

Nga Punawai o Te Tokotoru Claims Settlement Bill (Ngati Rangiteaorere)

19 June 2013

Attorney-General

Legal advice

Consistency with the New Zealand Bill of Rights Act 1990: Nga Punawai o Te Tokotoru Claims Settlement Bill (Ngati Rangiteaorere)

1. The draftsman advises that these three Bills are to be combined into an omnibus Nga Punawai o Te Tokotoru Claims Settlement Bill. The consolidated Bill will not be available until closer to the date that it is put before the Cabinet Legislation Committee, but he assures us that the consolidation will not involve any substantive changes. I have examined the three component Bills for consistency with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). I advise that each is consistent with the Bill of Rights Act.

2. The Bill will effect final settlements of the Ngati Rangiteaorere, Tapuika and Ngati Rangiwewehi historical claims as defined in the Bill.¹ It provides for acknowledgments and apologies to Ngati Rangiteaorere, Tapuika and Ngati Rangiwewehi in respect of historical breaches of the Treaty of Waitangi along with cultural and commercial redress.

Discrimination

3. The Bill does not limit the right to freedom from discrimination affirmed by s 19 of the Bill of Rights Act by conferring assets or rights on Ngati Rangiteaorere, Tapuika and Ngati Rangiwewehi that are not conferred on other people. Discrimination only arises 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 a settlement that addresses specified historical claims brought by these iwi, no other person could be said to be in comparable circumstances to those who are to receive entitlements under the Bill.

4. In respect of both Tapuika (clause 287A) and Ngati Rangiwewehi (clause 162A) the Bill reserves a special right of access to protected sites on Crown forest land transferred to iwi as part of the settlement. This right of access applies to Māori for whom the protected site is of special cultural, historical, or spiritual significance. It is conceivable that this clause raises a section 19 issue if the protected sites also have significance to non-Māori. However, the reasoning in paragraph 3 above also applies to these provisions and on that basis section 19 is not infringed. To the extent that section 19 might be engaged, any infringement is justified by the objective of ensuring that related claimant groups are not prejudiced by the settlement in situations where the negotiation of cultural and commercial redress has to occur in a multi-iwi setting.

Natural Justice

5. The Bill provides that the settlements of the historical claims of Ngati Rangiteaorere, Tapuika and Ngati Rangiwehewehi are final and it excludes the jurisdiction of the Courts, the Waitangi Tribunal and other judicial bodies from further consideration of the settlements and the historical claims, other than in respect of the interpretation and implementation of the Deeds of Settlement or the Act.

6. Legislative determination of historical claims would not conventionally fall within the scope of judicial review.² Even if any of the excluded matters were susceptible to juridical review, the clauses excluding jurisdiction are a justified limit on the right affirmed by s 27(2) of the Bill of Rights Act. Excluding subsequent legal challenges is a legitimate incident of the negotiated settlement of claims.

7. Any limit on minority rights under s 20 of the Bill of Rights Act would be justified on the same basis.

8. The United Nations Human Rights Committee upheld a similar exclusion under the 1992 Fisheries Settlement. The Human Rights Committee found that the exclusion was consistent with articles 14 and 27 of the International Covenant on Civil and Political Rights, which are comparable provisions to s 20 and s 27(2) of the Bill of Rights Act.³

9. In respect of each settlement the Bill will exclude any form of monetary compensation as a remedy for any failure of the Crown to comply with protocols issued under the Bill. Although s 27 affirms the right to bring civil proceedings against the Crown, the section protects only procedural rights, while these provisions concern the substantive law and no inconsistency arises.

Review of this advice

10. This advice has been reviewed in accordance with Crown Law protocol by Helen Carrad, Senior Crown Counsel.

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Footnotes

1 For Ngati Rangiteaorere giving effect to an earlier partial settlement and a Deed of Settlement on 14 June 2013; for Tapuika giving effect to a Deed of Settlement on 16 December 2012; and for Ngati Rangiwehewehi giving effect to a Deed of Settlement on 16 December 2012.

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

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

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