

# Departmental Disclosure Statement

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Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Bill
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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).

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

30 November 2016.

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## Part One: General Policy Statement

This Bill–

- records the acknowledgements and apology given by the Crown to the iwi and hapū of Te Rohe o Te Wairoa in the Deed of Settlement (the Deed) dated 26 November 2016 between the Crown and the iwi and hapū of Te Rohe o Te Wairoa; and
- gives effect to the Deed in which the Crown and the iwi and hapū of Te Rohe o Te Wairoa agree to a final settlement of all historical Treaty of Waitangi claims of the iwi and hapū of Te Rohe o Te Wairoa.

### Scope of settlement

The iwi and hapū of Te Rohe o Te Wairoa comprise approximately 25,533 members (2013 Census). The area of interest of the iwi and hapū of Te Rohe o Te Wairoa covers northern Hawke's Bay and southern Tūranga, and encompasses the township of Wairoa, Lake Waikaremoana and the Mahia peninsula. The iwi and hapū of Te Rohe o Te Wairoa is one of six large natural groups negotiating the settlement of the historical Treaty of Waitangi claims of Ngāti Kahungunu. Ngāti Kahungunu is the third largest tribal group in New Zealand.

Clause 13 of this Bill defines the iwi and hapū of Te Rohe o Te Wairoa.

The settlement settles all of the historical claims of the iwi and hapū of Te Rohe o Te Wairoa. These 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

that 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

Treaty of Waitangi claims against the Crown were lodged by members of the iwi and hapū of Te Rohe o Te Wairoa in the early 1980s as part of the Waitangi Tribunal Wairoa Inquiry District (stretching from Tūranganui-a-Kiwa to Mōhaka).

In 2002, a group of iwi and hapū with interests across the Wairoa Inquiry District came together to discuss how collectively to resolve historical Treaty of Waitangi claims against the Crown. This group was initially known as The Wairoa Inquiry District Working Group and was later renamed Te Tira Whakaemi o Te Wairoa (**Te Tira**).

After an extensive consultation process over the next three years, the iwi and hapū decided to progress through direct negotiations with the Crown.

In 2005, Te Tira began the process to formally seek a mandate to settle the historical grievances of Te Wairoa.

The historical claims of the iwi and hapū of Te Rohe o Te Wairoa against the Crown relate to the loss of the vast majority of their rohe and intense military campaigns resulting in the loss of life and property. By 2001, nearly 90% of the members lived outside the Wairoa rohe. Many of those who remain in the area suffer from serious socio-economic deprivation.

### **Negotiations and ratification process**

The Crown recognised the mandate of Te Tira to represent the iwi and hapū of Te Rohe o Te Wairoa in Treaty settlement negotiations on 4 February 2011. Terms of negotiation were signed on 12 June 2012 and the Crown and Te Tira signed an Agreement in Principle on 11 June 2014.

On 25 May 2016, Te Tira and the Crown initialled a deed. The Deed and the iwi and hapū of Te Rohe o Te Wairoa post-settlement governance entity, Tātau Tātau o Te Wairoa Trust, were ratified in July and August 2016, through a six-week ratification process and ten hui.

Of the total eligible voting population 56% participated in the ratification process. The Deed and the post-settlement governance entity were approved by 97% and 89% of eligible voting respectively. The Deed was signed on 26 November 2016.

### **Summary of settlement**

The Deed will be the final settlement of all the historical Treaty of Waitangi claims of iwi and hapū of Te Rohe o Te Wairoa resulting from acts or omissions by the Crown before 21 September 1992. This Bill contains provisions related to settlement redress that require legislation for their 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 unique aspects of the Bill include:

- the establishment of Te Rohe o Te Wairoa Reserves Board-Matangirau to administer and manage a mix of Crown and Wairoa District Council-owned reserves; and
- a statutorily required partnership agreement between Tātau Tātau o Te Wairoa Trust and Te Urewera Board.

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

- a social and economic revitalisation strategy;
- letters of introduction to Wairoa District Council and Hawke's Bay Regional Council;
- a tripartite relationship agreement between Tātau Tātau o Te Wairoa Trust, Wairoa District Council and Hawke's Bay Regional Council;
- a relationship agreement with the Ministry for the Environment;
- a partnership agreement with the Department of Conservation;

- a letter of commitment with the Department of Internal Affairs and the Museum of New Zealand Te Papa Tongarewa; and
- a total financial and commercial settlement package to the value of \$100 million. Of this total, \$5,000,000 has been paid as on-account. The remainder (\$88,964,250) will be transferred to the post-settlement governance entity on settlement date along with interests in Patunamu Crown Forest Licensed land (valued at \$2,465,750) and Wharerata Forest Limited (valued at \$3,570,000).

The benefits of the settlement will be available to all members of the iwi and hapū of Te Wairoa, wherever they live.

### **Removal of courts' jurisdiction and of resumptive memorials**

The iwi and hapū of Te Rohe o Te Wairoa and the Crown have agreed to the removal of the jurisdiction of the courts and the Tribunal in respect of the iwi and hapū of Te Rohe o Te Wairoa historical claims, the deed, the settlement redress, and this Bill (but not in respect of the interpretation or implementation of the deed or Bill).

Resumptive memorials no longer apply:

- to the licensed land; or
- to a deferred selection property (other than a deferred selection property that is also Right of First Refusal land) on and from the date of its transfer under section 79; or
- to the Right of First Refusal land; or
- for the benefit of the iwi and hapū of Te Rohe o Te Wairoa or a representative entity.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<i>The Te Urewera Report, WAI 894, 6 volumes published between April 2009 and December 2015 (accessible at <a href="https://forms.justice.govt.nz/search/WT/reports.html">https://forms.justice.govt.nz/search/WT/reports.html</a>).</i>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
<b>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?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
<b>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?</b>	<b>NO</b>
<b>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?</b>	<b>NO</b>

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
(a) the size of the potential costs and benefits?	<b>NO</b>
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	<b>NO</b>
<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	<b>NO</b>
(b) the nature and level of regulator effort put into encouraging or securing compliance?	<b>NO</b>

## 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 Te Tira 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 historical 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

<b>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?</b>	<b>NO</b>
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## External consultation

<b>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?</b>	<b>YES</b>
<p><i>Stakeholder groups (e.g. overlapping iwi and councils) 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: Ngāi Tūhoe, Ngāi Tāmanuhiri, Ngāti Pāhauwera, Ngāti Ruapani ki Waikaremoana, Rongowhakaata and Te Aitanga ā Māhaki.</i></p> <p><i>Councils: Wairoa District Council and Hawke's Bay Regional Council.</i></p>	

## Other testing of proposals

<b>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?</b>	<b>YES</b>
<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 Te Wairoa before the Deed of Settlement was signed on 26 November 2016.</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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