

Departmental Disclosure Statement

Ngāi Tai ki Tāmaki 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).

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.

26 July 2017

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Part One: General Policy Statement

This Bill–

- records the acknowledgements and apology given by the Crown to Ngāi Tai ki Tāmaki in the deed of settlement signed on 7 November 2015 (as well as 2 subsequent deeds to amend in 2016 and 2017); and
- gives effect to the deed of settlement in which the Crown and Ngāi Tai ki Tāmaki agree to a final settlement of all historical Treaty of Waitangi claims of Ngāi Tai ki Tāmaki.

Background

Ngāi Tai ki Tāmaki are an iwi with interests centred around Tāmaki Makaurau / Auckland, extending to Hauraki/Coromandel and, in particular, the coastline, harbours and motu/islands of the Waitematā harbour and Hauraki Gulf / Tīkapa Moana. The primary marae of Ngāi Tai ki Tāmaki is Umupuia Marae at Maraetai in Clevedon.

Ngāi Tai ki Tāmaki have extensive whakapapa links to Waikato-Tainui and strong connections to iwi in the Hauraki region.

Ngāi Tai ki Tāmaki have a population recorded in the 2013 Census of 498 members.

The Ngāi Tai ki Tāmaki Claims Settlement Bill comprehensively settles the historical claims of Ngāi Tai ki Tāmaki. The historical claims of Ngāi Tai ki Tāmaki against the Crown relate primarily to the loss of communal ancestral lands, which had a severe impact on their traditional tribal structure.

The raupatu claims of Ngāi Tai ki Tāmaki with respect to the Waikato region were settled through the Waikato Raupatu Claims Settlement Act 1995.

In June 2009, Cabinet agreed that the Crown negotiate with all groups in the Tāmaki Makaurau and Hauraki region at the same time and progress highly significant cultural redress through collective negotiations. Ngāi Tai ki Tāmaki are one of the 12 iwi groups in the Hauraki Collective and one of the 13 iwi groups included in the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

Comprehensive settlement negotiations

In 2010, the Crown and Ngāi Tai ki Tāmaki Tribal Trust commenced negotiations relating to the comprehensive settlement of Ngāi Tai ki Tāmaki's historical Treaty claims.

On 7 November 2015, the Crown and Ngāi Tai ki Tāmaki signed their deed of settlement. Both the deed of settlement and the post-settlement governance entity, Ngāi Tai ki Tāmaki Trust, were ratified by the claimant community. The Crown and Ngāi Tai ki Tāmaki signed a deed to amend in 2016. On 28 July 2017, the Crown and Ngāi Tai ki Tāmaki signed a further deed to amend, primarily to ensure that the deed of settlement reflects the Bill.

The Crown had intended that there be a single settlement date for the Hauraki Collective, Marutūāhu Collective and Hauraki iwi-specific settlements given the volume of joint redress and interconnectedness between the collective and individual settlements. Therefore, the Bill formed part of a draft omnibus Bill so it was not introduced immediately following the signing of the Ngāi Tai ki Tāmaki deed of settlement in November 2015.

In April 2017, the Crown committed to separate the Bill and introduce it ahead of the balance of the Hauraki settlement legislation rather than as part of an omnibus Bill, on the basis that there would be an unacceptable delay to the introduction of the Bill otherwise.

Summary of settlement

The Bill comprehensively settles the historical Treaty claims of Ngāi Tai ki Tāmaki 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. There are other aspects of redress in the deed of settlement that do not appear through provisions in this Bill because they do not require legislation to give them effect.

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 amount of redress shared by Ngāi Tai ki Tāmaki with the Hauraki Collective, Marutūāhu Collective, individual Hauraki iwi and other iwi. The Bill includes provisions to reflect that the settlement dates for the groups sharing the redress will not be the same. In some instances, this means if one party to shared redress takes some time to settle or never settles, Ngāi Tai ki Tāmaki may not receive the shared redress in a timely manner or at all. In other instances, it means shared redress may transfer to all parties before the final group has settled (or potentially might never settle). The Crown considers the risk associated with these provisions to be low.

The benefits of the settlement will be available to all members of Ngāi Tai ki Tāmaki, wherever they live.

Removal of jurisdiction of courts and tribunals

The jurisdiction of the courts and tribunals in respect of the Ngāi Tai ki Tāmaki historical claims, the deed, the settlement redress, and this Bill are removed (but not in respect of the interpretation or implementation of the deed or Bill).

However, the privative clause (*clause 15*) in the Bill will not apply to Hauraki Collective redress as it relates to Ngāi Tai ki Tāmaki. For this reason, an amendment to the deed and Bill will be required to be made through the Pare Hauraki Collective Redress deed and its related legislation.

The Bill removes the jurisdiction of courts and tribunals in relation to the collective redress provided for in the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (as it relates to Ngāi Tai ki Tāmaki).

Even though Ngāi Tai ki Tāmaki's historical claims are settled by this comprehensive settlement legislation, Ngāi Tai ki Tāmaki are not precluded from making a claim to any court, tribunal or other judicial body in respect of the process in relation to negotiations over harbours.

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
Waitangi Tribunal Hauraki District Inquiry 2006 <i>All Waitangi Tribunal reports are accessible at:</i> https://forms.justice.govt.nz/search/WT/reports.html	

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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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
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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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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
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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
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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
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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?	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 Ngāi Tai ki Tāmaki negotiators engaged with groups whose interests are directly affected by the settlement. The redress given effect to 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

The Crown Law Office was provided with the final draft of the Bill and it has advised that the Bill appears to be consistent with the Bill of Rights Act 1990.

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
<p><i>(3.4b)</i></p> <p><i>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 (clause 15), with some exceptions.</i></p> <p><i>Ngāi Tai ki Tāmaki are one of 12 iwi groups participating in collective negotiations in respect of redress in the Hauraki region, known as the Hauraki Collective. The collective redress was set out in the Pare Hauraki Collective Redress deed initialled in December 2016. The privative clause (clause 15) in the Ngāi Tai ki Tāmaki Claims Settlement Bill will not apply to the collective redress for the Hauraki Collective (in so far as it relates to Ngāi Tai ki Tāmaki) and will be amended by a consequential amendment through the future Pare Hauraki Collective Redress Act.</i></p> <p><i>Ngāi Tai ki Tāmaki are one of the 13 iwi groups included in the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014. The Bill removes the jurisdiction of the courts and tribunals in relation to the Tāmaki Collective redress.</i></p> <p><i>Even though the historical claims are settled by this comprehensive settlement legislation, the deed did not provide for all redress in relation to harbours (specifically, Manukau Harbour, the Waitematā Harbour and the Hauraki Gulf / Tīkapa Moana). Redress in relation to those harbours is to be developed in further negotiations between the Crown and others, including Ngāi Tai ki Tāmaki. Ngāi Tai ki Tāmaki are not precluded from making a claim to any court, tribunal or other judicial body in respect of the process in relation to harbours negotiations.</i></p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<i>The provisions were developed by the Office of Treaty Settlements which is part of the Ministry of Justice.</i>	

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
<i>Stakeholder groups (for example, relevant Crown agencies, overlapping iwi, councils and affected individuals as well as the Pare Hauraki Collective, of which Ngāi Tai ki Tāmaki is a member) were informed of the key relevant provisions contained in the Bill as the settlement was negotiated and agreed. Relevant Crown agencies and Ngāi Tai ki Tāmaki negotiators were provided with the Bill to review and were invited to comment on relevant parts affecting them.</i>	

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 relevant internal and external parties, including legal advisors.</i></p> <p><i>The deed of settlement was ratified by the Ngāi Tai ki Tāmaki community during a five-week voting period from 3 August to 7 September 2015. The deed of settlement was approved by 91.39% of those who voted, with 45.25% of the eligible voting members of Ngāi Tai ki Tāmaki participating.</i></p> <p><i>The deed of settlement (which appended a draft of this Bill) was signed on 7 November 2015 and a copy of it is publicly available on the Ministry of Justice website.</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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