

# Departmental Disclosure Statement

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## Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill (No 2)

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.

1 March 2018.

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## Part One: General Policy Statement

This Bill –

- gives effect to a deed of agreement between ngā hapū o Ngāti Porou and the Crown in relation to ngā rohe moana o ngā hapū o Ngāti Porou; and
- gives to the legal expression, protection, and recognition of the continued exercise of mana by ngā hapū o Ngāti Porou in relation to ngā rohe moana o ngā hapū o Ngāti Porou

### Background

On 31 October 2008, the Crown and Te Rūnanga o Ngāti Porou (on behalf of certain hapū of Ngāti Porou) signed a deed of agreement in relation to ngā rohe moana o ngā hapū o Ngāti Porou (the deed of agreement).

On 29 September 2008, a Bill giving effect to the deed of agreement—the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill—was introduced to the House of Representatives. That Bill, in part, gave effect to agreements reached between the Crown and certain hapū of Ngāti Porou under the repealed Foreshore and Seabed Act 2004. That Act was repealed following a review by the Marine and Coastal Area (Takutai Moana) Act 2011. The Crown and Te Rūnanga o Ngāti Porou (on behalf of certain hapū of Ngāti Porou) have agreed to amend the deed of agreement to align it, where required, with the Marine and Coastal Area (Takutai Moana) Act 2011. This Bill gives effect to the amended deed of agreement where required. It replaces the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill introduced on 29 September 2008. Te Rūnanga o Ngāti Porou has undertaken a process of seeking ratification of the amended deed of agreement by ngā hapū o Ngāti Porou. The ratification results have now been assessed. A deed to amend the deed of agreement was signed by the parties on 9 August 2017.

### Purpose of Bill

The purpose of the Bill is to give effect to the deed of agreement between ngā hapū o Ngāti Porou and the Crown in relation to ngā rohe moana o ngā hapū o Ngāti Porou. This Bill will contribute to the legal expression, protection, and recognition of the continued exercise of mana by ngā hapū o Ngāti Porou in relation to ngā rohe moana o ngā hapū o Ngāti Porou.

The deed of agreement provides for ngā hapū o Ngāti Porou to have customary interests (including customary marine title) recognised within ngā rohe moana o ngā hapū o Ngāti Porou. *Part 4* of the Bill gives effect to these provisions. The Bill provides that in ngā rohe moana o ngā hapū o Ngāti Porou, Parts 3 and 4 of the Marine and Coastal Area (Takutai Moana) Act 2011 cease to apply (with some exceptions) to ngā hapū o Ngāti Porou and *Part 4* of this Bill provides for the recognition of their customary interests instead.

The deed of agreement contains various recognition instruments. Some of those instruments require legislation to be given full effect, particularly those that affect other legislation such as the Conservation Act 1987, the Resource Management Act 1991, and the Fisheries Act 1996.

The Bill seeks to achieve the following outcomes:

- to recognise the unbroken, inalienable, and enduring mana of the hapū of Ngāti Porou in relation to ngā rohe moana o ngā hapū o Ngāti Porou, which is held and exercised as a collective right; and
- to provide legal mechanisms that support the expression and protection of the mana of the hapū of Ngāti Porou generally and in those specific areas where customary marine title rights are recognised in accordance with *Part 4* of the Bill; and
- to recognise that the Crown has a responsibility for public access in, on, and over the common marine and coastal area, and a role in regulating it; and
- to provide certainty about the use and administration of ngā rohe moana o ngā hapū o Ngāti Porou.

## Deed of agreement

The marine and coastal area means the marine area that is bounded, on the landward side, by the line of mean high-water springs and, on the seaward side, by the 12-nautical-mile limit. The common marine and coastal area means the marine and coastal area other than—

- specified freehold land located in that area; and
- any area that is owned by the Crown and has the status of a conservation area within the meaning of section 2(1) of the Conservation Act 1987, a national park within the meaning of section 2 of the National Parks Act 1980, or a reserve within the meaning of section 2(1) of the Reserves Act 1977; and
- the bed of Te Whaanga Lagoon in the Chatham Islands.

Ngā rohe moana o ngā hapū o Ngāti Porou is the common marine and coastal area in the rohe of the hapū that ratified the amended deed of agreement. It is depicted in a map in *Schedule 3* of this Bill. In this Bill, ngā hapū o Ngāti Porou is defined in clause 10 as the hapū of Ngāti Porou who have ratified the amended deed of agreement and are recorded in *Schedule 2*. The provisions in this Bill apply in ngā rohe moana o ngā hapū o Ngāti Porou.

The deed of agreement requires the Crown to provide recognition instruments or “mechanisms” to all ngā hapū o Ngāti Porou within ngā rohe moana o ngā hapū o Ngāti Porou. Where required, the Bill provides for these in *Part 2*. Where customary marine title is recognised under the provisions of this Bill in a particular area, additional mechanisms set out in *Part 3* of the Bill will apply.

This Bill provides for the mechanisms that have been negotiated and agreed between ngā hapū o Ngāti Porou and the Crown that require legislation to have effect. The following 8 mechanisms relate to the whole of ngā rohe moana o ngā hapū o Ngāti Porou:

- statutory overlay (*subpart 1 of Part 2* of the Bill): this mechanism ensures that a map of ngā rohe moana o ngā hapū o Ngāti Porou is attached to key public documents. It is also designed to provide for the effective participation of ngā hapū o Ngāti Porou in the processes relating to resource consent applications and applications under the Heritage New Zealand Pouhere Taonga Act 2014:
- environmental covenant (*subpart 2 of Part 2* of the Bill): this instrument provides for ngā hapū o Ngāti Porou to set out the issues, objectives, policies, and rules and other

methods relating to the promotion of their world view, including in relation to the promotion of sustainable management of ngā rohe o ngā hapū o Ngāti Porou, and the protection of the cultural and spiritual identity of ngā hapū o Ngāti Porou. To the extent that the environmental covenant relates to resource management issues, Gisborne District Council will be required to review key public documents (such as its regional coastal plan) the next time those documents are reviewed under the Resource Management Act 1991 to ensure that those documents take the environmental covenant into account:

- protected customary activities (*subpart 3 of Part 2 of the Bill*): this mechanism will provide a process by which ngā hapū o Ngāti Porou may obtain legal protection to ensure that they are able to continue their ongoing customary activities, uses, or practices within ngā rohe moana o ngā hapū o Ngāti Porou without the need for resource consent:
- wāhi tapu and wāhi tapu areas (*subpart 4 of Part 2 of the Bill*): this mechanism will enable ngā hapū o Ngāti Porou, in certain circumstances, to identify wāhi tapu and wāhi tapu areas within ngā rohe moana o ngā hapū o Ngāti Porou and also provide for prohibitions or restrictions on persons accessing the identified wāhi tapu and wāhi tapu areas:
- customary fishing practices (*subpart 5 of Part 2 of the Bill*): this mechanism recognises the special relationship that ngā hapū o Ngāti Porou have with the fishing grounds within ngā rohe moana o ngā hapū o Ngāti Porou. This mechanism will allow for the making of new customary fishing regulations to cover ngā rohe moana o ngā hapū o Ngāti Porou. These regulations will enable ngā hapū o Ngāti Porou to manage customary fishing within ngā rohe moana o ngā hapū o Ngāti Porou:
- conservation mechanisms (*subpart 6 of Part 2 of the Bill*): these mechanisms will facilitate the effective participation of ngā hapū o Ngāti Porou in the processes related to establishing or extending marine reserves, establishing or extending conservation protected areas, and granting concessions. This mechanism also facilitates the effective participation of ngā hapū o Ngāti Porou in the processes related to establishing or extending marine mammal sanctuaries, granting authorisations in relation to wildlife matter and permits in relation to marine mammal matter, and making decisions on the management of stranded marine mammals and applications for marine mammal watching permits:
- official geographic names of features (*subpart 7 of Part 2 of the Bill*): this instrument will provide for the alteration of two existing place names within ngā rohe moana o ngā hapū o Ngāti Porou to names chosen by ngā hapū o Ngāti Porou:
- relationship instruments (*subpart 8 of Part 2 of the Bill*): this subpart of the Bill will require the noting of various relationship instruments entered into by the Crown with ngā hapū o Ngāti Porou under the terms of the deed of agreement in various departmental plans, strategies and registers.

The following mechanisms relate to customary marine title areas only:

- permission rights (*subpart 1 of Part 3 of the Bill*): this instrument provides customary marine title hapū with the right to give, or refuse to give, their permission to applications for resource consent and requests made by persons, in response to a regional council invitation under the Resource Management Act 1991 or to change a regional coastal plan:
- customary fishing practices—extended mechanism (*subpart 2 of Part 3 of the Bill*): this mechanism will extend the fisheries mechanism by allowing ngā hapū o Ngāti Porou to

propose bylaws restricting or prohibiting fishing for sustainable utilisation or cultural reasons in customary marine title areas:

- environmental covenant—extended mechanism (*subpart 3 of Part 3 of the Bill*): this mechanism extends the environmental covenant by requiring Gisborne District Council to review its key public documents (that cover or directly affect a customary marine title area) to ensure that it recognises and provides for the issues, objectives, policies, and rules or methods set out in the environmental covenant to the extent that the environmental covenant relates to resource management issues:
- conservation processes—extended mechanism (*subpart 4 of Part 3 of the Bill*): this mechanism extends the conservation mechanism by allowing the customary marine title hapū to have the right to give, or refuse to give, their consent to certain proposals or applications where they relate to the customary marine title area, including applications to establish or extend marine reserves under the Marine Reserves Act 1971, proposals to establish or extend conservation protected areas, applications for concessions, proposals to establish or extend marine mammal sanctuaries, and applications for marine mammal watching permits:
- taonga tūturu ownership (*subpart 5 of Part 3 of the Bill*): this mechanism provides that any taonga tūturu found in a customary marine title area is prima facie the property of the customary marine title hapū:
- minerals ownership (*subpart 6 of Part 3 of the Bill*): this mechanism provides that the customary marine title hapū has ownership of minerals (other than petroleum, gold, silver, and uranium existing in their natural condition) that are within the customary marine title area.

## 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>NO</b>
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### 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>
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### 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>
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### 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>
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<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 negotiations on the Deed of Agreement, the Ministry of Justice, the Office of Treaty Settlements and ngā hapū o Ngāti Porou representatives engaged with iwi and hapū whose interest are directly affected by the Deed of Agreement. The recognition of customary interests and mechanisms in the Deed of Agreement given effect by this Bill are consistent with Treaty principles.*

### 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 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

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>(a) <i>Clause 46 provides that a person who intentionally fails to comply with a prohibition or restriction imposed in relation to a wāhi tapū or wāhi tapū area commits an offence and is liable on conviction to a fine not exceeding \$5000. This offence and penalties are the same as those provided for under the Marine and Coastal Area (Takutai Moana) Act 2011 for failure to comply with a prohibition or restriction imposed in relation to a wāhi tapū area.</i></p> <p><i>Clause 79 provides that it is an offence to commence an activity (other than an accommodated activity) in a customary marine title area unless the customary marine title hapū has given permission for that activity. A person who commits this offence is liable on conviction, in the case of a natural person, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$300,000. A person who commits this offence is liable on conviction, in the case of a person other than a natural person, to a fine not exceeding \$600,000. This offence and penalties are the same as those imposed under the Marine and Coastal Area (Takutai Moana) Act 2011 for commencing an activity in a customary marine title area without the consent of the customary marine title group.</i></p> <p>(b) <i>This Bill provides that a hapū of ngā hapū o Ngāti Porou may apply to the High Court for a court order of one or more protected customary activities, recognition of a wāhi tapū area and customary marine title. These jurisdictions are broadly in line with the High Court's jurisdiction to make an order for protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011. The Bill provides that any order of the High Court in favour of an application for protected customary rights, recognition of wāhi tapū, or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 where the application group becomes part of ngā hapū o Ngāti Porou as defined in this Bill will be transition to a protected customary activity, recognition of a wāhi tapū, or customary marine title under the provisions of this Bill.</i></p>	

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

## 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>
<i>Stakeholder groups (including overlapping iwi, the Gisborne District Council, and Te Rūnanganui o Ngāti Porou) were informed of the key relevant provisions contained in the Bill as the deed of agreement was negotiated and agreed, and were invited to comment on the relevant parts of the Bill affecting them.</i>	

## 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>
<i>The proposed provisions were tested throughout the negotiation process through consultation with key stakeholders and engagement with third parties. The amended deed of agreement and entities that will hold rights of the hapū under the Deed of Agreement were ratified by ngā hapū o Ngāti Porou before the deed of agreement was signed.</i>	

## 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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