

Ngā Hapū o Ngāti Ranginui Claims Settlement Bill

19 June 2015
Attorney-General

Ngā Hapū o Ngāti Ranginui Claims Settlement Bill (PCO 16650/11.0) — Consistency with the
New Zealand Bill of Rights Act 1990

Our Ref: ATT395/228

1. We have considered the above Bill for consistency with the New Zealand Bill of Rights Act 1990 (“the Bill of Rights Act”). The Bill appears consistent.

2. The Bill will effect a final settlement of the historical claims of Ngā Hapū o Ngāti Ranginui. It:

2.1 records the acknowledgments and apology given by the Crown to Ngā Hapū o Ngāti Ranginui in the deed of settlement signed on 21 June 2012 (the “settlement deed”);

2.2 provides cultural redress in the form of a taonga tūturu protocol, changes to official geographic names, appointing the trustees of the Ngā Hapū o Ngāti Ranginui Settlement Trust (the “Settlement Trust”) to administer a reserve, vesting 15 properties in the trustees of the Settlement Trust, and vesting two properties jointly in the trustees of six iwi settlement trusts (including the Settlement Trust); and

2.3 provides commercial redress including the transfer of properties, setting apart of properties as Māori reservations, and giving the trustees of the Settlement Trust a right of first refusal over certain land.

Whether s 19 at issue

3. By conferring assets and rights on Ngā Hapū o Ngāti Ranginui that are not conferred on others, 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 historical claims brought by Ngā Hapū o Ngāti Ranginui, no other persons or groups who are not party to those claims are in comparable circumstances. Excluding others from those entitlements does not give rise to any differential treatment for the purpose of s 19.

Issues under ss 20 and 27(2) — privative clauses

4. Clause 15 provides the settlement of historical claims is final and excludes the jurisdiction of any court, tribunal or other judicial body to consider the historical claims or settlement, other than in respect of the interpretation or implementation of the settlement deed, the

Tauranga Moana Iwi Collective settlement deed, the Bill or the Tauranga Moana Iwi Collective Settlement Bill.

5. Legislative determinations ought not conventionally to fall within the scope of judicial review. [1] However to the extent any excluded matters could be susceptible to judicial review, cl 15 constitutes a justified limit under s 5 of the right affirmed by s 27(2). Excluding subsequent challenges is a legitimate incident of the negotiated settlement of claims. To the extent exclusion of subsequent challenges could be said to limit a claimant's minority rights under s 20, this would be justified on the same basis.

6. 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. [2]

Whether s 27(3) at issue

7. Clause 24(3) excludes damages and other forms of monetary compensation as a remedy for any failure by the Crown to comply with the taonga tūturu protocol.

8. This clause may be seen to limit s 27(3) of the Bill of Rights Act, namely the right to bring civil proceedings against the Crown and have those heard according to law in the same way as civil proceedings between individuals. However, cl 24(3) affects the substantive law and does not fall within the ambit of s 27(3), which protects procedural rights. [3]

Daniel Perkins
Crown Counsel

[Disclaimer](#)

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 Ngā Hapū o Ngāti Ranginui 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.

Footnotes

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

[2] *Apirana Mahuika v New Zealand Communication* Number 547/1993 UN Doc CCPR/C/70/D/547/1993 (2000).

[3] *Westco Lagan Ltd v Attorney-General*, above n 1 at [63]: “Section 27(3) ... cannot restrict the power of the legislature to determine what substantive rights the Crown is to have. Section 27(3) merely directs that the Crown shall have no procedural advantage in any proceeding to enforce rights if such rights exist.”