



New Zealand Bill of Rights (Private Property Rights) Amendment Bill

255-1

Report of the Justice and Electoral
Committee

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Recommendation

The Justice and Electoral Committee has examined the New Zealand Bill of Rights (Private Property Rights) Amendment Bill and recommends that it not be passed.

Introduction

1 This is a Member’s bill in the name of Gordon Copeland. The bill would amend the New Zealand Bill of Rights Act 1990 to provide for the protection of private property rights in New Zealand and for the right to compensation in the event of deprivation of property.

Consideration

2 We examined in detail the possibility of adding provisions protecting property rights to the New Zealand Bill of Rights Act 1990, and obtained advice on the potential effect of the amendments it proposes.

3 We acknowledge that there is significant public support for further legal protection of private property rights in New Zealand. We heard arguments that the absence of the right to own private property from the Act is anomalous. We also note that the enshrining of private property rights in legislation, often alongside personal rights, is common in other jurisdictions.

4 The notion of a right to compensation for loss of property is also widely supported. We heard arguments that protection of private property rights—and provision for compensation when they were infringed—would benefit business (and therefore promote economic development), would mitigate certain effects of the Resource Management Act 1991, and would benefit Māori. We note that some submitters suggested that this legislation would be good for Māori in that—if it had been in place—it might have prevented the passage of the Foreshore and Seabed Act 2004. We are not convinced that this is in fact the case.

5 We acknowledge that these arguments have some merit, but nevertheless we consider that the bill is not an appropriate way of protecting private property rights in New Zealand or of establishing an equitable compensation regime for loss of property. During our consideration we examined several aspects of the bill in detail, and concluded that potential outcomes would not achieve the bill’s stated purpose. We agree with submitters who raised concerns with the definitions of “property”, “deprived”, and “use and enjoyment” proposed in the bill. We consider that further work needs to be undertaken to define these terms so that they can be interpreted correctly and without confusion before any amendment is passed. A major concern was that the bill as drafted does little to address the

consequences of the proposed amendment, providing, for example, little guidance on legal interpretation.

6 One of our major reservations is the potential costs resulting from the bill. We agree with submitters who argued that the proposed amendment could complicate the legal interpretation of property rights in New Zealand, especially in relation to the Resource Management Act 1991. Its provisions could have a profound impact on current legislation, especially the Resource Management Act, which would have to be read consistently with the bill and would therefore be interpreted as requiring compensation in certain instances. More generally, the right to compensation would have a considerable effect on the Government and local authorities, of which the potential costs remain unknown. We consider that the bill could create outcomes and incur costs that were not necessarily intended.

7 During our consideration of the bill, Mr Copeland stated that he was willing to remove the words “of the use or enjoyment” from clause 4 new section 11B. We gave this offer due consideration, but remained of the view that the bill should not proceed.

Conclusion

8 We consider that the bill should not proceed. We are not fundamentally opposed to the principle of the bill, but given the possible consequences of its enactment, we do not support it in its current form. We consider that exhaustive research is needed into how private property rights can be protected in the New Zealand environment before any amendment to legislation should be considered. In addition, the impact of such amendments on existing legislation and their potential cost needs to be established in advance of any legislation being proposed or passed. We consider that once such work has been completed it may be possible to develop appropriate legislation to provide more protection for private property rights in New Zealand.

New Zealand National minority view

9 While strongly supporting property rights, we cannot support the passage of this bill for a number of reasons. First, the amendment will have far-reaching implications and could well be the cause of a great deal of litigation against the Crown. The ambit and scope of what is proposed is very unclear. As this is a Members’ bill, the select committee has not had the benefit of Crown advice to the same extent as if it were a Government bill. Much more research is required on the implications of this amendment.

10 Secondly, we consider that compensation issues should not simply be left to the courts. There should always be a proper statutory basis for compensation.

11 We are concerned that the compensation regimes in a number of statutes may well require review. Those statutes include the Public Works Act 1981 (the compensation provisions of which have remained unchanged from prior statutes) and the Resource Management Act 1991. It may be that an alternative approach is to review and enhance those compensation provisions rather than create the uncertainty associated with a more broad-brush approach in the present bill.

12 This bill illustrates the dangers of Members' bills which seek to amend legislation in a way which could have wide-ranging consequences without proper analysis or full advice from the Crown and its agencies. If there is to be any amendment of this nature to the New Zealand Bill of Rights Act, it can only be passed after exhaustive consideration. That exhaustive consideration has not occurred in this instance.

Appendix

Committee procedure

The New Zealand Bill of Rights (Private Property Rights) Amendment Bill was referred to the Justice and Electoral Committee on 11 May 2005. The closing date for submissions was 12 August 2005. We received and considered 36 submissions from interested groups and individuals. We received advice from the Ministry of Justice.

Committee membership

Lynne Pillay (Chairperson)

Christopher Finlayson (Deputy Chairperson)

Chris Auchinvole (from 6 December 2006)

Charles Chauvel (from 21 February 2007)

Gordon Copeland (non-voting member for this item of business)

Russell Fairbrother (until 21 February 2007)

Hone Harawira (from 13 December 2006) (non-voting member)

Ann Hartley

Nándor Tánczos

Nicky Wagner

Dr Richard Worth (until 6 December 2006)