

# Departmental Disclosure Statement

---

Ngāti Tūwharetoa 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 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.

28 June 2017.

**Contents**

Contents..... 2

Part One: General Policy Statement ..... 3

Part Two: Background Material and Policy Information ..... 6

Part Three: Testing of Legislative Content..... 8

Part Four: Significant Legislative Features ..... 10

## Part One: General Policy Statement

This Bill–

- records the acknowledgements and apology given by the Crown to Ngāti Tūwharetoa in the deed of settlement (the **deed**) to be signed on 8 July 2017 between the Crown and Ngāti Tūwharetoa; and
- gives effect to the deed in which the Crown and Ngāti Tūwharetoa agree to a final settlement of all historical Treaty of Waitangi claims of Ngāti Tūwharetoa.

### Scope of settlement

Ngāti Tūwharetoa is the fifth largest iwi in New Zealand (approximately 35,000 members). The Ngāti Tūwharetoa area of interest is centred on Lake Taupō and the Central Plateau and covers most of the Central North Island and Te Arawa regions.

Clause 13 of this Bill defines Ngāti Tūwharetoa.

The settlement settles all of the historical claims of Ngāti Tūwharetoa. 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

Ngāti Tūwharetoa has several previous partial settlements and agreements with the Crown on claims not included in the comprehensive settlement. The Crown has addressed these issues and claims through:

- the Ngāti Tūrangitukua settlement in 1999, with the Ngāti Tūrangitukua hapū of Ngāti Tūwharetoa, which settled Ngāti Tūrangitukua's Treaty claims arising from the creation of the Tūrangi township and the development of the Tongariro Power Development scheme;
- the Central North Island (**CNI**) Forests Land settlement in 2008 which settled historical Treaty claims over the CNI forests land and provided an on-account payment to Ngāti Tūwharetoa of (\$2008) 52.6 million;
- the Te Awa Tupua settlement in 2016, which settled historical Treaty claims of Whanganui Iwi in relation to the Whanganui River;
- the Lake Taupō (Taupomoana) deed in 2007; and

- the Waikato River co-management deed with the Tūwharetoa Māori Trust Board in 2010.

In 2004, the Crown formally recognised the mandate of the Tūwharetoa Hapū Forum to negotiate the settlement of all of Ngāti Tūwharetoa's remaining historical claims. In 2005, Te Ariki Sir Tumu te Heuheu decided to progress Ngāti Tūwharetoa's claims through the Waitangi Tribunal's District Inquiry process. Following this decision, negotiations were paused until such time as Ngāti Tūwharetoa was ready to resume direct negotiations.

The historical claims of Ngāti Tūwharetoa against the Crown relate to the establishment of the Tongariro National Park, the New Zealand Wars, land loss through native land laws, Crown purchasing tactics and public works takings, loss of access to and control over geothermal resources, water rights, fisheries rights and environmental issues, especially concerning Lake Taupō.

### **Negotiations and ratification process**

Following the conclusion of Part 1 of the Waitangi Tribunal District Inquiry process, the Crown reconfirmed the mandate of the Tūwharetoa Hapū Forum in 2011 to represent Ngāti Tūwharetoa in comprehensive settlement negotiations with the Crown.

Terms of Negotiation were signed in January 2013 and the Crown and Ngāti Tūwharetoa signed an Agreement in Principle on 6 March 2015.

On 15 December 2016, the Crown and Ngāti Tūwharetoa initialled a deed. The deed and the Ngāti Tūwharetoa Post-Settlement Governance Entity (**PSGE**), Te Kotahitanga o Ngāti Tūwharetoa, were ratified by the claimant community during a 6 week voting period from 10 February to 27 March 2017.

The participation rate for the ratification of the deed and PSGE was 34% and 33% of the eligible voting members of Ngāti Tūwharetoa. The deed and PSGE were approved by 73% and 71% of eligible voters respectively.

The introduction of this Bill is subject to signing the deed with Ngāti Tūwharetoa on 8 July 2017.

### **Summary of settlement**

The deed will be the final settlement of all the historical Treaty of Waitangi claims of Ngāti Tūwharetoa 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 more unique aspects of the Bill include:

- the establishment of Te Kōpua Kānapanapa;
- obligations for local authorities and the Environmental Protection Authority in relation to planning documents and resource consent applications;
- the joint development of a conservation management strategy with the Department of Conservation;
- amendments to the Conservation Act 1987; and
- redress over the Trout Centre property.

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

- cultural funds of:
  - \$2,500,000 towards the establishment of a Ngāti Tūwharetoa Whare Taonga;
  - \$1,000,000 to help restore the mauri of Te Wai Ū o Tūwharetoa spring;
  - \$250,000 to fund projects to restore traditional mahinga kai, places of harvest and the practice of mātauranga Māori within the Ngāti Tūwharetoa area of interest; and
  - \$200,000 cultural and environmental revitalisation fund for cultural redress properties of Aratiatia and Atahaka;
- letters of introduction to the Manawatū District Council, the Rangitikei District Council, the Ruapehu District Council and the Manawatū-Whanganui Regional Council;
- Letter of Commitment with Te Papa Tongarewa;
- right to purchase Waiteti Landcorp Farm; and
- financial redress of \$25 million.

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

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

Ngāti Tūwharetoa and the Crown have agreed to the removal of the jurisdiction of the courts and the Tribunal in respect of the Ngāti Tūwharetoa 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 areas.

## 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>
<p><i>Tūrangi Township report (1995), Mohaka ki Ahuriri report (2008), He Maunga Rongo report (2008), Te Kāhui Maunga National Park District Inquiry report (2013) and report on the national freshwater and geothermal resources claim (2012).</i></p> <p>All Waitangi Tribunal reports are accessible at:  <a href="https://forms.justice.govt.nz/search/WT/reports.html">https://forms.justice.govt.nz/search/WT/reports.html</a>.</p>	

### 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>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<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>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<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 Ngāti Tūwharetoa negotiators engaged with 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>
---	-----------

## 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, 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: Raukawa, Te Arawa Affiliates (Ngāti Tahu - Ngāti Whaoa), Maniapoto, Ngāti Rangī, Uenuku, Ngāti Hāua, Ngāti Rangitīhi, Tūwharetoa (Bay of Plenty), Ngāi Tūhoe, Ngāti Whare, Ngāti Manawa, Ngāti Hineuru, Ngāti Pahauwera, Ahuriri Hapū, Rangitāne o Manawatū, Raukawa ki te Tonga, Ngāti Apa, Ngāti Hauiti and unmandated Mōkai Pātea groups.</i></p> <p><i>Councils: Taupō District Council and Waikato District 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 was ratified by Ngāti Tūwharetoa during a 6 week voting period during February and March 2017. The deed of settlement is to be signed on 8 July 2017.</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
---	----

### 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
---	----

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
--	----

### 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
--	----

### 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
---	----

### 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?	NO
---	----

### 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
---	----