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Sent: Tuesday, 18 February 2020 2:56 PM
To:ROWE, Jonathan (Inet) <jonathan.rowe@parliament.govt.nz>
Subject: Aarhus notes

Kia ora Minister

On Monday 10 Feb I made some informal comments to you on the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters) and the slide deck provided to you by a member of the treaty secretariat. This email records the points I made.

As you recall, I advised that this convention and whether New Zealand might consider acceding to it, would be a matter for the Minister of Foreign Affairs and the Minister for the Environment. I don't know whether at any time in the past it has been considered by the government or any proposal taken to cabinet.

The convention was negotiated under the auspices of the United Nations Economic Commission for Europe. New Zealand wasn't involved in negotiating it and indeed it is very European in style. Whether it would be suitable for our style of government and unique aspects such as the Treaty of Waitangi I don't know. There are 47 parties – EU states and other European states plus others.
s9(2)(g)(i)

The convention covers things for which we have legislative and regulatory provisions through the Resource Management Act, the Official Information Act etc. BUT, the analysis provided to you by the secretariat suggests that these New Zealand Acts may not go far enough. (Some of the assertions are certainly debateable.) Any decision to explore potential accession would require detailed review and policy work on whether and to what extent NZ law was compliant with the convention. Potentially policy changes and amendments to these (and other?) Acts would be required. The analysis involved would need to be undertaken by MoJ, MfE and MFAT.

s9(2)(g)(i)

The convention entered into force in 2001 and only 47 countries are parties.

In sum, exploring whether NZ should accede to this convention would require considerable policy effort, potentially amendments to several Acts, and then (if NZ did accede) ongoing resourcing of the convention (regular reporting and meetings of parties etc).
s9(2)(g)(i)

s9(2)(g)(i)

Kay

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The Aarhus **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters** is one of five Environment Agreements negotiated under the auspices of the United Nations Economic Commission for Europe. New Zealand was not involved in its negotiation, so the text does not necessarily reflect NZ practices and concerns.

Key obligations:

- Access to information
 - Reactive: Article 4: authorities must respond to requests from the public for access to environmental information in a timely manner
 - Proactive: Article 5: authorities must possess and update environmental information relevant to their functions; ensure that environmental information is effectively accessible
- Public Participation
 - Article 6: There must be public participation in processes to permit activities that may have a significant effect on the environment
 - Article 7: The public must be able to participate in the preparation of plans, programmes and policies on the environment
 - Article 8: The public must have opportunities to participate in the preparation of executive instruments and legislation on environmental matters
- Access to Justice
 - Article 9: there must be a review procedure for Article 4 refusals;
 - and for Article 6 decisions (where the individual has an “interest”);
 - and the ability for individuals to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment.

There is also an obligation to promote the principles of the Convention in other international fora.

There is a Protocol to the Convention: The Kyiv Protocol on Pollutant Release and Transfer Registers. (I haven't had time to look at this)

Cost/benefit considerations

s9(2)(h)

Becoming party would, however, require a diversion of resources on an ongoing basis. The process to become party involves analysis of whether existing laws and regulations enable us to comply with the provisions. This is likely the case in a broad sense, but the Ministry of Justice, Ministry of Foreign Affairs and Trade, Ministry for the Environment and other departments would all be required to devote resources to this. Following the work of officials, Ministers (Cabinet) would then need to take a decision, and Parliament's time would be required to complete the treaty-making process. If we didn't already comply with all of the obligations, we may need to amend legislation to do so (the analysis provided in the presentation suggests that we do not totally comply).

Once New Zealand was party, it would be expected to participate in the European-based Meetings of the Parties (annual?). There is also a compliance committee, and no doubt reporting requirements. ^{s6(a)} it is bureaucracy-heavy.

Benefits outlined by Secretariat:

Future proofing: “Joining Aarhus would bind current and future governments not to reduce thresholds for information, participation and justice below the level set by the Convention, with an international compliance committee and reporting requirements to ensure compliance and implementation.”

- Yes, but this underscores the bureaucracy involved (resourcing required) ^{s9(2)(h)}

Giving NZ a stronger voice internationally: e.g. we risk being left behind because Aarhus already has 47 parties.

- Not a particularly convincing argument. ^{s9(2)(h)}

Significant contribution to implementing SDG16

- We can demonstrate our commitment to SDG16 through the laws and practices we have domestically. SDG 16 is set out below for information.

A forum for sharing NZ’s innovative practices, and hearing of others

- That would be good, but the Ministry’s experience is that other government departments would find it difficult to prioritise international travel for something like this, especially something that is so European focused. The burden to attend meetings would likely fall on MFAT.

Specific areas where NZ doesn’t comply with Aarhus

- No doubt there are improvements that could be made to the OIA and the RMA, and other legislation, but there is a suggestion in the presentation that amendments to the legislation would be required in order to become party to the Convention. A judgment would need to be made by other relevant departments/Ministers as to whether that was a good use of resources.

Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

16.1 Significantly reduce all forms of violence and related death rates everywhere

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- 16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children
- 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all
- 16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime
- 16.5 Substantially reduce corruption and bribery in all their forms
- 16.6 Develop effective, accountable and transparent institutions at all levels
- 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels
- 16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance
- 16.9 By 2030, provide legal identity for all, including birth registration
- 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
- 16.a Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime
- 16.b Promote and enforce non-discriminatory laws and policies for sustainable development

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