

17 November 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Thomas Cawthron Trust Amendment Bill

1. We have considered whether the Thomas Cawthron Trust Amendment Bill (the Bill), a private bill in the name of Rachel Boyack MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. The Cawthron Institute Trust Board was established by the Thomas Cawthron Trust Act 1924 (the principal Act). The Trust Board conducts significant scientific research and associated activities in the Cawthron Institute under the governance of a board of directors.
3. The Bill amends the principal Act in order to:
 - a. clearly articulate the objects of the Cawthron Institute Trust Board (the Trust Board) and the powers conferred on the Trust Board to advance those objects,
 - b. provide for the appointment of a member of the Trust Board nominated by Te Taihū iwi,
 - c. specify the legal liability of the members of the Trust Board, and
 - d. update and modernise the governance arrangements of the Trust Board; and consolidate and revise other aspects of the governance and administration of the Trust Board.
4. Section 3 of the Bill of Rights Act states that the Bill of Rights applies only to acts done:
 - a. by the legislative, executive, or judicial branches of the Government of New Zealand; or
 - b. by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.
5. The Trust Board is not part of the legislative, executive or judicial branches of government. We have considered whether the Bill includes any functions or powers that fall within the scope of section 3(b) of the Bill of Rights Act.
6. In *Ransfield v The Radio Network Ltd*¹, the High Court held that a decision about whether an entity is performing a public function, power or duty under section 3(b) of the Bill of Rights Act will be fact dependent, while noting that “a private organisation (whether or not it is providing services to the public) is entitled to manage its business as it sees fit. Unless it is exercising public functions, powers or duties...in terms of s 3(b), the only constraints upon its freedoms are those imposed by general law”.² In a subsequent case involving a Trust Board, albeit one established by deed rather than legislation, the High Court found

¹ [2005] 1 NZLR 233 (HC).

² *Ibid* at [70].

that there was a “very weak” case for suggesting the Trust Board’s functions fell within section 3(b) of the Bill of Rights Act.³

7. We do not consider that the Trust undertakes public functions, powers or duties, as its work is essentially of a private character rather than governmental in nature.⁴ Consequently, the Bill’s proposed changes to the Trust’s objects, powers, and governance arrangements do not engage any rights or freedoms affirmed in the Bill of Rights Act.
8. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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³ *Falun Dafa Association of New Zealand Inc v Auckland Children's Christmas Parade Trust Board* [2009] NZAR 122 (HC) at [43] – [45].

⁴ *Ransfield v Radio Network Ltd* [2005] 1 NZLR 233 (HC) at [69(f)], endorsed in *Low Volume Vehicle Technical Assoc Inc v Brett* [2019] NZCA 67 at [25].