

Treaty of Waitangi (Final Settlement of Claims) Bill (No 2)

Member's Bill

Explanatory note

The purpose of this bill is to provide a timeframe and a context within which the full and final settlement of claims to the Waitangi Tribunal takes place. It is now time for Parliament to be giving a lead in moving New Zealand on from preoccupation with the claims process to the new and higher level of reconciliation between the races of the post-claims period.

For many years the relationship between Maori and Pakeha in New Zealand has been dominated by claims to the Tribunal. There have been some substantial settlements, and the claims process has played a part in securing the growth and development of Maori and in improving reconciliation between Maori and Pakeha.

But, for a host of reasons, the process is dragging on. It threatens increasingly to try the patience and goodwill of New Zealanders. It is very important that it should not overstay its welcome and become a source of discord rather than concord between the races. It is time to start shifting the focus away from past grievances in this area, and start looking to and planning for the future. Parliament needs now to start drawing a line under the claims process and turn New Zealand's attention to the next stage of race relations in this country. In this area, we ought now to be looking forwards rather than backwards, and need already to be laying the groundwork to meet the challenges of the next century as a united nation.

The first step in getting New Zealanders to start thinking about the changes required to take race relations to a higher plane is to establish an end-point for the claims process. It is necessary to create certainty in this respect by incorporating the time-frames into law. This bill does that in *clause 5*, while recognising the scale and

complexity of the claims process. Thus, the Waitangi Tribunal will not be able to receive claims after 31 December 2004, but it will have until 2009 to complete its inquiries, findings and recommendations. The Crown will have 5 years to take action from the date on which such findings and recommendations have been made to it. A savings provision will ensure, however, that past and future settlements of claims remain final and that actions taken in accordance with settlements and the Crown's approaches to claims in the past are not affected. The new section that the clause will insert into the Treaty of Waitangi Act 1975 also provides for the claims process to be kept under constant review by the Crown and Parliament through regular reports by the Tribunal. In an area of such importance to New Zealand's future, a mechanism of this kind is considered essential.

But the bill also recognises that the end of the claims process must be seen in the broader context of race relations in New Zealand more generally. This is an appropriate point in time to be reviewing where New Zealand stands as one nation, and what more needs to be done to reach this goal. New Zealand is in urgent need of a strategy and a process to bring people of all races in the country together. *Clause 6* of the bill therefore provides for the Prime Minister to establish a Council of Race Relations. The Council will have large and important questions to consider, and it is essential that it comprise eminent persons, one of whom must be the Human Rights Commissioner appointed to be the Race Relations Conciliator under the Human Rights Act 1993.

Clause 7 sets out the functions of the Council. Under *clause 7(1)*, it will have the task of examining attitudes and the law in New Zealand with a view to ensuring equality between all races in New Zealand and to establishing a consensus within New Zealand on any necessary changes. New Zealand legislation presently makes separate provision for Maori in a huge number of areas. It is timely to ask how effective all these provisions have been, and whether such discrimination continues to be of benefit to Maori. The references throughout the statute book have been incorporated in an ad hoc way, some have their origins in much earlier, more paternalistic times, and all are in need of methodical review by eminent persons in the interests of Maori and all New Zealanders.

Clause 7(2) sets out, by way of illustration, a number of matters of direct relevance to race relations in New Zealand where we ought

now to be asking broad questions as to what more needs to be done, whether, or to what extent, it continues to be necessary to treat Maori differently, and whether any of the legislation and policies concerned may be holding Maori back, creating dependency, and preventing them from taking advantage of opportunities and playing their full part in society. The Council would be required to look broadly at the direction of race relations in contemporary New Zealand society and to consider carefully the reasons why things are as they are and whether they should remain so. In that context, nothing should be off-limits. The Council would be expected not to hold back from examining all relevant areas, including the Treaty of Waitangi and the claims settlement process and the relevance and application of existing and developing international human rights standards.

Clause 7(3) also provides further guidance to the Council by defining, in effect, the sort of equality with which the bill is concerned. This is specified to be a situation in which New Zealand is one country with many people united in a single legal system which recognises differences between the races that are essential to secure the adequate development and protection of particular groups and individuals or that provide for members of a minority to be free, in community with other members of that minority, to enjoy their culture, profess and practise their religion, and use their own language. In these respects, the bill draws on New Zealand's international obligations under such instruments as the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Civil and Political Rights, and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Treaty of Waitangi (Final Settlement of Claims) Act (No 2) **2004**.

2 Commencement

This Act comes into force on the day after the day on which it receives the Royal assent. 5

3 Purpose

The purpose of this Act is to establish a timeframe and a context within which the full and final settlement of claims to the Waitangi Tribunal takes place. 10

4 Interpretation

In this Act, unless the context otherwise requires,—

Council means the Council of Race Relations established by **section 6**.

5 New section 6A inserted

The Treaty of Waitangi Act 1975 is amended by inserting, after section 6, the following section:

“6AA Time limit on receipt and settlement of claims

- “(1) Subject to **subsection (8)**, this section applies notwithstanding anything in this Act or in any other enactment or rule of law. 5
- “(2) No claims are to be received by the Tribunal after 31 December 2004.
- “(3) The Tribunal must complete all inquiries into and all findings and recommendations in respect of claims submitted to it in a timely manner, and in any event no later than 1 January 2009. 10
- “(4) The Crown must consider and take decisions on all findings and recommendations made to it by the Tribunal in a timely manner, and in any event must complete its action on such findings and recommendations no later than 5 years after the date on which they have been made to it. 15
- “(5) The Maori Appellate Court and the Maori Land Court must give priority to any questions and, in the case of the Maori Appellate Court, any appeals referred to them under section 6A, with a view to ensuring that the Tribunal completes its work as provided in this section. 20
- “(6) The Tribunal must report each year to the Crown on claims submitted to it and on progress with its inquiries into, and its findings and recommendations in respect of, claims.
- “(7) The Minister of Maori Affairs must, in conjunction with the annual report referred to in section 8I, report on the matters referred to in **subsection (6)** of this section. 25
- “(8) Nothing in this section affects—
- “(a) the finality of past and future settlements of claims by the Crown: 30
 - “(b) actions taken by the Crown and other persons as provided in settlements of claims made between the Crown and Maori and in enactments implementing such settlements:
 - “(c) any principles, processes, practices, or requirements of the Crown in respect of the processing and settlement of claims, other than to the extent that the time limits specified in this section apply.” 35

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- 6 Council of Race Relations established**
- (1) This section establishes the Council of Race Relations.
- (2) The Council consists of a chairperson and 6 other persons appointed by the Prime Minister, after consultation with the Minister of Justice and the Minister of Maori Affairs, on the basis of the expertise and credibility that they can bring to the functions of the Council, and the Human Rights Commissioner appointed to be the Race Relations Conciliator under the Human Rights Act 1993. 5
- (3) The chairperson and other members of the Council are to be appointed on such terms and conditions as the Prime Minister thinks fit. 10
- (4) The Council may adopt and regulate its own procedure as it thinks fit.
- 7 Functions of Council** 15
- (1) The functions of the Council are—
- (a) to conduct an examination of changes to attitudes and the law in New Zealand in the interests of equality between all races in New Zealand:
- (b) to make recommendations to the Prime Minister on the changes referred to in **paragraph (a)**: 20
- (c) to seek to establish a consensus within New Zealand on such changes:
- (d) to carry out such other functions related to race relations in New Zealand as the Prime Minister requests. 25
- (2) Without limiting the generality of **subsection (1)(a)**, the Council is required to examine the following matters:
- (a) the changing multiracial and multiethnic nature of New Zealand society, and what it means to be a New Zealander in a society undergoing such changes: 30
- (b) the development of a race relations strategy that will assist in the creation of the type of society that New Zealanders want in the context of those changes:
- (c) the relevance and application to New Zealand of other national experiences and international developments, including existing and developing international human rights obligations and standards, in the areas of race relations and the protection of the rights of minorities: 35

- (d) the status to be accorded to the Treaty of Waitangi in contemporary New Zealand society and New Zealand law:
- (e) measures to enhance the acceptability and effectiveness of the process for the settlement of claims under the Treaty of Waitangi Act 1975, including: 5
- (i) examination of the impact that settlements have had and are likely to have on relationships between Maori and between Maori and non-Maori; and 10
- (ii) whether claims before the Waitangi Tribunal should be made more contestable; and
- (iii) whether the Waitangi Tribunal should continue to have a role after it has completed its work on claims: 15
- (f) the current system for representation of Maori in New Zealand, and its relationship to representation for non-Maori:
- (g) whether, and if so what, separate legislative provision should be made, or continue to be made, for racial and ethnic minorities in New Zealand. 20
- (3) For the purposes of this section, **equality between all races in New Zealand** means a situation in which New Zealand is one country with many people united in a single legal system that recognises differences between the races where such differences— 25
- (a) are essential to secure the adequate development and protection of particular groups and individuals; or
- (b) provide for members of a minority to be free, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, and to use the language, of that minority. 30