Te Tari Ture
o te Karauna
Crown Law

25 November 2022

Attorney-General

Pare Hauraki Collective Redress Bill PCO 17856/7.18 – Consistency with the New Zealand Bill of Rights Act 1990
Our Ref: ATT395/373

1. We have considered the above Bill for consistency with the New Zealand Bill of Rights Act 1990 (**the Bill of Rights Act**). We advise that the Bill appears to be consistent with the Bill of Rights Act.

2. The Bill will effect redress which requires legislation in the Pare Hauraki Collective Redress Deed (**Collective Deed**).[1] The Pare Hauraki Collective is formed by the 12 Iwi of Hauraki.[2] The Collective Deed includes cultural and commercial redress, but not financial redress which each of the Iwi of Hauraki will receive through their iwi-specific settlements. The Bill does not settle any claims; full and final settlement of historical Treaty of Waitangi claims will be made through iwi-specific settlements. Measures for cultural redress include the vesting of two cultural redress properties in fee simple, statutory acknowledgment of the association of the Iwi of Hauraki with the statutory area, participation in a number of co-governance/co-management arrangements over natural resources, te reo revitalisation and declaration of official geographic names. Commercial measures include the right to purchase Crown Forest Land, the transfer of 41 properties and ownership of Crown-owned minerals in land transferred to the Iwi as part of their Treaty settlements.

Whether s 19 at issue

3. The Bill does not *prima facie* limit the right to freedom from discrimination affirmed by s 19 of the Bill of Rights Act through conferring assets or rights on the Iwi of Hauraki that are not conferred on other people. 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 Bill, which addresses cultural and commercial redress for the Iwi of Hauraki, no other persons or groups who are not party to the claims of the Iwi of Hauraki are in comparable circumstances to the recipients of the entitlements under this Bill. No differential treatment for the purposes of s 19 therefore arises by excluding others from the entitlements conferred under the Bill.

[1] The Pare Hauraki Collective Redress Deed is defined in cl 9.

[2] The Iwi of Hauraki are defined in cl 10 as the collective group comprising the listed iwi.

4. Clause 201 proposes to reserve a special right of access to land on which a protected site is situated.[3] 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 may raise a s 19 issue if the protected sites also have significance to non-Māori. However, the reasoning in paragraph 3 above would also apply to cl 201 and on that basis, s 19 is not infringed. To the extent that s 19 might be engaged, any infringement is justified by the objective of ensuring that related claimant groups are not prejudiced by the redress in situations where the negotiation of cultural commercial redress has to occur in a multi-iwi setting.

Right to justice

5. There are privative clauses in the Bill:

   5.1 Clause 15 proposes that no court, tribunal, or other judicial body will have jurisdiction in respect of any matter that arises from the application of the Te Ture Whenua Māori Act 1993 if the matter relates to certain land dealt with in the Bill, the Pare Hauraki Whenua Limited Partnership or a subsidiary, or an RFR holder,[4] any governance arrangement over specified land or any decision or other action taken by either of the Pare Hauraki Limited Partnerships (or subsidiaries) in relation to specified land in specified circumstances.

   5.2 Clause 273(2) proposes to amend the Ngāi Tai ki Tāmaki Claims Settlement Act 2018 to extend the matters from which the jurisdiction of the courts is excluded to include the Pare Hauraki collective deed, the Pare Hauraki Collective Redress Act, and the redress provided under these collective deeds and Acts.

6. Legislative determination ought not conventionally to fall within the scope of judicial review.[5] However, to the extent any excluded matters could be susceptible to judicial review, cl 15 and 273(2) constitute a justified limit under s 5 of the Bill of Rights Act on the right affirmed by s 27(2). Excluding subsequent challenge is a legitimate incident of the negotiated settlement of claims. To the extent the exclusion of subsequent challenge could be said to limit a claimant's minority rights under s 20 of the Bill of Rights Act, this would be a justified limitation on the same basis.

7. The United Nations Human Rights Committee upheld a similar exclusion under the 1992 Fisheries Settlement. The Committee found the exclusion was

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[3] Clause 184 defines "protected site" as meaning any area of land situated on the licensed land that-

(a) is wāhi tapu or a wāhi tapu area within the meaning of section 6 of the Heritage New Zealand Pouhere Taonga Act 2014; and

(b) is, at any time, entered on the New Zealand Heritage List/Rārangi Kōrero as defined in section 6 of that Act.

[4] "RFR holder" is defined in cl 257(4).

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

consistent with articles 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.[6]

Review of this advice

8. In accordance with Crown Law's policies, this advice has been peer reviewed by Helen Carrad, Crown Counsel.

Debra Harris
Crown Counsel
027 839 3046

Encl.

Noted / Approved / Not Approved

Hon David Parker
Attorney-General
25 / 11 /2022

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