

Admin law

- Bradley and Ewing: “administrative law may be defined as the law which determines the organisation, power and duties of the administrative authorities”
 - o Focus: exec only

Judicial review

Structure

1. Issue statement (who you are advising, the relevant legislation etc.)
2. Amenity to review: essentially looks at whether the decision is susceptible to review- ultimately about the public nature of the power being exercised

Grounds and sub-grounds for review- set out relevant tests, authority

3. Illegality
4. Procedural impropriety
5. Unreasonableness
6. Conclude --> can make interim conclusions

Def: “Review by judge of High Court of public decision-making powers, in order to determine whether [it] is unauthorised or invalid” (Crown Law Office ‘Judge Over Your Shoulder’)

Role of the Courts: review the process by which the decisions is made

Pros	Cons
<ul style="list-style-type: none">- Allows Courts to control activities of the exec to safeguard rights of citizens- Flexible- can be applied to different kinds of decisions- Potency- can make government overturn a decision- Mechanisms to let citizens understand and challenge decisions- --> uphold rule of law	<ul style="list-style-type: none">- Can lead to lack of coherence- individual decisions challenged- Secondary- ambulance at the bottom of the cliff- Limited grounds of review- Govt can remake same decision- undermines process?- Slow and expensive- Can undermine good relationships with government

→ Red light= limit govt power, green light= facilitate use of fair public power

Scope

- **Can review:** Powers derived from statute, regulations, actions performed by public powers (*Phipps*), prerogative powers (*CCSU*).
- **Cannot review:** content of statutes (Crown Law); non-justiciable issues: issues of national security (*CCSU*), treaty settlement bills (*NZMC v AG*), policy (*Curtis*).
- **Will review but high threshold:** commercial decisions of public bodies (*Lab Tests*- fraud, corruption, bad faith)

1. Issue statement- who you are advising, relevant legislation.
2. Amenity to review- a public power? – exercised under statute?

Grounds

1. Illegality
2. Procedural impropriety/fairness
3. Irrationality

1. Illegality

Sub-grounds:

1. Error of law
2. Relevancy
3. Failure to exercise discretion
4. Improper purpose
5. Error of fact?

1. Error of law

- Decision within scope of authority (i.e. not ultra vires)- uphold parliamentary supremacy (within power granted by P)
- Statutory interpretation into scope of power
- Authorities: *Peters*, *Carter Holt Harvey*, *M v Syms*

- What legislation is relevant?
 - Empowering legislation and other law materially relevant to the decision
 - Treaty incorporated in legislation?
- What is the scope of power?

2. Relevancy

- Are there mandatory relevant considerations?
 - o Expressed in statute (“... shall have regard to...”) or implied from statutory context
 - o Unincorporated treaties (*Tavita*)- manifestly important? (*Ashby*)
- Were irrelevant considerations taken into account?
- Permissible considerations- do not point to whether an error has been made
- “plainly relevant factors”
 - o Parliament would have intended to be taken into account (*NZ Fishing Industry Association*)
- Weight given
 - o Courts will review whether matters were taken into account but will not second-guess weight given to each consideration, unless decision is unreasonable (*NZ Fishing*)

3. Failure to exercise discretion

- Related grounds: acting under dictation (doing what someone tells you)/ invalid delegation (you were supposed to make the decision but you delegated the power)

- Is exercise of discretion required?
 - o “May”/“can choose to”
- Is there policy dispensing exercise of discretion?
 - o Guidelines/manuals – can only guide discretion
 - o Cannot rigidly apply policy without exercising discretion where required (*M v Syms*) --> analogise

4. Improper purpose

- Power granted for one purpose must not be used for a different purpose- based on express and implied purpose or spirit of the law (*Roncarelli*).

- What is the purpose?
- Does the improper purpose “thwart or run counter to” the statutory purpose? (*Unison Networks*).
 - o Can have secondary purpose as long as it does not run counter to statutory purpose

5. error of fact?

- Promoted as general ground by Cooke J in *Daganayasi* in obiter
- Not valid where it is reasonably possible to hold differing views about the facts (*Moxon*)

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| <ul style="list-style-type: none">- Is there a binary fact in issue? (<i>Oggi</i>) --> analogise |
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2. procedural impropriety/fairness

- Rules in common law or statute
- Advantages:
 - Non-instrumental: human dignity- where decisions are being made about someone, they should be involved in that process
 - Instrumental:
 - o Errors can be corrected, and more accurate evidence is supplied
 - o Decision-maker gets better information to make decisions
 - o Improves trust and confidence in the system
 - o Improves compliance with decisions
 - o Increases legitimacy of the system
- Disadvantage: expensive and burdensome

Sub-grounds:

1. Hearing rule
2. Bias

1. Hearing rule

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| <ul style="list-style-type: none">- Threshold: Is a right or interest affected?- Or are there legitimate expectations of a fair process?- What is required in the context?<ul style="list-style-type: none">o Nature of decision and decision maker<ul style="list-style-type: none">▪ Cabinet decision making incompatible with oral hearings (<i>CREEDNZ</i>)▪ Administrative efficiency (<i>Daganayasi</i>)o Statutory scheme (<i>Daganayasi</i>)<ul style="list-style-type: none">▪ Avoid frustrating scheme of the statute (<i>CREEDNZ</i>)▪ What is required or excluded? (<i>Daganayasi</i>)o Nature of affected rights and interests (more stringent process where rights are more impacted- <i>Daganayasi</i>)<ul style="list-style-type: none">▪ If rights are affected typically notice of case against you, material adverse to you presented and opportunity to make written subso Legitimate expectations (past practice or assurance from administration- <i>CREEDNZ</i>) |
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- What process is required?
 - o Opportunity to make submissions- written subs usually bare minimum
 - o Notice- know the case and have a chance to respond (*Daganayasi*)
 - o Oral hearing- where credibility, literacy or facts are in issue (*Fraser*).
- Non-adjudicative/legislative decisions- decision not targeting one person: consultation
 - o What is required by statute/legitimate expectation? (*Lab Tests*)
 - o Must provide notice of proposal, chance to comment with sufficient info provided and have an open mind (*Wellington International Airport*)

2. Bias

- Why?:
 - o Bias can impact accuracy of decision- decision-maker is basing decision on other considerations other than law and facts
 - o Contrary to P's intentions
 - o Improve trust and confidence in system

- Threshold: Is a right or interest affected?
- The general test is "Whether "fair-minded [reasonably informed] lay observer would reasonably apprehend that the [decision-maker] might not bring an impartial mind to the resolution of the question" (*Saxmere* (No 1) and (No 2))
- *Ebner* (cited in *Saxmere*) provides further assistance.
 1. Firstly you need an identification of what might lead to a biased decision.
 - Pecuniary interest
 - Familial/other relationship
 - Personal prejudice
 2. Secondly, you need an "articulation of the logical connection" between the identification and the "feared deviation" from deciding the case on its merits
 - Degree of relationship
 - Temporal considerations

3. unreasonableness

- Neither approach has been approved or dismissed
- Traditional approach
 - o Perverse, absurd, outrageous, in the defiance of logic (*Woolworths*)
 - o "so unreasonable that no reasonable authority could ever have come to it" (*Wednesbury*)
 - o E.g. dismissal of red-haired teacher

- Modern approach- a “hard look” (*Wolf*)
 - --> greater scrutiny
 - Nature of decision- broad vs individualised, HR- analogise with *Wolf*
 - Who makes the decision- are they democratically accountable? (*Wolf*)
 - Subject matter and policy content
 - Importance of decision --> are human rights affected
 - Decision-making process- is it transparent?

Other substantive grounds

- Substantive legitimate expectation (*Coughlan*)
 - Never been won in NZ- indications in HC that it is open in NZ
- Inconsistent treatment
- Disproportionality- BORA
- Substantive fairness

Procedure

- Common law (Part 30 of High Court Rules)
 - Can get extraordinary remedies: injunction or declaration
 - Or prerogative writs / orders including:
 - Mandamus- mandatory injunction requiring someone to do something
 - Prohibition- prevent public authority from doing something
 - Or certiorari- review and quash
 - Based on the publicness of the decision
- Judicial Review Procedure Act 2016
 - “simplified and streamlined” procedure in cases involving:
 - “exercise of statutory power” and
 - “statutory power of decision”
 - Raises the issue of publicness
 - Incorporations included where they make rules, bylaws etc prescribing or affecting privileges, immunities, benefits or liabilities etc.
 - S17: Court may direct reconsideration- decision-maker remakes decision based on issue on review
 - S18: ultimately, relief is discretionary

- Factors in discretion?
 - Alternative remedies could have been used e.g. appeal
 - Merits
 - Needs of public administration- will cripple govt
 - The conduct of the applicant
 - Efficacy (issue is no longer an issue)

Constitutional foundation

- Theory 1: Legislative intent: Courts are applying intention of P (Dicey model). Issues:
 - What is Parliament's intent? If they wanted a system of reviewing decisions, they would allow appeal
 - Many grounds of review cannot be found in statute
- Theory 2: Common law model
 - Inherent power of Courts
 - Parliament can expressly override JR where they do not agree
- Convergence: Over time two theories have significantly converged
 - Presumed legislative intent: presume P intended to legislate in compliance w fairness and justice as the Courts regulate

International law

Dualist orthodoxy

- Administrators and Courts only required to apply treaties only when incorporated into domestic law (*Brind*)- ∴ if not considered --> error of law
- Incorporated treaties can be used to interpret ambiguous statutes (*Brind*)
- Making treaty is an executive act requiring legislative action (*A-G for Canada v A-G for Ontario*)

Relevancy principle

- Unincorporated treaties are mandatory relevant considerations (*Tavita*)
 - Where a treaty is "of such overwhelming or manifest importance" / "obviously or manifestly necessary" to take it in account (*Ashby*)
- Weight given to international obligations for the decision-maker, not the court

Presumption of consistency

- --> How the scope of decision-making power is interpreted

- Statutory powers should be read, so far wording allows, consistently with unincorporated international treaty obligations (*Puli 'uvea* and *Zaoui*)
 - o Unless the words of the statute exclude an int obligation consistent interpretation, this interpretation should be inferred
- Lower Courts less likely to apply presumption of consistency

Constitutional legitimacy

- Separation of powers and P sovereignty still recognised:
 - o Mandatory relevant considerations: weight given up to exec
 - o Presumption of consistency: clear language can rebut presumption
- Presumption of consistency: rule of law is informed by international sources and Courts should strive to interpret law in line with the rule of law

Public law toolbox

Accountability

- Mark Bovens: Narrow relationship between a public actor accountable to a forum which can enforce some consequences
- Why?
 - o Democracy: need representatives to justify themselves
 - o Good governance: internal accountability for how they perform their role on our behalf

Ombudsmen

Who?

- Officer of Parliament, appointed by G-G on recommendation of House of Representatives [s 3(2)];
- Governed by the Ombudsman Act 1975
- Similar independence / tenure protections to judges [s 6]
- Typically filled by former judges and senior civil servants

Jurisdiction:

- S13(1) "any decision or recommendation", act done or omitted
- by [central govt] Dept or org listed in Schedule 1, Part 1 and 2:
 - o not Ministers, Council elected representatives, or exceptions (s13(7) and (8) e.g. where right to appeal or an internal review process exists, also armed forces)

- Includes any Government Department, legal offices, ACC, DHBs, committee of local authority etc.
- --> affecting a person or body of persons in their personal capacity

Scope

- Investigate complaints or own motion [s 13(1) and 3]
- Inquisitorial process
- Good relationship with Government to investigate
- Reporting powers when something is [s 22(1)]:
 - Contrary to law;
 - Decision (or rule of law, provision of Act, regulation, or bylaw or a practice) was unreasonable, unjust, oppressive, or improperly discriminatory;
 - Was based wholly or partly on a mistake of law or fact; or
 - Was wrong

Outcomes

- recommendation powers [s 22(3)]:
 - matter should be referred to the appropriate authority for further consideration (similar to referral back remedy in JR)
 - omission should be rectified
 - decision should be cancelled or varied (or practice should be altered)
 - law on which the decision, recommendation, act, or omission was based should be reconsidered; or
 - reasons should have been given for the decision; or
 - any other steps should be taken
- if recommendations not implemented by Dept, may advise the PM and House [s 22(4)]
- However, not binding
- E.g. *Satyanand*: Recommended he would have to pay off what he would have had to, if not given wrong information
 - --> Could not get monetary remedy in JR, not significant enough

Official Information Act

- Change from presumption of secrecy (Official Secrecy Act 1951) to presumption of availability (in s5)

- Danks report “Towards open Government”
- Justification: An informed & empowered citizenry is at the core of a successful democracy
 - If the Government knows the information will be made available, they will be more responsive to what the public thinks)

Requests

- Who may make a request?
 - citizen, permanent resident, person in NZ, body corp operating in NZ [s 12(1)]
- From whom?
 - Department [s 2; Ombudsman Act, Sch 1, Part 1]
 - Minister of Crown
 - organisation [s 2; Sch 1; Ombudsman Act, Sch 1, Part 2]
 - Includes contractors engaged by department, minister or organisation
 - --> Note LGOIM Act 1987 for local authorities
- For what?
 - official information [ss 2 and 12] = info held by department, Minister or organisation
 - information, not documents (e.g. recollection from a meeting)
 - however, requests for personal information from natural person governed by Privacy Act
 - cf Part 4 OIA for corporate "personal information"
- How?
 - request with "due particularity" [s 12]
 - oral and written requests
 - Don't have to mention the OIA
 - urgent requests: reasons must be given

Processing

- Who processes / determines requests?
 - Dept/ Min / organisation [s 15(1)]
 - transfer permitted – if requested from wrong dep [s 14]
- When?
 - "as soon as reasonably practicable" and, in any case, within 20 working days [s15(1)] (20 days= backstop)

- extension possible for a "reasonable period" [s 15A]
 - If consultation is needed etc.

How is the request fulfilled?

- documents [s 16]:
- inspection / viewing / copy / transcript excerpt / summary / furnishing oral information
- deletions [s 17] - preferred to full refusal of request
- Charges for providing information [s 15(1A)-(3)]
- reasonable assistance [s 13] – clarification
- --> ss 2: organisation has to make info available in the way the person requesting the information prefers

Refusals and deletions

- Reasons must be given, incl PI balancing [s 19]
- substantive reasons:
 - conclusive reasons [s 6]
 - National security
 - International intelligence
 - Endangering safety of a person
 - Significant economic damage
 - special reasons [s 7]: Parts of realm of NZ which are not NZ (Cook Islands etc.)
 - other reasons, but only if not outweighed by public interest in disclosure [s 9]
 - Prima facie reason to withhold balanced with PI of release
 - E.g. trade secrets, public health, confidentiality, collective ministerial responsibility --> overused?
- neither confirm nor deny existence [ss 18(b) and 10]
- disclosure would breach another enactment or constitute contempt [s 18(c)]
- Administrative reasons:
 - is or will soon be publicly available [s 18(d)]
 - criminal disclosure [s 18(da)]
 - does not exist or cannot be found [s 18(e)]
 - substantial collation and research [ss 18(f) and 18A- extension]
 - is not held [s 18(g)]

- frivolous / vexatious / trivial [s 18(h)]

Review

- Where it takes ages, is refused or parts are deleted
- Review done by Ombudsman [s 28]
 - Consultation with Privacy Commissioner [s 29B]
- Recommendations [s 30(1)(d)]:
 - Must be complied with, unless Order in Council otherwise directs [s 32]
(stronger than Ombudsman)
 - 20 working days after recommendation to comply
 - Request cannot be made, in special cases, if Prime Minister or Attorney-General certifies [s 31]

Treaty

Declaration of independence

- Signed in 1835 by group of 34 rangatira in Te Tai Tokerau
- Sets up Confederation of United Tribes to meet in congress
- Asks King of England to be “the parent of their infant State”
 - o Draws British government into recognition of independence
- Made under encouragement of Busby
- Recognition of the flag and trade
- Unilateral statement of sovereign power and authority

The text

Article 1

- English: Māori cede sovereignty
- Māori: kawanatanga= government
 - o Kawanatanga used in Declaration of Independence in 1835 to mean government

Article 2

- English: “right of pre-emption” (sale of land needs to go through Crown) and “full and undisturbed possession of land and estates”
- Māori: retain “tino rangatiratanga” (= traditional chiefly authority) and “taonga”
 - o Conflict with sovereignty granted in art 1

Article 3

- Guarantee rights of British citizens to Māori

Article 4?

- Oral article protecting religious freedom

Notes

- Not signed by all iwi (e.g. Tūhoe)
- Recognition has changed over time (from *R v Symonds* to *Wi Parata* to *SOE*)
- Incompetently or intentionally translated?
- Māori version should be preferred as they did not draft (contra proferentum)

Motivations

British	Māori
<ul style="list-style-type: none"> - Control and regulation of increasing settler activity - Access to resources - Protect from other foreign interests - Diplomatic Respond to declaration - Humanitarian concern (encouraged by missionaries): <ul style="list-style-type: none"> o Justice 	<ul style="list-style-type: none"> - Control settlers - Protections of resources and authority - Trade - Alliance with major world power

Approach to interpretation

- “Living instrument” (Cooke P in *SOE*)
 - o “the Treaty must be capable of adapting to new and changing circumstances” (Richardson J in *SOE*)
- “what matters is the spirit” (Cooke P in *SOE*)
- Must be interpreted according to principles suitable to its character (e.g. history, form etc. – Richardson J in *SOE*)
- Must be given a wide and generous interpretation (*BA*)

1. Issue statement

- Parties, claim and legislation
- Rephrase task given at the end of the problem
- The issue is...

2. Nature of the obligation to honour the principles that the Crown is under

- Directly or indirectly incorporated?
- a) Direct incorporation: incorporated statutorily into empowering legislation
 - o This sets a substantive standard the Crown must meet when making decisions (Privy Council in *BA*)
 - o Negative obligation: decision-maker cannot act inconsistently with the principles
 - o Positive obligation: decision-maker must actively give effect to the treaty principles (higher threshold) e.g. s5 of Conservation Act (in *Ngai Tahu* and *Ngai Tai*)
- b) Indirect incorporation: the principles might be a relevant consideration (or an extrinsic interpretative aid) based on the surrounding context of the decision
 - o *Huakina*: the treaty is part of the fabric of society and therefore where legislation infringes on its principles it can provide an interpretative aid when the scheme/context permits even without explicit reference
 - o *Radio Frequencies*: where Māori rights are interests are affected the principles are to be taken into account (e.g. taonga under art 2)

3. What principles will the Courts apply?

- --> state authority (*SOE*), and definition
- The first relevant principle is partnership which imports obligations, analogous to fiduciary obligations, to act reasonably and in good faith (*SOE*). This imports the need to consult where appropriate (*SOE*). The second relevant principle is active protection: which is a positive guarantee by the Crown to protect Maori ability to use lands and water to the fullest extent practicable (*SOE*). This is afforded in article 2 (*SOE*). Finally, redress is a duty to remedy breaches where claim has merit (*SOE*).

4. What do the principles require in this case?

- Partnership: do the actions of the Crown demonstrate good faith?
 - o No unreasonable restrictions, WT report (*Radio Frequencies*)
- Consultation? - it is in good faith for the Crown to be well-informed when making a decision
 - a. No general duty to consult: “wide-ranging consultation could hold up the processes if government in a way contrary to the principles of the treaty” (*SOE*). Richardson J: circumstantial on what the parties require to make adequately informed decisions
 - b. *Ngai Tahu*: the obligation to consult is not empty and should not be reduced to a procedural matter

- c. *Ngai Tahu*: in some cases, consultation would be a bare minimum (strong statutory provision, prominence of iwi in interest, connected to taonga)
 - d. *Mighty River Power*: a national hui might be appropriate depending on circumstances
- Active protection- afforded under article 2
- a. What is the taonga which needs protection? Is it tangible? (look at how it is used/what it is used for)
 - o *Ngai Tahu*: although commercial whale watching is not taonga it is sufficiently linked to taonga and fisheries that a reasonable treaty partner would recognise that the principles are relevant
 - b. What state is the taonga in and how responsible is the Crown for that?
 - o *Broadcasting Assets*: where taonga is in a vulnerable state, more obligation on the Crown “to take especially vigorous action for its protection”
 - o To what degree are the Crown responsible for this state? (*BA*)
 - c. Is the asset substitutable?
 - o *BA*: the language was the taonga, however there are other ways to give effect to active protection as the assets were substitutable
 - o Compare with *SOE*: where the land was not substitutable
- Redress
- o The issue relating to redress is whether the proposed privatisation or action is inconsistent with Te Tiriti by virtue of “materially impairing” the Crown’s ability to provide redress (*MRP*)
 - Material= unreasonable and substantial (*MRP*)
 - o Assess capability before and after the transfer/proposed action (*MRP*)
 - o Where the capacity to provide redress is impaired, must assess the Crown’s ability to provide other forms of redress which are equally effective (*MRP*)
 - o --> if it was not substitutable (above) less likely to provide redress

5. Should the Court intervene? (balancing Crown's right to govern and the principles)

- a. The Crown's obligation to protect Māori interests is not absolute or unqualified. This would be inconsistent with the Crown's other responsibilities as Government of NZ (*BA*)
- b. Are there any policy factors so compelling which justify the Crown taking action despite breaching principles? (*MRP*)- In the spirit of the treaty neither partner shall impose unreasonable restrictions
 - i. Protective steps may be required. *BA*: in times of recession it is reasonable not to engage in heavy spending
 - ii. Policy heavy- contention on the issue etc.
 - iii. Other objectives of the Crown (e.g. Conservation in *Ngai Tahu*)
- c. Balance with treaty interests
 - i. Refer to arguments in limb 4, strong statutory provision etc.
 - ii. Te Aotearoa Tēnei recommendations for Conservation Land

6. Conclusion

- Which principle was most compelling etc.
- Send back to decision-maker etc.
- Reasonable degree of preference? (*Ngai Tahu*)

Misc

Ihumātao

- Land was subject to confiscation in 1860s as part of Waikato confiscations as a result of military conflict
- Had been in the lands of the same family (Wallace) after confiscation (1869) until sold to Fletchers in 2016
- Significant site because:
 - o Place of long-term human occupation
 - o Distinctive geological features
- Associated with different iwi
- Occupied by SOUL (Save Our Unique Landscapes)
- Te Kawerau a Maki signed Deed of Settlement in 2014
 - o Had been in conservation with Fletchers and were largely supportive of the housing development

- Others with mana whenua connections to the land were opposed
- Ihumatao not part of settlement because it is now private land
- 2014 Special Housing Area designated
- Still waiting to hear the outcome

Waitangi Tribunal and Settlements

- Established by Treaty of Waitangi Act 1975
- Members appointed by GG on recommendation of the Minister of Maori affairs
- 4(2)(a)
 - 4(2A): take into account personal attributes, knowledge and experience, have regard to partnership between the 2 parties to the Treaty (Maori and non-Maori members, men and women)
 - Knowledge: academics, historians, expertise with tikanga and Te Reo, working with iwi communities, lawyers, business expertise, land management expertise
- Can only make binding recommendations in relation to SOE land
 - Never been fully exercised

Claims

- Any Māori person can make a claim (can be made for themselves on behalf of a group)
- Claims always against Crown
- Any act done by the Crown since 1840
 - 1985 amendment: Tribunals gets historical jurisdiction
 - Historical jurisdiction ended 2008
 - Now claims only after 1992- Cabinet established principles for dealing with historical claims- since 1992= contemporary claim
 - Contemporary claims (post-1992) are settled by the relevant govt department
- Claimant must allege the action or omission has a prejudicial effect which is inconsistent with the treaty principles
- Common claims:
 - Land alienation
 - Other natural resources e.g. fish, water
 - Te Reo

- Foreshore and Seabed
- Maori Electoral Option
- Cannot claim for:
 - Commercial fisheries- claims have been settled
 - Other claims already settled
 - Crown Forest Licensed Land
 - Claim which is trivial or vexatious or if there is a more appropriate remedy
 - Something which is before Parliament
- Parliament can refer a Bill to the Tribunal (never done)
- Inquires and makes recommendations but does not settle the issues- separate office engages with Maori to make settlements

Commission of inquiry

- Substantial powers
- Can summon people and require documents
- Gives flexibility in procedure (can change and adapt)
 - Before historical jurisdiction: would receive claim, hear submissions and report
 - After: more claims ∴ national overview reports of different geographic regions to canvass and categorise claims (freshwater, land) --> claims grouped and heard together

E.g. Ngai Tahu Sea Fisheries Report 1992

- Example of a historical report
- Nature and extent of Ngai Tahu rights over fisheries
- What is bound up in rangatiratanga?
 - Recognise spiritual source of taonga
 - Exercise over authority was not just over the resource but extends to regulating people's behaviour towards the resource
- Rangatiratanga extends 12 miles from coastline (did not need to demonstrate they were fishing this entire area)

Settlements

- Te Arawhiti (Treaty Settlements Ropu) engages in negotiations for treaty settlements
 - Do not need a WT report to negotiate
- A space for creativity in environmental law

- Co-management and co-governance
- E.g. legal personhood of Te Awa Tupua
 - People making decisions concerning the taonga must do so in the interests of it (in interests for the river, working for the river)
 - One person appointed by Crown and one appointed by iwi to speak on behalf of the river
 - Gives a standing to sue for damage to the river
- 3 types of redress
 - Commercial redress- \$\$
 - Can be land, shares, money etc.
 - Compensation (but not specific)
 - 2-3% of value of land lost in treaty breaches
 - Cultural redress
 - Range of different things
 - Co-management of areas of significant cultural importance
 - Changing place names
 - Funding for Te Reo revitalisation
 - Historical redress
 - Historical account of history of relationship between settling group and Crown
 - Acknowledge treaty breaches
 - Crown apologies

Doctrine of discovery

- Proclamation from the Pope stating that Christian states the rights to conquer and claim land unoccupied by other Christians
- Allows a European state to claim land which non-European and non-Christian
- Basis of indigenous claims to land e.g. *Wi Parata*: a simple nullity
- Provided a justification for wiping away indigenous claim on land

DOC Policy and Conservation- Ko Aotearoa Tēnei

- Part of the Wai 262 inquiry into wide-ranging cross-government reforms to laws and policies affecting Maori

Why is the conservation state important for Maori?

- The Crown controls a huge amount of land
- Indigenous flora and fauna are found here ∴ hapu relationships to the land (flora and fauna not found on more modified land)
- Conservation land is related to mātauranga Maori
 - E.g. rongoā: access to plant resources for medicinal purposes found in conservation land
 - DOC has a role in restricting access which restricts access to resources used in mātauranga Maori--> if not accessible the practice cannot be passed on

WT recommendations on Conservation Act and DOC policy

- Government statements reflect the executive's position on treaty principles and does not represent the views of the Courts and the WT
 - E.g. partnership in *SOE* case seen as an overarching principle
 - These principles asserted by the Courts are read down by the executive
- ∴ Conservation General Policy should be amended to reflect the principles found in the Courts and the legislation (s4 of Conservation Act)
- Failure to include these principles breaches s4
- WT not binding but DOC must recognise the principles as relevant and should be considered
- Right of DOC to achieve conservation objectives is not absolute- must be achieved in a manner based on partnership, support tino rangatiratanga of hapu and iwi and provides for active protection of Maori interests in taonga
- Whales case: balance treaty principles with conservation whereas this is balancing conservation with treaty principles