

Whanganui Iwi (Wanganui Prison and Northern Part of Wanganui Forest) On-account Settlement Bill

23 July 2009

Attorney-General

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

Whanganui Iwi (Wanganui (Kaitoke) Prison and Northern Part of Wanganui Forest) On-account Settlement Bill

Our Ref: ATT395/111

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 is a companion measure to the Ngāti Apa (North Island) Claims Settlement Bill. The Bill gives effect to certain provisions in the deed of on account settlement of the historical claims of Whanganui Iwi. The Bill provides Whanganui Iwi with rights to purchase a half share of Wanganui Prison and the northern part of Wanganui Forest, both on a deferred selection basis. Whanganui Iwi's right to purchase these properties takes effect only if Ngāti Apa (North Island) exercise their rights to purchase either the other half share of Wanganui Prison and/or the southern half of the Wanganui Forest.
3. Clause 8 of the Bill applies relevant provisions of the Ngāti Apa (North Island) Claims Settlement Act 2009, with the necessary modifications, to the transfer of the share of the Wanganui Prison and northern part of the Wanganui Forest to Whanganui Iwi (should that transfer occur). Clause 8(1) applies those provisions in that Act that relate to the transfer of commercial redress properties and clause 8(2) applies those provisions that confer a right of access across land to protected sites on "Maori for whom the protected site is of special spiritual, cultural, or historical significance".
4. Although the Bill confers entitlements on Whanganui Iwi and certain other Maori which are not conferred on other people, it is not, in my view, a *prima facie* limit on the right to freedom from discrimination affirmed by s 19 of the Bill of Rights Act. Discrimination only arises if there is a difference in treatment on the basis of one of the prohibited grounds of discrimination between two comparably situated groups that causes disadvantage [\[1\]](#). Excluding others from the entitlements conferred under the Bill is not differential treatment for the purposes of s 19, as no other persons or groups are comparably situated to the recipients of those entitlements. Further, even if this did amount to differential treatment for the purposes of s 19 it does not result in the type of disadvantage that s 19 aims to protect against. That is disadvantage arising from prejudice and negative stereotyping that perpetuates legal, social or political disadvantage faced by a marginalised group in our society.

5. This advice has been reviewed, in accordance with Crown Law protocol, by Victoria Casey, Crown Counsel.

Yours faithfully

Jane Foster
Associate Crown Counsel

Footnotes

1. *Hodge v Canada* [2004] 3 SCR 357, [1-3], [17-37] and *R (Carson) v Secretary of State for Work and Pension* [2006] 1 AC 173, [14], [25-27].

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 Whanganui Iwi (Wanganui (Kaitoke) Prison and Northern Part of Wanganui Forest) On-account 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.