

Departmental Disclosure Statement

Moriori 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 Office for Māori Crown Relations – Te Arawhiti.

The Office for Māori Crown Relations – Te Arawhiti certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 March 2020.

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Part One: General Policy Statement

This Bill gives effect to certain matters contained in the Deed of Settlement (the Deed), signed on 14 February 2020 by the Crown and Moriori. The Deed provides for the final settlement of all the historical Treaty of Waitangi claims of Moriori 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 comprises three parts:

- *Part 1* sets out the purpose of the Bill, provides the provisions of the Bill take effect on the settlement date unless a provision states otherwise, specifies the Bill binds the Crown, and defines terms used in the Bill, including Moriori and historical claims;
- *Part 2* sets out in 6 subparts the cultural redress for Moriori and includes protocols, a statutory acknowledgement, deeds of recognition, overlay classifications, official geographic names, provision for customary fishing regulations, and vesting of cultural redress properties;
- *Part 3* sets out in 2 subparts commercial redress for Moriori and includes the transfer of commercial redress properties and a right of first refusal (shared with Ngāti Mutunga o Wharekauri) in relation to Crown and Canterbury District Health Board land that is declared surplus on the Chatham Islands.

There are 4 schedules to the Bill:

- Schedule 1 describes the areas subject to a statutory acknowledgement;
- Schedule 2 describes the areas subject to an overlay classification;
- Schedule 3 describes the cultural redress properties; and
- Schedule 4 provides for notices in relation to RFR land.

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
<p><i>Waitangi Tribunal – Rekohu: a Report on Moriori and Ngāti Mutunga Claims in the Chatham Islands</i> https://forms.justice.govt.nz/search/WT/reports/reportSummary.html?reportId=wt_DOC_68595363</p> <p><i>High Court of New Zealand – Ngāti Mutunga o Wharekauri Iwi Trust v Minister for Treaty of Waitangi Negotiations [2019] NZHC 1942 [9 August 2019] Judgement of Cooke J (Interim relief)</i> https://forms.justice.govt.nz/search/Documents/pdf/jdo/38/alfresco/service/api/node/content/workspace/SpacesStore/ea45fd3b-c471-4cd9-b4f6-a65e3cc54e91/ea45fd3b-c471-4cd9-b4f6-a65e3cc54e91.pdf</p>	

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?	NO
<p><i>A regulatory impact statement is not required because the impact on the regulatory regime of the requirement for the Minister of Fisheries to recommend customary fisheries regulations is minor (see 4.8 below).</i></p> <p><i>The Treasury agrees no Regulatory Impact Assessment is required for this proposal, since it implements deeds of settlement for Treaty of Waitangi claims, provides for the commencement of existing legislation and is expected to have only minor impacts on businesses, individuals or not-for-profit entities.</i></p>	

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
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 for Māori Crown Relations – Te Arawhiti and Moriori Imi Settlement Trust negotiators engaged with iwi whose interests are directly affected by the settlement. The redress given effect by this Bill is consistent with the Treaty of Waitangi and its principles and the 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 Office for Māori Crown Relations – Te Arawhiti provided the Bill to Crown Law Office on 13 December 2019. No issues were raised. 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 the historical Treaty of Waitangi claims of Moriori and removes the jurisdiction of courts, tribunals and other judicial bodies to inquire 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 former Office of Treaty Settlements, which was part of the Ministry of Justice.

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>Moriori were consulted on the content of the Bill. Stakeholder 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. Stakeholder groups: Ngāti Mutunga o Wharekauri, Chatham Islands Council, Canterbury District Health Board.</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
<i>The proposed provisions are tested throughout the negotiations process through consultation with relevant agencies, key stakeholders, and engagement with third parties. The Deed of Settlement was ratified by Moriori during a six-week voting period from 13 September to 25 October 2019.</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
4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<i>The Bill requires the Minister of Fisheries to recommend the making of customary non-commercial fishing regulations to enable Moriori and Ngāti Mutunga o Wharekauri to manage customary fishing in the Rēkohu/Wharekauri fisheries area subject to the Fisheries Act 1996. The regulations are also to make provision for 'Rāhui areas' in which no commercial fishing is allowed and in which Moriori and Ngāti Mutunga o Wharekauri can recommend bylaws governing all fishing. The power to create these regulations is already provided for in section 186 of the Fisheries Act 1996 as a consequence of the Treaty of Waitangi Fisheries Settlement.</i>	

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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