

October 2014 Māori Law 1

(Ruru, J., 2014)

Tūhoe-Crown settlement – Te Urewera

Dr Jacinta Ruru sets out and comments on the main elements of Te Urewera Act 2014. The legislation both facilitates management of Te Urewera by a new Te Urewera Board and declares that Te Urewera is a legal entity. Te Urewera ceases to be a national park as a result of the Act.

Overview

A new dawn for conservation management in Aotearoa New Zealand has arrived with the enactment of Te Urewera Act 2014. Te Urewera, named a national park in 1954 and most recently managed as Crown land by the Department of Conservation became Te Urewera on 27 July 2014: “a legal entity” with “all the rights, powers, duties, and liabilities of a legal person” (section 11(1)). Te Urewera Act is undoubtedly legally revolutionary here in Aotearoa New Zealand and on a world scale.

Discussion

Te Urewera Act 2014

Te Urewera Act makes clear that Te Urewera ceases to be vested in the Crown, ceases to be Crown land, and ceases to be a national park (s 12). Te Urewera is now freehold land (albeit inalienable except in accordance with Te Urewera Act, see s 13).

Te Urewera is now managed not by the Department of Conservation but by the new Te Urewera Board. This Board is responsible “to act on behalf of, and in the name of, Te Urewera” (s 17(a)). Te Urewera will still have a management plan like national parks in New Zealand. The Board, rather than the Department of Conservation, will approve these plans (s 18). For the first 3 years, the Board has an equal membership of Tūhoe and Crown appointed persons (4 persons each). Thereafter, the Board will increase by 1 and the ratio will change so that 6 persons are Tūhoe-appointed and 3 persons are Crown-appointed (s 21).

The Board, in contrast to nearly any other statutorily created body, including the Department of Conservation, is directed to reflect customary values and law. Section 18(2) states that the Board may “consider and give expression to “Tūhoetanga” and “Tūhoe concepts of management such as rāhui, tapu me noa, mana me mauri, and tohu”.

Section 20 makes it clear that the Board “must consider and provide appropriately for the relationship of iwi and hapū and their culture and traditions with Te Urewera when making decisions” and that the purpose of this is to “recognise and reflect” Tūhoetanga and the Crown’s responsibility under the Treaty of Waitangi (Te Tiriti o Waitangi).

The Act mandates that the Board must strive to make some decisions by unanimous agreement (such as the approval of Te Urewera management plan) and some decisions by consensus (see sections 33 and 34).

The Board must work with the chief executive of Tūhoe Te Uru Taumatua and the Director-General of Conservation to develop an annual budget. Section 38(2) states that the chief executive and the Director-General “must contribute equally to the costs provided for in the budget, unless both agree to a different contribution”.

All revenue received by the Board must be paid into a bank account of the Board and used for achieving the purpose of the Act (s 39(1)).

For taxation purposes, Te Urewera and the Board are deemed to be the same person (s 40(1)).

Similarly to national parks, work undertaken in Te Urewera does not require a resource consent under the Resource Management Act 1991 if that work is for the purpose of managing Te Urewera, is consistent with Te Urewera Act and its management plan, and does not have a significant adverse effect on the environment beyond the boundary of Te Urewera (s 43).

The chief executive of Tūhoe Te Uru Taumatua and the Director-General of Conservation are responsible for the operational management of Te Urewera (s 50) and must prepare an annual operational plan (s 53).

The Director-General and every other person who performs functions and exercises powers and duties under the Conservation Act 1987 has the powers that are necessary or expedient for the performance of the functions and exercise of the powers and duties under Te Urewera Act (s 52).

Te Urewera Act stipulates what activities are permitted in Te Urewera and what activities require authorisation and in what form (see s 55). The National Parks Act does something similar for national parks.

Section 58 of Te Urewera Act lists activities that require an activity permit. These include: taking any plant; disturbing or hunting any animal (other than sports fish); possessing dead protected wildlife for any cultural or other purpose; entering specially protected areas; making a road; establishing accommodation; farming; and recreational hunting. This is a comprehensive list and demonstrates that the tight rules for preserving national park land have been transported to Te Urewera.

Throughout Te Urewera Act the legislation is clear that Te Urewera may still be mined. Section 64(1) is one example of this where it states: “Despite anything in this Act, Te Urewera land is to be treated as if it were Crown land described in Schedule 4 of the Crown Minerals Act 1991” (see also s 56(b) where a mining activity authorised by the Crown Minerals Act can be undertaken without authorisation from the Board).

Section 3 of Te Urewera Act is so beautifully expressed that I have copied it in full here:

3 Background to this Act

Te Urewera

- (1) Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty.
- (2) Te Urewera is a place of spiritual value, with its own mana and mauri.
- (3) Te Urewera has an identity in and of itself, inspiring people to commit to its care.

Te Urewera and Tūhoe

- (4) For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui; it is the heart of the great fish of Maui, its name being derived from Murakareke, the son of the ancestor Tūhoe.
- (5) For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland.
- (6) Te Urewera expresses and gives meaning to Tūhoe culture, language, customs, and identity. There Tūhoe hold mana by ahikāroa; they are tangata whenua and kaitiaki of Te Urewera.

Te Urewera and all New Zealanders

(7) Te Urewera is prized by other iwi and hapū who have acknowledged special associations with, and customary interests in, parts of Te Urewera.

(8) Te Urewera is also prized by all New Zealanders as a place of outstanding national value and intrinsic worth; it is treasured by all for the distinctive natural values of its vast and rugged primeval forest, and for the integrity of those values; for its indigenous ecological systems and biodiversity, its historical and cultural heritage, its scientific importance, and as a place for outdoor recreation and spiritual reflection.

Tūhoe and the Crown: shared views and intentions

(9) Tūhoe and the Crown share the view that Te Urewera should have legal recognition in its own right, with the responsibilities for its care and conservation set out in the law of New Zealand. To this end, Tūhoe and the Crown have together taken a unique approach, as set out in this Act, to protecting Te Urewera in a way that reflects New Zealand's culture and values.

(10) The Crown and Tūhoe intend this Act to contribute to resolving the grief of Tūhoe and to strengthening and maintaining the connection between Tūhoe and Te Urewera.

Comparative comments

Te Urewera Act is significant in a comparative domestic and international context.

First, Te Urewera Act marks for the first time in New Zealand's history the permanent removal of a national park from the national park legislation. It has been long-standing Crown policy that conservation land should not be returned to iwi ownership. The creation of Te Urewera as its own entity has provided a win-win solution for Tūhoe and the Crown. The only other Treaty claims settlement that contemplates removal of land from the National Parks Act 1980 is the provision in the Ngāi Tahu Claims Settlement Act 1998 that provides that the Crown will vest the title of Aoraki/Mount Cook in Te Rūnanga o Ngāi Tahu for a period of 7 days. After 7 days, Ngāi Tahu will gift the mountain back to the nation as the centre piece of the Aoraki/Mount Cook National Park. Te Rūnanga o Ngāi Tahu have yet to action this temporary vesting.

Secondly, while there are similarities between Te Urewera Act and the National Parks Act (such as the requirement to have a management plan and ensure these lands are available for public use and enjoyment) the purpose for setting aside the land is subtly but importantly different. The National Parks Act is premised on preserving national parks in perpetuity "for their intrinsic worth and for the benefit, use, and enjoyment of the public," areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest (s 4). The National Parks Act does not recognise the importance of lands encased in national park boundaries as being culturally and spiritually important to iwi. The National Parks Act is a mono-cultural statute premising Western values for preserving land. Te Urewera Act demonstrates a new bi-cultural way of articulating the importance of national park lands for multiple reasons ranging from science to cultural. Section 4 of Te Urewera Act reads:

4 Purpose of this Act

The purpose of this Act is to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and for its national importance, and in particular to—

(a) strengthen and maintain the connection between Tūhoe and Te Urewera; and

(b) preserve as far as possible the natural features and beauty of Te Urewera, the integrity of its indigenous ecological systems and biodiversity, and its historical and cultural heritage; and

(c) provide for Te Urewera as a place for public use and enjoyment, for recreation, learning, and spiritual reflection, and as an inspiration for all.

Third, Te Urewera Act will be of immense interest internationally for aspects concerning ownership, management and purpose. For example, the Canadian national park legislation clearly states that the Crown has “clear title to or an unencumbered right of ownership in the lands to be included in the park” (s 5(1)(a) of the Canada National Parks Act 2000).

In the late 19th century and early 20th century, at times, Canada forcibly removed Aboriginal groups from lands intended for national parks in order to assert clear title. In the 1970s, as Canada sought to create new national parks in the remote northern territories of Canada a new solution to diluting the ownership issue was initiated. Canada introduced the novel legislative tool: the national park reserve label. The legal definition for a national park reserve is an area or a portion of an area proposed for a park that is subject to a claim in respect of Aboriginal rights that has been accepted for negotiation by the Government of Canada (see s 4(2) of the Canada National Parks Act 2000). The idea is that Canada can set land aside as a national park reserve and manage it as if it were a national park even if there is an accepted Aboriginal rights claim to the land in question. After negotiating with the relevant Aboriginal peoples, the Crown can confirm the land as a national park.

There are several instances in Canada’s northern territories where Aboriginal peoples have acquiesced to the national parks and thus Crown ownership of these lands. But in the southern more populated provinces, the ownership issue is more contentious. No national park reserves in the south have been reclassified as national parks. In fact, national parks created since the 1970s in the south have not often even used this temporary national park reserve label. Ownership and management of many of the southern national parks remains heated.

Significance of the legislation for New Zealand

The comments by some of our Members of Parliament during the third reading of the Bill that became Te Urewera Act capture the importance of this statute. For example:

Catherine Delahunty (Green Party MP)

“... It was never a park. That was a label imposed in the 1950s based on an old behaviour pattern since colonisation, and it has melted in the mist like all the other attempts to colonise the heart of the motu and the “children of the mist”...”

Hon Dr Nick Smith (Minister of Conservation)

“... It is surprising for me, as a Minister of Conservation in the 1990s who was involved under the leadership of the Rt Hon Jim Bolger—who is in the House—in the huge debate that occurred around the provisions of the Ngāi Tahu settlement in respect of conservation land, how far this country and this Parliament have come when we now get to this Tūhoe settlement in respect of the treasured Te Urewera National Park. If you had told me 15 years ago that Parliament would almost unanimously be able to agree to this bill, I would have said “You’re dreaming mate”. It has been a real journey for New Zealand, iwi, and Parliament to get used to the idea that Māori are perfectly capable of conserving New Zealand treasures at least as well as Pākehā and departments of State...”

Hon Dr Pita Sharples (Minister of Māori Affairs)

“... The settlement is a profound alternative to the human presumption of sovereignty over the natural world. It restores to Tūhoe their role as kaitiaki and it embodies their

hopes of self-determination—Tūhoe autonomy for the 21st century, Tūhoe services for Tūhoe, benefit on Tūhoe terms, and Tūhoe living by Tūhoe traditions and Tūhoe aspirations...”

Concluding comment

My post-graduate thesis work (LLM completed in 2002 and PhD completed in 2012) argued for the reform of owning and managing national parks. As I concluded in my comparative PhD:

“National park lands encase the lived homes of Indigenous peoples. Today, the law reflects a new societal goal that seeks to reconcile with Indigenous peoples for the past wrongs of taking their lands and denying them the very means to be true to themselves, their ancestors, and their grandchildren. National parks have the potential to play an instrumental role in committing to this reconciliation journey. National parks are symbolic of our national identity and our future, and the parks contain Crown lands that thus enable the Crown to lead in implementing a new way of thinking about owning and managing lands including national parks.”

While I dreamed for radical legislative reform when writing my PhD, I did not know when I graduated that the horizon for change was so near. The enactment of Te Urewera Act makes me immensely proud to be a New Zealander.

Author: Jacinta Ruru



Professor Jacinta Ruru Ngāti Raukawa ki Waikato, Ngāti Ranginui ki Tauranga, Ngāti Maniapoto and Pakeha Jacinta is a professor in law at Otago University where she has been a faculty member since 1999. In 2016, she also became Co-Director of Nga Pae o te Maramatanga New Zealand's Maori Centre of Research Excellence. Her research interests focuses on exploring Indigenous peoples' legal rights to own, manage and govern land and water. Jacinta's PhD thesis (University of Victoria, Canada, 2012) is titled "Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand's National Parks." Jacinta has led, or co-led, several national and international research projects including on the Common Law Doctrine of Discovery, Indigenous rights to freshwater and multidisciplinary understandings of landscapes. She coleads several research groups including a new University of Otago Poutama Ara Rau Research Theme, and has organised a variety of national and international conferences including the "In Good Faith" Treaty of Waitangi symposium (2007), the international Indigenous Legal Water Forum (2009) and the Australia New Zealand Law and History Society conference (2013). Significant research awards include the University of Otago prestigious Rowheath Trust and Carl Smith Medal for outstanding scholarly achievement across all disciplines (2010) and the Fulbright Nga Pae o te Maramatanga Senior Maori Scholar Award (2012). Jacinta is a consultant editor to the Māori Law Review.