

Departmental Disclosure Statement

Taranaki Iwi Claims Settlement Bill

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 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.

3 December 2015.

Contents

Contents..... 2

Part One: General Policy Statement 3

Part Two: Background Material and Policy Information 6

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features 9

Part One: General Policy Statement

This Bill–

- records the acknowledgements and apology given by the Crown to Taranaki Iwi in the deed of settlement (the **deed**) dated 5 September 2015 between the Crown and Taranaki Iwi; and
- gives effect to the deed in which the Crown and Taranaki Iwi agree to a final settlement of all Taranaki Iwi's historical Treaty of Waitangi claims.

Scope of settlement

Taranaki Iwi is one of eight iwi of the Taranaki region, with a population recorded in the 2013 Census of 6,087 members. The Taranaki Iwi area of interest stretches from Ōnukutaipari on the northern coast to the Ōuri Stream in the south and encompasses Mount Taranaki and the Egmont National Park. *Clause 13* of this Bill defines Taranaki Iwi.

The settlement settles all of the historical claims of Taranaki Iwi. Those claims include all claims that–

- are, or are founded on, a right arising–
 - from the Treaty of Waitangi or its principles; or
 - under legislation; or
 - at common law (including aboriginal title or customary law); or
 - from a fiduciary duty;
 - or otherwise; and
- arise from, or relate to, acts or omissions before 21 September 1992–
 - by or on behalf of the Crown; or
 - by or under legislation.

The Crown is released and discharged from all obligations and liabilities in respect of those claims.

History of the claim

The first Taranaki claim in the Waitangi Tribunal (the **Tribunal**) was brought by the Taranaki Māori Trust Board in 1987. As a result of the inquiry, the Tribunal released an interim report called The Taranaki Report - Kaupapa Tuatahi on 11 June 1996. The report dealt with 21 claims investigated by the Tribunal between 1990 and 1995 concerning the Taranaki rohe, including the Crown's purchase of land, the Taranaki land wars and the confiscation of land under the New Zealand Settlements Act 1863.

In 2000, hapū of Taranaki Iwi participated in the Tribunal's urgent inquiry into the Petroleum Claim (Wai 796). The claim asserted that in the nineteenth century, and up to 1937, Taranaki Māori lost ownership of much of their traditional lands, often as a result of Crown acts and policies that have since been found to have been inconsistent with the principles of the Treaty of Waitangi. The claim also asserted that the same Crown breaches resulted in the loss of petroleum resources located within that land. The Tribunal issued the Petroleum Report in 2003 and found that prior to 1937, Māori

had legal title to the petroleum in their land and a Treaty interest was created in favour of Māori for the loss of legal title to petroleum.

Negotiations and deed of settlement

Taranaki Iwi gave Taranaki Iwi Trust (the **Trust**) a mandate to negotiate a deed of settlement with the Crown by way of mandating hui and on 26 February 2010 the Crown recognised the mandate. The Trust and the Crown signed terms of negotiation on 17 March 2010 that agreed the scope, objectives, and general procedures for the negotiations. A letter of agreement signed on 22 December 2012 by Taranaki Iwi and the Crown agreed a basis for a deed in principle. In June 2014, negotiations were paused due to a lack of agreement on how the Crown could address Taranaki Iwi's aspirations relating to Parihaka. In December 2014, negotiations recommenced following the establishment by the Crown, Taranaki Iwi and Parihaka, of Kawe Tutaki, a working group established to advise on how the Crown can support Parihaka to achieve its aspirations. After Taranaki Iwi advised the Office of Treaty Settlements on 20 May 2015 that the Trust had agreed to initial the deed given the progress made by Kawe Tutaki, the Crown and Taranaki Iwi initialled the deed on 7 July 2015. Taranaki Iwi held a ballot to ratify the deed. Of the total eligible voting population, 25% participated in the ballot. Of those who voted, 99% supported the deed, which was signed on 5 September 2015.

Governance entity

Taranaki Iwi ratified their post-settlement governance entity (**PSGE**) between May and June 2013. Of the total eligible voting population, 32.5% participated in the ratification process. Of those who voted, 93.25% supported the establishment of Te Kāhui o Taranaki Trust as the PSGE. The PSGE was subsequently established on 24 June 2013. On settlement, the trustees of the PSGE will manage the settlement assets.

Summary of settlement

The deed will be the final settlement of all Taranaki Iwi's historical Treaty of Waitangi claims resulting from acts or omissions by the Crown before 21 September 1992. This Bill contains provisions related to the settlement redress that requires legislation for its implementation. Other aspects of the settlement are provided for only in the deed (because they do not require legislative authority).

This Bill contains the typical features of a Treaty settlement bill as set out in the clause by clause analysis. Some of the more unique aspects of the Bill include:

- provision for iwi representation on the Taranaki Regional Council's Policy and Planning Committee and the Consents and Regulatory Committee to allow the iwi of Taranaki to contribute to the Council's decision-making processes;
- provision for the transfer of Mandated Iwi Organisation (**MIO**) status from Taranaki Iwi's existing MIO to their PSGE through the Bill (rather than through the Maori Fisheries Act); and
- joint vesting (with Te Atiawa) of Ngā Motu/Sugar Loaf Islands with the Department of Conservation continuing to manage the islands and public access being maintained.

Key aspects of redress provided for in the deed that do not appear through provisions in this Bill include:

- a relationship agreement with the Ministry of Business, Innovation and Employment (in relation to minerals including petroleum); and
- financial redress of \$70 million and a cultural fund of \$55,633.

The benefits of the settlement will be available to all members of Taranaki Iwi, wherever they live.

Removal of courts' jurisdiction and of resumptive memorials

Taranaki Iwi and the Crown have agreed to the removal of the jurisdiction of the courts and the Tribunal in respect of the Taranaki Iwi historical claims, the deed, the settlement redress, and this Bill (but not in respect of the interpretation or implementation of the deed or Bill), and to the removal of resumptive memorials from computer registers in relation to land within the Right of First Refusal (**RFR**) areas.

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
<i>The Taranaki Report – Kaupapa Tuatahi, WAI 143, 1996 (accessible at http://www.justice.govt.nz/tribunals/waitangi-tribunal/Reports/wai0143).</i>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

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.

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 the settlement negotiations, the Office of Treaty Settlements and Taranaki 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.

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/>

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 historic Treaty claims and removes the jurisdiction of courts, tribunals and other judicial bodies into the claims, deed of settlement and redress provided. (clauses 15, 16, 17 and 18).

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

YES

The provisions were developed by the Office of Treaty Settlements which is part of the Ministry of Justice.

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><i>Stakeholder groups (e.g. overlapping iwi, councils, affected individuals, recreation groups) were informed of the key relevant provisions contained in the Bill as the settlement was negotiated and agreed, and were invited to comment on relevant parts of the Bill affecting them.</i></p> <p><i>Overlapping groups: Te Atiawa, Ngāruahine</i></p> <p><i>Councils: New Plymouth District Council, Taranaki Regional Council</i></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 Taranaki Iwi before the deed of settlement was signed on 5 September 2015.</i></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

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?	NO
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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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