

23 November 2021

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Canterbury Regional Council (Ngāi Tahu Representation) Bill

Purpose

1. We have considered whether the Canterbury Regional Council (Ngāi Tahu Representation) Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 19 (freedom from discrimination). Our analysis is set out below.

The Bill

3. The main objective of the Bill is to provide for Ngāi Tahu representation on the Canterbury Regional Council (trading as Environment Canterbury). This is to be achieved by empowering Te Rūnanga o Ngāi Tahu to appoint two non-elected members to Environment Canterbury, to serve equally alongside the 14 elected members.
4. The Bill is intended to reinstate Ngāi Tahu representation on Environment Canterbury, which was previously provided for during 2016-2019 under the Environment Canterbury (Transitional Governance Arrangements) Act 2016.

Consistency of the Bill with the Bill of Rights Act

Section 19 - Right or Freedom discrimination

5. Section 19(1) of the Bill of Rights Act affirms the right to freedom from discrimination on the grounds set out in the Human Rights Act 1993 (the Human Rights Act).
6. The key questions in assessing whether there is a limit on the right to freedom from discrimination are:
 - a. does the legislation draw a distinction on one of the prohibited grounds of discrimination under s 21 of the Human Rights Act; and if so,
 - b. does the distinction involve disadvantage to one or more classes of individuals?
7. A distinction will arise if the legislation treats two comparable groups of people differently on one or more of the prohibited grounds of discrimination. Ethnicity is a prohibited

ground of discrimination under s 21 of the Human Rights Act. Whether disadvantage arises is a factual determination.¹

8. The Bill proposes to confer rights on Māori that are not conferred on other people, by providing Ngāi Tahu with non-elected representatives on the Council, in addition to their vote for elected members. The Bill could therefore be seen to draw distinctions on the basis of race or ethnic origins.
9. Notwithstanding this, the extent to which the distinctions reflect the status of Māori as the Crown's Treaty partner, and the Crown's duties under Te Tiriti o Waitangi, we do not consider any other group is in a comparable position.
10. The Treaty of Waitangi settlement agreed between Ngāi Tahu and the Crown in November 1997 acknowledged the rangatiratanga and mana of Ngāi Tahu over their lands ("the Settlement") and affirmed their "special association" with the natural environment in a number of areas². On the basis of this, the Settlement awarded Ngāi Tahu positions of input into environmental management bodies throughout the South Island/Te Wai Pounamu. This included establishing a Ngāi Tahu statutory adviser position to the Department of Conservation and awarding dedicated seats to appointees of Te Rūnanga o Ngāi Tahu on the New Zealand Conservation Authority and on Conservation Boards within the Ngāi Tahu Claim Area.
11. Empowering Te Rūnanga o Ngāi Tahu to appoint two non-elected members to Environment Canterbury adheres to the same principle as the decisions to give Ngāi Tahu input into other environmental governance bodies in the Settlement. Ngāi Tahu have a unique claim to input into the Environment Canterbury context on the basis of their special association with the Canterbury natural environment. No comparator group is currently recognised by the government as having this special association in this region.
12. In the context of the provisions within this Bill, no other persons or groups can be considered to be in comparable circumstances to Ngāi Tahu and no persons or groups will be materially disadvantaged by the passing of the Bill. The result of this assessment is that s 19 of the Bill of Rights Act is not engaged.

Conclusion

13. 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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¹ See, for example *McAlister v Air New Zealand* [2009] NZSC 78, [2010] 1 NZLR 153 at [40] per Elias CJ, Blanchard and Wilson JJ.

² Deed of Settlement between Te Rūnanga o Ngāi Tahu and the Crown, 21 November 1997, Section 2, "Crown's Apology, Acknowledgements and Agreements."