

Departmental Disclosure Statement

Maori Commercial Aquaculture Claims Settlement Amendment 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 for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 July 2020.

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Part One: General Policy Statement

The objective of the Maori Commercial Aquaculture Claims Settlement Amendment Bill (the Bill) is to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004 (the Settlement Act) to better enable the allocation and transfer of aquaculture settlement assets to iwi.

Currently iwi in some regions are facing indefinite delays in receiving their aquaculture settlement assets from Te Ohu Kai Moana Trustee Limited (Te Ohu Kaimoana). This is due to the inability of iwi in those regions to reach agreement, in accordance with the provisions of the Settlement Act, about how regional aquaculture settlement assets should be allocated amongst them. The dispute resolution process provided in the Settlement Act has been unable to address these issues and there is a risk that similar situations will arise in future regional settlement processes. If no changes are made, settlement assets for iwi in those regions will remain held in trust by Te Ohu Kaimoana indefinitely, causing further frustration for those iwi who will be unable to realise their aquaculture aspirations and contribute to the broader aquaculture industry.

The Bill provides Te Ohu Kaimoana with a limited discretionary power to allocate and transfer aquaculture settlement assets to iwi when Te Ohu Kaimoana is satisfied that the dispute resolution process provided in the Settlement Act (which includes reference to the Māori Land Court) has been unable to resolve the issue or could not be used in the situation; and either:

it is clear that there is an inability for iwi (through their iwi aquaculture organisations and any recognised iwi organisation of a relevant iwi that does not have an iwi aquaculture organisation) in a region to reach agreement, in accordance with the provisions of the Settlement Act, about how regional aquaculture settlement assets should be allocated amongst them; or

Te Ohu Kaimoana is satisfied that it is unable to make a determination on aquaculture settlement allocation entitlements because it has not been able to recognise iwi aquaculture organisations for one or more iwi.

The Bill will:

ensure iwi can access their aquaculture settlement assets within an appropriate timeframe;

improve the delivery of the Crown's aquaculture settlement obligations;

protect the interests of iwi who do not wish to claim their aquaculture settlement assets; and

support iwi aquaculture aspirations as well as further support the growth of the aquaculture industry.

The Bill amends the sections of the Settlement Act that relate to the allocation of settlement assets.

<http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/06.htm>

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
Fisheries New Zealand Discussion Paper No: 2019/19: Proposal to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004 https://www.fisheries.govt.nz/news-and-resources/consultations/proposal-to-improve-the-allocation-and-transfer-process-provided-in-the-maori-commercial-aquaculture-claims-settlement-act-2004/	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
The Ministry for Primary Industries authored one Regulatory Impact Assessment which informed policy decision that led to the Maori Commercial Aquaculture Claims Settlement Amendment Bill. The Regulatory Impact Assessment is titled "Improving the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004". It was completed on 17 March 2020. The Regulatory Impact Assessment can be found on the Ministry for Primary Industries and Treasury websites: https://www.mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/ https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments	

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
The Regulatory Impact Assessment was reviewed by the Ministry for Primary Industries internal Regulatory Impact Assessment panel, as recommended by the Treasury. The Quality Assurance criteria were considered to have been met.	

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

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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The cost/benefit analysis for 2.5(a) can be found in Appendix One and the Regulatory Impact Assessment	

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 as there are no international obligations relating to this policy.

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?

The proposal was developed collaboratively with Te Ohu Kaimoana, as corporate trustee of the Māori Commercial Aquaculture Settlement Trust, and in consultation with iwi. The provisions in the Bill are consistent with the Treaty of Waitangi and its principles. It provides scope for both iwi and the Crown to act in good faith and partnership and provides active protection for all iwi through its flexibility.

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 Ministry for Primary Industries provided the Bill to the Ministry of Justice for vetting on 12 June 2020. No issues were raised.

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's 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)?

NO

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>The Ministry for Primary Industries undertook consultation on proposals for inclusion in the Bill:</p> <p>Fisheries New Zealand Discussion Paper No: 2019/19: Proposal to improve the allocation and transfer process provided in the Maori Commercial Aquaculture Claims Settlement Act 2004</p> <p>https://www.fisheries.govt.nz/news-and-resources/consultations/proposal-to-improve-the-allocation-and-transfer-process-provided-in-the-maori-commercial-aquaculture-claims-settlement-act-2004/</p> <p>This included seeking feedback on a discussion document and three targeted meetings. Appendix Two and the Regulatory Impact Assessment (link in section 2.3) describe the consultation undertaken.</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 Bill seeks to provide Te Ohu Kaimoana with a limited discretionary power to allocate and transfer aquaculture settlement assets to iwi.</p> <p>The Ministry for Primary industries provided an exposure draft of the Bill to Te Ohu Kaimoana on 12 June 2020. Their feedback has been incorporated and they support the Bill.</p> <p>The limited discretionary powers are similar to those in sections 135 and 136 of the Maori Fisheries Act 2004, which have been successfully utilised (by Te Ohu Kaimoana) to promote the timely transfer of fisheries settlement assets.</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

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

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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

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

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?	NO

Appendix One: Further Information Relating to Part Two

Extent of impact analysis available – question 2.5(a)

Additional costs of proposed approach, compared to taking no action

There is no monetised cost associated with the proposed approach and the non-monetised impacts are low for the affected parties.

Iwi: Iwi would not bear any financial cost as a result of the proposed approach

Te Ohu Kaimoana: Legislative change will not result in additional cost to Te Ohu Kaimoana but will mean that the costs expended will be more effective.

Ministry for Primary Industries: Resources are required to progress this one off legislative change which could be met within existing baselines.

Expected benefits of proposed approach, compared to taking no action

The estimated total monetised benefit is around \$8 million with greater future potential benefits (i.e. regional jobs) as assets are developed and grow. The non-monetised benefits are also high for affected parties.

Iwi: The immediate benefit to iwi in the Northland and Bay of Plenty regions is unlocking valuable aquaculture settlement assets worth around \$8 million. The proposal provides active protection for all iwi through its flexibility and greater equity as it ensures every iwi has equal ability to access their aquaculture settlement assets.

Te Ohu Kaimoana: The proposal provides a cost effective way for regional aquaculture settlement assets to be transferred to iwi in a timely manner.

Ministry for Primary Industries: The proposal ensures that Government can deliver on its obligations and the aquaculture strategy to deliver economic growth and jobs for the regions and achieve the goal for it to become a \$3 billion industry by 2035.

Appendix Two: Further Information Relating to Part Three

External consultation – question 3.6

Consultation on proposals to improve the allocation and transfer process of aquaculture settlement assets as provided for in the Settlement Act was conducted by the Ministry for Primary Industries / Fisheries New Zealand from 28 November 2019 to 20 February 2020 with the release of a discussion document and targeted meetings held in early December 2019.

The proposed options outlined in the discussion document and discussed at meetings were:

Option 1 (status quo) – Maintain the status quo, with no changes to legislation

Option 2 – Provide additional resources towards facilitating regional agreements

Option 3 – Amend the Settlement Act to provide Te Ohu Kaimoana with a limited discretionary power to allocate and transfer aquaculture settlement assets in circumstances where:

It has not been possible for all iwi in a region to conclude a formal agreement on allocation of the assets for a particular settlement; or

The dispute resolution process provided for in the Settlement Act (which includes reference to the Māori Land Court) has been unable to resolve the issue.

A total of seven written responses were received on the proposed options, in addition to verbal feedback provided at the targeted meetings. Three targeted meetings were held with IAOs in the Northland and Bay of Plenty regions as well as a national IAO meeting in Auckland.

Five written responses from Te Ohu Kaimoana and representative iwi organisations (Te Whakakitenga o Waikato Incorporated, Te Rūnanga o Ngāi Tahu, Ngātiwai Trust Board and Te Aupōuri Commercial Development Limited) supported amendments to the Settlement Act (Option 3).

Two written responses, from individuals, supported the option to maintain the status quo, with no changes to legislation (Option 1). The responses from individuals did not provide any detailed information or rationale for their position.

Amending the Settlement Act to provide a limited discretionary power to Te Ohu Kaimoana had wide support from iwi at the targeted meetings as they see that it will:

Ensure aquaculture settlement assets are delivered to those IAOs that wish to claim the assets it is agreed they are entitled to within an appropriate timeframe;

Protect the interests of those iwi that choose not to claim the aquaculture settlement assets they are entitled to within that timeframe; and

Assist the Crown to fulfil its settlement obligations.

This option was identified in the written responses as a practical means for resolving current and future issues and would ensure regional settlement assets are transferred to iwi in a timely manner.