



LEGISLATION ADVISORY COMMITTEE

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The Chairperson
Māori Affairs Committee
Parliament Buildings
WELLINGTON

MARINE AND COASTAL AREA (TAKUTAI MOANA) BILL 2010

1. The Legislation Advisory Committee (LAC) was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced and updates the Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
2. The terms of reference of the LAC include:
 - (a) to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
 - (b) to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.

3. The Law Commission has provided LAC with a report on this Bill. The LAC resolved that the report should be forwarded to the Committee considering the Marine and Coastal Area (Takutai Moana) Bill.
4. In summary, the report makes the following points:
 - (a) The Bill would benefit from clarification in two respects.
 - It might be made clearer that the Māori Land Court will have no jurisdiction with respect to the common marine and coastal area.
 - The status of the term “mana tuku iho” might be clarified.
 - (b) A consideration of the principles of the Treaty of Waitangi raises two issues:
 - The threshold for recognition of customary marine title seems quite high.
 - There is a question whether the Bill makes adequate provision for areas in which different Māori groups may hold overlapping interests.
 - (c) There is a question of whether the marine and coastal register should be held in LINZ, and whether the Bill should expressly state that it overrides the Land Transfer Act.
 - (d) The provision of alternative routes for the recognition of customary interests, ie. by High Court order or an agreement with the Crown, is constitutionally unusual.
 - (e) The provisions of the Bill with respect to agreements are much less detailed than those relating to Court orders. In particular:
 - There are no requirements for public notification, and thus no opportunity for third parties to be heard.
 - Little detail need be included in the agreement (in contrast with the contents of a Court order).

- There is no provision for agreements to be reviewed, cancelled or varied.
 - There is no provision for other interested parties to challenge an agreement.
- (f) The time limit for filing a claim (six years) seems short by comparison with the time limit under the Foreshore and Seabed Act 2004.
- (g) The offence created by clause 68 is a summary offence even though it is punishable by imprisonment of up to two years.
5. LAC also wishes to draw the Committee's attention to the heading of Part 4 of the Bill, "Administrative and Miscellaneous Matters". This seems quite inadequate to describe the provisions of the part, which go to the very substance of the Bill: they deal with the Court order and agreement alternatives. The LAC suggests that some such heading as "Recognition of Customary Interests" would be more appropriate.
6. Thank you for considering this report.

Sir Geoffrey Palmer
Chair