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Wai 1040

IN THE WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Paparahi o Te Raki Inquiry

MEMORANDUM-DIRECTIONS OF JUDGE C T COXHEAD
15 July 2013

Introduction

1. The Te Paparahi o Te Raki region encompasses the Ngāti Manuhiri area of interest. As such, a number of Ngāti Manuhiri claims were included for inquiry by this Tribunal.

2. Given the passing into legislation of the Ngāti Manuhiri Claims Settlement Act 2012 ("the Act") we must now reconsider our jurisdiction in respect of these claims.

The Act

3. In previous directions I outlined the relevant sections of the Act. For ease of reference I do so again.

4. Section 14 of the Act states:

> (1) The historical claims are settled.
> (2) The settlement of the historical claims is final and, on and from the settlement date, the Crown is released and discharged from all obligations and liabilities in respect of those claims.
> (3) Subsections (1) and (2) do not limit the deed of settlement.
> (4) Despite any other enactment or rule of law, on and from the settlement date, no court, tribunal, or other judicial body has jurisdiction (including the jurisdiction to inquire or further inquire or to make a finding or recommendation) in respect of—
> (a) the historical claims; or
> (b) the deed of settlement; or
> (c) this Act; or
> (d) the redress provided under the deed of settlement or this Act.
> (5) Subsection (4) does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or implementation of the deed of settlement or this Act.

5. Section 13 of the Act defines historical claims as:

> (1) In this Act, **historical claims**—
> (a) means the claims described in subsection (2); and
> (b) includes the claims described in subsection (3); but
> (c) does not include the claims described in subsection (4).
> (2) The historical claims are every claim that Ngāti Manuhiri or a representative entity had on or before the settlement date, or may have after the settlement date, (whether or not the claim has arisen or been considered, researched, registered, notified, or made on or before the settlement date) and that—
> (a) is, or is founded on, a right arising—
> (i) from the Treaty of Waitangi or its principles; or
> (ii) under legislation; or
> (iii) at common law (including aboriginal title or customary law); or
> (iv) from fiduciary duty; or
> (v) otherwise; and
> (b) arises from, or relates to, acts or omissions before 21 September 1992—
> (i) by, or on behalf of, the Crown; or
> (ii) by or under legislation.
> (3) The historical claims include—
> (a) a claim to the Waitangi Tribunal that relates exclusively to Ngāti Manuhiri or a representative entity, including each of the following claims, to the extent that subsection (2) applies to the claim:
> (i) Wai 280—Little Barrier Island claim:

(ii) Wai 487—Hauturu (Little Barrier Island) claim:
(iii) Wai 532—Mangawhai Lands and Hauraki Gulf claim:
(iv) Wai 567—Hauturu (Little Barrier Island)—Wi Taiawa Family claim; and

(b) any other claim to the Waitangi Tribunal, including each of the following claims, to the extent that subsection (2) applies to the claim and the claim relates to Ngāti Manuhiri or a representative entity:
(i) Wai 244—Ngāti Wai claim:
(ii) Wai 1811—Māori Representation in Government claim:
(iii) Wai 2181—Nga Uri o Maki lands and resources claims.

(4) However, the historical claims do not include—
(a) a claim that a member of Ngāti Manuhiri, or a whānau, hapū, or group referred to in section 12(1)(c), had or may have that is, or is founded on, a right arising by virtue of being descended from a person other than an ancestor of Ngāti Manuhiri (as defined in section 12(2)); or
(b) a claim that a representative entity had or may have that is, or is founded on, a claim described in paragraph (a).

6. Section 12 of the Act defines Ngāti Manuhiri as:

(1) In this Act, **Ngāti Manuhiri**—
(a) means the collective group composed of individuals who are descended from an ancestor of Ngāti Manuhiri; and
(b) includes those individuals; and
(c) includes any whānau, hapū, or group to the extent that it is composed of those individuals.

(2) In this section,—
ancestor of Ngāti Manuhiri means an individual who—
(a) exercised customary rights by virtue of being descended from Manuhiri; and
(b) exercised the customary rights in the area of interest of Ngāti Manuhiri at any time after 6 February 1840

area of interest of Ngāti Manuhiri means the area of interest shown in the attachments to the deed of settlement

customary rights means rights according to tikanga Māori, including—
(a) rights to occupy land; and
(b) rights in relation to the use of land or other natural or physical resources

descended means that a person is descended from another person by—
(a) birth; or
(b) legal adoption; or
(c) whāngai (Māori customary adoption) in accordance with Ngāti Manuhiri tikanga.

Background

7. In my previous direction I also gave my preliminary view on the effect of the Act (#2.5.149), namely that we are no longer able to inquire into any Ngāti Manuhiri historical claim to the extent that it falls within the definition in section 13 of the Act.

8. I noted that it appeared our jurisdiction has been completely removed for Wai 280, Wai 487, Wai 532 and Wai 567; and limited in respect of Wai 244, Wai 245, Wai 1961, Wai 1973 and Wai 2181.

9. I did not address the Wai 1811 claim as it was not included in the final list of claims to be inquired into as part of this Inquiry (#2.5.106). However, I note that it is also included in the Act as a claim for which the Tribunal now has limited jurisdiction.

10. I then called for submissions from the affected parties. Submissions were received from:

    a) Greg McDonald, Wai 532 (#3.1.911 & #3.1.949);
    b) Christine Baines, Wai 1811 (#3.1.914 & #3.1.945);
    c) Counsel for William Kapea and Michael John Beazley, Wai 2181 (#3.1.917); and
    d) Counsel for the Crown (#3.1.940).

Wai 532, the Mangawhai Lands and Hauraki Gulf Islands Claim

11. Mr McDonald acknowledges that the Wai 532 claimants fall within the definition of Ngāti Manuhiri contained in the Act. However, he contends that certain aspects of the claim are generic in nature and as such still remain within the Tribunal's jurisdiction, specifically, a number of Crown actions in the mid 19th century and allegations concerning the Mahurangi and Omaha Crown purchase. I fail to see how these allegations could be generic in nature when they relate to transactions concerning specific pieces of land. In fact, the geographic nature of the allegations was the basis for the claim being included for inquiry within this region.

12. He also makes allegations in relation to aspects of the Ngāti Manuhiri Claims Settlement Bill ("the Bill"), for which he contends the Tribunal has jurisdiction to inquire. However, the provisions of the Bill were given effect through the Act. Any inquiry into the Bill would, as a result, necessitate inquiry into the Act, for which the Tribunal's jurisdiction has been expressly removed.[1]

13. The submissions then go on to seek a Tribunal inquiry into the interpretation and implementation of the Act. However, the Wai 532 claim does not contain any allegations concerning this. Until a claim concerning this issue is lodged with and registered by the Tribunal, we cannot initiate an inquiry into the matter.

14. Mr McDonald has failed to demonstrate how the Tribunal retains its jurisdiction in respect of Wai 532. I agree with the submissions of the Crown. Pursuant to the provisions of the Act, specifically sections 12, 13 and 14, the Tribunal now has no jurisdiction to inquire into this claim.

Wai 1811, the Māori Representation in Government (Baines) Claim

15. Ms Baines submits that the Tribunal retains its jurisdiction to inquire into her claim based on the recommendations of the Māori Affairs Committee. Specifically she relies on its recommendation that the Bill be amended to include a statement expressly noting it will not extinguish the 'more generic element' of Wai 1811. The Act however, does not include such a provision and Ms Baines has failed to demonstrate how this recommendation affects sections 12, 13 and 14 of the Act.

16. I note that given the generic nature of the allegations, which concern the Crown's failure to provide effective representation for Māori "in the legislative councils and/or administration" (Wai 1811, #1.1.1), this claim was not included for inquiry within the Te Paparahi o Te Raki region.

[1] s14(4) of the Act

17. If Ms Baines wishes to be included in the inquiry she would need to seek leave to do so. I note however, that the filing deadline for such applications has past. I also note that previous applications for inclusion by claims that were of a generic nature were declined by the Deputy Chairperson. This decision was made on the grounds that kaupapa, or generic issue claims should not be aggregated within the inquiry as they cannot be effectively inquired into within a single geographically defined region (#2.5.100).

18. In any respect, in relation to the matter of jurisdiction the Tribunal is precluded from inquiring into Wai 1811 to the extent that it relates to Ngāti Manuhiri or a representative entity. The Tribunal does, however, retain its jurisdiction to inquire into any elements of the claim that fall outside this scope.

Wai 2181, the Ngā Uri o Maki-nui Lands (Kapea and Beazley) Claim

19. Linda Thornton, counsel for the Wai 2181 claimants, submits that the allegations in the claim are based on descent from Kahikatearoa, Maraeariki and Ngawhetu. While Ms Thornton agrees that the allegations arising from the claimant's Kahikatearoa descent are settled by the Act, she submits that those arising from Maraeariki and Ngawhetu remain within the Tribunal's jurisdiction.

20. The Crown agrees with this submission on the assumption that the claim does make allegations based on descent from Ngawhetu and Maraeariki, and that Ngawhetu and Maraeariki are not descended from Manuhiri and are not part of Ngāti Manuhiri.

21. The Tribunal will continue to inquire into the Wai 2181 claim to the extent that its allegations are based on descent from a person other than an ancestor of Ngāti Manuhiri. During the course of the inquiry the claimants may be required to provide evidence on this point.

Conclusion

22. These claimants have been active participants in the Te Paparahi o Te Raki Inquiry. It is evident from their submissions that they still wish to participate. It is also clear that they were not supportive of the Ngāti Manuhiri settlement and object to the inclusion of their claims. While I do not discount the desires of these claimants, the Tribunal must comply with the law, which in this case includes the provisions of the Act.

23. The Act expressly states that the settlement of Ngāti Manuhiri historical claims is final and precludes any court, tribunal, or other judicial body from inquiring into or making findings in respect of these claims. This includes the Waitangi Tribunal.

24. Accordingly, I find the Tribunal no longer has jurisdiction to inquire into or make recommendations in respect of:

    a) Wai 280, the Little Barrier Island Claim;
    b) Wai 487, the Hauturu (Little Barrier Island) Claim;
    c) Wai 532, the Mangawhai Lands and Hauraki Gulf Islands Claim; and
    d) Wai 567, the Hauturu (Little Barrier Island) Wi Taiawa Family Claim.

25. The Tribunal is also unable to inquire into the following claims to the extent that the claims relate to Ngāti Manuhiri or a representative entity:

    a) Wai 244, the Ngāti Wai Lands and Fisheries Claim;
    b) Wai 1811, the Māori Representation in Government Claim;
    c) Wai 1961, the Native Land Court Legislation (Carpenter) Claim;
    d) Wai 1973, the Descendants of Hone Tautahi Pita and Marara Henare Kaupeka Piripi Claim; and
    e) Wai 2181, the Ngā Uri o Maki Lands and Resources Claim.

26. The Tribunal is also unable to inquire into those aspects of Wai 245, the Pataua 4C Claim which concern the Ngāti Manuhiri Deed of Settlement.

27. This does not, however, prevent the Tribunal from inquiring into those claims in paragraphs 25 and 26 to the extent that they are founded on a right arising by virtue of being descended from a person other than an ancestor of Ngāti Manuhiri.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the Te Paparahi o Te Raki inquiry.

DATED at Rotorua this 15th day of July 2013

Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL