

Rongowhakaata Claims Settlement Bill

15 February 2012

ATTORNEY-GENERAL

Rongowhakaata Claims Settlement Bill (PCO 14005 version 3.9): Consistency with the New Zealand Bill of Rights Act 1990
Our Ref: ATT395/166

1. I have considered the current draft of this Bill for consistency with the New Zealand Bill of Rights Act 1990 (“the Bill of Rights Act”). I conclude that the Bill appears to be consistent with the Bill of Rights Act. This advice addresses issues which arise in relation to ss 19, 20 and 27(2) to (3) of the Bill of Rights Act.

2. The Bill will give effect to the final settlement of the historical claims of Rongowhakaata, including Nga Uri o Te Kooti Rikirangi [\[1\]](#). It sets out the cultural and commercial redress provided to Rongowhakaata, which includes the vesting of the original parts of the whare Te Hau ki Tuaranga; provision for various forms of protocol; statutory acknowledgement of Rongowhakaata’s association with specified statutory areas; and notification of certain draft conservation management strategies to Nga Uri o Te Kooti Rikirangi trustees. The Bill vests cultural and commercial redress properties and provides a right of first refusal over certain Crown-held land.

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 prima facie 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 of Rongowhakaata and Nga Uri o Te Kooti Rikirangi. No other persons or groups are in comparable circumstances to the recipients of the entitlements under the Bill, meaning that exclusion of others from these entitlements is not differential treatment for the purposes of s 19.

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

4. Clause 15 of the Bill states that the settlement of the historical claims is final and excludes the jurisdiction of the courts, tribunals or other judicial bodies from considering the historical claims, deed of settlement, the Act or redress under the deed or Act. Jurisdiction is retained in respect of the interpretation and implementation of the deed of settlement or the Act.

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].

Section 27(3) of the Bill of Rights Act

8. Clause 26(3) of the Bill excludes damages or monetary compensation as a remedy in respect of any failure by the Crown to comply with a protocol. This clause does not in my view fall within the ambit of s 27(3), which protects rights to bring civil proceedings against the Crown and have those heard according to law in the same way as civil proceedings between individuals. Section 27(3) does not prevent the legislature determining substantive rights [4]. Accordingly, clause 26(3) of the Bill is not inconsistent with s 27(3) of the Bill of Rights Act.

9. This advice has been reviewed in accordance with Crown Law protocol by Charlotte Griffin, Crown Counsel.

Yours faithfully

Lisa Fong
Crown Counsel

Footnote 1:

Clause 13 defines the settling group and cl 14 defines the historical claims.

Footnote 2:

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).

Footnote 4:

Westco Lagan Ltd v Attorney-General [2001] 1 NZLR 40, at [63] (HC).

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