

Departmental Disclosure Statement

Whakatōhea 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.

21 June 2023

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Part One: General Policy Statement

Legislation is required to give effect to some elements of the Whakatōhea Deed of Settlement which was signed between Whakatōhea and the Crown on 27 May 2023. This bill records the acknowledgements and apology made to Whakatōhea by the Crown when the deed was signed and gives effect to redress in the deed that requires legislation.

Whakatohea is an iwi with over 16,000 members. It comprises six hapū – Ngāi Tamahaua, Ngāti Ira, Ngāti Ngahere, Ngāti Patumoana, Ngāti Ruatakena and Upokorehe, and has an area of interest covering around 200,000 hectares in the eastern Bay of Plenty.

Negotiations

Whakatōhea entered direct negotiations for a comprehensive settlement in the early 1990s and initialled a DOS in 1996. At that point, iwi members raised concerns the negotiators had gone beyond their mandate and the settlement package was insufficient. The Crown terminated the 1996 DOS without a ratification vote taking place, and negotiations ended.

Between May and June 2016, Whakatohea voted to mandate the Whakatohea Pre-Settlement Claims Trust (WPCT) to represent Whakatohea in comprehensive historical Treaty of Waitangi settlement negotiations. In December 2016, the Crown recognised the WPCT's mandate. Negotiations began in January 2017 and in August 2017, the Crown and Whakatohea signed an agreement in principle.

In December 2021, the Crown and Whakatohea initialled a Deed of Settlement. The Deed was ratified by Whakatohea members in 2022 and was signed in May 2023. This bill gives effect to the Whakatōhea specific redress that requires legislation and settles the historical Treaty of Waitangi claims of Whakatōhea.

Key elements of the Whakatōhea settlement

The Whakatōhea settlement contains acknowledgement of a number of Crown breaches of te Tiriti o Waitangi / the Treaty of Waitangi and its principles including failure to act in good faith by unjustifiably invading and occupying parts of the Whakatōhea rohe; failure to return the body of Tio Te Kāhika after he had been killed and desecrated which caused great distress and offence to his whānau and Whakatōhea; failure to act in good faith in its treatment and execution of Mokomoko, a Whakatōhea rangatira, and the subsequent stigmatisation of Te Whānau a Mokomoko for generations; failure to protect Whakatōhea from becoming virtually landless due to the cumulative effect of the Crown's acts and omissions; failure to actively protect Te Reo Māori and encourage its use; and failure to actively protect Whakatōhea from widespread displacement, causing their subsequent separation from whanaunga, reo and tikanga. The settlement also includes an apology from the Crown for breaches of the Treaty and its principles and for the harm the Crown's actions caused Whakatōhea.

Whakatōhea will receive redress that includes the return of thirty-three sites of cultural significance, financial and commercial redress valued at \$100 million (\$92 million in quantum and \$8 million for cultural funds), along with a wide range of other commercial, cultural and relationship items.

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
<i>The Whakatōhea Mandate Inquiry Report, Wai 2662, 2018</i> The Whakatōhea Mandate Inquiry Report (justice.govt.nz) <i>The Priority Report on The Whakatōhea Settlement Process, Wai 1750, 2021</i> https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_179926467/NEBoP W.pdf	

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
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 Whakatōhea 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 <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/>

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 historic Treaty of Waitangi claims and removes the jurisdiction of courts, tribunals and other judicial bodies 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

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

Overlapping groups and relevant councils were informed of the key relevant provisions contained in the Bill as the settlement was negotiated and agreed. Councils were invited to comment on relevant parts of the Bill affecting them.

Overlapping groups: *Ngāi Tūhoe, Te Aitanga ā Māhaki, Ngāi Tai (Torere), Te Whānau a Apanui, Te Whānau a Kai, Ngāti Awa*

Councils: *Ōpōtiki District Council*

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
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The proposed provisions are tested throughout the negotiations process through consultation with iwi and engagement with third parties. The Deed of Settlement provisions were ratified by Whakatōhea before the Deed of Settlement was signed on 27 May 2023.

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?	NO
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