New Zealand Geographic Board (Ngā Pou Taunaha O Aotearoa) Bill

18 April 2007

Attorney-General

LEGAL ADVICE
CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
NEW ZEALAND GEOGRAPHIC BOARD (NGĀ POU TAUNAHA O AOTEAROA) BILL

1. We have considered the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Bill (PCO 6792/7) ('the Bill') for consistency with the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act'). We understand that the Bill is likely to be considered by the Cabinet Business Committee at its meeting on Monday, 23 April 2007.

2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered possible inconsistencies with sections 14 (freedom of expression) and 19 (freedom from discrimination).

PURPOSE OF THE BILL

3. The Bill repeals and replaces the New Zealand Geographic Board Act 1946. It continues the existence of the New Zealand Geographic Board ('the Board') which is responsible for assigning, approving, altering, or discontinuing the use of official names for geographic features in New Zealand and Antarctica.

POSSIBLE INCONSISTENCIES WITH THE BILL OF RIGHTS ACT

Section 14: Freedom of Expression

4. Section 14 of the Bill of Rights Act affirms that:

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

5. Clause 32 of the Bill requires official names to be used in official documents. Official documents include documents created by a public office (defined in the Public Records Act 2005) or local authority, as well as geographic or scientific publications, or publications intended for travellers or tourists.

6. We have considered whether clause 32 limits the freedom of expression affirmed in section 14 of the Bill of Rights Act. Freedom of expression includes the right to say nothing or the right not to say certain things.[1] It is arguable whether the use of official names is truly expressive in nature and, therefore, whether compelling their use limits freedom of expression. The voluntary use of unofficial names could have an expressive component, however, we note that the Bill does not prevent the use of such names in official documents provided the document indicates that the names are unofficial. That indication is a

mandatory statement of fact, rather than an expression of ideas or opinions. Accordingly, we have concluded that clause 32 does not limit the freedom of expression.

Section 19(1): Freedom from Discrimination

7. Section 19(1) of the Bill of Rights Act affirms the freedom from discrimination on prohibited grounds set out section 21 of the Human Rights Act 1993 including race and ethnic origins. 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 exists are:

i. Does the provision draw a distinction based on one of the prohibited grounds of discrimination; and
ii. Does the distinction involve disadvantage to one or more classes of individuals?

8. If these questions are answered in the affirmative, the provision gives rise to a *prima facie* issue of 'discrimination' under section 19(1) of the Bill of Rights Act. 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 justified under section 5 of that Act.[2] A limitation on a right or freedom might be justifiable where:

i. the provision serves an important and significant objective; and
ii. there is a rational and proportionate connection between the provision and that objective.

Possible Inconsistencies with section 19(1) in the Bill

9. Clause 11(1) of the Bill makes it a function of the Board to collect original Māori names and encourage their use on official charts and official maps. In support of this function, schedule 1 of the Bill requires that at least two people appointed to the Board have knowledge of tikanga Māori.

10. Schedule 1 could be seen as giving rise to indirect discrimination on the basis of race or ethnic origins because Māori are more likely than non-Māori to have knowledge of tikanga Māori. Non-Māori could therefore be disadvantaged in appointments to the Board. It could also be argued that clause 11(1) appears to discriminate on the basis of race or ethnic origin because it gives the Board a specific direction to collect and encourage the use of Māori placenames. There is no such direction in respect of non-Maori placenames which could be of equal importance to those groups. Whether this would result in disadvantage to non-Māori is not clear, however, we have considered clause 11(1) further on the basis that it could be *prima facie* inconsistent with section 19(1) of the Bill of Rights Act.

Significant and important objective

11. We consider collecting, and encouraging the use of, original Māori place names to be a significant and important objective. The preservation of Māori place names reflects the Crown's obligations under the Treaty of Waitangi to protect Māori cultural heritage. The United Nations has identified the preservation of minority and indigenous group culture as an important aspect of the standardisation of geographical names. It has recognised that the geographical names of indigenous peoples are a significant part of the cultures and traditions of the area or country in which they live. It has recommended that all countries with indigenous people make a special effort to collect their geographical names along with

other appropriate information. Whenever possible and appropriate, a written form of those names should be adopted for official use on maps and other publications.[3]

Rational and proportionate connection

12. Conferring on the Board the function of collecting and encouraging the use of Māori place names is rationally connected to the objective. It is the Board that is responsible for official geographic names in New Zealand and so it is the appropriate body to fulfil such a role. The provision is proportionate because the Board is not prevented from considering the collection and use of non-Māori names.

13. We have also concluded that the appointment of Members with knowledge of tikanga Māori is rationally connected to the objective because such knowledge is necessary to fulfil the Board's function of gathering and encouraging the use of Māori names. This knowledge requirement is directly relevant to the credibility of Board decisions regarding Māori names of geographic features. The requirement is also proportionate to the objective because it allows for non-Māori to be appointed where they have knowledge of tikanga Māori.

14. For these reasons, to the extent that the Bill might give rise to discrimination of the basis of race or ethnic origins, we believe it can be justified under section 5 of the Bill of Rights Act.

CONCLUSION

15. For the reasons set out above, we have concluded the Bill is consistent with the rights and freedoms affirmed in the Bill of Rights Act.

Melanie Webb	Margaret Dugdale
Manager, Ministerial Advice	Policy Manager, Bill of Rights/Human Rights

Footnotes

1 *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977)

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

3 See Resolution V/22 (Aboriginal/native geographical names) of the Fifth United Nations Conference on the Standardization of Geographical Names relating to the recording and use of aboriginal/native geographical names, London 10-31 May 1972, United Nations Publication E.74.I.2 (1974); Resolution VIII/1 (Promotion of minority group and indigenous geographical names) Eighth United Nations Conference on the Standardization of Geographical Names (Berlin, 27 August-5 September 2002) United Nations Publication E.03.I.14 (2003)

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 New Zealand Geographic Board (Ngā Pou Taunaha O Aotearoa) 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.