

Central North Island Forests Land Collective Settlement Bill

18 June 2008

Attorney-General

Central North Island Forests Land Collective Settlement Bill (229-1): Consistency with New Zealand Bill of Rights Act

Our Ref: ATT395/64

1. I have considered this Bill ("Bill") for consistency with the New Zealand Bill of Rights Act 1990 ("Bill of Rights Act"). I advise that the Bill appears to be consistent with the Bill of Rights.
2. The Bill seeks to facilitate the settlement of historic claims by certain Central North Island iwi in respect of certain Crown forest land. The operative provisions of the Bill:

2.1 Transfer Crown forest land and accumulated rents in respect of that land to a company, CNI Iwi Holdings Ltd;

2.2 Record allocation of these assets as between the iwi that are party to the settlement;

2.3 As not all iwi have agreed to the settlement, retain Crown ownership of a percentage of the Crown forest land and accumulated rents in order to meet claims by other claimants and/or claims for cultural redress by iwi party to the settlement;

2.4 Seek to facilitate the resolution of any other Central North Island claims; and

2.5 Retain public access in respect of the Crown forest land.

3. The Bill raises one issue in respect of the Bill of Rights Act. Subject to specific retention of certain jurisdiction by the Waitangi Tribunal (cll 22 & 23), cl 7 of the Bill excludes jurisdiction of courts, tribunals and other judicial bodies in respect of the forest land claims, the deed of settlement or the Bill itself.
4. That exclusion may constitute a limit on the right to seek judicial review affirmed by s 27(2) of the Bill of Rights Act, which 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."

5. The term "determination of any tribunal or other public authority" in the parallel provision in s 27(1) has been held to apply only to decisions of public authorities that are adjudicative in nature.[\[1\]](#) On that basis, the claims, settlement deed and the Bill

are not decisions of that kind and, on that basis, fall outside the scope of s 27(2) and no issue arises.

6. Further, and in any event, even if s 27(2) does apply to any of these actions or any related decision, I conclude that the limitation under cl 7 is justifiable in terms of s 5 BORA:[\[2\]](#)

6.1 The Bill reflects a reciprocal and negotiated agreement between the parties. The Bill also makes provision for non-parties to that agreement.

6.2 In that context, exclusion of jurisdiction in respect of the claims, settlement deed and the Bill is an integral part of the settlement process.

7. I note, in this respect, the view of the United Nations Human Rights Committee that a similar exclusion under the Fisheries Settlement, in the context of a negotiated settlement, was consistent with the right of access to the courts under art 14(1) of the International Covenant on Civil and Political Rights, which is comparable to s 27(2).[\[3\]](#)
8. This advice has been reviewed, in accordance with Crown Law protocol, by Fergus Sinclair, Crown Counsel.

Yours sincerely

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Footnotes

1 *Chisholm v Auckland City Council* [2005] NZAR 661 (CA).

2 The application of s 5 entails an assessment of whether the restriction is rationally connected to an important objective and is proportionate to that objective: see, most recently, *R v Hansen* [2007] 3 NZLR 1 (SC) at [70], [123], [203]-[204] and [271].

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

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