IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2025-409-745
[2026] NZHC 722

UNDER	the Declaratory Judgments Act 1908 and the Judicial Review Procedure Act 2016
BETWEEN	TE RŪNANGA o NGĀI TAHU Plaintiff
AND	MINISTER OF CONSERVATION Defendant

Hearing: 13 March 2026

Counsel: C F Finlayson KC, R E Brown and R L Dunford for Plaintiff
J M Prebble, S J Jensen and C R Downey for Defendant

Judgment: 25 March 2026

JUDGMENT OF OSBORNE J

Interlocutory applications

[1] The plaintiff applies for a direction that this proceeding be set down for an urgent fixture. The defendant, opposing that application, cross-applies for an interim stay of the proceeding.

The context

[2] Te Rūnanga o Ngāi Tahu (Te Rūnanga) is a body corporate established pursuant to the Te Runanga o Ngai Tahu Act 1996. Following negotiations with the Crown relating to breaches of te Tiriti o Waitangi/the Treaty of Waitangi (the Treaty), Te Rūnanga entered into a Deed of Settlement with Her Majesty the Queen in right of

New Zealand on 21 November 1997 (the Deed of Settlement), following which Parliament enacted the Ngāi Tahu Claims Settlement Act 1998 (the Settlement Act).

[3] This proceeding concerns, from Te Rūnanga's perspective, obligations the Crown entered into which were given effect by the Deed of Settlement and/or the Settlement Act. Te Rūnanga, as the tangata whenua of, and as holding rangatiratanga within the takiwā of Ngāi Tahu Whānui, refers particularly to the Crown's obligation of consultation in relation to conservation management, Te Rūnanga's entitlement to provide advice, and the right of Te Rūnanga to have two nominees on Conservation Boards wholly within the Ngāi Tahu takiwā and one on Boards partly within the Ngāi Tahu takiwā. These are aspects of more extensive commitments the Crown made in relation to conservation matters.

[4] Te Rūnanga viewed as a particularly important component of the negotiations that led to the Deed of Settlement and the Settlement Act the obligations the Crown undertook through the Director-General of the Department of Conservation (the Director-General), pursuant to s 4 Conservation Act 1987 (s 4). Section 4 requires the Conservation Act to "be interpreted and administered [so] as to give effect to the principles of the Treaty of Waitangi."

[5] In 2024, the Government proposed changes to conservation law and, in particular, to the management of conversation land. The Director-General circulated a discussion document in November 2024, including to Te Rūnanga. The Director-General also recorded in a letter to Te Rūnanga the same month the Government's commitment "to ensuring that any changes uphold Treaty settlement redress".

[6] The proposed reforms, as explained in materials published by the Department of Conservation (DOC) are intended to:

(a) streamline the planning framework for conservation land;

(b) improve the processing and management of activity authorisation on conservation land;

(c) enable greater flexibility to exchange or sell conservation land; and

(d) provide clarity on the Crown's obligations in respect of the Treaty.

[7] Regional hui took place with post-settlement governance entities (PSGEs), including Te Rūnanga, from November 2024 to February 2025. Te Rūnanga (and others) were notified in March 2025 of the timeframe of the Minister of Conservation (the Minister) for the introduction of a Conservation Amendment Bill (the Bill)[1] (by the end of 2025), with the expectation that it would be passed in 2026. The Minister's proposed changes included "codifying" what is required to give effect to Treaty principles under s 4, through spelling out clear requirements and providing clarifications.

[8] In June 2025, the Minister sought policy Cabinet approval "to modernise conservation land management so drafting of legislation can commence", in particular seeking policy decisions in relation to a bill. Cabinet approved the Minister's proposal (the June decision), with the Minister invited to issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to the June decision.

[9] A further paper from the Minister to Cabinet in September 2025, in relation to upholding Treaty settlements, dealt with what were referred to as "standard redress" issues (relating to 700 commitments). Placeholder provisions were proposed in relation to around 45 commitments which required more "complex and material changes" (called "complex redress"). The Minister proposed to work with PSGEs and groups in negotiations to find mutually agreeable solutions but recorded that might not be achievable. Cabinet approved the Minister's proposals (the September decision) and authorised the Minister to make final decisions in consultation with the Minister for Māori Development to replace the placeholder provisions for complex redress. The Minister was again invited to issue drafting instructions to the PCO, to give effect to the September decision.

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[1] The Bill has been referred to as the "Conservation Amendment Bill", the "Conservation Acts (Land Management) Amendment Bill", and, most recently the "Conservation Acts (Land Management and Other Matters) Amendment Bill". In this judgment, "the Bill" refers to the intended bill by whatever description was used since its development began.

[10] On 3 November 2025, the Minister wrote to Te Rūnanga's Kaiwhakahaere. The Minister recorded his intention was to introduce the Bill in early 2026, whereupon consultation would be available through the select committee process. The Minister recorded he had asked officials to engage with Te Rūnanga in relation to complex redress issues prior to the introduction of the Bill.

[11] Correspondence followed between Te Rūnanga and DOC in the following days identifying that the instructions to be given to the PCO in relation to s 4 would follow further discussion.

[12] Te Rūnanga's Group Head of Strategy and Environment, Jacqui Caine, sent an email to DOC's Acting Deputy Director-General, Peter Galvin, shortly after Te Rūnanga filed this proceeding, recording:

> You would have heard that Te Rūnanga o Ngāi Tahu (Te Rūnanga) has filed proceedings against the Minister in respect of the proposed [Bill]. As discussed previously, Te Rūnanga is greatly concerned by the reforms to section 4, as well as, those particular aspects of the proposals that breach and undermine our Settlement. We remain open and willing to engage with the Department on the reforms.

[13] Peter Galvin, DOC's Acting Deputy Director-General provided an affidavit as to the progress of the Bill. He deposed that at that date (13 February 2026) the reform proposals were being drafted by the PCO for introduction to the House of Representatives (the House). He stated officials were still working towards the introduction of the Bill in late March or early April 2026 in accordance with the Minister's indication that the Government would like the Bill to be passed by Parliament into legislation before the end of the current Parliamentary term (that is, November 2026). He added the precise timing of introduction is subject to a number of factors in terms of the Government's legislative priorities.[2]

Te Rūnanga's claim

[14] On 21 November 2025, Te Rūnanga issued this proceeding.

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[2] Following the hearing the Court received from counsel the copy of an email from DOC to Te Rūnanga dated 20 March 2026. The email refers to the Minister's intention to introduce the Bill in April 2026 but subject to the timing issues described at [13]. The email also discusses "engagement opportunities" that will ensue. The content of the email is consistent with the evidence presented for the hearing.

[15] Te Rūnanga pleads three causes of action, namely that:

(a) there has been a breach of the Crown's commitments in the Deed of Settlement and the Settlement Act because the Crown's proposed reforms of the conservation system are not consistent with the Crown's obligations and commitments as contained in those documents;

(b) there has been a breach of s 4, in that the proposed reforms do not recognise, safeguard and accommodate the rights and interests of Te Rūnanga; and

(c) there has been a breach of Te Rūnanga's legitimate expectation that the Crown would act consistently with the Deed of Settlement and Settlement Act.

[16] The Minister has filed a defence—all alleged breaches are denied.

Relief claimed by Te Rūnanga

[17] On its three causes of action, Te Rūnanga seek three sets of declarations in the following terms:

(a) On the first cause of action (breach of settlement);

i) the Deed of Settlement and the Settlement Act contain obligations which require the Crown to act in a manner consistent with its commitments contained in [the Deed of Settlement and the Settlement Act].

ii) The Crown's proposed reforms of the conservation system are not consistent with [the Crown's] obligations and commitments as negotiated with Te Rūnanga and as contained in [the Deed of Settlement and the Settlement Act].

(b) On the second cause of action (breach of s 4):

(i) when the Crown undertakes any process to reform the conservation system it must do so in a manner that is consistent with section 4 of the Conservation Act 1987; and

(ii) any process to reform the conservation system must occur in a way that recognises and respects the provisions of the Deed of Settlement and the Settlement Act, and which recognises, safeguards, and accommodates the rights and interests of Te Rūnanga.

(c) On the third cause of action (breach of legitimate expectation):

1 A declaration pursuant to the Judicial Review Procedure Act 2016 that Te Rūnanga has a legitimate expectation that:

i) the Crown will act in a manner consistent with its commitments as negotiated with Te Rūnanga and as outlined in the Deed of Settlement and the Settlement Act; and

ii) any reform process of the conservation system must occur in a way that recognises and respects the provisions of the Deed of Settlement and the Settlement Act, and which recognises, safeguards, and accommodates the rights and interests of Te Rūnanga.

2 A declaration that the Crown's proposed reforms of the conservation system are not consistent with its obligations and commitments as negotiated with Te Rūnanga and as contained in those documents, and are not consistent with the legitimate expectation of Te Rūnanga.

[18] As is evident from the declarations sought, the declarations on the first and third cause of action relate to both the process and substance of reform, while the second cause of action concerns process only, related to the requirements of s 4.

The Minister's interim stay application

[19] The order sought by the Minister would stay this proceeding until such time as the Conservation Act (Land Management and Other Matters) Amendment Bill (the Bill's most recent name) reforming the conservation system, including by amending the Conservation Act, is not before Parliament.

[20] The application identifies these grounds:

(a) allowing the claim to proceed would breach the privileges of Parliament:

(i) the drafting and the consideration of the Bill are proceedings in Parliament—the Bill is currently being drafted by the PCO and due to be introduced to Parliament as early as the end of March; and

(ii) the plaintiff's statement of claim puts at issue the Bill for the purpose of supporting the judgment, orders and relief sought;

(the Parliamentary privilege ground)

(b) the claim would breach the principle of non-interference because it seeks to interfere with Parliament's ability to legislate, and in particular:

(i) the plaintiff's statement of claim asks the High Court to make findings and declarations as to the process and content of any proposed reform of the conservation system and the current reform proposed in the bill; and

(ii) in so doing, the claim seeks to control or influence what could be placed before Parliament and Parliament's ability to pass legislation;

(the principle of non-interference ground)

(c) any prejudice suffered by the plaintiff in granting the stay is outweighed by the prejudice to the Parliamentary process in allowing the claim to proceed while the legislation is being drafted for and considered by Parliament.

[21] By its notice of opposition, Te Rūnanga opposed the stay application on the grounds:

(a) the Parliamentary privilege ground does not apply because the matters subject of this proceeding are not "proceedings in Parliament";[3]

(b) the principle of non-interference ground is not engaged because:

(i) a relevant bill has not been introduced;

(ii) Te Rūnanga's challenge is to executive, not legislative, action;

(iii) DOC is still further considering and developing the proposed reforms;

(iv) the proposed arrangements for upholding redress pursuant to Treaty settlements (part of the reform process) are subject to further engagement between the parties independent of the introduction of legislation to Parliament.

(c) the relief sought by Te Rūnanga in the proceeding will declare rights that exist independently of the Crown's proposed reforms of the conservation system and relates to the process by which the Crown is undertaking those reforms;

(d) the court's function is to adjudicate on matters in which a party is seeking to have its legal rights determined;

(e) such right of access to the courts is not excluded by the fact a matter may later be addressed by Parliament; and

(f) the court's overriding objective is to secure the just resolution of proceedings by proportionate means, which a stay would impede.

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3 Parliament Act 2025, s 13.

Parliamentary privilege

Overview

[22] The first principle invoked by the Minister—Parliamentary privilege—is related to the privilege declared in art 9 of the Bill of Rights 1688 (England) which prevents proceedings in Parliament from being impeached or questioned in any court.[4]

[23] The phrase "proceedings in Parliament" is defined in the Parliament Act 2025 as "all words spoken and acts done in the course of, for the purposes of, or incidental to transacting the business of the [House] or a Committee",[5] and includes "preparing a document for the purposes of or incidental to transacting any business of the [House]".[6]

[24] The Minister and Te Rūnanga adopt fundamentally different views as to the point at which this privilege began or will begin to operate in relation to the Bill. For the Minister, Mr Prebble submits the privilege extends to the actions of the Executive in preparation for the introduction of the Bill to Parliament (that point being reached in his submission in June 2025 at the latest), when Cabinet agreed to the Minister's proposals for reform of conservation law and invited the Minister to issue drafting instructions to the PCO to give effect to Cabinet's decisions. For Te Rūnanga, Mr Finlayson KC submits the principle of non-interference is not engaged by this proceeding because there is no bill yet before the House to give effect to DOC's proposed reforms. Alternatively (if the Court finds the privilege was engaged), Mr Finlayson makes two submissions. First, that Te Rūnanga's proposed declarations relate to its rights independent of DOC's proposed reform and any proposed legislation. Secondly, the placeholder provisions for complex redress in the reform process (above at [9]) indicates the reform is still under development, with further discussions with Te Rūnanga to take place before the enactment of the legislation.

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4 Bill of Rights Act 1688, art 9; Imperial Laws Application Act 1988, s 3(1) and sch 1.
5 Parliament Act, s 13(1).
6 Section 13(2)(c).

The principle of non-interference

[25] In addition to the privilege relating to proceedings in Parliament, which is substantially based in statute going back to the Bill of Rights, there is a related, wider principle, that the courts should not interfere so as to frustrate the powers of the House to enact legislation.[7] The Supreme Court in *Ngāti Whātua Ōrākei Trust v Attorney-General* (*Ngāti Whātua*) recognised two propositions as to the scope of the principle:[8]

(a) a court will not make an order to prevent the introduction of a bill to the House;[9]

(b) the courts should not try to dictate, by declaration or other relief, what should be placed before Parliament.[10]

[26] The Supreme Court's decision in *Ngāti Whātua* recognised there remain issues as to the exact scope of the principle of non-interference in Parliament proceedings:

> [46] From the cases to date, there remain questions about the exact scope, qualifications and basis of the principle of non-interference in parliamentary proceedings.[11] As will become apparent, it is not necessary in the present case to resolve the exact metes and bounds of the principle. It is, nonetheless, appropriate to sound a note of caution at the extent to which the principle of non-interference in parliamentary proceedings has been held to apply to decisions somewhat distant from, for example, the decision of a minister to introduce a Bill to the House or from debate in the House. It would be overbroad to suggest that the fact a decision may, potentially, be the subject of legislation would always suffice to take the advice leading up to that decision out of the reach of supervision by the courts. That would be to ignore the function of the courts to make declarations as to rights. In that respect, it is relevant that the observations in *Milroy* [*v Attorney-General*] were made in the context of acceptance by counsel for the appellants that the officials' advice did not affect the rights of any person or have the potential to do so.
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> [47] The Court of Appeal in *Milroy* described the test as to what amounts to interference in parliamentary proceedings as one of function, rather than "remoteness in time or evolution".[12] However, it may not be appropriate to discount out of hand the relevance of timing in determining the reach of the principle of non-interference in parliamentary proceedings. As the Court of

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7 *Westco Lagan Ltd v Attorney General* [2001] 1 NZLR 40 at [98].

8 *Ngāti Whātua Ōrākei Trust v Attorney-General* [2018] NZSC 84, [2019] 1 NZLR 116 [*Ngāti Whātua*] at [36] per Ellen France J for the majority.

9 Adopting *Te Rūnanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301 (CA) [*Sealords*] at 307–308.

10 At 308.

11 See *Sealords*, above n 9, at 307–308.

12 *Milroy v Attorney-General* [2005] NZAR 562 (CA) at [17].

> Appeal in *Sealords* observed, the principle of non-interference with parliamentary proceedings can be characterised as "the corollary" of the "implied right to freedom of expression in relation to public and political affairs [that] necessarily exists in a system of representative government".[13] That suggests a rather more direct temporal link to what occurs in the House than was the case in *Milroy*.
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> [48] As foreshadowed, it is not necessary to finally resolve these questions here…

[27] The majority reinstated four limbs of the declaratory relief sought on the basis that relief could be characterised as dealing with the plaintiff's legal claims, including the rights existing under tikanga. Two limbs of relief ((e) and (f)) which were held to be correctly struck out had sought to challenge decisions of the Minister to legislate to transfer particular properties.[14]

[28] The Court of Appeal subsequently followed *Ngāti Whātua* in *Ngāti Mutunga O Wharekauri Asset Holding Co Ltd v Attorney-General* (*Ngāti Mutunga*), and discussed the judgment of the majority.[15] Williams J, delivering the judgment of the Court of Appeal, observed in relation to the extent of judicial deference to Parliamentary proceedings:

> [24] While the majority of the Supreme Court in the *Ngāti Whātua* decision sounded "a note of caution" about undue judicial deference to parliamentary proceedings where the decisions in question are somewhat distant from, for example, the decision of a Minister or Cabinet to introduce a bill into the House, there was certainly no suggestion that it would be unduly deferential of the courts to refuse to enquire into the potential rights impact of a bill before the House.
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> [25] The caution from the majority in *Ngāti Whātua* related to a question about whether a challenged decision was outside the court's purview simply because it might potentially be the subject of legislation in the future. It is, the majority said, "the function of the courts to make declarations as to rights". The first four of six declarations sought by Ngāti Whātua related to the relevance of tikanga in the Treaty settlement process and the extent to which tikanga should affect the way the Crown dealt with other iwi in the Tāmaki isthmus. The relief was couched in broad and relatively abstract propositions unrelated to any particular settlement agreement between the Crown and other iwi. Thus, the comity principle was not undermined, and those first four heads of relief remained. But the last two heads sought relief specific to actual land assets on the isthmus which were intended to be transferred to other iwi in proposed settlements. The majority struck those heads out. That is because,

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13 *Sealords,* above n 9, at 308.
14 *Ngāti Whātua,* above n 8, at [65]–[66].
15 *Ngāti Mutunga O Wharekauri Asset Holding Co Ltd v Attorney-General* [2020] NZCA 2, [2020] 3 NZLR 1 [*Ngāti Mutunga*] (footnotes omitted).

> the majority found, those aspects were specific to settlements which would inevitably be given effect by legislation. This was despite the fact that no bills had been introduced into the House to give effect to these settlements.

[29] The Court of Appeal proceeded to explain the critical point is that at which a government proposal crystallises into a proposal to legislate:

> [27] The simple point is, courts may declare rights, and these may relate to the rights-consistency of government action, and even proposed government action. But they may not relate to the rights-consistency of proposed legislation. For example, a government proposal to exercise an existing lawful power in a particular way may be the subject of court declarations. The difficult area is where the proposed government action is really a proposal to legislate. In principle, declaratory proceedings of this nature are simply not permitted. The point at which a government proposal crystallises into what is in substance a proposal to legislate may be a matter for debate. But it is not one that needs to be resolved in this case.

[30] The Court's approach in *Ngāti Mutunga* to the non-interference principle, including in the Treaty context, recognised that it is not the formulation of government policy that will generally impact on a party's rights—rather, it is resulting legislation and executive acts that will do that.[16] Accountability for alleged inadequacy in the consultation relating to a bill is political and ultimately electoral and not for the court.[17]

[31] Just as was the case in *Ngāti Whātua*, the present is not the proceeding in which it is necessary to resolve the exact metes and bounds of the principle of non-interference in Parliament proceedings.

[32] On the documentary record that has been produced here, it is clear that a point was reached in June 2025 at the latest where the steps to be taken by the Minister became Parliamentary in character. The Minister was then to issue drafting instructions to the PCO to give effect to decisions the Executive had made. At that point, the introduction of the Bill was planned for the end of 2025 with the expectation it would become legislation in 2026. In short, Cabinet had approved the decision of the Minister to introduce a bill to the House.

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16 As referred to in *Ngāti Whātua*, above n 8, at [39], citing *Milroy v Attorney-General*, above n 12.

17 *Te Rūnanga o Ngāti Whātua v Attorney-General* [2024] NZHC 2271, [2024] 3 NZLR 218 at [68], [78]. See also *Mikisew Cree First Nation v Canada (Governor General in Council)* 2018 SCC 40, [2018] 2 S.C.R. 765 at [2], [34]. The Supreme Court cited the case of *Reference re Resolution to amend the Constitution* [1981] 1 S.C.R. 753, where the majority of the Court stated that "[c]ourts come into the picture when legislation is enacted and not before", at 785.

[33] Te Rūnanga asserts, notwithstanding those developments in relation to the proposed legislation in 2025, the principle of non-interference in Parliament proceedings did not apply to the developing Bill when, in November 2025, Te Rūnanga commenced this proceeding. Mr Finlayson, in his submissions, brought Te Rūnanga's position together under three headings, which I now consider.

No Bill before the House

[34] As I understood it, Mr Finlayson's submission was that, at least generally speaking, Parliamentary privilege attaches and the principle of non-interference is activated at the point there is proposed legislation before the House. Mr Finlayson referred to types of conduct that have been regarded as "proceedings in Parliament" such as briefings provided to Ministers by officials, and evidence given to select committees.[18]

[35] Mr Finlayson referred also to the 2014 select committee report on the Parliamentary Privilege Bill when Parliament was considering the legislative definition of "proceedings in Parliament" which came to be contained in s 10 of the Parliamentary Privilege Act 2014, and is now contained in s 13 Parliament Act.[19] Examples of matters the select committee expected would be covered by the drafted definition included attendances such as preparation associated with questions for answers in House; preparation of evidence for the select committee; and the preparation of documents for a member for use in the House. Mr Finlayson noted what he submitted was a "strong nexus" between those activities and a bill in the House.

[36] I observe that Mr Finlayson did not refer to any case law to support the proposition that the point at which a bill is introduced to the House becomes the start date for the application of privilege or the non-interference principle. Authority is to the contrary. The test identified by the Court of Appeal in *Ngāti Mutunga*—the point at which a government proposal crystallises into what is in substance a proposal to

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18 Privileges Committee *Question of Privilege concerning the defamation action Attorney-General and Gow v Leigh* (I.17A) at [28].

19 Parliamentary Privilege Bill (179-2) (Select Committee Report) at 10–11.

legislate[20]—will almost invariably result in the privilege or non-interference principle having application significantly before the date on which the relevant bill is introduced to the House.

[37] Mr Finlayson recognised that case law suggests matters "preparatory to" the introduction of legislation may be covered by the privileges of Parliament but sought to confine those earlier "crystallisation" cases to situations which he described as "inextricably linked to the business of the House". He took as an example the decision of McQueen J in *Roebeck v Attorney-General*.[21] The Ngāti Pāoa *S*ettlement Bill was about to be introduced to the House to give effect to the *Ngāti Pāoa* Deed of *S*ettlement. McQueen J concluded, applying *Ngāti Whātua*, that the applicants' claims in what was called the "Crown process proceedings" were a breach of comity or the non-interference principle.[22] In Mr Finlayson's submission, what distinguishes such Treaty settlement cases is that there is *inevitably* to be forthcoming legislation to reflect the settlement. Mr Finlayson submitted that point was not reached by November 2025 (when this proceeding was filed) in the present case—there were no "proceedings in Parliament" because the legislation the Minister intends to introduce is "expressly subject to further development" with impacted groups, including rangatiratanga, in respect of Treaty settlement redress.

[38] I am not persuaded that deliberation and discussions yet to take place about aspects of the proposed legislation, including in relation to the important placeholder provisions, meant that the Government's proposal in relation to the Bill did not crystallise by June 2025 into what is in substance a proposal to legislate. Inherent within the June 2025 decision to proceed with the legislative process was a recognition that matters of complex redress would be worked through in the context of the legislative process, including at select committee.

[39] Mr Finlayson's proposition is that the privileges of Parliament and the principle of non-interference cannot sensibly be invoked in circumstances where policy is expressly subject to further development before it is finalised in legislation. He cites

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20 *Ngāti Mutunga*, above n 15, at [27].
21 *Roebeck v Attorney-General* [2022] NZHC 3341.
22 At [268].

no authority for that proposition. I do not accept it is sound. The fundamental question remains whether there are "proceedings in Parliament". The fact the Minister (and Cabinet) have decided to introduce legislation to Parliament which, given the state the draft legislation will be in, is likely to require substantial policy discussion and further drafting, does not alter the fact the Minister has now assumed a role in relation to the proposed legislation that is Parliamentary in nature.[23]

Relief which is declaratory as to rights

[40] Mr Finlayson alternatively submitted that, in the event the Court was to decide (as I have) that "the Crown's preparatory steps to the introduction of [this] Bill are relevant", the privilege and the non-interference principle are not engaged by reason of the nature of relief sought by Te Rūnanga. That is because, in his submission, the relief sought:

(a) relates to present rights that exist independently of the Crown's proposed reforms of the conservation system;

(b) relates to the process by which the Crown is currently undertaking reforms of the conservation system; and

(c) is declaratory in nature.

[41] Mr Finlayson emphasised the fundamental common law right of access to the Courts, citing the observation of Cooke J in *Hata v Attorney-General (No 2)* that "it is of constitutional importance that there is [a] right of access to the court so that parties may obtain determinations of their legal rights.[24] Such right is reflected in the New Zealand Bill of Rights Act 1990.[25]

[42] Mr Finlayson drew in aid observations of both the majority and of Elias CJ in the Supreme Court's judgments in *Ngāti Whātua.* In the passage cited at [42] above,

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23 See *Boscawan v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229 at [31]; *Mikisew Cree First Nation v Canada (Governor General in Council)*, above n 17, per Karakatsanis J at [2], per Brown J at [120].

24 *Hata v Attorney-General (No 2)* [2023] NZHC 2919 at [32].

25 New Zealand Bill of Rights Act 1990, s 27.

the majority recognised that taking an "overbroad" approach to the concept of "Parliamentary proceedings" would result in ignoring the function of the courts to make declarations as to rights.[26] In her judgment, the Chief Justice (as she then was) characterised as a "creep in restriction of established constitutional obligations of Courts" the suggestion that it is inappropriate to determine existing rights or to declare what the existing law is where the executive has indicated it intends to ask Parliament to change the law.

[43] Mr Finlayson submits the declarations Te Rūnanga seeks here are entirely consistent with the court's established constitutional role described in the case law. He summarises the Te Rūnanga's statement of claim as seeking "declarations as to its rights and entitlements stemming from the Ngāi Tahu Settlement, and the actions of DOC in developing the proposed reforms".

[44] I do not view the note of caution sounded by the majority in *Ngāti Whātua*, in the full passage partly referred to by Mr Finlayson, as rendering the principle of non-interference in Parliament proceedings inapplicable in this case.[27] For convenience, I set out the key sentences of that discussion again:[28]

> It is … appropriate to sound a note of caution at the extent to which the principle of non-interference in parliamentary proceedings has been held to apply to decisions somewhat distant from, for example, the decision of a minister to introduce a Bill to the House or from debate in the House. It would be overbroad to suggest that the fact a decision may, potentially, be the subject of legislation would always suffice to take the advice leading up to that decision out of the reach of supervision by the courts. That would be to ignore the function of the courts to make declarations as to rights. In that respect, it is relevant that the observations in *Milroy* were made in the context of acceptance by counsel for the appellants that the officials' advice did not affect the rights of any person or have the potential to do so.

[45] The present decisions of the Minister to introduce the Bill to the House were made at the latest in June 2025 when the Minister was invited by Cabinet to issue draft instructions to PCO to give effect to Cabinet's decisions. There is a close parallel between the declarations sought by Te Rūnanga in this case and the "problematic" declarations (paragraphs (e) and (f) in *Ngāti Whātua*), both of which the Supreme

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26 *Ngāti Whātua*, above n 8, at [46].
27 The full passage is set out at [26] above.
28 *Ngāti Whātua*, above n 8, at [46].

Court left struck out.[29] That was on the basis that, in context, the relief sought could only be characterised as a challenge to the decision already made to legislate in a particular manner. The fact the appellant's complaint was said to arise because of some prior lack of process did not alter that conclusion.[30]

[46] Obligations and commitments contained in the Deed of Settlement are of course, as Mr Finlayson emphasised, rights that exist independently of the reforms proposed to be effected through the Bill. But, as the courts have recognised on previous occasions and as Mr Prebble submits in relation to the current reforms, the principle of non-interference will be engaged where the only impact on rights will be as a result of the proposed legislation.[31] Mr Prebble refers to a passage in the Court of Appeal's judgment in *Ngāti Mutunga*, explaining (in the passage emphasised) that the court's power to make declarations is not unfettered where the subject-matter involves the potential legislative amendment of rights:[32]

> [33] That said, the reasoning of both the majority and Elias CJ in *Ngāti Whātua* is consistent with the proposition that the courts may make declarations of existing right, interest or entitlement whether or not there is a bill before the House which may affect them in some way. Such relief is not "in relation to parliamentary proceedings", in the sense provided for by in the Parliamentary Privilege Act. It does not amount to an interference by the courts in Parliament's "proper sphere of influence and privileges" because such declarations would be about existing rights, interests or entitlements, and not what Parliament may be proposing to do in relation to them. The terms of s 4(1)(b) of the Parliamentary Privilege Act are apposite here. Comity is a principle of "mutual respect and restraint" between the legislative and judicial branches as to their respective constitutional functions. It is the function of courts to adjudicate on rights and entitlements.

[47] The relief sought in this case is very much about what the Minister may intend Parliament to do about matters Te Rūnanga considers would affect their rights, interests or entitlements. Such is reflected in the explanation (above at [12]) that Ms Caine gave Mr Galvin of the proceeding Te Rūnanga had just issued. The matters Te Rūnanga was "greatly concerned" with were the reforms to s 4 as well as those particular aspects of the Minister's proposals that "breach and undermine [Te Rūnanga's] Settlement".

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29 At [65], [67].
30 At [66].
31 At [38]–[39] citing *Milroy*, above n 12.
32 *Ngāti Mutunga*, above n 15, at [33]. Footnotes omitted.

[48] The specific focus on amendments to the statutory provisions in s 4 (Conservation Act) reinforce the conclusions I have reached. Te Rūnanga asserts the Crown through the reforms proposed in the Bill, has acted in breach of a number of requirements including the provisions of s 4. But the intention of the Bill as proposed is to amend the very requirements of s 4.

[49] I accept Mr Prebble's submission that the terms of Te Rūnanga's proposed declarations, as drafted, are mandatory. As a matter of convention the Crown complies with declarations.[33] As recently observed by Boldt J, it is not the court's role to make suggestions, especially in the context of forthcoming legislation which is likely to be controversial.[34] In the same case, the Judge referred to observations of Fordham J in the English High Court in *R (on the application of A, J, K, B and F) v Home Secretary*, which identified by the potential for interference in the Parliamentary process through courts seeking to influence the course of a bill:[35]

> …Let it be assumed that the Court's conclusion did not involve any 'step' being taken by Government. Suppose instead that the Court's judgment instead cast a legal 'shadow' over the product of the consultation. That shadow would, in my judgment, itself stand — in the circumstances of the present case — as an interference in the Parliamentary process. The Court would, unmistakeably, have concluded that the 'product' of the consultation was legally 'tainted'. The Court would have held that the product had been arrived at in breach of a relevant, material and applicable legal standard. In the present case, the Claimants' pleaded grounds for judicial review, in my judgment, demonstrate this 'shadow' point very clearly when they address the purpose of a freestanding declaration … The very consequence for which the Claimants hope, and which they intend, through the bringing of this claim for judicial review and the seeking of a declaration of breach would, in a real sense, be seeking to 'influence the course of the Bill' … Otherwise, how could the judgment be affecting the thinking of 'Parliament' (as it is put), or thinking of those involved in the Parliamentary process?

[50] I find it would be inappropriate to grant Te Rūnanga any declarations of the nature it seeks either when the Bill is shortly to go to the House or while it is before the House.

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33 *Hood v Carter Holt Harvey Ltd* HC Auckland CIV-2004-404-292, 5 April 2004 at [8].

34 *Te Rūnanga o Ngāti Whātua v Attorney-General*, above n 17, at 58.

35 At [60] citing *R (on the application of A, J, K, B and F) v Home Secretary* [2022] EWHC 360 (Admin), [2022] 4 All ER 615 at [26](ii).

The stay

[51] The very nature of the Bill, including its intended introduction to the House, the fact it constitutes proceedings in Parliament, and that it is protected by privilege and the non-interference principle means that it is an abuse of process of the Court for the Court to be asked to engage in consideration of the proposed legislation.

[52] As such, the Minister's interlocutory application for a stay falls within the provisions of r 15.1(1)(d) High Court Rules 2016.

Outcome

[53] The stay sought by the Minister will be granted. Counsel accept in this circumstance Te Rūnanga's application for an urgent fixture falls away.

[54] In relation to costs, counsel accepted that costs would follow the event on a 2B basis, with a certificate for second counsel.

Orders

[55] I order:

(a) there is an order staying this proceeding until such time as the Conservation Acts (Land Management and Other Matters) Amendment Bill is not before Parliament;

(b) the plaintiff's application for an urgent fixture is adjourned with leave to have it brought on for hearing on five days' notice;

(c) the costs of the defendant's stay application are to be paid by the plaintiff on a 2B basis together with disbursements to be fixed by the Registrar, with a certificate for second counsel;[36]

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[36] High Court Rules 2016, Category 2 under r 14.3(1) and band B under r 14.5(2).

(d) within 20 working days after the Bill ceases to be before Parliament, counsel are to file a joint memorandum identifying intervening developments and setting out proposed directions in relation to the proceeding;

(e) leave is reserved to the parties to request the case officer to set down a case management conference at any intervening time should that become appropriate.

Osborne J

Solicitors:

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