

Departmental Disclosure Statement

Te Kawerau ā Maki 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;
- 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.

31 March 2014

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Part One: General Policy Statement

This Bill gives effect to the Deed of Settlement entered into by the Crown and Te Kawerau ā Maki on 22 February 2014, for the final settlement of historical Treaty of Waitangi claims of Te Kawerau ā Maki. Legislation is necessary to give effect to certain aspects of the settlement. Other aspects of the settlement are provided for only in the Deed of Settlement.

Te Kawerau ā Maki are also signatories to the deed entered into by the Crown and Ngā Manawhenua o Tāmaki Makaurau on 8 September 2012 and will receive collective cultural and commercial redress through that deed and enabling legislation.

The Bill defines Te Kawerau ā Maki as the collective group composed of individuals who –

- descend from 2 or more of the ancestors Tawhiakiterangi (also known as Te Kawerau ā Maki), Mana, Te Au o Te Whenua, Kowhatu ki te Uru, and/or Te Tuia; and
- exercised customary rights in the Te Kawerau ā Maki area of interest at any time after 6 February 1840.

Part 1 of this Bill —

- sets out the purpose of the Bill and deals with other preliminary matters of general application; and
- records the Crown acknowledgements and apology offered by the Crown to Te Kawerau ā Maki; and
- defines various terms including Te Kawerau ā Maki and historical claims; and
- provides that the settlement of the Te Kawerau ā Maki historical claims are final; and
- removes the jurisdiction of judicial bodies in respect of the Te Kawerau ā Maki historical claims and the redress provided under the deed of settlement or the Bill; and
- deals with related issues, including a consequential amendment to the Treaty of Waitangi Act 1975, and the removal of certain resumptive memorials.

Part 2 of this Bill sets out the cultural redress provided to Te Kawerau ā Maki, including —

- protocols, statutory acknowledgements and deeds of recognition; and
- a whenua rāhui over Taumaihi (part of Te Henga Recreation Reserve); and
- assigning and altering of geographic names as official geographic names; and
- cultural redress properties and their vesting and administration provisions, including vesting land as a Māori reservation for the purpose of establishing a marae; and
- vesting of the Kopironui property pursuant to a determination of the Māori Land Court.

Part 3 of this Bill sets out the commercial redress provided to Te Kawerau ā Maki, in relation to —

- the transfer of Riverhead Forest licensed land; and
- deferred selection properties; and
- an exclusive right of first refusal (RFR) over two properties; and
- a non-exclusive (or shared) RFR over RFR properties.

Kopironui

Provisions in Part 2 provide for the Kopironui property to be vested pursuant to a decision of the Maori Land Court arising out of a special jurisdiction conferred on the Court. Te Kawerau ā Maki and Ngāti Whātua o Kaipara each assert interests in the Kopironui property but have been unable to reach agreement on how to give effect to their interest through negotiations on the settlement of their historical Treaty of Waitangi claims. The Court will determine which of the two iwi is entitled to the beneficial interest in the Kopironui property and, if both, the proportion in which they should receive it. If agreement can be reached by the iwi the Court must give effect to that agreement.

Non-exclusive RFR

Provisions in Part 3 provide for Te Kawerau ā Maki, Marutūāhu Iwi and Ngāti Whātua to have a shared right of first refusal of RFR land in an area from the Whangaparaoa Peninsula to the Mahurangi Harbour and including part of Kawau Island. It is intended that approving settlement legislation for Marutūāhu Iwi and Ngāti Whātua will mirror these provisions for the respective groups.

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?	NO
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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
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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?
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No steps have been taken.

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/13.htm>

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 settlement negotiations, the Office of Treaty Settlements and Te Kawerau ā Maki negotiators engaged with iwi 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.

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/14.htm>

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
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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/>

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/15.htm>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
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The Bill settles historic Treaty claims and removes the jurisdiction of courts, tribunals and other judicial bodies into the claims, deed of settlement and redress provided.

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/16.htm>

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p><i>These provisions were developed by the Office of Treaty Settlements which is part of the Ministry of Justice.</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/16.htm</p>	

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
<p><i>Stakeholder groups (e.g. overlapping iwi, Auckland Council) 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. Iwi with settlement legislation have been consulted on proposed legislative provisions affecting their settlements.</i></p> <p><i>Overlapping groups: Ngāti Whātua o Kaipara, Marutūāhu Iwi, Te Rūnanga o Ngāti Whātua, and other Auckland iwi.</i></p> <p><i>Councils: Auckland Council.</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/18.htm</p>	

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 third parties. The deed of settlement provisions were ratified by Te Kawerau ā Maki before the deed of settlement was signed on 22 February 2014.</i></p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/19.htm</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
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?	YES
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Provisions in Part 2 (clauses 73 and 74) establish a special jurisdiction for the Māori Land Court and provide, as cultural redress, for the Kopironui property to be vested pursuant to a decision of the Court in Te Kawerau ā Maki or Ngāti Whātua o Kaipara, or both. If agreement can be reached by iwi the Court must give effect to that agreement.

Provisions in Part 3 provide for Te Kawerau ā Maki, Marutūāhu Iwi and Ngāti Whātua to have a shared right of first refusal of RFR land in an area from the Whangaparaoa Peninsula to the Mahurangi Harbour and including part of Kawau Island. It is intended that approving settlement legislation for Marutūāhu Iwi and Ngāti Whātua will mirror these provisions for the respective groups

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/26.htm>