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Is the Ngai Tahu Bill democratic?

By David Round

Last year the Crown signed a Deed of Settlement with Ngai Tahu. The Ngai Tahu Claims Settlement Bill, giving effect to this agreement, is now before Parliament's Maori Affairs select committee.

The Bill's 466 sections cover 204 pages, and 115 schedules occupy 341 pages more. It is immensely complex. It constantly refers to the even lengthier Deed, but does not include it. The Deed is not readily accessible to the public, and cannot even be directly considered by Parliament's Justice and Law Reform select committee.

The Bill covers hundreds of places and issues. Citizens would have to study it closely to decide if it affected their interests. Yet it has received little publicity, and only five weeks were allowed for public submissions.

The Law Society wants comprehensible public notice of its provisions to be given, and the time for submissions extended. In a democracy we can expect no less.

Negotiations with Ngai Tahu were conducted in secret. The parliamentary process is citizens' one opportunity to offer their opinions. The Government does not want to hear us; the cabinet is adamant that nothing in the Bill is to be changed. But we do not, surely, live in a dictatorship.

The Bill declares it is the final settlement of all Ngai Tahu claims. This is a good thing. But of course any future parliament can amend or repeal that provision. There are, after all, previous full and final settlements of the Ngai Tahu claim.

Parliament's 1944 settlement was not imposed on the tribe, but, as the former Labour Minister of Maori Affairs, Mrs Whetu Tirikatene-Sullivan emphasises, was freely accepted after much discussion. Tribal leaders now claim a "just" settlement would cost us about $20 billion, and any lesser settlement is a sacrifice on Ngai Tahu's part.

Some have already suggested that this settlement is only for this generation – some have already complained of its meanness. Not a few within Ngai Tahu object to settlement funds going to one central body, instead of being distributed among tribal subdivisions and localities. We can easily imagine complaints that the Bill's prohibition on future recourse to the Waitangi Tribunal and courts breaches citizens' usual rights of access to the legal process.

Moreover, the Deed – the agreement between Crown and Ngai Tahu – is, in a sense, the substantive document; the Bill merely gives legal effect to parts of it. It is clear the parties may alter the Deed after the Bill becomes law. The Bill defines certain words by reference to the – alterable – definitions in the Deed. The Deed has its own independent life outside the Bill. As well, barring future approaches to the Waitangi Tribunal means little when many claims now are settled directly by the Crown without any recourse to the Tribunal.

Statute now regulates many such matters as the stopping of roads, the establishment (or not) of marginal strips (the Queen's chain), consent for subdivisions, leases of conservation land, changes in place names and management of reserves. But the Bill contains extraordinary arrangements in Ngai Tahu's favour about these things.

It overrides the usual legal channels – many, of course, involving public participation – and instead gives Ngai Tahu its own, fast-track legislation. Why? No select committee, even one without certain members biased in Ngai Tahu's favour, can give these matters the detailed attention which would arise out of normal public processes.

The Bill establishes Ngai Tahu as a perpetually-privileged citizen. It is given the right of first refusal to purchase all surplus Crown lands in its tribal area. Already the Crown has lost significant sums as Ngai Tahu has, sometimes on the same day, bought cheap and sold dear.

Ngai Tahu will as of right have seats on the New Zealand Conservation Authority, Geographic Board, Southern Conservation Boards, and the Guardians of various southern lakes. Its nominees will be "statutory advisers" to Fish and Game Councils. The Minister of Conservation must comply with "protocols" concerning tribal "input into [DOC's] decision-making process".

Virtually all native bird species and many plants, fish and marine mammals in Ngai Tahu's area, become "taonga species", about whose management the tribe has particular influence. The tribe has a preferential right to 10% of all coastal tendering opportunities.

The Bill makes "statutory acknowledgements" of tribal associations with many areas and local authorities, and other bodies must "have regard to" them. These acknowledgements, and associated "deeds of recognition", in practice may mean little less than a Ngai Tahu right of veto.

Everyone now may participate in planning procedures; why should one group be specially privileged, and the beliefs and desires of non-Ngai Tahu Maori (including, of course, the earlier Waitaha inhabitants) and non-Maori New Zealanders, be of less significance?

The Government has clearly abandoned its claimed position that the conservation estate is not readily available for settling claims. Everyone now has access to conservation land, but Ngai Tahu receive special, exclusive rights to camp in many places by waterways on conservation and other Crown lands.

Conservation bodies must have "particular regard" to the Ngai Tahu values of "topuni areas". These topuni include various mountains, freely sold by the tribe last century. Special tribal influence is also established over various parts of the conservation estate.

Not all parts of the Bill are objectionable. But in many respects it is summed up by the Crown's servile and inaccurate apology to Ngai Tahu in section 6. This refers to the tribe as the Crown's "Treaty partner". The courts have never clearly declared this "partnership"; and, if it exists, where does that leave the rest of us?

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