

Nga Rohe Moana o Nga Hapu o Ngati Porou Bill

26 September 2008

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

Nga Rohe Moana o Nga Hapu o Ngati Porou Bill

Our Ref: ATT395/79

1. I have reviewed the above Bill (version 17) for consistency with the New Zealand Bill of Rights Act 1990. I advise that the Bill appears to be consistent with the New Zealand Bill of Rights Act 1990.
2. The Bill would give effect to a deed of agreement between the Crown and certain hapu of Ngati Porou. It provides for certain benefits to be conferred, or instruments to apply, in relation to:

2.1 the areas defined by the term "nga rohe moana of nga hapu o Ngati Porou", and

2.2 within those areas, locations determined to be "Territorial Customary Rights" areas in accordance with Part 3 and the Foreshore and Seabed Act 2004

3. The Bill does not purport to affect the existing rights, avenues for claim, and rohe of hapu who are not signatories to the deed.

Section 18 - Freedom of Movement

4. Section 18(1) of the New Zealand Bill of Rights Act 1990 provides for the "right to freedom of movement..." in New Zealand.
5. Subpart 4 of Part 2 of the Bill enables the identification of wahi tapu to which public access may be restricted or prohibited. I do not consider that this creates inconsistency with s 18(1) because:

5.1 The right to freedom of movement could not apply absolutely to any place in the country.

5.2 The rights of access conferred by s 7 of the Foreshore and Seabed Act 2004 may be limited by the gazettal of wahi tapu under s 26. Subpart 4 appears to create no greater limitation on public access than currently exists.

Section 27(2)– The Right to Judicial Review

6. Section 27(2) of the Bill of Rights Act provides:

“Every person whose rights, obligations or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.”

7. Clause 108 excludes the jurisdiction of the High Court and Maori Land Court under sections 33, 48 and 68 of the Foreshore and Seabed Acts 2008, which concern territorial customary rights and customary rights orders. This exclusion applies only to areas defined as nga rohe moana or nga hapu o Ngati Porou and is subject to the ability to make territorial customary rights claims in the High Court under sections 113 and 114. Subpart 3, concerning “protected customary activities”, appears to be a substitute for the existing customary rights jurisdictions.
8. Clause 109 of the Bill would remove the jurisdiction of courts, tribunals and judicial bodies over:

8.1 The deed of agreement

8.2 The Act

8.3 Territorial Customary Rights and Customary Rights Orders

9. Section 27(2) has been held to apply to a determination by a Tribunal or public authority that is adjudicative in nature [\[1\]](#). A negotiated settlement between two parties is not an adjudication of the matters in dispute. Nor can it be said the Crown is a tribunal or public authority. It follows that s 27(2) is not engaged.

Section 19 – Freedom From Discrimination

10. Section 19 of the New Zealand Bill of Rights Act 1990 concerns the right to freedom from discrimination on various grounds, including race.
11. This Bill addresses, among other things, extant rights under the Foreshore and Seabed Act and the continuing associations of Ngati Porou hapu to the coastline in question. In this respect its focus is different from statutes that settle historical Treaty of Waitangi claims. Nevertheless, I do not consider that it raises any discrimination issue that is significantly different from that legislation, which advice from this office has regarded as consistent with s 19 New Zealand Bill of Rights Act 1990.
12. Ben Keith, Crown Counsel, has reviewed this advice in accordance with Crown Law Office protocol.

Fergus Sinclair

Crown Counsel

Footnotes

1 Chisholm v Auckland City Council [2005] NZAR 661. Minister of Fisheries & Ors v Pranfield Holdings & Ors, [2008] NZCA 218 CA 48/07 para [136].

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