

Departmental Disclosure Statement

Heretaunga Tamatea 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.

8 March 2017

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Part One: General Policy Statement

This Bill relates to the deed of settlement signed by the Crown with Heretaunga Tamatea. Heretaunga Tamatea is 1 of 6 large natural groups negotiating the settlement of the historical Treaty of Waitangi claims of Ngāti Kahungunu.

The Bill:

- records the acknowledgements and apology given by the Crown to Heretaunga Tamatea in the Deed of Settlement dated 26 September 2015 between the Crown and the Heretaunga Tamatea (the Heretaunga Tamatea Deed); and
- gives effect to the Heretaunga Tamatea Deed in which the Crown and Heretaunga Tamatea agree to a final settlement of all historical Treaty of Waitangi claims of Heretaunga Tamatea.

Scope of settlement

Heretaunga Tamatea is a large natural group of Hawke's Bay hapū whose area of interest extends from southern Napier to Takapau in southern Hawke's Bay. Heretaunga Tamatea is 1 of 6 large natural groups negotiating the settlement of the historical Treaty of Waitangi claims of Ngāti Kahungunu, the third largest tribal group in New Zealand. Heretaunga Tamatea has a population of 15,862 (2013 Census).

Clause 13 of the Bill defines the term Heretaunga Tamatea for the purposes of the Bill.

The settlement settles all of the historical claims of Heretaunga Tamatea. 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
 - or otherwise; and
- 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 claim

On 31 October 2003, following a series of 16 hui between 16 June 2003 and 31 October 2003 (culminating in a hui-ā-iwi at Kahurānaki Marae), the overwhelming majority of Waitangi Tribunal claimants in the Tribunal's Southern Hawke's Bay Inquiry District (subsequently renamed Heretaunga Tamatea Inquiry District) resolved to work together to progress and settle their respective claims. The claimants also resolved to file a comprehensive statement of claim (encompassing the then 31 registered Waitangi Tribunal claims) in the Tribunal.

They proposed that a Taumata based on hapū (represented by marae) be established and to also include 3 other non-marae based claimant groups.

A year later, on 28 August 2004, at a hui-ā-iwi at Pukehou Marae, this structure was ratified and the decision was made to call the Taumata, He Toa Takitini (Our Strength is in Unity). In February 2005, following the election of representatives on to He Toa Takitini, its inaugural meeting was held.

During 2006 and 2007, the Heretaunga Tamatea claimants considered issues relating to the progression of their claims through the Waitangi Tribunal (followed by negotiations) or direct negotiations with the Crown.

Following a series of information hui, on 24 March 2007 at a hui-ā-iwi at Omaha Marae, the Taumata and the Heretaunga Tamatea claimants voted to proceed straight to direct negotiations with the Crown rather than progress these claims through the Waitangi Tribunal.

The historical claims of Heretaunga Tamatea are significant and cover large scale land losses during the 1850s, including a number of instances where the Crown acquired land secretly without seeking the consent of all customary owners. The Crown purchasing created tensions among hapū and fighting in which a number of people, including leading rangatira, were killed.

The Native Lands Act 1865 enabled the shares of individual grantees to be alienated without the consent of the other grantees or other right-holders not named on the title. Through the 1860s and 1870s, Heretaunga Tamatea hapū were dispossessed of further large areas of land. By 1900, approximately 1.2 million acres out of 1.4 million acres of Heretaunga Tamatea land had passed from Māori ownership, mostly through purchases carried out by the Crown. During the twentieth century, Heretaunga Tamatea hapū and whānau have suffered social, economic, and cultural marginalisation, and today more than half of their people live outside the traditional rohe.

Negotiations and ratification process

He Toa Takitini was mandated to represent Heretaunga Tamatea and was recognised by the Crown on 4 February 2011 and Terms of Negotiation were signed on 19 December 2011.

On 11 June 2015 Heretaunga Tamatea and the Crown signed the Agreement in Principle to settle all of the historical Treaty of Waitangi claims of Heretaunga Tamatea. On 9 July 2015 Heretaunga Tamatea and the Crown initialled the Heretaunga Deed. The Heretaunga Tamatea Settlement Trust, the Heretaunga Tamatea post-settlement governance entity, was ratified in January 2015 and the deed was ratified in February 2015.

The post settlement governance entity ratification process had a 34% participation rate and 94% approval. The Heretaunga Tamatea Deed process had a 41 percent participation rate and a 95% approval rate. The Deed was signed on 26 September 2015. A Deed to Amend was signed on 24 February 2017.

Summary of settlement

The Heretaunga Tamatea Deed will be the final settlement of all the historical Treaty of Waitangi claims of Heretaunga Tamatea resulting from acts or omissions by the Crown before 21 September 1992. The Bill contains provisions related to settlement redress that require legislation for their implementation. Other aspects of the settlement are provided for only in the Heretaunga Tamatea Deed because they do not require legislative authority.

The Bill contains the typical features of a Treaty settlement Bill as set out in the clause by clause analysis. A unique aspect of the Bill is that the Kaweka and Gwavas forest licensed land will transfer to the Kaweka Gwavas Forestry Company Limited. The company is held 56.66% by the Heretaunga Tamatea Settlement Trust, 33.34% of the company's shares will be held by the Crown for up to 8 years for the potential settlement of Ahuriri Hapū claims, and 10% of the company's shares will be held by the Crown for up to 8 years, for potential use in future settlements where groups establish a well-founded claim to the licensed land.

Key aspects of redress in the Heretaunga Tamatea Deed that do not appear through provisions in the Bill include—

- various commitments related to developing the relationship between Heretaunga Tamatea and the Department of Conservation, Ministry for the Environment, Ministry for Primary Industries, Ministry for Culture and Heritage, Department of Internal Affairs and Museum of New Zealand Te Papa Tongarewa and Ministry of Social Development,
- a total financial and commercial settlement package to the value of \$105,000,000, which includes –
 - \$5,000,000 being the on-account payment that was paid on 23 July 2015 to the governance entity; and
 - \$7,989,060 being the value of shares held in Kaweka Gwavas Forestry Company Limited; and
 - \$45,500,000 being the on-account payment made on 10 March 2017.

The benefits of the settlement will be available to all members of the iwi and hapū of Heretaunga Tamatea wherever they live.

Removal of courts' jurisdiction and of resumptive memorials

Heretaunga Tamatea and the Crown have agreed to the removal of the jurisdiction of the courts and the Waitangi Tribunal in respect of the Heretaunga Tamatea historical claims, the Heretaunga Tamatea deed, the settlement redress, and the Bill (but not in respect of the interpretation or implementation of the Deed or Bill).

The Waitangi Tribunal's jurisdiction to make binding recommendations in relation to the licensed land will no longer apply, with the exception of a proportion that is equal to the proportion of the share held by the Crown in the Kaweka Gwavas Forestry Company Limited.

Resumptive memorials no longer apply—

- to a deferred selection property on and from the date of its transfer under *clause 82*; or
- to the right of first refusal land; or
- for the benefit of the Heretaunga Tamatea or a representative entity.

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>Te Whanganui-A-Orotu Report 1995 -</i> https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68457298/Te%20Whanganui-a-Orotu%201995.pdf</p> <p><i>The Mohaka Ki Ahuriri Report 2004</i> https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68598011/Wai201.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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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
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

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(c) the size of the potential costs and benefits?	NO
(d) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

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(c) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(d) 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 settlement negotiations, the Office of Treaty Settlements and Heretaunga Tamatea negotiators engaged with iwi and 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.

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

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

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>Stakeholder groups (e.g. overlapping iwi, councils, affected individuals, etc) 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.</p> <p>Overlapping groups for Heretaunga Tamatea: Rangitāne o Wairarapa and Rangitāne o Tāmaki Nui ā Rua, Kahungunu ki Wairarapa Tāmaki Nui ā Rua, Mōkai Pātea Waitangi Claims Trust, Ngāti Hinemanu me Ngāti Pahi Heritage Trust, Ahuriri Hapū, Rangitāne o Manawatu.</p> <p>Councils: Hawke's Bay Regional Council, Hastings District Council.</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>The proposed provisions are tested throughout the negotiation process through consultation with key stakeholders and engagement with third parties. The deed of settlement was ratified by the Heretaunga Tamatea claimant community before the deeds of Settlement were signed.</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

<i>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?</i>	<i>NO</i>
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<i>4.8. Does this Bill create or amend any other powers to make delegated legislation?</i>	<i>NO</i>
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Any other unusual provisions or features

<i>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</i>	<i>NO</i>
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