreement'). The Bill provides for the transfer of the fee simple estate in Mauao historic reserve, by way of gift, to the trustees of the Mauao Trust subject to enumerated encumbrances.
4. The Bill recognises the significant cultural, traditional, historical and spiritual importance of Mauao, or Mount Maunganui, to the Ngāi Te Rangī, Ngāti Ranginui and Ngāti Pūkenga. In addition, Bill recognises that the Waitaha have ancestral associations and historical connections with Mauao.

### CONSISTENCY WITH SECTION 19(1) OF THE BILL OF RIGHTS ACT

5. Section 19(1) of the Bill of Rights Act provides:

"Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993."

6. Section 21 of the Human Rights Act 1993 specifies the prohibited grounds of discrimination. These grounds include race.
7. 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 s. 19 exists are:

i does the legislation draw a distinction based on one of the prohibited grounds of discrimination?

ii does the distinction involve disadvantage to one or more classes of individuals?

8. If these questions are answered in the affirmative, we consider that the legislation gives rise to a *prima facie* issue of "discrimination" under section 19(1) of the Bill of Rights Act.
9. In our view there is no distinction drawn by the Bill because interests promoted are particular to the four iwi concerned.
10. Although the Bill provides that the vesting is not a settlement of a Treaty of Waitangi or other claim, the Agreement and the Bill both specifically recognise the unique interests of the Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pūkenga and Waitaha.
11. A discrimination assessment requires a relevant comparator group. No group possesses the same unique interests as the Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pūkenga and Waitaha, and therefore, there is no group to be treated differently under the Bill.
12. In the interests of completeness, even if there was a comparator group, the Bill does not have the intention or effect of creating a disadvantage for any other group. The Bill provides that general law continues to apply as if Mauao historic reserve is vested in the Crown; the Reserves Act 1977 continues to apply as if the Mauao historic reserve was vested in the Crown; and, the vesting does not affect any rights or obligations in respect of the Mauao historic reserve of any person who is not a party to the Agreement.

## CONCLUSION

13. Based on the analysis set out above, we have concluded that the Bill appears to be consistent with the Bill of Rights Act.

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