

3. RE-EVALUATION OF THE HUMAN RIGHTS PROTECTIONS IN NEW ZEALAND

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Corporate Plan Output: Policy Advice to Council	

The purpose of this report is to provide information to the Council on the *recent Re-evaluation of Human Rights Protections in New Zealand* discussion paper and to seek Council approval for the attached submission on this paper.

INTRODUCTION

In April 2000 the Government commissioned an independent re-evaluation of human rights protections in New Zealand. In October 2000 the Associate Minister of Justice, Hon. Margaret Wilson, released a discussion paper called *Re-evaluation of the Human Rights Protections in New Zealand* for public submission. This report provides a summary of the background and content of this review, and puts forward a response to be submitted by the Christchurch City Council by the new submission date of 9 February 2001 (submissions will be accepted after this date which will allow the submission to go through the Council process).

BACKGROUND

The Hon. Margaret Wilson made a presentation to the Christchurch Human Rights Network in December and stated that both the Labour Party and the Alliance Party had a commitment to reviewing human rights protections. The reasons for this review included:

- the desire for stronger human rights law
- more accessible human rights education
- co-ordination of human rights education
- ensuring compliance with national standards.

The independent review notes that "New Zealand's law and institutions dealing with human rights have grown organically, largely in response to the adoption of the international standards we have helped to develop" (Ministry of Justice, 2000, p.6). Given that New Zealand has had human rights legislation for almost 30 years, and that there has been major social and cultural change during this time, there seemed to a general recognition that it was time to reconsider both the human rights legislation and the structures which implement it.

The independent review was carried out from April last year and was released in October. A consultation process was carried out in June and July 2000. It is intended that the scoping report which was the outcome of this process is intended to be the beginning of a longer policy process. The recommendations in the discussion paper are intended to be used to formulate the principles for the development of an improved human rights environment.

SUMMARY OF THE DISCUSSION PAPER

The Discussion paper makes four main points. These are summarised below:

1. There is a need to clarify the relationship and appropriate use of the Bill of Rights Act 1990 and the Human Rights Act 1993.

The relationship between these two pieces of legislation has not been well understood. The Bill of Rights Act protects a broad range of civil and political rights and deals with all government actions, legislation and policies. The Bill of Rights can affect, limit and sometimes add to statutes and regulations. The discussion paper seeks to clarify that legislation should be measured against a Bill of Rights standard.

The Human Rights Act focuses on discrimination and harassment in some specific areas (eg. employment). Section 151 (1) of the Human Rights Act states that it will not override existing Acts unless expressly stated. The discussion paper suggests that Section 151 be repealed so that laws and policies are measured against the Bill of Rights standard rather than the Human Rights Act.

2. A new human rights institution should be established to provide strategic community leadership on human rights issues.

The New Zealand institutions dealing with human rights issues were set up at different points over a period of more than twenty years (they are the Race Relations Conciliator's Office, the Human Rights Commission, the Commissioner for Children, the Privacy Commissioner, and the Health and Disability Commissioner). There are significant differences amongst them in terms of role, structure and function. The longer established organisations (the Human Rights Commission and the Race Relations Office) have tended to be primarily occupied with complaints and are perceived by the public as being complaints driven. The report also notes that co-ordinated strategic direction on human rights issues is difficult when efforts are divided amongst several small organisations.

The discussion document recommends that a new human rights institution should be formed which focuses on strategic and community leadership on human rights issues. It suggests that this will improve education and awareness of a broad range of human rights including civil, political, economic, social and cultural rights. It also recommends that the Human Rights Act be amended to give the new institution a role in discussing the relationship between the Treaty of Waitangi and human rights.

The recommended structure of the new organisation is for a Governance Council of seven or nine members (including a full time President), a chief executive and staff. The Governance Council would have a broad awareness of human rights issues and representatives with particular knowledge and expertise in each area of human rights. A stand-alone Proceedings Commissioner would ensure consistency of standards in the cases submitted to the Complaints Review Tribunal.

It is suggested that the new structure would include the present Human Rights Commission and Race Relations Office. The relationship with (and possible inclusion of) the Commissioner for Children and the Health and Disability Commissioner should be considered later.

3. There is a need to improve the government's ability to incorporate human rights in the development of policy.

The discussion document suggests a number of mechanism which should be implemented to ensure that human rights issues are taken into account early in the policy making process. These involve the Cabinet Office, the State Services Commission and individual government departments. The report notes that "[p]olicies which respect and reflect human rights are more likely to be inclusive, equitable, robust, durable and of good quality" (The Ministry of Justice, 2000, p. 95).

4. Develop a New Zealand National Plan of Action for the Promotion and Protection of Human Rights.

The United Nations has recommended such plans of action and New Zealand has advocated for them in the Asia/ Pacific region. The discussion document reports that there is widespread support for a New Zealand National Plan that can help to develop and strengthen co-operation on human rights at the national and local levels.

The development of a National Plan would involve widespread consultation as its success would depend on government support and community involvement. The report recommends that an advisory committee should be set up to develop the Plan and that its implementation would then be led by either a government department or the proposed new human rights institution.

DISCUSSION

The Christchurch City Council has had on-going involvement in many of the human rights issues raised in the discussion document. For example, the Council assisted the Race Relations office to host a consultation meeting on its Agenda New Zealand proposal in 1999. The Council has on-going involvement with many organisations concerned with human rights issues, such as the Christchurch Ethnic Council, Age Concern, the Refugee and Migrant Forum, the Christchurch Human Rights Forum, the Council of Social Services and the local Human Rights and Race Relations Offices themselves.

The Council recognises that many of the issues raised in the Discussion Paper about a lack of coherence in the organisation structures addressing human rights issues have been illustrated at a local level. For example, the Agenda New Zealand process appears to remain incomplete, and there is frustration about the limited education resources available to the local Human Rights and Race Relations offices. However, the continuing presence of local staff is considered important to building local networks and ensuring that Christchurch issues are identified and reflected in the work carried out by the new structure.

The draft submission (attached) reflects the Council's experiences of human rights initiatives in Christchurch and supports the desire expressed in the report to provide a more coherent and robust process for implementing the relevant legislation. The draft submission also cautions that it will be important to ensure that any structural changes retain the ability to attend to specific human rights areas such as ethnic relations.

Attached is a draft submission on the Re-evaluation of Human Rights Protections in New Zealand Discussion Paper.

Chairman's

Recommendation: That the attached submission be endorsed by the Council and be submitted to the Ministry of Justice.