

# BILLS DIGEST

**TE ARAWA LAKES SETTLEMENT BILL 2006  
(SUPPLEMENTARY ORDER PAPERS 2006 No 56 (Government) and No 57  
(Maori Party))**

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**TE ARAWA LAKES SETTLEMENT BILL 2006**  
**(SUPPLEMENTARY ORDER PAPERS 2006 No 56 (Government) and No 57**  
**(Maori Party))**

Date of introduction:	06 April 2006
Portfolio:	Treaty of Waitangi Negotiations
Select Committee:	Maori Affairs
Date report presented:	04 August 2006
SOP No 56 released :	06 September 2006 (Hon Mark Burton)
SOP No 57 released:	06 September 2006 (Te Ururoa Flavell)

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**PURPOSE**

“This Bill ... records the acknowledgements and apology given by the Crown to Te Arawa in the deed of settlement (the deed) dated 18 December 2004 between the Crown and Te Arawa ... and ... gives effect to the deed in which the Crown and Te Arawa agree to a final settlement of all Te Arawa's historical claims relating to the 14 lakes and the remaining annuity issues”<sup>1</sup>.

*The Bill as introduced is described in [Bills Digest No 1364](#).*

**MAIN CHANGES PROPOSED**

**Supplementary Order Paper 2006 No 56 (Hon Mark Burton – Minister for Treaty Negotiations)**

**Commencement**

SOP No 56 proposes certain changes to this Bill consequent to the passing of the Protected Objects Amendment Act 2006 and further proposes that those changes would come into force on 01 November 2006 and not when the rest of this Bill comes into force on the day after the date on which the Bill receives the Royal assent. The provisions concerned would be the new definitions of “protected New Zealand objects protocol” and “protected New Zealand objects protocol area” (discussed below), and a substituted Clause 57 (relating to the effect of the “Protected New Zealand object protocol”) (*Clause 2 of the Bill*).

**Definitions amended to conform with Protected Objects Amendment Act 2006**

SOP No 56 proposes amendments to the following definitions in the Bill to conform with the Protected Objects Amendment Act 2006:

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<sup>1</sup> Te Arawa Lakes Settlement Bill, 2006 No 25-1, Explanatory Note, General policy statement, p. 1.

- definitions of “antiquities protocol” and “antiquities protocol area” would be renamed, respectively, “protected New Zealand objects protocol” and “protected New Zealand objects protocol area”;
- the definitions of “deed of settlement” and “deed” would be amended to replace the inclusion in the “deed of settlement” and “deed” of “the schedules and attachments to the deed” with the inclusion in the “deed of settlement” and “deed” of “the schedule, comprising the Relationship Schedule, Cultural Redress Schedule, Deed of Covenant, Schedule of Attached Plans” and “any attachments”;
- a new definition, that of “Relationship agreement” would be inserted in the Bill. This term would mean “ ... the agreement set out in Part 3 of the Relationship Schedule, or as amended in the manner provided for in the agreement”;
- a new definition, that of “Relationship Schedule” would be inserted in the Bill. This term would mean Schedule 1 of the deed, comprising the Rotorua Lakes Strategy Group agreement, the protocols, and the Relationship agreement (*Part 1, Subpart 2, Clause 11, replacing definitions of “antiquities protocol” and “antiquities protocol area” with “protected New Zealand objects protocol” and “protected New Zealand objects protocol area” respectively, and inserting definitions of “Relationship agreement” and “Relationship Schedule” into the Bill*).

### **Provisions applying between date Bill comes into force and 01 November 2006**

SOP No 56 proposes transitional definitions (instead of the new definitions of “protected New Zealand objects protocol” and “protected New Zealand objects protocol area”, the transitional definitions would be “antiquities protocol” and “antiquities protocol area”), and a form of Clause 57 (“effect of antiquities protocol”). These transitional provisions would apply, from the date the Bill comes into force (i.e. the day after the date on which the Bill receives the Royal assent) until 31 October 2006 (*Part 4 of the Bill, inserting New Clause 101*).

## **Supplementary Order Paper 2006 No 57 (Te Ururoa Flavell – Maori Party)**

### **Background**

In a First Reading speech in relation to this Bill<sup>2</sup>, Mr Pita Sharples, co-leader of the Maori Party explained why the Maori Party did not vote on the First reading of this Bill. Before addressing particular aspects of the Bill, Mr Sharples said, in relationship to the claims settlement process generally: “The House needs to recall that not one person has ever even suggested these settlements are anywhere near what a true and accurate response should have been. Indeed, Professor Margaret Mutu has suggested that the Tainui people had to accept .01 percent of the real value of their claim—\$170 million—while the claim was estimated at \$1,192 billion. For Ngai Tahu, the figure

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<sup>2</sup> Parliamentary debates (Hansard), Thursday 04 May 2006, [Te Arawa Lakes Settlement Bill, First reading debate, Mr Peter Sharples](#).

was 0.4 percent of the real value. More recently, redress amounts have been established, pitting iwi against iwi, hapu against hapu.

“Nowhere is this more apparent than amongst Te Arawa—and it is sad—where serious divisions have occurred between and amongst whanau, hapu, and iwi throughout the confederation. The process is a recipe for division—divide and rule and conquer. We have heard how some tribes are not mentioned in some of the three settlements, yet mentioned in others.

“We are also aware of the urgent inquiry currently before Judge Wickliffe, on behalf of Ngati Whaoa, specifically for three of the 13 lakes enshrined in this legislation and for the 14th lake, which has been omitted from this bill. How can Government go to settlement when there are still outstanding issues with regard to lakes in front of the tribunal?

“Ngati Whaoa have told us that they were never represented by the Te Arawa Maori Trust Board in the legislation of 1922 or 1955. By this process, the people of Te Arawa are being forced to face three different settlements with three different governance and management bodies with three different sets of costs. The fisheries settlement, the kaihautu agreement in principle, and the lakes settlement deed are the objects of today’s hui. With each new negotiation, the amount reduces, leaving a mere \$2.7 million in cash for financial redress, and \$7.3 million for annuity redress. Ko te patai, is that all a glittering jewel in this nation’s wealth is worth? The bill itself acknowledges this: “It is not possible to compensate Te Arawa fully for that loss”. It is in the bill.

“Te Arawa Lakes Trust is a group formed from Environment Bay of Plenty and the Rotorua District Council, with just two places reserved for mana whenua Te Arawa? Where is the rangatiratanga in that? Mana, or control, over the lakes is thereby again subject to the whims of Government constructs.

“The matter of water has not even been mentioned or addressed. Nor is there sufficient recognition of the pollution and degradation of Te Arawa’s taonga. We understand that the estimated amount required to remedy the contamination inflicted on their moana by successive local authorities and Government regimes totals over \$200 million. Where are the resources to clean up the lakes? Will the next Budget make the appropriation to restore the lakes to their positive condition? I think not”<sup>3</sup>.

## Outline

Clause 5 of the Bill is a guideline to the overall scheme and effect of this Bill.

Clause 5(3) provides that Part 1 of the Bill sets out a number of things. One of the matters that Clause 5(3) sets out (in paragraph (a)) is the following:

“[Part 1, *inter alia*] provides that the settlement of the Te Arawa lakes historical claims and the Te Arawa lakes remaining annuity issues is final, and deals with related issues, including:

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<sup>3</sup> Some of the issues raised by Mr Sharples, as they relate to the Te Arawa Lakes Settlement Bill, were addressed extensively in the report of the Maori Affairs Committee on this Bill: [Te Arawa Lakes Settlement Bill, 25-1, Report of the Maori Affairs Committee](#).

- (i) a statement of the effect of the settlement on the jurisdiction of a court, tribunal, or other judicial body to consider the Te Arawa lakes historical claims and the Te Arawa remaining annuity issues; and
- (ii) provision for consequential amendments to the Treaty of Waitangi Act 1975; and
- (iii) miscellaneous matters relating to the settlement, namely, the exclusion of the law against perpetuities and the timing of actions or matters provided for in this Act”.

SOP No 25 proposes the deletion of Clause 5(3)(c) from the Bill (*Part 1, Clause 5(3), deletion of paragraph (c)*).

### **Crown stratum included in lakebed vestings**

The Bill defines the expression “Crown stratum” as “... the space occupied by water and the space occupied by air above each Te Arawa lakebed” (*Part 1, Subpart 2, Clause 11, definition of “Crown stratum”*). The Bill also defines the expression “Te Arawa lakebed” as “... in respect of each Te Arawa lake except Lake Okaro, the stratum comprising the land defined by the legal description ... [set out in Schedule 1 of the Bill] ... including the subsoil beneath that land and plants attached to that land, but excluding ... [inter alia] ... the Crown stratum” (*Part 1, Subpart 2, Clause 11, definition of “Te Arawa lakebed”, paragraph (a)*). The Bill provides for the fee simple estate in each Te Arawa lakebed to be vested in trust in the Trustees of the Te Arawa Lakes Trust (*Part 2, Subpart 1, Clause 23(1)*) but for the Crown to retain the ownership of the Crown stratum (*Part 2, Subpart 1, Clause 23(2)*). The Bill also provides, for the avoidance of doubt, that the vesting in the Trustees of the Te Arawa Lakes Trust of the fee simple estate in the Te Arawa lakebeds does not confer on the Trustees any rights or obligations in relation to “... the water in the Te Arawa lakes” (*Part 2, Subpart 1, Clause 25(a)*) or “the aquatic life in the Te Arawa lakes, except in relation to the plants attached to the lakebeds” (*Part 2, Subpart 1, Clause 25(b)*).

SOP No 57 proposes to delete the exception of the Crown stratum from the settlement (*Part 1, Subpart 2, Clause 11, deletion of the definition of “Crown stratum” and amendment of the definition of “Te Arawa lakebed” to exclude paragraph (a) (which excludes the Crown stratum from that definition); Part 2, Subpart 1, Clause 23, deletion of subclause (2) (which provides that the Crown retains the ownership of the Crown stratum); Part 2, Subpart 1, Clause 25, removal of subclause (a) (which provides that the vesting of the Te Arawa lakebeds confers no rights or obligations on the Trustees in respect of the water in the Te Arawa lakes)*).

### **No finality of settlement and claims may be made/continued for certain lakes**

The Bill relates to the settlement of “Te Arawa lakes historical claims” and provides a very detailed definition of that expression (*Part 1, Subpart 2, Clause 13(1)*). The Bill also sets out what that expression does not include (i.e. in effect allowing for certain claims to be made and/or continued regardless of the passing of the Bill) (*Part 1, Subpart 2, Clause 13(2)*). The Bill also provides that “... the settlement of the Te Arawa lakes historical claims effected under the deed of settlement and this [Bill] is

final, and on and from the settlement date the Crown is released and discharged from all obligations and liabilities in respect of those claims” (*Part 1, Subpart 3, Clause 15*)

SOP No 57 proposes that another category of claims should be able to be made and is therefore proposing that excluded from the definition of the expression “Te Arawa lakes historical claims” should be “ ... a claim from any iwi, hapu, group, family, or whanau that relates to Lakes Ngahewa, Ngapouri (also known as Opouri), and Tutaeinanga ... ”. SOP No 57 also proposes the deletion of Clause 15 of the Bill (headed “Settlement of Te Arawa lakes claims final” and quoted above (*Part 1, Subpart 2, Clause 13(2), insertion of new paragraph (aa); Part 1, Subpart 3, deletion of Clause 15 from the Bill*)).

### **Rotorua Lakes Strategy Group: membership and binding documents**

Clause 5 gives an outline, *inter alia*, of Part 3 of the Bill. Clause 5(a) states that Part 3 provides for “ ... the establishment by the Rotorua District Council and the Bay of Plenty Regional Council of the Lakes Strategy Group [(the Group)] (of which 2 Trustees of the Te Arawa Lakes Trust are members) and for the status and purpose of the group”.

SOP No 57 proposes the amendment of Clause 5(5)(a) by removing the figure “2” from the phrase (also quoted above) “of which 2 trustees of the Te Arawa Lakes Trust are members”. This seems to imply that all Trustee will be members of the Group.

SOP No 57 also proposes that the Group may adopt strategies, programmes, and action plans and if such relates to a Rotorua lake<sup>4</sup>, or the catchment of a Rotorua lake, within the region of the Waikato Regional Council, a copy of that strategy, programme, or action plan must be provided to the chief executive of the Waikato Regional Council. SOP No 57 further provides that the provisions of any such strategy, programme, or action plan “ ... are binding on the Waikato Regional Council” (*Part 1, Subpart 1, Clause 5(5)(a), removing the figure “2”*); *Part 3, Subpart 1, inserting New Clauses 51A and 51B into the Bill*).

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<sup>4</sup> The term “Rotorua lakes” is defined for the purposes of Part 3, Subpart 1 of the Bill as: Lakes Okareka, Okaro, Okataina, Rerewhakaaitu, Rotoehu, Rotoiti, Rotokakahi, Rotoma, Rotomahana, Rotorua, Tarawera, and Tikitapu (*Part 3, Subpart 1, Clause 47, definition of “Rotorua lakes”*).