

26 January 2018

Attorney-General

**Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill v 13: consistency with the New Zealand Bill of Rights Act 1990**  
**Our Ref: ATT395/276**

1. We have considered the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill ("the 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. Vetting advice on this bill was given to the previous Attorney-General in August 2017 but the Bill was ultimately not introduced to the House before the election. It is anticipated that it will now be before cabinet on 15 February 2018.
3. The purpose of the Bill is to give effect to the deed of agreement between ngā hapū o Ngāti Porou ("the hapū") and the Crown in relation to ngā rohe moana o ngā hapū o Ngāti Porou ("the rohe moana"). That agreement provides for the hapū to have customary interests, including customary marine title, recognised within the rohe moana. The Bill provides for Parts 3 and 4 of the Marine and Coastal Area (Takutai Moana) Act 2011 to no longer apply in the rohe moana, replacing them with specific recognition of customary interests.
4. The rohe moana is the common marine and coastal area in the rohe of the hapū that ratified the deed of agreement. This group does not comprise all hapū in the area, some having chosen not to ratify.
5. The Bill recognises the mana of the hapu in the rohe moana and provides legal mechanisms to support that mana.

**Discrimination – Section 19**

6. Clause 6(2) provides that Parts 3 and 4 of the Marine and Coastal Area (Takutai Moana) Act cease to apply to hapū who have ratified the agreement so that they cannot pursue customary rights under the Act. Customary rights are instead recognised by the Bill and the processes provided for in the Bill. Other hapū in the area will continue to be covered by the Act in the same way as iwi around the country.

7. The Bill does not *prima facie* limit the right to freedom from discrimination affirmed by section 19 of the Bill of Rights Act by conferring rights on hapū that are not conferred on other people. 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 this settlement, which is made in the context of the particular relationship between the Crown and the hapū who have ratified the agreement, 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. While some hapū have chosen not to ratify the agreement and are therefore excluded from the ambit of the bill (cl 6), that must reflect their own relationship with the Crown. No differential treatment for the purpose of section 19 therefore arises by excluding others from the entitlements conferred under the Bill.
8. The Bill makes it an offence to intentionally fail to comply with a prohibition or restriction imposed in relation to a wāhi tapu or wāhi tapu area (cl 46) and the offence can include exemptions for people carrying out customary activities. A similar provision exists in s 81 of the Marine and Coastal Area (Takutai Moana) Act. While this offence provision does confer access for some that is not conferred on others, it is a difference of treatment that arises because of the particular circumstances of those with customary activities in the area and is not therefore discrimination on a prohibited ground between those in comparable circumstances.
9. This advice has been peer reviewed by Austin Powell, Senior Crown Counsel.

**Noted**

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Kim Laurenson  
Crown Counsel

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Hon David Parker  
**Attorney-General**  
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