

Submission to the New Zealand Constitutional Review June 2013

Addresses for Submissions

Online at www.ourconstitution.org.nz

Email to constitutionalreview@justice.govt.nz

with an attachment

Submissions Secretariat,
Constitutional Advisory Panel
C/o Ministry of Justice, DX SX10088
Wellington

Your Name

Address

Contacts

Organization

Date [22nd June 2013]

Please send your submission by 5pm 30th July 2013.

This submission is prepared with appreciation that the New Zealand Constitution must safeguard the wellbeing of New Zealand as a whole. Any expressions of specific and diverse interests are to be expressed and given form within a framework of justice and overall unity of the country and its territory and realm. Clearly a Constitutional Review is carried out in the context of some outstanding issues of justice and with a view to giving direction for the future benefit of New Zealand. Ensuring the Constitutional status of Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand is a pre-eminent matter. The position of Pasifika peoples in Aotearoa New Zealand is a longstanding matter of justice to be considered for constitutional resolution. While a Constitution attempts to set justice in stone, it also lays out a pathway for a unifying and visionary evolution of wise principles.

The specific issues raised here are therefore to be seen in the light of overall constitutional development with principles of participation and inclusion of all communities in Aotearoa New Zealand

The following comments express some specific interests of the New Zealand Pasifika communities-in relation to the current constitutional review project. We would ask that the following points be considered by the review in the fulfillment of its terms of reference.

Community Values and Constitutional Duties

A feature of most, if not all Pacific cultures is an emphasis on community and families evident by caring and sharing. This is often expressed in the various Pacific languages by reference to the basic constitutional concept of *alofa*. This is an ethic which encompasses responsibility, responsiveness, reciprocity, generosity, and family commitment.

In any discussion of fundamental rights and freedoms in a future constitution of New Zealand, it is submitted that it would be appropriate, for the general community and particularly for those sectors of New Zealand society with a strong community ethic, that consideration be given to including a statement of fundamental duties and responsibilities. Precedents for this can be found in Constitutions such as the Constitution of Vanuatu, the Constitution of the Cook Islands, which reflect in one way or another the basic principle declared in article 29 of the UDHR “1 Everyone has duties to the community in which alone the free and full development of his personality is possible”.

We therefore submit that an expanded view of rights and responsibilities, with an account of

collective rights and duties could be accommodated in an amended Bill of Rights.

There is consideration of Economic, Social and Cultural Rights (ESCR) both in New Zealand and international fora. ESCR may include health; a reasonable standard of living including housing; water; food; education; work rights; social security; cultural rights.

A selection of ESCR are now regularly included in Bills of Rights and Constitutions and they are clearly acknowledged as justiciable in a wide range of jurisdictions. The UN recently (2008) agreed to an Optional Protocol, which provides for a complaint mechanism directly to the UN Committee on Economic, Social and Cultural Rights. New Zealand ratified the ICESCR in 1978 (Bedggood, M. (2013) 'Making Human Rights a Keystone to New Zealand's Constitutional Conversation.' Paper for Amnesty International Conference'.)

With New Zealand Foreign policy and Overseas Aid focused on the Pacific region, interests in trade and development would be an area for inclusion in terms of economic rights.

Language interests

An aspect of cultural rights that is relevant to Pacific peoples in Aotearoa New Zealand is to have recognition and support for the retention of languages of Pacific peoples in Aotearoa. A 2010 study at the University of Auckland showed a very low rate of Pacific Island language retention (<http://www.royalsociety.org.nz/2010/09/22/pacific-languages/>)

As the numbers of New Zealand born Pacific people grow, there is a prospect of reduced intergenerational language transfer. The future of Pasifika languages may lie with Pacific peoples in Aotearoa New Zealand. We therefore submit that consideration be given for constitutional provisions for the retention of the indigenous languages of all Pacific peoples in Aotearoa New Zealand, be included.

Aotearoa New Zealand as a Pasifika Nation

The constitution of the state of New Zealand is more than just that. The state of New Zealand is an integral and, it may be said, essential part of the Realm of New Zealand because the Executive Council, which advises the head of the Realm, is made up of the members of the Executive of the state of New Zealand. The constitution of the State of New Zealand impacts on the operation of the Letters Patent, and therefore constitutional development should bear in mind that impact on the other countries of the Realm, particularly the associated states but potentially also Tokelau, which has yet to exercise its right to self-determination.

New Zealand and Pasifika Nations share historic ties and in a world of increasing interdependence, continues to shape the futures that we share. The state of New Zealand controls the citizenship of the peoples of the Cook Islands, Niue and Tokelau. This is currently provided for specifically in the Cook Islands Constitution Act 1964, the Niue Constitution Act 1974 and the Citizenship Act 1977. The New Zealand citizenship and immigration rules also have a significant impact on the personal and social relations of many in New Zealand who are part of the diaspora of many other Pacific countries, and in particular Samoa with which New Zealand has special arrangements for immigration and Tonga. The potential of climate change to produce climate refugees from *Pasifika* communities which have substantial family contacts with New Zealand may also be appropriate to bear in mind in the event that constitutional development of New Zealand addresses the question of citizenship.

Church Constitutions

Churches in Aotearoa New Zealand have developed constitutional models to express and give effect to Te Tiriti o Waitangi and including Pacific interests. This reflects their commitment to Te Tiriti o Waitangi as the founding document with agreements between the Crown and Iwi/hapu.

The Constitutions also reflect their commitment to the Pasifika Membership as evident by the structures and leadership of the churches.

Te Haahi Weteriana o Aotearoa, the Methodist church has a power sharing covenant between Te Taha Māori and Tauwiwi. Within Tauwiwi there are semi autonomous regional synods as well as for Pasifika members, thus, Sinoti Samoa, Vahefonua Tonga and Wasewase ko Viti kei Rotuma (Fiji and Rotuman). These synods are led by Pasifika leaders of Te Haahi Weteriana o Aotearoa.

The Anglican church developed a 'three tikanga' model, which is based on Te Tiriti o Waitangi and the Diocese of Polynesia. The General Synod/ Te Hinota Whanui adopted a revised constitution in 1992. Through this the church is made up of three constituent bodies: Tikanga Pakeha, Pihopatanga o Aotearoa and Tikanga Pasifika.

Making a Submission - any questions please call 0508 411 411.

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Important Information: a valid submission must have your name. If you are submitting on behalf of an organisation please give the name of the organisation