

Departmental Disclosure Statement

Ngāti Koroki Kahukura Claims Settlement Bill
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2013 No 161

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).

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.

15 October 2013

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Part One: General Policy Statement

The bill gives effect to the deed of settlement entered into between the Crown and Ngāti Koroki Kahukura on 20 December 2012, and the deed to amend signed in October 2013, between the Crown and Ngāti Koroki Kahukura. By signing these documents the Crown and Ngāti Koroki Kahukura agreed to the final settlement of the non-raupatu historical Treaty of Waitangi claims of Ngāti Koroki Kahukura. Legislation is necessary to give effect to certain aspects of the settlement. Other aspects of the settlement are provided for only in the deed of settlement.

Ngāti Koroki Kahukura benefit from both the Waikato Raupatu Claims Settlement Act 1995 and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 in relation to aspects of their historical claims.

Along with recent settlements with other iwi, this settlement is intended to enable an integrated approach to decision making in relation to the Waikato River and Maungatautari.

Part 1—

- sets out the purpose of the Bill and deals with other matters of general application;
- defines Ngāti Koroki Kahukura, non-raupatu historical claims, and other essential elements;
- records the acknowledgements and apology offered by the Crown to Ngāti Koroki Kahukura;
- gives effect to the agreement between the Crown and Ngāti Koroki Kahukura to a final settlement of the non-raupatu historical Treaty of Waitangi claims of Ngāti Koroki Kahukura;
- removes the jurisdiction of judicial bodies in respect of the Ngāti Koroki Kahukura historical claims and the redress provided under the deed of settlement or the Bill; and
- deals with related issues, including a consequential amendment to the Treaty of Waitangi Act 1975, and the removal of certain resumptive memorials.

Part 2 of the Bill sets out the cultural redress provided to Ngāti Koroki Kahukura including—

- statutory acknowledgements; and
- provision for deeds of recognition; and
- cultural redress properties and their vesting provisions; and
- provisions relating to the Maungatautari Mountain Scenic Reserve; and
- provisions for the geographical extension of the co-management instruments for the Waikato River provided to Waikato-Tainui under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Ngāti Koroki Kahukura is defined as part of Waikato-Tainui under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and will continue to be represented by the Waikato Raupatu River Trust, representing Waikato-Tainui under that Act.

Part 3 of the Bill makes provision for the certain commercial redress to be provided for the benefit of Ngāti Koroki Kahukura in relation to—

- commercial redress properties and deferred selection properties that are to be transferred to the Taumatawiwi Trust; and
- a right of first refusal (RFR) over RFR land.

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><i>Co-management arrangements for the Waikato River; Report of the Independent Review Panel, 27 April 2009</i></p> <p>http://www.beehive.govt.nz/release/waikato-river-co-management-arrangements-review-independent-panel</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

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?

No steps have been undertaken

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/13.htm>

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 Ngāti Koroki Kahukura negotiators engaged with iwi and hapū whose interests are directly affected by the settlement. The redress given effect by this Bill is consistent with Treaty principles and Treaty of Waitangi settlement policy.

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/14.htm>

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 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/>

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/15.htm>

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)?

NO

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

YES

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

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/16.htm>

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p><i>These provisions were developed by the Office of Treaty Settlements which is part of the Ministry of Justice.</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/16.htm</p>	

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>Overlapping iwi: Raukawa, Ngāti Hauā and Ngāti Kauwhata were consulted on the provisions of the deed of settlement and where necessary the deed to amend implemented in this bill. The Waikato Regional Council and Waipa District Council were consulted on the provisions affecting them. Other stakeholders: such as the Maungatautari Ecological Island Trust, Maungatautari Landowner's Council, Pukeatua Community, Waikato-Tainui, Te Arawa River Iwi, Ngāti Tūwharetoa were also involved.</p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/18.htm</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><i>The proposed provisions are tested throughout the negotiations process through consultation with key stakeholders and engagement with third parties. The deed of settlement provisions were ratified by Ngāti Koroki Kahukura before the deed of settlement was signed on 20 December 2012.</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/19.htm</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?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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?	NO
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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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p><i>Section 93 (1) of the Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010 empowers the Governor-General, by Order in Council, to make regulations in respect of the Waikato River within Area A on SO 409144 for the management of aquatic life, habitats, and natural resources managed under the conservation legislation. Clause 90 extends the scope of any regulations made under that provision to enable them to apply also to the Karapiro to Lake Arapuni sub-catchment, being the area shown coloured Yellow on SO 409144.</i></p> <p><i>Section 93 (3) of the Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010 requires the Minister of Fisheries to recommend the making of regulations under the Fisheries Act 1996 providing for Waikato-Tainui to manage customary fishing on the Waikato River within Area A on SO 409144 through the issuing of customary fishing authorisations to fisheries managed under the Fisheries Act 1996. Clause 91 extends the scope of regulations made under that provision to enable them to apply also to the Karapiro to Lake Arapuni sub-catchment, being the area shown coloured yellow on SO 409144.</i></p> <p><i>Section 93 (4) of the Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010 requires the Minister of Fisheries to recommend the making of regulations under the Fisheries Act 1996 providing for Waikato-Tainui to recommend to the Minister of Fisheries the making of bylaws restricting or prohibiting fishing on the Waikato River of fisheries managed under the Fisheries Act 1996. Clause 92 extends the scope of regulations made under that provision to enable them to apply also to the Karapiro to Lake Arapuni sub-catchment, being the area shown coloured yellow on SO 409144.</i></p> <p><i>Clause 93 provides additional requirements for developing and recommending by-laws under regulations made in accordance with section 93 (4) of the Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and section 58 (3) of the Ngāti Tuwharetoa Raukawa and Te Arawa River Iwi Waikato River Act 2010 with effect that bylaws made under both sets of regulations, to the extent that they apply to the sub-catchment, must be jointly developed and be the same.</i></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?	YES
<p><i>The bill provides for Te hāpori o Maungatautari - The Maungatautari community comprising iwi with customary interests in Maungatautari and members of the wider community connected with Maungatautari (Maungatautari community) to be named as the registered proprietor on the computer freehold register for the Maungatautari Mountain Scenic Reserve. The Maungatautari Community is not a legal entity but a class of persons comprising iwi with customary interests in Maungatautari and members of the wider community connected with Maungatautari. The site's Scenic Reserve classification under the Reserves Act 1977 will remain and the Waipa District Council will continue to control and manage the reserve. The status of the site as a reserve under the Reserves Act 1977 will not be able to be revoked.</i></p>	