

Departmental Disclosure Statement

Te Urewera – Tūhoe Bill

2013 No 146

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice (Office of Treaty Settlements) in consultation with the Department of Conservation.

The Ministry of Justice (Office of Treaty Settlements) certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

6 August 2013.

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Part One: General Policy Statement

Purpose and scope of Bill

The Te Urewera–Tūhoe Bill gives effect to the deed of settlement signed on 4 June 2013 in which the Crown and Tūhoe agree to the final settlement of the historical Treaty of Waitangi claims of Tūhoe.

The deed of settlement sets out in full the redress provided to Tūhoe in settlement of all of their historical claims. This Bill includes only those elements for which legislation is necessary. In settling these claims, the Crown acknowledges past wrongs and its intention to put in place the foundation for a constructive future relationship with Tūhoe. It is intended that this Bill be divided at the committee of the whole House stage so that—

- *Parts 1 to 4 and Schedules 1 to 4* become the Tūhoe Claims Settlement Bill;
- *Parts 5 to 7 and Schedules 5 to 9* become the Te Urewera Bill.

Background

Tūhoe is New Zealand's sixth-largest iwi, with a population of over

32 000 at the 2006 census. The traditional lands of Tūhoe centred on Te Urewera, but over time Tūhoe influence extended to Waikaremoana and Pūtere in the south and from Kaingaroa in the west to Ngatapa in the east. In the north, Tūhoe and other iwi used the resources of Ohiwa Harbour.

The claims of Tūhoe against the Crown are wide-ranging. They relate to—

- confiscation (raupatu) during the 1860s;
- Crown military operations in Te Urewera during the 1860s and 1870s, which resulted in widespread destruction and loss of life;
- the impact of the Native Land Laws from the 1870s;
- failure to properly implement the Urewera District Native Reserve Act 1896;
- Crown purchasing (some of which was illegal);
- further loss of land through Crown-instigated consolidation schemes.

In 1954, the Crown established Te Urewera National Park, which included most of the Tūhoe traditional lands. The Crown did not consult Tūhoe about this, and did not recognise Tūhoe as having any special interest in Te Urewera National Park or its management.

Elements of the settlement package

Part 1 of the Bill contains a summary of the historical account from the deed of settlement, the acknowledgements and apology given by the Crown to Tūhoe, and the acceptance by Tūhoe of that apology.

Part 2 of the Bill sets out the cultural redress provided to Tūhoe, including the vesting of 5 cultural redress properties, the provision of 2 protocols, and the appointment of the trustees of Tūhoe Te Uru Taumatua as a fisheries advisory committee, as well as changes to a small number of geographic names. It also includes Tūhoe as a member of the Rangitāiki River Forum.

Part 3 of the Bill includes some of the commercial redress that will enable Tūhoe to establish an economic base, including the opportunity to purchase 5 Crown-owned properties within a deferred selection period (subject to their lease back to the Crown) and an exclusive right of first refusal over Crown-owned properties within a specified area for 172 years from settlement date.

Part 4 of the Bill will assist Tūhoe to consolidate and improve the efficiency of their governance entities, as well as institute a tikanga-based process for selecting trustees to their mandated iwi organisation. It provides for—

- dissolution of the Tūhoe-Waikaremoana Maori Trust Board and the vesting of its assets; and

- merging of the Tūhoe charitable entities, the Tūhoe-Waikaremoana Maori Trust Board Charitable Trust and the Tūhoe Fisheries Charitable Trust, with the Tūhoe Charitable Trust; and
- recognition of the Tūhoe Charitable Trust as the mandated iwi organisation of Tūhoe and an exemption from the requirement in the Maori Fisheries Act 2004 that individual iwi members must have a vote in the election of trustees.

These changes were supported by iwi members during the process of ratifying their deed of settlement and post-settlement governance entity.

New arrangements for Te Urewera

Purpose and principles of Parts 5 to 7

The purpose and principles of *Parts 5 to 7* provide that Te Urewera will be preserved for its cultural, historic, and natural values, as well as for the use and enjoyment of the public. The level of protection given to Te Urewera under this legislation meets the International Union for Conservation of Nature criteria for a Category II Protected Area (National Park).

Te Urewera to be legal entity

Tūhoe have made it clear that settlement of their historical grievances must provide for a meaningful re-connection of Tūhoe people with Te Urewera. New arrangements for Te Urewera are therefore a central pillar of this settlement. Under the National Parks Act 1980, Te Urewera is owned by the Crown and managed as a national park.

Tūhoe has no formally recognised status in relation to Te Urewera. The Bill recognises the mana and intrinsic values of Te Urewera by putting it beyond human ownership. It establishes a legal identity for Te Urewera, and vests the current national park land in that legal identity. Te Urewera will effectively own itself, in perpetuity. Legal identity is the vehicle by which the law of New Zealand recognises the existence of a separate and distinct entity which can be the subject of defined rights for legal purposes (as in the company model). Crown ownership of Te Urewera is removed, and *Parts 5 to 7* of this Bill will replace the National Parks Act 1980 as the primary legislation governing Te Urewera. Although legal personality is conferred on Te Urewera, Te Urewera can only act through human agents. For this purpose the Bill establishes a board to act in the interests of Te Urewera, as provided for in *Parts 5 to 7*.

Vesting ownership of Te Urewera in the legal entity Te Urewera is an innovative alternative to Crown ownership, ownership by an iwi governance entity, or vesting in the name of an ancestor of the iwi. It removes Te Urewera from Crown ownership and recognises that protecting Te Urewera's values does not depend on being legally owned by the Crown or by Tūhoe. This reflects a Tūhoe view of Te Urewera as having an identity in its own right. Te Urewera is not a mere possession. It is a treasured place that requires respect and careful stewardship. Land cannot be removed from Te Urewera except by an Act of Parliament.

Other iwi and hapū have special associations with parts of Te Urewera, and Te Urewera is prized by all New Zealanders for its outstanding natural and recreational values. The new arrangements for Te Urewera have been designed, therefore, to strengthen and maintain the connection between Tūhoe and Te Urewera, to provide for the interests of other iwi and hapū, and to retain the existing level of protection for conservation and recreation values and public access.

Governance and management

Parts 5 to 7 set out the key arrangements for governance and management of Te Urewera. A governance board is established for Te Urewera. The membership of the Te Urewera board (the **Board**) reflects both the relationship of Tūhoe with Te Urewera and the broader public interest. For the first 3 years, half of the Board's membership of 8 will be appointed by Tūhoe and half by the Crown. That ratio will change after the initial 3-year term, when the Board will have 9 members, 6 appointed by Tūhoe and 3 by the Crown. At all times, the chair will be a Tūhoe appointee. The Board will be obliged to serve Te Urewera and act in its interests, with a unity of purpose and the utmost good faith, rather than acting on behalf of the appointers. This ethos is reflected in the Board's processes and procedures, which emphasise consensus decision making. The Board sets the direction for the management of Te Urewera through its

role in preparing and approving a 10-year management plan and annual statement of priorities. It undertakes landowner functions such as prescribing land use within the parameters of the legislation, granting permits and concessions, and making other decisions on activities to be undertaken in Te Urewera. The Board is able to make recommendations that land, whether privately owned or public conservation land, be added to Te Urewera, subject to certain criteria being met. The Minister of Conservation retains a role in relation to certain decisions, where there is a need for a perspective that reflects a national interest. The Crown and Tūhoe have shared interests and obligations in relation to caring for Te Urewera. The Department of Conservation is charged with looking after New Zealand's indigenous biodiversity and environment on behalf of the public, and promoting outdoor recreation. The Bill gives Tūhoe and the Department of Conservation responsibilities and powers to carry out the operational management of Te Urewera.

In order to protect the values of Te Urewera, the Bill sets out a range of activities that are prohibited unless the Board has expressly given permission, as well as offences, penalties, compliance, and enforcement provisions. The Board may make bylaws to regulate conduct within Te Urewera. The bylaws are to be subject to disallowance under the Legislation Act 2012, a standard process of parliamentary oversight. The penalties replicate those that are proposed to apply under the National Parks Act 1980 (as it is proposed to amend that Act by the Conservation (Natural Heritage Protection) Bill, due to be reported back to the House on 8 August).

Further provisions for accountability and transparency include—

- public notification of key decisions, such as the preparation of a management plan; and
- annual reporting obligations; and
- the application of the Official Information Act 1982, the Ombudsmen Act 1975, and the Public Audit Act 2001.

Financial provisions

Under *Parts 5 to 7*, the Board, Tūhoe Te Uru Taumatua (the Tūhoe post-settlement governance entity), and the Director-General of Conservation must develop a budget for the Board. Tūhoe and the Director-General must meet the costs of the Board equally. The Board is to receive all the revenue derived from the operations in Te Urewera and from enforcement. All money received by the Board, from whatever source, must be applied to achieve the purpose of the Bill.

Parts 5 to 7 provide an income tax exemption for income earned by the Board from activities connected with the use of Te Urewera. Under the Bill, all such income must be applied by the Board to achieving the purposes of *Parts 5 to 7*. For the purposes of the Inland Revenue Acts, the Board and Te Urewera are to be treated as a single person. The Board assumes all of the tax compliance obligations that might otherwise be attributed to Te Urewera. The Bill further provides that all income and expenditure of Te Urewera is income and expenditure of the Board. Similarly, for Goods and Services Tax purposes, any supplies by or to Te Urewera are treated as supplied to or purchased by the Board. The purpose of these provisions is to reduce tax compliance costs connected with the 2 entities created by the Bill and to recognise the relationship between Te Urewera and the Board.

Although the Crown will no longer own the land comprising Te Urewera, the Crown will have influence over the management of the land and therefore continues to have an interest in Te Urewera. For financial reporting purposes, Te Urewera the legal entity is to be consolidated into the financial statements of the Government. To be consolidated, the Te Urewera entity needs to be listed in a schedule of the Public Finance Act 1989, and to that end a new schedule that aligns with the requirements for Te Urewera is to be inserted into that Act.

Treaty of Waitangi

The Crown's ongoing responsibilities under the Treaty of Waitangi are reflected in *Parts 5 to 7* by—

- preserving and enhancing existing Treaty settlement arrangements for Ngāti Whare and Ngāti Manawa where their areas of interest fall within Te Urewera; and
- ensuring that the legislation can accommodate the involvement of other claimant groups who are yet to settle their claims, as by excluding Onepoto from inclusion in Te Urewera, pending future discussions with claimant groups; and
- requiring those who exercise governance functions, in making certain decisions, to consider and provide appropriately for the relationship and the culture and traditions of iwi and hapū who have interests in Te Urewera, including by means of a requirement for a memorandum of understanding to be reached by the Board and Ngāti Ruapani ki Waikaremoana; and
- confirming that the Conservation Act 1987 (including the duty imposed by section 4 to give effect to the principles of the Treaty of Waitangi) applies in Te Urewera to the same parties as it does under general conservation legislation.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Te Urewera Pre-Publication Part I, Waitangi Tribunal, April 2009 Te Urewera Pre-Publication Part II, Waitangi Tribunal, August 2010 Te Urewera Pre-Publication Part III, Waitangi Tribunal, October 2012 Te Urewera Pre-Publication Part IV, Waitangi Tribunal, December 2012</p> <p>All reports are available online at www.waitangitribunal.govt.nz.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Policy on Te Urewera has been developed with reference to International Union for Conservation of Nature (IUCN) Guidelines for Applying Protected Area Management Categories. Further assessment of the policy to be given effect by the Bill, in relation to New Zealand's international obligations, is under way.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

During settlement negotiations, the Office of Treaty Settlements and Ngāi Tūhoe negotiators engaged with iwi and hapu groups whose interests are directly affected by the settlement. The policy to be given effect by the Bill was developed taking account of their views to provide appropriate protection for their interests (e.g. cl 112(1)(d), cl 127). The Bill has been reviewed by Crown Counsel and by officials and legal advisers of the Office of Treaty Settlements and Department of Conservation for consistency with Treaty principles. Te Puni Kokiri was consulted on Cabinet papers seeking policy decisions in relation to the settlement.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Crown Law Office, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

YES

(a) Part 6 (subpart 6) creates offences and penalties

(b) The Bill settles historic Treaty claims and removes the jurisdiction of courts, tribunals and other judicial bodies into the claims, deed of settlement and redress provided.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

Ministry of Justice advice was sought on the compliance and enforcement provisions of the Bill.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Stakeholder groups (e.g. conservation and recreational groups, local councils) and overlapping iwi have been informed of key proposals as the policy contained in the Bill was developed and invited to comment. Iwi with legislated settlements have been consulted on proposed legislative provisions affecting their settlements.</p> <p>Overlapping groups: Ngāti Ruapani ki Waikaremoana, Ngāti Kahungunu ki Wairoa, Ngāti Manawa, Ngāti Whare , Ngāti Pāhauwera, Te Aitanga a Mahaki and Affiliates, Te Whanau a Kai, Whakatōhea, Te Upokorehe, Ngāti Awa, Ngāti Tūwharetoa ki Kawerau, Ngāti Rangitihī, Ngāti Tūwharetoa, Affiliate Te Arawa, Ngāti Hineuru</p> <p>Councils: Bay of Plenty Regional Council, Whakatane District Council, Wairoa District Council, Hawkes Bay Regional Council</p> <p>Stakeholder groups: Federated Mountain Clubs of New Zealand, Fish & Game New Zealand, Forest and Bird, Friends of Te Urewera, New Zealand Deerstalkers Association, New Zealand Professional Fishing Guides Association, New Zealand Walking Access Commission, Waikaremoana Boating & Fishing Association.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The policy is contained in the Ngāi Tūhoe deed of settlement, which has been open to scrutiny by the public and by Ngāi Tūhoe in the ratification process. The deed of settlement and Bill have been reviewed by a Queen's Counsel.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
<p>Clause 23, Schedule 7, establishes strict liability for offences in relation to dogs, which are specified in cl 192, Part 6. This replicates the strict liability for offences in relation to dogs under the National Parks Act 1980. The application of strict liability reflects the importance of protecting highly vulnerable indigenous wildlife within Te Urewera, including threatened species, from harm by uncontrolled dogs. The matters to be proved by the defendant in defence of any charge are matters particularly within the defendant's knowledge.</p> <p>Clauses 182(4) and (8), Part 6, reverse the usual burden of proof for an offence, stating that the burden lies on the defendant to prove that he or she is authorised to carry out an activity or possess a thing in Te Urewera which is an offence if not authorised. This replicates the burden of proof established under s 60 of the National Parks Act 1980 in relation to the same forms of offence. The offences relate to activities done voluntarily and any authorisation relied upon by a defendant is within his or her knowledge and capability to provide.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Clause 96 (2), Part 4, excludes Te Ohu Kai Moana (TOKM) Trustee Limited from liability. This exclusion clause is included, for the avoidance of doubt, so TOKM cannot be held liable for approving the constitution of Tuhoe's mandated iwi organisation (MIO), when it does not comply with the Maori Fisheries Act in respect to the election of MIO trustees. Cabinet has granted the Tūhoe MIO an exemption from the Maori Fisheries Act provisions relating to the election of trustees.</p> <p>Clause 102 (1), Part 4. Clause 102 is part of a suite of standard clauses that make provision for the transfer of one going concern to another. In this case these transitional clauses make provision for the change of organisational arrangements from the Tuhoe Wakiakremoana Māori Trust Board to the new PSGE for Tuhoe, Te Uru Taumatua. Clause 102 provides that those holding office with the Trust Board as employees, agents or other, immediately before the commencement date are protected from personal liability in the exercise of their roles under the Maori Trust Boards Act 1955 or other enactment. This immunity applies only if there was no actual fraud committed by the person or the action did not constitute an offence under an enactment or rule of law.</p> <p>Clause 137, Part 6, excludes a member of Te Urewera Board from civil liability for any act or omission of the Board or any member of the Board, providing that the member has acted in good faith in the course of the Board performing its functions. The exclusion of liability does not extend to any dishonest, negligent or criminal act or omission. The exclusion of liability compares to that applying to members of other statutory bodies administering protected areas and natural resources (e.g. reserves boards, the Queen Elizabeth II National Trust and members of Fish & Game councils). Providing the exclusion of liability is intended to ensure that board members acting in good faith and to appropriate professional standards are not unnecessarily exposed to personal financial risk as a consequence of their duties.</p> <p>Clause 202, Part 7, excludes Te Urewera Board from liability under the Resource Management Act 1991 for remediation of any Te Urewera land that is contaminated (as defined by that Act) if the contamination occurred while the land was owned by the Crown. The clause assigns that liability to the Crown. This ensures that responsibility for remediating any contamination that occurred under Crown ownership and control remains with the Crown. Liability could otherwise fall to the Board, on behalf of the Te Urewera legal entity as land owner, regardless of the Board's lack of responsibility for any contamination that occurred before the Board was established.</p>	

Significant decision-making powers affecting individuals

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill establishes public rights (e.g. cl 112(2) right of entry and access to Te Urewera; cl 163 rights to undertake certain activities without authorisation; cl 164 right to apply for authorisation; cl 4 Sch 6 right to attend Board meetings; cl 20,21 Sch 6 right to submit on draft management plan for Te Urewera and to be heard on submission). Consistent with the National Parks Act it also establishes decision-making powers to make determinations affecting those rights (e.g. cl 176(1)(d) Board power to make bylaws controlling public access to any part of Te Urewera; cl 219 Board power to recommend establishment of specially protected area, with controlled public access; cl 168 Board power to grant (or decline) applications for concessions; cl 4 Sch 6 power for Board chair to exclude members of the public from Board meetings; cl 21 Sch 6 Board power to amend draft management plan as it considers appropriate after considering public submissions). A broad range of checks and balances apply to the exercise of the Board's decision-making powers, including statutory constraints (e.g. the principles stated in cl 112) and the prospect of judicial review; accountability to the appointers of the Board; roles for other decision-makers in key processes (e.g. for the Minister of Conservation and Chair of Ngāi Tūhoe in the process for approval of a management plan; for the Minister of Conservation in the process for making bylaws); requirements for public notification and consultation; a right for concession applicants to apply for reconsideration of a concession decision (cl 26 Sch 7); and the application of the Official Information Act 1982, Ombudsmen Act 1975 and Public Audit Act 2001.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 176 empowers Te Urewera Board to make bylaws to regulate conduct within Te Urewera. This replicates a power of the Minister of Conservation to make bylaws under the National Parks Act 1980. Existing bylaws for Te Urewera National Park cover detailed matters including rubbish disposal, fire control, camping, boating, use of vehicles, use of generators and public address systems, which are important to the management of conflicting uses of a place freely accessible to the public, but which do not merit the attention of Parliament. Any bylaws made by the Board must be approved by the Minister of Conservation and publicly notified in the <i>Gazette</i> (cl 176(3)). The bylaws are disallowable under the Legislation Act 2012.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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