

Departmental Disclosure Statement

Te Awa Tupua (Whanganui River 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; and
- 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 Ministry for the Environment.

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 April 2016

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Part One: General Policy Statement

The Te Awa Tupua (Whanganui River Claims Settlement) Bill gives effect to the Whanganui River Deed of Settlement Ruruku Whakatupua, signed 5 August 2014, that settles the historical claims of Whanganui Iwi as they relate to the Whanganui River.

The Whanganui River is New Zealand's longest navigable river, stretching from the slopes of Mount Tongariro to the Tasman Sea. It is central to the existence of Whanganui Iwi and their health and wellbeing. Other iwi and hapū also have interests in parts of the Whanganui River and its tributaries.

Through this settlement, the Crown acknowledges that Te Awa Tupua is an indivisible and living whole comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements. Te Awa Tupua has provided both physical and spiritual sustenance to Whanganui Iwi and its hapū from time immemorial.

The deed of settlement sets out in full the redress provided to Whanganui Iwi in settlement of their historical claims relating to the Whanganui River. This Bill includes elements for which legislation is necessary and some where Whanganui Iwi have requested their specific inclusion within the legislation in addition to the deed of settlement. Other aspects of the settlement are provided for only in the deed of settlement. In settling these claims the Crown acknowledges past wrongs, intends to put in place the foundation for a constructive future relationship with Whanganui Iwi and establish Te Pā Auroa nā Te Awa Tupua, a legal framework for the Whanganui River that is centred on the legal recognition of the Whanganui River as Te Awa Tupua.

Elements of the settlement package

The Bill comprises five Parts.

Part 1 – Preliminary provisions:

- a. sets out the purpose of the Bill;
- b. provides that the provisions of the Bill take effect on the settlement date unless a provision states otherwise;
- c. specifies that the Bill binds the Crown; and
- d. defines terms used in the Bill, including Whanganui River, the Whanganui Iwi and historical claims.

Part 2 sets out, in 7 subparts, Te Pā Auroa nā Te Awa Tupua, the framework for the recognition of the Whanganui River as Te Awa Tupua. This covers:

- a. the scope and effect of the framework and its legal status;
- b. the legal status of Te Awa Tupua and Tupua te Kawa (values for the River);
- c. Te Pou Tupua, the human face of Te Awa Tupua;
- d. Te Kōpuka nā Te Awa Tupua (strategy group) and Te Heke Ngahuru ki Te Awa Tupua (the strategy);
- e. the vesting of the Crown-owned bed of the Whanganui River in Te Awa Tupua;
- f. Te Korotete o Te Awa Tupua (Te Awa Tupua fund); and
- g. other arrangements relating to Te Awa Tupua.

Part 3 sets out Whanganui Iwi redress, including the Crown acknowledgements and apology, making provision for the standing of Whanganui Iwi in certain circumstances and providing for authorised customary activities.

Part 4 – Settlement of historical claims and other matters:

- a. refers to the historical account as set out in the Deed; and
- b. provides that the settlement of the historical Whanganui Iwi Whanganui River claims is final.

Part 5 provides for governance reorganisation and transitional tax matters.

There are 8 schedules in the Bill:

- a. Schedule 1 lists the hapū of Whanganui Iwi;
- b. Schedule 2 lists the Acts that are subject to the legal weighting provisions (see clauses 15(2) and (3) and 37);
- c. Schedule 3 sets out administrative matters relating to Te Pou Tupua, the human face of Te Awa Tupua, and of Te Karewao, an advisory group to support Te Pou Tupua;
- d. Schedule 4 sets out further provisions relating to Te Kōpuka (the strategy group) and Te Heke Ngahuru ki Te Awa Tupua (the strategy);
- e. Schedule 5 sets out further provisions relating to the vesting of parts of the bed of the Whanganui River;
- f. Schedule 6 sets out further provisions relating to the Te Awa Tupua register of hearing commissioners;
- g. Schedule 7 sets out further provisions relating to authorised customary activities; and
- h. Schedule 8 provides the statement of Whanganui Iwi regarding the significance of ngā ripo (river rapids).

Elements included in legislation upon request of Whanganui Iwi

This Bill includes elements for which legislation is necessary. In addition, during the course of drafting the Bill, Whanganui Iwi requested that it provide for some matters agreed by the parties and included in the deed of settlement. Even though these are matters that do not require statutory authority, some have been included in the Bill

New arrangements for the Whanganui River

The Crown's objectives with the Te Awa Tupua framework are to:

- a. recognise Te Awa Tupua and the Whanganui Iwi connection with the Whanganui River;
- b. recognise and protect the range of other interests in the Whanganui River catchment;
- c. provide an effective role for iwi in the governance and management of the Whanganui River;
- d. lead to good environmental, economic, social and cultural outcomes for iwi, communities that relate to the Whanganui River, and other New Zealanders;
- e. address issues giving rise to the Whanganui Iwi claims as they relate to the Whanganui River but not create new injustices;

- f. be well-designed, simple, transparent and affordable; and
- g. result in durable settlement of Whanganui Iwi claims as they relate to the Whanganui River.

The key redress items covered in the package are:

- a. Te Pā Auroa nā Te Awa Tupua (Te Awa Tupua framework) provides:
 - i. recognition of the status of the Whanganui River (including its tributaries) as Te Awa Tupua, an indivisible, living whole from the mountains to sea;
 - ii. recognition of Te Awa Tupua as a legal entity and the vesting of certain Crown-owned parts of the Whanganui River-bed in the name of Te Awa Tupua;
 - iii. appointment of two persons (one by the Crown and the other by iwi with interests in the Whanganui River) to a guardianship role – Te Pou Tupua – to act on behalf of Te Awa Tupua;
 - iv. a set of Te Awa Tupua values;
 - v. for the establishment of a strategy group to develop a “Whole of River Strategy” by collaboration between iwi, central and local government, commercial and recreational users and other community groups;
 - vi. legal weighting provisions that specify how decision makers will be required to ‘recognise and provide for’ the Status and Values and ‘have particular regard to’ the River Strategy when exercising functions, powers and duties under legislation listed in the Bill;
 - vii. a statement of general relevance that ensures that Te Awa Tupua is a relevant consideration in the exercise of all statutory functions, duties or powers relating to the Whanganui River or activities in the catchment affecting the Whanganui River;
 - viii. the establishment of a fisheries group to coordinate planning and management activities of organisations within the Whanganui River catchment;
 - ix. protection of the name “Te Awa Tupua”; and
 - x. an amended process for dealing with taonga tūturu found on the bed of the Whanganui River.
- b. Cultural redress: place name changes; recognition of Whanganui Iwi customary activities on the Whanganui River; recognition of Whanganui Iwi standing and relationship with the Whanganui River; authorisation of certain customary activities; and Whanganui Iwi statement of significance of ngā ripo (river rapids).
- c. Financial redress: Whanganui Iwi will receive financial redress of \$81 million in recognition of the settlement of their historical Treaty claims over the Whanganui River and to help them advance the the future health and wellbeing of both the Whanganui River and its people.

A \$30 million contestable fund, Te Korotete o Te Awa Tupua will assist with implementing the Te Awa Tupua framework. Although this fund is provided by the settlement, it is not technically settlement redress. The fund will be available to support projects relating to the environmental, social, cultural, and economic health and wellbeing of Te Awa Tupua. Such projects will be intended to strengthen the relationship of the iwi, hapū and other communities of the

Whanganui River with the Whanganui River in relation to its health and wellbeing, and, in turn, the social and cultural health of those communities.

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
Whanganui River Report, The Waitangi Tribunal, 1999 (accessible at https://forms.justice.govt.nz/search/WT/reports/reportSummary.html?reportId=wt_DOC_68450539)	

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?	YES
A Regulatory Impact Statement is attached to the paper lodged with Cabinet, and will be made publicly available at the same time as this Agency Disclosure Statement (and General Policy Statement).	

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?	YES
The Regulatory Impact Statement, referred in 2.4, addresses the potential efficiencies, costs and benefits associated with this settlement.	
(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 taken as there is no international dimension to the contents of the bill.

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 Whanganui Iwi 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?

NO

At the time of writing, the Crown Law Office has not been provided with a final copy of the Bill, and has not yet provided formal advice to the Attorney-General as to the Bill's consistency with the New Zealand Bill of Rights Act 1990. However, it is not anticipated at this stage that the Bill will present any inconsistencies with the Bill of Rights Act.

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)?

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.

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

YES

These provisions were developed by the Office of Treaty Settlements, which is part of the Ministry of Justice and the Crown Law Office and replicates the drafting that has been included in most Treaty settlement Acts since the Ngai Tahu settlement.

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. iwi with interests in the Whanganui River, local authorities (the regional and district councils), third parties, etc) 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.</p> <p>Iwi with interests in the Whanganui River: Whanganui Iwi, Ngāti Maniapoto, Ngāti Tūwharetoa, Ngāti Maru, Ngāti Ruanui, Ngāti Apa and Ngā Rauru Kītahi.</p> <p>Councils: Manawatu-Wanganui Regional Council and the Ruapehu, Stratford and Wanganui District Councils.</p> <p>Third parties: Fish and Game, Forest and Bird, Federated Farmers, Genesis Energy</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 proposed provisions are tested throughout the negotiations process through consultation with relevant Crown agencies, key stakeholders, other iwi with interests in the Whanganui River and engagement with third parties. The deed of settlement was ratified by the Whanganui Iwi claimant community before it was signed.</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?	YES
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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
At the time of writing, the Crown Law Office has not been provided with a final copy of the Bill, and has not yet provided formal advice to the Attorney-General as to the Bill's consistency with the New Zealand Bill of Rights Act 1990. However, it is not anticipated at this stage that the Bill will present any inconsistencies with the Bill of Rights Act.	

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>Deeming Te Awa Tupua a public authority for the purposes of Part 3A of the Maritime Transport Act 1994 will make it possible for a regional council to transfer its responsibilities to Te Awa Tupua to make bylaws. As Te Awa Tupua could be given the ability to make bylaws, the Bill might be said to create or amend the power to make bylaws under that Act. However, the transfer of such responsibilities will be at the discretion of the regional council.</p> <p>In addition, a collaborative group (comprised of iwi, the Department of Conservation, local authorities and Maritime New Zealand) will undertake a review of the management of activities on the surface of the Whanganui River and report to relevant Ministers. Under clause 65 of the Bill, those Ministers may:</p> <ul style="list-style-type: none"> • consider that existing regulations are insufficient to provide for public health and safety or the health and well-being of Te Awa Tupua; and • recommend new regulations related to the management of activities carried out on the surface of the River. <p>Finally, clause 67 of the Bill provides that a collaborative group (comprised of iwi and the Ministry for Primary Industries) will establish process to develop regulation under the Fisheries Act 1996 for the management of customary food gathering by iwi with interests in the Whanganui River.</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>The Bill provides for the recognition of Te Awa Tupua as a legal person and records Tupua te Kawa (the Te Awa Tupua values) in clauses 12 to 14:</p> <ul style="list-style-type: none"> • Clause 12 states how Te Awa Tupua is recognised: “Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements.” • Clause 13 sets out the intrinsic values representing the essence of Te Awa Tupua in both Te Reo Māori and in English. • Clause 14 declares Te Awa Tupua to be a legal person with the full capacity of a legal person, while also providing that all the rights, powers, and duties of Te Awa Tupua must be exercised or performed by Te Pou Tupua. All its liabilities and responsibilities are taken by Te Pou Tupua on behalf of, and in the name of, Te Awa Tupua. 	