



LEGISLATION ADVISORY COMMITTEE

PO Box 180
Wellington
6401

Phone 04 494 9785
Fax 04 494 9859
www.justice.govt.nz/lac
Email Thomas.Parry@justice.govt.nz

16 June 2011

Chair
Māori Affairs Committee
Parliament Buildings
P O Box 18 041
Wellington 6160

Ngāti Pāhauwera Treaty Claims Settlement Bill

1. This submission is made by the Legislation Advisory Committee (LAC).
2. The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced and updates the *Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation* (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
3. The terms of reference of the LAC include:
 - (a) to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
 - (b) to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.
4. The LAC wishes to raise one issue concerning a provision of the Bill that appears to be inconsistent with the LAC Guidelines.

5. Clauses 57 to 60 of the Bill deal with extraction of hāngi stones from the beds of the Mohaka and Te Hoe Rivers. Clause 58(1)(b) provides that a person may only extract such stones with the written consent of the Ngāti Pāhauwera Development Trust (“the Trust”).
6. Clause 60(1) provides for the appointment by the Trust of “tangata tiaki”, whose role is “to promote compliance” with the restriction imposed by clause 58(1). Clause 60(3) provides that tangata tiaki are responsible to the trustees of the Trust for assisting in implementation of the restriction, informing members of the public of the restriction, recording failure to comply with the restriction (where this appears to be intentional) and recording the name, contact details and date of birth of individuals who appear not to be complying. The Act does not provide tangata tiaki with powers, but clause 60(4) provides that regulations may be made by Order in Council prescribing the mechanism for reporting and enforcing non-compliance with the restriction imposed by clause 58(1), and prescribing appointment procedures, functions, powers or duties of tangata tiaki. Clause 60(2) provides that tangata tiaki may be appointed whether or not any such regulations have been made.
7. The LAC Guidelines (section 10.1.3) discuss matters that should be included only in primary legislation. From that discussion, we note in particular the following point: “[P]rovisions which affect fundamental human rights and freedoms should always be included in primary legislation.” Such rights include the right not to be compelled to provide information.
8. If tangata tiaki are to have enforcement powers, including powers to require people to provide information, our preference is for these to be provided for in primary legislation rather than in delegated legislation. Alternatively, the regulation-making powers in clause 60(4) should be further specified. As the Bill is currently drafted, there is a danger that tangata tiaki will be perceived as having a power to require individuals to provide the information specified in clause 60(3)(c)(ii), although the Bill does not in fact confer such power.
9. The LAC thanks the Committee for its consideration of this issue. We do not wish to be heard on this matter.

Yours sincerely



Sir Geoffrey Palmer SC
Chair
Legislation Advisory Committee