

New Organisms And Other Matters Bill (Treaty Provisions)

9 April 2003

Attorney-General

Legal Advice

New Organisms And Other Matters Bill:

Consistency With The New Zealand Bill Of Rights Act 1990

(Treaty Provisions)

INTRODUCTION

1. On 26 March 2003 we provided you with preliminary advice on the consistency of the New Organisms and Other Matters Bill (PCO 5072/4) with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). At this time we concluded that the Bill, as drafted at that time, did not appear to be inconsistent with the Bill of Rights Act. We have now had an opportunity to consider the version of the Bill (PCO 5072/10) that is to be considered by the Cabinet Legislation Committee at its meeting on Thursday 10 April 2003.
2. The key changes to the Bill from the earlier version we provided advice on is the inclusion of a number of provisions aimed at meeting the Government's stated intention to "better reflect the Treaty relationship between Māori and the Crown in HSNO".
3. We have considered whether these provisions raise issues of consistency with the right to be free from discrimination under section 19(1) of the Bill of Rights Act. We have concluded that they do not appear to be inconsistent with the Bill of Rights Act.

Possible issues of consistency with section 19 of the Bill of Rights Act

4. Clause 2.4A of the Bill amends section 16 of the Hazardous Substances and New Organisms Act 1996 ("HSNO") by clarifying that when the Minister for the Environment appoints members to the Environmental Risk Management Authority ("ERMA"), he or she needs to consider whether the person has knowledge and experience of a range of matters coming before ERMA including the Treaty of Waitangi and tikanga Māori.
5. While, in practice, it seems highly likely that the majority of people possessing the required levels of knowledge and expertise would be Māori, it is also possible that persons of other races may possess the requisite knowledge and could make valuable contributions as members.
6. We note also that the identification of these particular areas of knowledge as relevant does not in any way prevent knowledge and experience of other relevant matters being taken into account in making appointments. From this

perspective, the clause does no more than to specifically identify knowledge and experience of the Treaty of Waitangi and tikanga Māori as relevant matters to be considered in making appointments. Accordingly, we have concluded that no issue of discrimination on the grounds of race arises in relation to this clause.

7. Clause 2.5A of the Bill inserts Part 4A into HSNO. Part 4A establishes a committee within ERMA known as Nga Kaihautu Tikanga Taiao. This committee has been designed to provide ERMA with advice and support on policy and process issues on an "as needs" basis, as determined by ERMA. Nga Kaihautu Tikanga Taiao is to provide this advice from a Māori perspective and the advice is to be consistent within the terms of reference established by ERMA.
8. While clause 2.5A establishes a mechanism by which ERMA can obtain advice on issues and the perspective of a particular racial group, we note that there is nothing to prevent the Authority obtaining advice on the perspectives of other racial or cultural groups as required. Therefore, we do not consider clause 2.5A to give rise to an issue of consistency with section 19 of the Bill of Rights Act.

CONCLUSION

9. We are of the view that the version of the New Organisms and Other Matters Bill that is to be considered by Cabinet Legislation Committee does not appear to be inconsistent with the Bill of Rights Act.
10. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. A copy of this opinion is also attached for referral to the Minister for the Environment if you agree.

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