

# Maraeroa A and B Blocks Claims Settlement Bill

27 February 2012

ATTORNEY-GENERAL

Maraeroa A and B Blocks Claims Settlement Bill (PCO 15028 version 3.5): Consistency with the New Zealand Bill of Rights Act 1990

Our Ref: ATT395/161

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

2. The Bill gives effect to a final settlement of the Maraeroa A and B historical claims as defined in the Bill [1]. The Bill transfers to the descendants of the original owners of Maraeroa A and B blocks various items of cultural and commercial redress, including the vesting of property and right of first refusal over the purchase of certain protected land. It provides claimants with rights in respect of culturally significant matters, including statutory acknowledgements; overlay classifications with associated protection principles and rights of consultation; geographic name changes; entitlement to certain Crown forestry rental proceeds; and rights of access to protected sites.

## *Section 19 of the Bill of Rights Act*

3. Although the Bill confers assets and interests on the settling group that are not conferred on other people it does not, in my view, create a limit on the freedom from discrimination affirmed by s 19 of the Bill of Rights Act. This would involve a difference in treatment on the basis of one of the prohibited grounds of discrimination between those in comparable circumstances [2]. The settlement addresses specified historical claims brought only by the descendents of the original owners of Maraeroa A and B. No other persons or groups are in comparable circumstances to the recipients of the entitlements under the Bill. Accordingly, excluding others from the entitlements conferred under the Bill is not differential treatment for the purposes of s 19.

## *Sections 20 and 27(2) of the Bill of Rights Act*

4. Clause 14 of the Bill states that the settlement of the historical claims is final and excludes, other than in respect of the interpretation and implementation of the deed of settlement or the Act, the jurisdiction of the courts, tribunals or other judicial bodies from considering the settlement and historical claims.

5. Legislative determination of a claim would not conventionally fall within the scope of judicial review. Nonetheless, to the extent the clause covers determinations otherwise

susceptible to judicial review, it limits the right to bring judicial review proceedings affirmed by s 27(2) of the Bill of Rights Act. Any such limitation on s 27(2) would, however, be justified under s 5 of the Bill of Rights Act as a legitimate incident of the negotiated settlement of the claims.

6. In so far as the section could be said to limit reliance on the protection of the rights of minorities under s 20 of the Bill of Rights Act, it would be justified under s 5 on the same basis.

7. The United Nations Human Rights Committee upheld a similar exclusion under the 1992 Fisheries Settlement, also an incident of a negotiated settlement, as consistent with the right of access to the courts as affirmed by art 14(1) of the International Covenant on Civil and Political Rights and with art 27, which are comparable to ss 20 and 27(2) of the Bill of Rights Act [3].

8. This advice has been reviewed, in accordance with Crown Law protocol, by Martha Coleman, Crown Counsel.

Yours faithfully

Lisa Fong  
Crown Counsel

---

*Footnote 1:*

Clause 11 and Schedule 1 defines the settling group; cl 12 defines the historical claims.

*Footnote 2:*

*Quilter v Attorney-General* [1998] 1 NZLR 523 at 527 per Gault J and 593 per Tipping J (CA); also *McAlister v Air New Zealand Ltd* [2010] 1 NZLR 153 at [51] per Tipping J and [105] per McGrath J (SC).

*Footnote 3:*

*Apirana Mahuika v New Zealand*, Communication No. 547/1993, U.N. Doc. CCPR/C/70/D/547/1993 (2000).

---

In addition to the general disclaimer for all documents on this website, please note the following: This advice was prepared to assist the Attorney-General to determine whether a report should be made to Parliament under s 7 of the New Zealand Bill of Rights Act 1990 in

relation to the Maraeroa A and B Blocks Claims Settlement Bill. It should not be used or acted upon for any other purpose. The advice does no more than assess whether the Bill complies with the minimum guarantees contained in the New Zealand Bill of Rights Act. The release of this advice should not be taken to indicate that the Attorney-General agrees with all aspects of it, nor does its release constitute a general waiver of legal professional privilege in respect of this or any other matter. Whilst care has been taken to ensure that this document is an accurate reproduction of the advice provided to the Attorney-General, neither the Ministry of Justice nor the Crown Law Office accepts any liability for any errors or omissions.