26 March 2018

Attorney-General

Tēnā koe

Ngāti Rangi Claims Settlement Bill (v 5.0) - Consistency with the New Zealand Bill of Rights Act 1990
Our Ref: ATT395/280

1. We have considered the above Bill for consistency with the New Zealand Bill of Rights Act 1990 ("the Bill of Rights Act"). We advise that the Bill appears to be consistent with the Bill of Rights Act.

2. The Bill will effect a final settlement of the Ngāti Rangi historical claims as defined in the Bill.[1] It provides for acknowledgements and an apology to Ngāti Rangi, as well as for cultural and commercial redress. Measures for cultural redress include:

    2.1 protocols for Crown minerals and taonga tūturu;

    2.2 acknowledgement of statements of association made by Ngāti Rangi,

    2.3 a deed of recognition for certain areas administered by the Department of Conservation;

    2.4 declaration of official geographic names;

    2.5 the vesting of certain properties in Ngāti Rangi;

    2.6 a joint management scheme for Whangaehu River, known to Ngāti Rangi as Te Waiū-o-Te-Ika; and

    2.7 Te Tāpora, an overlay classification applying to a forest sanctuary area which requires the New Zealand Conservation Authority and relevant Conservation Boards to have regard to statements of values and protection

[1] Clause 13 defines Ngāti Rangi, clause 14 defines historical claims.

principles outlined by Ngāti Rangi and trustees of Te Tōtarahoe o Paerangi Trust.

3. The rights or interests of persons not party to the statutory acknowledgement or the deed of recognition are expressly not affected by the Bill.[2]

Whether s 19 at issue

4. The Bill will confer assets or rights on Ngāti Rangi that are not conferred on other people. Notwithstanding that, the Bill does not *prima facie* limit the right to freedom from discrimination affirmed by s 19 of the Bill of Rights Act. Discrimination arises only if there is a difference in treatment on the basis of one of the prohibited grounds of discrimination between those in comparable circumstances. In the context of this settlement, which addresses specified historical claims brought by Ngāti Rangi, no other persons or groups who are not party to those claims are in comparable circumstances to the recipients of the entitlements under the Bill. No differential treatment for the purpose of s 19 therefore arises by excluding others from the entitlements conferred under the Bill.

5. Clause 137 reserves a special right of access to protected sites transferred to the iwi and hapū of Ngāti Rangi. This right of access applies to Māori for whom the protected site is of special cultural, historical or spiritual significance. It is conceivable this clause raises a s 19 issue if the protected sites also have significance to non-Māori.

6. However, the reasoning in paragraph 4 above also applies to clause 137 and on that basis s 19 is not infringed. To the extent s 19 might be engaged, any infringement is justified by the objective of ensuring related claimant groups are not prejudiced by the settlement in situations where the negotiation of cultural and commercial redress has to occur in a multi-iwi setting.

Privative clause

7. Clause 15 of the Bill provides that the settlement of the historical claims is final. It excludes the jurisdiction of any court, tribunal or other judicial body to consider: the historical claims, the deed of settlement, the Act itself, or the redress provided under the deed of settlement or this Act, other than in respect of the interpretation or implementation of

   7.1 the deed of settlement; or

   7.2 the Act (when the Bill is passed into law).

8. Legislative determinations ought not conventionally to fall within the scope of judicial review.[3] However, to the extent any excluded matters could be susceptible to judicial review, cl 15 constitutes a justified limit under s 5 of the Bill of Rights Act on the right affirmed by s 27(2). Excluding subsequent challenge is a legitimate incident of the negotiated settlement of claims.

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[2] Clauses 38 and 54.

[3] *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC).

9. To the extent the exclusion of subsequent challenge could be said to limit a claimant's minority rights under s 20 of the Bill of Rights Act, this would be justified on the same basis.

10. The United Nations Human Rights Committee upheld a similar exclusion under the 1992 Fisheries Settlement. The Committee found the exclusion was consistent with arts 14 and 27 of the International Covenant on Civil and Political Rights, which are comparable to ss 20 and 27(2) of the Bill of Rights Act.[4]

Whether s 27(3) at issue

11. Clause 24 of the Bill excludes damages or other forms of monetary compensation as a remedy for a failure of the Crown to comply with the taonga tūturu protocol.

12. This clause may be seen to raise the issue of consistency with s 27(3) of the Bill of Rights Act, namely the tight to bring civil proceedings against the Crown and have these heard according to the law in the same way as civil proceedings between individuals. However, cl 24 affects the substantive law and does not fall within the ambit of s 27(3) of the Bill of Rights Act, which protects procedural rights.[5] Accordingly, no inconsistency arises.

Review of this advice

13. This advice has been reviewed in accordance with Crown Law protocol by Helen Carrad, Crown Counsel.

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Debra Harris
Crown Counsel

Noted

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Hon David Parker
Attorney-General
/ /2018

[4] *Apirana Mahuika v New Zealand* Communication Number 547/1993 UN Doc CCPR/C/70/D/547/1993 (2000).
[5] *Westco Lagan Ltd v Attorney-General*, above n 3, at 55.