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Ngāti Apa (North Island) Claims Settlement Bill 2009

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Select Committee:	As at 15 October, 1st Reading not held.
Published: 15 October 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The aim of this Bill is to give effect to the deed of settlement in which the Crown and Ngāti Apa (North Island) agreed to a final settlement of the Ngāti Apa (North Island) historical claims.

Background

"At 1840, Ngāti Apa (North Island) in the Rangitikei–Manawatū area had land interests stretching from Mōtū Karaka (about midway between the Whanganui and Whangaehu Rivers) south to Omarupapako (just north of the Manawatū River) and inland to the upper Rangitikei area". In 1840 "... 3 members of Ngāti Apa (North Island) signed the Treaty of Waitangi at Tawhīrihoe pā, a Ngāti Apa kainga near the mouth of the Rangitikei River". The preamble to the Bill sets out the details of the Ngāti Apa (North Island) claims which related principally to loss of land (*Preamble to the Bill*).

The Bill sets out the acknowledgements made by the Crown in relation to the claim. These acknowledgements are as follows:

- "Ngāti Apa (North Island) have been raising grievances with the Crown for over a hundred years" (*Part 1, Subpart 1, Clause 7(a)*);

- "[The Crown] has failed to deal with the longstanding grievances of Ngāti Apa (North Island) in an appropriate way and that recognition of the grievances of Ngāti Apa (North Island) is long overdue" (*Part 1, Subpart 1, Clause 7(b)*);
- "from 1848 the Crown purchased over 400 000 acres of land in which Ngāti Apa (North Island) held interests (*Part 1, Subpart 1, Clause 7(c)*);
- "through these land transactions, Ngāti Apa (North Island) endeavoured to establish a relationship with the Crown, and that Ngāti Apa (North Island) sought subsequently to strengthen this relationship by expressing loyalty to the Crown (*Part 1, Subpart 1, Clause 7(d)*);
- "the 1849 Rangitikei–Turakina purchase stated that lands between the Whangaehu and Turakina Rivers (approximately 35 000 acres) would be reserved for all of Ngāti Apa (North Island) to collect and settle on. Later native land legislation enabled these reserved lands to pass through the Native Land Court, which awarded land interests to individuals rather than to all the tribe, excluding many Ngāti Apa (North Island) from ownership of the tribal reserve lands. The Crown's failure to ensure that the arrangements recorded in the 1849 deed were given effect was a breach of the Treaty of Waitangi and its principles (*Part 1, Subpart 1, Clause 7(e)*);
- "over 100 000 acres of land in which Ngāti Apa (North Island) held interests was subject to native land laws introduced in the 1860s, in addition to reserves from the Rangitikei–Turakina purchase. The operation and impact of the native land laws, in particular the awarding of land to individual Ngāti Apa (North Island) rather than to iwi or hapū, made the lands that Ngāti Apa (North Island) were able to retain more susceptible to partition, fragmentation and alienation. This contributed to the erosion of the traditional tribal structures of Ngāti Apa (North Island), which were based on collective tribal and hapū custodianship of land. The Crown failed to take steps to adequately protect those structures. This had a prejudicial effect on Ngāti Apa (North Island) and was a breach of the Treaty of Waitangi and its principles" (*Part 1, Subpart 1, Clause 7(f)*);
- "lands transferred by Ngāti Apa (North Island) for settlement purposes have contributed to the development of New Zealand, and that some of the significant benefits that Ngāti Apa (North Island) expected to flow from its relationship with the Crown were not realised" (*Part 1, Subpart 1, Clause 7(g)*);
- "the cumulative effect of the Crown's actions and omissions, including Crown purchases and the operation and impact of native land laws, left Ngāti Apa (North Island) virtually landless. The Crown's failure to ensure that Ngāti Apa (North Island) retained sufficient lands for its present and future needs was a breach of the Treaty of Waitangi and its principles" (*Part 1, Subpart 1, Clause 7(h)*);
- "today most Ngāti Apa (North Island) live outside their rohe, and that the loss of their traditional lands has impacted on the access of Ngāti Apa (North Island) to resources such as rivers, lakes, forests, wetlands, and traditional walking paths (*Part 1, Subpart 1, Clause 7(i)*);
- "Ngāti Apa (North Island) have lost control over many of their significant sites, including wāhi tapu, and that this has had an ongoing impact on their physical and spiritual relationship with the land" (*Part 1, Subpart 1, Clause 7(j)*).

Main Provisions

Purpose

The purpose of the Bill (which is stated to bind the Crown) is to:

- record the acknowledgements and the apology offered by the Crown to Ngāti Apa (North Island) in the deed of settlement dated 8 October 2008 and signed by the Minister in Charge of Treaty of Waitangi Negotiations, the Honourable Dr Michael Cullen, the Minister of Māori Affairs, the

Honourable Parekura Horomia, and the Associate Minister in Charge of Treaty of Waitangi Negotiations, the Honourable Mita Rinui (all three for the Crown) and Lillian Ruihi Manawaroa Te Aweawe, Ropata Te Hina, Arikihana Mare Mare, and Mariana Shenton (all four for Ngāti Apa (North Island)); and

- to give effect to certain provisions of the deed of settlement, which is a deed that settles the Ngāti Apa (North Island) historical claims (*Part 1, Subpart 1, Clauses 3 and 4*).

Acknowledgements, apology and finality of settlement

The Bill sets out the acknowledgements of the Crown in relation to the settlement (see above). The Bill specifies that the Act binds the Crown; and defines terms such as Ngāti Apa (North Island) (this is a complicated definition which relates primarily to "the collective group composed of ... individuals who descend from 1 or more Ngāti Apa (North Island) ancestors"). The term "historical claims" is also defined. The Bill provides that the settlement of the historical claims is final and provides for the effect of the settlement on the jurisdiction of a court, tribunal, or other judicial body in respect of the historical claims (no jurisdiction to "inquire or further inquire into, or to make a finding or recommendation" in respect of "the historical claims", "the deed of settlement", this Bill, or "the redress provided under the deed of settlement or this [Bill]"). Consequential amendments are made to the Treaty of Waitangi Act 1975 and the memorials on certain land such as State enterprise land under that Act are stated to no longer apply. The normal provisions relating to the exclusion of the law against perpetuities, the timing of actions or matters provided for in this Act, and access to the deed of settlement are provided for (*Part 1, Subparts 2-4, Clauses 1-7; 9-19*).

Apology

The Bill sets out the apology given by the Crown to Ngāti Apa (North Island) in the deed of settlement, and the text of that apology is as follows:

"(1) The Crown recognises the efforts and struggles of the ancestors of Ngāti Apa (North Island) in pursuit of their claims for justice and redress from the Crown and makes this apology to Ngāti Apa (North Island) and their descendants.

"(2) The Crown profoundly regrets and unreservedly apologises to Ngāti Apa (North Island) for the breaches of the Treaty of Waitangi, and its principles, acknowledged above.

"(3) The Crown regrets and apologises for the cumulative effect of its actions and omissions over the generations to the present day which have had a detrimental impact on the traditional tribal structures of Ngāti Apa (North Island), their access to customary resources and significant sites, economic and social development, and their physical, cultural, and spiritual wellbeing.

"(4) Accordingly, with this apology the Crown seeks to atone for its past wrongs, begin the process of healing and make a significant step towards re-building a lasting relationship based on mutual trust and cooperation with Ngāti Apa (North Island) (*Part 1, Subpart 1, Clause 8*).

Cultural redress

The Bill provides for cultural redress including:

- protocols to be issued to the trustees by the Minister of Conservation, the Minister of Fisheries, and the Minister for Arts, Culture and Heritage;
- an acknowledgement by the Crown of the statements made by Ngāti Apa (North Island) of their cultural, spiritual, historical, and traditional association with nine statutory areas, and the effect of that acknowledgement;
- deeds of recognition between the Crown and the trustees;

- the vesting in the trustees of the fee simple estate in 17 cultural redress properties and subsequent management arrangements in relation to various sites; and
- the alteration of place names.

The Bill contains two schedules that describe the 9 statutory areas to which the statutory acknowledgement relates and list the 17 cultural redress properties (*Part 2, Clauses 20-69; Schedules 1 and 2 to the Bill*).

Commercial redress

The Bill provides for commercial redress, including the transfer of the settlement Crown forestry licensed land under the Crown Forest Assets Act 1989, and public access to wāhi tapu sites on that land (*Part 3, Clauses 70-86*)

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