

section 1.4 |



appendix 1

Context and process

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1.4 New Zealand: political framework

To provide a context for some of the representations to the Commission (see Appendices 2 and 3) and for certain recommendations by the Commission (see the Report), this section describes key features of New Zealand’s political framework. It outlines the nature of New Zealand’s:

- constitution
- central government
- political spectrum
- local government.

It then offers a context for the present Commission by describing the role of Royal Commissions in New Zealand.

Constitution

New Zealand has a constitution, although it is not set out in one all-inclusive document. It consists of a series of formal legal documents, decisions of the courts (common law) and long-standing recognised practices, some of which are described as constitutional conventions.

New Zealand’s constitution comes from the Westminster, or British, tradition. It has evolved slowly over many years since New Zealand became independent of Britain. Although it can be argued that this makes the New Zealand constitution weaker than some others, it also makes it more flexible.

The Treaty of Waitangi, signed in 1840, is a central document in New Zealand’s evolving constitution and legislative development. (A copy of the Treaty is contained within the Report.)

In essence, the Treaty sought to secure a place in which two cultures could coexist¹. In recent years, there has been a focus on the intent (or “principles”) of

¹It was inherent in the Treaty’s terms that Maori customary values would be properly respected, but it was also an objective of the Treaty to secure a British settlement and a place where two peoples could fully belong. To achieve that end the needs of both cultures must be provided for, and where necessary, reconciled. (*Report of the Waitangi Tribunal on the Mangonui Sewerage Claim — Wai 17*. 1988. Waitangi Tribunal, Wellington: 60.)

the Treaty. The Waitangi Tribunal, established in 1975, has chosen to concentrate on the spirit of the Treaty rather than exclusively on its written terms, thereby emphasising the mutual obligations and responsibilities of both parties in a constantly evolving society.

The principles of the Treaty, as outlined by the Waitangi Tribunal, cover the protection and preservation of Maori property and taonga; custom and cultural values (including protection of tino rangatiratanga); partnership and mutual respect between both parties; recognition and equal weighting of Maori views, values, law and policies in decision-making; active protection of Maori Treaty interests by the Crown; autonomy of Maori in determining their own affairs; to allow Maori the option to wholly or partially adopt their cultural practices; and recognition that ongoing development and evolution of tikanga is integral to Maori culture.

Notwithstanding the absence of direct reference to the Treaty in legislation, recent cases support the proposition that Treaty principles may be a relevant consideration. Guidelines for the preparation of legislation adopted by Cabinet in 1987 state that: “all prospective legislation should be examined with regard to its implications for the Treaty at policy approval stage”. In effect, the Treaty has become “part of the legal backdrop against which the legislation must be read” (Burrows, 1992).

The implications of the Treaty of Waitangi in the genetic modification debate are developed more fully in the Report.

The Constitution Act 1986 is the principal formal charter. This Act specifies that the Queen, the Sovereign in right of New Zealand, is the Head of State of New Zealand and that the Governor-General appointed by her is her representative. Her representative can, in general, exercise all the powers of the Sovereign. That conferring of power is described in the Letters Patent Constituting the Office of the Governor-General of New Zealand, most recently revised in 1983. Other relevant Acts are State Sector Act 1988, Electoral Act 1993 and Judicature Act 1908, as well as Ombudsmen Act 1975, Official Information Act 1982, Public Finance Act 1989 and New Zealand Bill of Rights Act 1990. These Acts, however, are not “supreme laws” and may be changed by a further Act of Parliament.

New Zealand is an independent sovereign nation and is called a “Realm” because it is a monarchy. New Zealand ceased being a Dominion in 1947. The Realm of New Zealand comprises New Zealand, Tokelau and the Ross Dependency and the self-governing states of Cook Islands and Niue.

As Head of State, Queen Elizabeth’s formal New Zealand title is “Elizabeth the Second, by the Grace of God, Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith”.

The Queen’s personal representative in New Zealand is formally styled “The Governor-General and Commander-in-Chief in and over New Zealand”. The Governor-General is appointed by the Queen on the advice of the New Zealand Government, usually for a term of five years.

Central government

New Zealand central government has three branches: the Legislature (Parliament), the Executive (New Zealand Government) and the Judiciary. Power is divided between these to prevent any single branch from acting against the basic constitutional principles of the country. Although each branch has a different role, they are not totally separate.

The Legislature

Parliament consists of a single house (the House of Representatives) whose members are elected every three years by universal suffrage.

The Executive

Cabinet is the central decision-making body of executive government. All major decisions are taken through the Cabinet process and Cabinet meetings are confidential.

Cabinet’s role is to take decisions in a wide range of areas including:

- major policy issues
- important spending proposals and financial commitments
- proposals involving new legislation or regulations
- matters that concern the interests of a number of government departments
- controversial matters
- ratification of international treaties and agreements.

The Executive Council is the part of the executive branch of government that carries out formal acts of government. By convention, membership of the Executive Council comprises all Ministers of the Crown, whether those Ministers are inside or outside the Cabinet. Ministers have specific areas of responsibility called “portfolios” and may be assisted in these by Deputy or Associate Ministers or Parliamentary Under-Secretaries.

The Executive Council is the highest formal instrument of government and is the institution through which the government as a whole advises the Governor-General, normally by recommendations to make Orders in Council. Apart from

Acts of Parliament, Orders in Council are the main method of implementing government decisions requiring legal force.

The Judiciary

The independence of the Judiciary, a principle that ensures that judges are free of political interference, is an important principle of the New Zealand constitution. This is reflected in the standing orders of the House of Representatives, which prohibit Members of Parliament from criticising a judge. A judgment may be criticised but personal attacks on, or attempts to influence, a judge are not allowed. Although Parliament makes laws, it is the job of the Judiciary to interpret and apply those laws in cases that come before the courts.

Political spectrum

At least once every three years, New Zealand holds a General Election to choose its Parliament. The New Zealand Parliament is elected using the Mixed Member Proportional Representation (MMP) electoral system.

Under MMP, voters have two votes:

- a Party Vote for the party the voter most wants to be represented in Parliament
- an Electoral Vote for the Member of Parliament the voter wants to represent their electorate (area).

Voters' residential addresses decide which electorate they will be in. The New Zealand Parliament includes General and Maori electorates. Qualified electors who are New Zealand Maori or descendants of New Zealand Maori can choose whether they want to vote for a General electorate or a Maori electorate. The voting age is 18.

The political parties which gained at least 5% of the vote in the 1999 election were (in alphabetical order) ACT New Zealand, the Alliance, the Green Party of Aotearoa New Zealand, the New Zealand Labour Party, and the New Zealand National Party. As a result of that election, the current government is a coalition made up of the Labour Party and the Alliance.

ACT, which gained 7.0% of the vote in 1999, is founded on the following two principles:

That individuals are the rightful owners of their own lives and therefore have inherent freedoms and responsibilities.

That the proper purpose of government is to protect such freedoms and not to assume such responsibilities.

The Green Party gained 5.2% of the vote in 1999. The Greens:

realise a society is sustainable only when it acts in harmony with the natural world.

are united in their belief that ecological economics and a new political consciousness can achieve this harmony.

take advice from experts and link it to local decision-making and personal responsibility for the results of personal action.

The Labour Party, which gained 38.7% of the vote in 1999, and the Alliance, which gained 7.7% of the vote in 1999, formed a coalition government with the following objectives:

1. to implement a policy platform which reduces inequality, is environmentally sustainable, and improves the social and economic wellbeing of all New Zealanders,
2. to restore public confidence in the political integrity of Parliament and the electoral process,
3. to provide stable and effective long term government for New Zealand without losing the distinctive political identity of either party, and
4. to act in good faith between the coalition partners.

The National Party, which gained 30.5% of the vote in 1999, expresses its principles as wanting:

a confident and ambitious people driven by the freedom, self-reliance and enterprise of individuals who are:

passionate for excellence, achievement and success,

committed to a united society based on tolerance, diversity, independence, and

determined to make their community and environment a better place.

Local government

The basic role of local authorities is to enable local communities to make collective choices and decisions and to undertake collective activity. This gives New Zealanders a way to influence decisions shaping the communities in which they live, through their locally elected representatives. Each local authority has a degree of discretion over the scope of the specific activities it undertakes or funds.

Local government is responsible for local policy-making, specific local service delivery and aspects of local regulation. Local authorities are also active in community leadership and advocacy on behalf of their districts.

Local authorities include Regional Councils and territorial authorities, that is, District Councils and City Councils. Regional Councils have overarching responsibilities, such as biosecurity (including pest management), catchment control, harbour administration, hazardous substances management, regional emergency management, regional land transport and resource management.

Within each of the country's 15 Regional Councils are City and/or District Councils, of which there are a total of 76. The exception is four unitary authorities which fulfil the functions of both a Regional Council and a territorial authority. City Councils are specific to a single city, but a District Council may comprise a city and its surrounding area, or several smaller towns and the area around them. The responsibilities of a City or District Council include community wellbeing and community development, emergency management, environmental management (including waste management), infrastructure (roading and transport, sewerage, water and stormwater), public health and safety issues (including building control), recreation and resource management (including land use planning and development control).

Some territorial authorities have become actively involved in the debate about genetic modification. For example:

- The Far North District Council sought public submissions on their District Plan, with some submitters suggesting that the district council take a stance on the issue of genetic modification. The Council is awaiting the findings of the Commission before developing its own policies on the matter. However, it decided in March 2001 to ask Government to make compulsory the current voluntary moratorium on the release of genetically modified organisms.
- The Whangarei District Council received a delegation from opponents of genetic modification who presented a petition opposing the technology signed by 2300 Whangarei residents and 93 businesses. One District Council member proposed declaring Whangarei District free of genetic modification, but the Mayor and other Councillors voted in favour of awaiting the outcome of the Commission before taking further action.
- In the Auckland area, Waiheke, Eden/Albert and Devonport Community Boards have recently passed symbolic resolutions supporting the establishment of "GE-free" zones. The wording encourages and supports local businesses and individuals to refrain from using any genetically modified organisms.
- The Kapiti Coast District Council invited written submissions from the public on a discussion document entitled "Genetic Engineering —

Declaration of Kapiti as a Genetic Engineering-Free Zone”. Submissions were considered by a Council subcommittee in March 2000. The subcommittee rejected a motion to declare Kapiti “Genetic Engineering Free for Crops and Food” by seven votes to six.

- In Nelson, citizens organised a petition calling for the city to be declared a genetic modification-free zone. The Mayor of Nelson has publicly supported this move. In 2000, Nelson City Council twice narrowly voted against becoming the first city to become “GM free” as a symbolic act. However, on 5 April 2001, the Council formally agreed to declare Nelson New Zealand’s first “GE-free” city. The Council hopes that its decision will enhance Nelson’s image as a clean, green city, and have a positive effect on promoting Nelson’s tourism and economy. The city will be philosophically against genetic modification, particularly genetically modified foods. This status is not enforceable on other organisations in Nelson.
- Tasman District Council rejected a proposal to declare Tasman District “GE free” in late October 1999.
- Other territorial authorities such as Hurunui District Council, Hamilton City Council and Northland Regional Council made formal submissions to the Commission. Hamilton City Council was accorded Interested Person status because about 25% of New Zealand’s science research is undertaken in a life sciences research cluster in or near Hamilton City: the Council declared its belief in the potential economic benefits of supporting businesses that utilise the careful application of biotechnology.

Royal Commissions

A Royal Commission is the highest level of response available to the New Zealand Government when considering an inquiry into a particular issue. Royal Commissions are convened to investigate any matter of major public importance that is of concern to the government of the day, such as matters of considerable public anxiety or where a major lapse in government performance appears to be involved.

Other options are also available to Governments faced with an issue of concern, such as Commissions of Inquiry, Statutory Inquiries, Ministerial Inquiries and so on.

The current Royal Commission on Genetic Modification is the first Royal Commission to be held since the Royal Commission on Social Policy in 1986.

Background to the Royal Commission on Genetic Modification

Genetic modification was developed in the 1970s. It is already an integral part of biological and medical research and has medical, commercial and industrial applications. Agricultural and food-related uses of genetic modification are a more recent development and have attracted great public interest in New Zealand. (Further information is provided in this volume: see “Genetic modification technology and its uses in New Zealand”.)

In May 1999, Government established the Independent Biotechnology Advisory Council to help New Zealanders explore and consider issues of biotechnology. In October 1999, the Green Party presented to Parliament a petition of 92,000 signatures calling for a Royal Commission on genetic modification and a moratorium on field trials.

After a general election in November 1999, the new government considered that there was significant public interest in and uncertainty and concern about the topic of genetic modification, and that official investigation was warranted. The Speech from the Throne at the Opening of Parliament on 21 December 1999 announced that a Royal Commission would be established on the topic:

It is recognised that one area of research and development has led to significant public concerns. That is the area of genetic modification. A Royal Commission into Genetic Modification will be established. Until it has reported, a moratorium will be imposed on the commercial planting of genetically modified crops. Very strict conditions will apply to the consideration of any application for field trials until such time as the Commission reports on the wider issues.

My government will require a simple and comprehensive system of labelling of genetically modified food, whether “substantially equivalent” or not, and of any food derived from genetically modified organisms.

Honourable Members. The concerns about genetically modified foods and organisms reflect wider public interest in environmental and conservation issues. My government shares that interest.

A working party was established to consider the terms of reference, budget and other details for the Royal Commission. The working party was led by the Ministry for the Environment, and included officials from the Department of the Prime Minister and Cabinet, the Ministry of Research, Science and Technology, the Ministry of Health, Treasury, the Department of Conservation, the Ministry of Fisheries, Te Puni Kokiri (the Ministry of Maori Development), the Environmental Risk Management Authority, the Ministry of Foreign Affairs and

Trade, the State Services Commission, the Ministry of Agriculture and Forestry and the Department of Internal Affairs.

On 17 April 2000, the Royal Commission on Genetic Modification and a voluntary moratorium on the release of genetically engineered organisms were announced. The voluntary moratorium on future applications for general release and field tests of genetically modified organisms was the result of discussion between the Government, industry and relevant research groups. The Government reserved the right to legislate to give effect to a moratorium should the voluntary agreement prove ineffective. This strategy allowed research to continue but ensured that nothing irreversible occurred while the Commission was in process. (Further information is provided later in this volume: see “Processes of the Commission: Establishment of the Commission”.)

References and further information

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Internet sites

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<http://www.act.org.nz/policy/index.xml> (as at 30 March 2001).

<http://www.greens.org.nz/about/welcome.htm> (as at 30 March 2001).

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http://www.national.org.nz/party/stand_for.htm (as at 30 March 2001).