

Te Roroa Claims Settlement Bill

24 January 2007

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

Te Roroa Claims Settlement Bill - PCO 7009/15

Our Ref: ATT395/27

1. I have considered the above Bill for consistency with the New Zealand Bill of Rights Act 1990 ("the Bill of Rights"). I advise that the Bill appears to be consistent with the Bill of Rights.
2. The Bill effects a final settlement of the Te Roroa historical claims (defined in clause 12). The Bill transfers to Te Roroa various items of cultural and commercial redress in settlement of historical claims. The Bill excludes courts, judicial bodies and tribunals from considering the settlement and historical claims (clause 13). The Waitangi Tribunal's jurisdiction is specifically excluded (clause 14).

Section 27(2) issue

3. The clauses in the Bill ousting the jurisdiction of courts and the Tribunal (clauses 13 and 14) raise an issue about compliance with s 27(2) of the Bill of Rights (the right to seek judicial review). That section 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."

4. Section 27(2) applies to a determination by a tribunal or public authority that is adjudicative in nature, *Chisholm v Auckland City Council* [2005] NZAR 661. A negotiated settlement between two parties is not an adjudication of the matters in dispute. Nor can it be said that the Crown is a tribunal or other public authority.
5. Clause 13 does limit the ability to bring judicial review. However, even if this is a *prima facie* breach of s 27(2), it is likely to be justified under s 5. Any limitation on the right to judicial review is justified as the Bill reflects a reciprocal agreement between two parties who have agreed on the effect settlement would have on their future claims. I also note that the settlement was only signed after the Crown was satisfied there was the appropriate mandate to enter into such an agreement. Further, the Bill specifically does not exclude the jurisdiction of courts, judicial bodies or tribunals (including the Waitangi Tribunal) in respect of the interpretation or the implementation of the deed or the Act (clauses 13(3) and 14).
6. This analysis is consistent with advice given concerning the effect of other settlements^[1].

Section 27(3) issue

7. Clause 21(3) of the Bill raises the issue of compliance with s 27(3) of the Bill of Rights, 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.
8. Clause 21(3) of the Bill excludes damages as a remedy for any failure of the Crown to comply with a protocol under Part 2. This clause affects the substantive law and does not in my view fall within the ambit of s 27(3), that protects procedural rights. Accordingly, clause 21(3) of the Bill is consistent with s 27(3) of the Bill of Rights.

Yours sincerely

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1 See our advice in respect of the Ngati Mutunga Settlement (dated 21 June 2006), the Te Arawa Lakes settlement (dated 17 February 2006), the Ngati Tuwharetoa (Bay of Plenty) settlement (dated 6 September 2004), the Ngati Awa settlement (dated 4 August 2004), the Ngati Tama settlement (dated 4 April 2003), the Te Uri o Hau settlement (dated 22 November 2001), the Pouakani settlement (dated 12 September 2000), and the Ngai Tahu settlement (dated 24 March 1998). Those opinions reflected the approach taken in relation to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Waikato Raupatu Claim Settlement Act 1995.

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