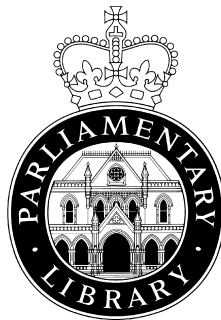


BILLS DIGEST

TE ARAWA LAKES SETTLEMENT BILL 2006

Date of Introduction: 06 April 2006

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Prepared by John McSoriley B.A.L.L.B., Barrister
Legislative Analyst
Ph. (04) 471-9626 (Ext. 9626)
Fax (04) 471-1250

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TE ARAWA LAKES SETTLEMENT BILL 2006
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Date of introduction:	06 April 2006
Portfolio:	Treaty of Waitangi Negotiations
Select Committee:	As at 04 May, 1 st reading not held

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”¹.

BACKGROUND**The settlement**

Te Arawa is a confederation of iwi and hapu whose traditional areas encompass from Maketu in the north to Mount Tongariro in the south. Te Arawa's population is approximately 40,000. In the deed² and in this Bill, Te Arawa are defined as “the collective group comprising the descendants of a Te Arawa ancestor, every individual who is a member of the listed iwi and hapu of Te Arawa, groups consisting of individuals descended from a Te Arawa ancestor or who are members of an iwi or hapu of Te Arawa” (*Part 1, Subpart 1, Clause 12, definition of “Te Arawa”*).

The settlement settles all of Te Arawa's historical claims relating to fourteen lakes and the remaining annuity issues³. The fourteen lakes are: Ngahewa, Ngapouri, Okareka, Okaro, Okataina, Rerewhakaaitu, Rotoehu, Rotoiti, Rotoma, Rotomahana, Rotorua, Tarawera, Tikitapu Tutaeinanga.

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

² The deed means the deed of settlement dated 18 December 2004 between the Crown and the Arawa Maori Trust Board and includes the deed to amend the deed of settlement dated 15 February 2006 (*Part 1, Clause 11 of the Bill, definition of “deed of settlement”*).

³ The term “annuity” is defined in the Bill as “... the annuity originating under the 1922 arrangements and paid to the Arawa Maori Trust Board under section 4(2) of the Maori Trust Boards Act 1955” (*Part 1, Subpart 2, Clause 11*).

Section 4 of the Maori Trust Boards Act 1955 established the Arawa Maori Trust Board. Section 4(2) of that Act provides that “... there shall, without further appropriation than this section, be paid out of public money to the Board on the 1st day of April in each year, the sum of \$18,000”. This figure has never been adjusted for inflation and this has been a long-standing grievance of Te Arawa.

The deed⁴

The deed fully sets out the redress to be provided to Te Arawa in settlement of all Te Arawa's historical lakes claims and the remaining annuity issues. The deed contains the following acknowledgements by Te Arawa and the Crown concerning the settlement:

- the settlement represents the result of extended negotiations conducted in good faith and in a spirit of co-operation and compromise;
- it is difficult to assess the loss and prejudice suffered by Te Arawa as a result of the matters acknowledged by the Crown in Part 8 of the deed;
- it is not possible to compensate Te Arawa fully for that loss and prejudice;
- in foregoing full compensation, Te Arawa intends to contribute to the development of New Zealand;
- taking all matters into consideration, the settlement is fair in the circumstances⁵.

Acknowledgements and apology by the Crown

“The deed and the Bill include acknowledgements by the Crown of the grievances of Te Arawa in relation to the Te Arawa lakes and the annuity. The deed and the Bill also set out the formal apology in which the Crown expresses its profound regret to Te Arawa, their ancestors, and their descendants for the breaches of te Tiriti o Waitangi (the Treaty of Waitangi) by the Crown”⁶.

Cultural redress for which legislative authority is given by or under the Bill

“The fee simple title to each of 13 lakebeds is vested in trust in the Trustees by the Bill. The bed of Lake Okaro, the 14th lake, is presently vested in the Rotorua District Council. Title to that lakebed is not vested in the Trustees under this Bill.

“The vesting provides for Te Arawa's beneficial ownership of the lakebeds and subsoil (including plants attached to the lakebeds). In each case, title specifically excludes the water column (the space occupied by the water) and the airspace (together called the Crown stratum). Existing structures on the lakebeds are excluded from the vesting. The rights relating to public navigation, recreational activities, existing commercial activities, and public utilities are provided for in the Bill.

“The Bill makes provision to establish the Rotorua Lakes Strategy Group, replacing the body currently known as the Rotorua Lakes Strategy Joint Committee. The Rotorua Lakes Strategy Group (the Group) will become a joint committee under the Local Government Act 2002. The legislation will provide for the Group's

⁴ Ministry of Justice, Office of Treaty Settlements, Summaries of Settlements Te Arawa Lakes Summary of the Te Arawa Lakes Deed of Settlement, signed 18 December 2004 (accessed 05 May 2006 <http://nz01.terabyte.co.nz/ots/LiveArticle.asp?ArtID=1422502571> <http://nz01.terabyte.co.nz/ots/DocumentLibrary/TeArawaLakesSettlementSummary.pdf>

⁵ Te Arawa Lakes Settlement Bill, 2006 No 25-1, Explanatory note, General policy statement, p. 4.

⁶ Ibid., p. 5.

permanence, membership of the Group for Trustees, through two representatives; and the purpose of the Group, which is to contribute to promoting the sustainable management of twelve named Rotorua Lakes and their catchments for the use and enjoyment of present and future generations, while recognising and providing for the traditional relationship of Te Arawa with their ancestral lakes.

“The Minister of Conservation, the Minister of Fisheries, the Minister for Arts, Culture and Heritage, and the Minister for the Environment are empowered to issue protocols that must set out how the relevant department or ministry will interact with the Trustees on the matters specified in a protocol. The form of each protocol is included in the deed.

“The Bill sets out the Crown’s acknowledgement of the statement by Te Arawa of its cultural, spiritual, historical, and traditional association with the Crown stratum above each of the 13 lakes vested in the Trustees. Te Arawa’s statement of association is recorded in a schedule to the deed, incorporated by reference into the Bill. Under the statutory acknowledgement, consent authorities, the Environment Court, and the Historic Places Trust will be required to have regard to the statutory acknowledgement, while consent authorities will also have to forward summaries of resource consent applications to the Trustees.

“The Bill makes provision for the official amendment of various place names associated with the Te Arawa lakes. The Bill includes provisions under which the Minister of Fisheries must recommend to the Governor-General the making of regulations to provide for the Trustees to manage the non-commercial taking of certain indigenous species in the lakes”⁷.

Redress set out only in deed

“The deed also includes redress for which legislative authority is not required. These items of redress provide:

- “for financial redress with a total value of \$2.7 million in cash;
- for annuity redress of \$7.3 million to capitalise the annuity Te Arawa receives from the Crown and to address the remaining annuity issues;
- “for the Crown to write to the Rotorua District Council to encourage it to discuss with Te Arawa appropriate arrangements for Lake Okaro, which is currently vested in the Rotorua District Council;
- “for Te Arawa and the Crown to enter into a relationship agreement that will outline the respective rights of both the owner of the lakebeds and the owner of the Crown stratum, and that will describe how they will consider applications to erect new structures, modify existing structures, or undertake any activity that traverses a lakebed and the Crown stratum, or just the Crown stratum, and by law requires the consent of an owner;

⁷ Te Arawa Lakes Settlement Bill, 2006 No 25-1, Explanatory note, General policy statement, pp. 5 and 6.

- “an acknowledgement that the Minister in charge of Treaty of Waitangi Negotiations, the Minister for the Environment, and the Minister of Local Government have, in consultation with Te Arawa, written to the Waikato Regional Council and the Bay of Plenty Regional Council, encouraging them to allow cultural harvest of indigenous plants and paru (pigmented mud) through their regional plans;
- “an acknowledgement that the Minister of Conservation has written to the Bay of Plenty Conservation Board, promoting a relationship between the Trustees and that board;
- “an acknowledgement that the Minister of Conservation has written to Eastern Region Fish and Game New Zealand, promoting a relationship between that entity and the Trustees;
- “an acknowledgement that the Minister for Crown Research Institutes has written to the National Institute of Water and Atmospheric Research, promoting a relationship between the Trustees and the Institute;
- “an acknowledgement that the Minister of Transport has written to Transit New Zealand, promoting a relationship between the Trustees and the board of Transit New Zealand; and
- “for a capitalised sum of \$400,000 to be paid to the Trustees to capitalise the ongoing annual cost of purchasing 200 fishing licences from Eastern Region Fish and Game New Zealand”⁸.

Removal of jurisdiction of courts and Waitangi Tribunal

The parties agreed to the removal of the jurisdiction of the Courts and the Waitangi Tribunal in respect of Te Arawa’s historical claims and remaining annuity issues, the deed, the settlement redress, or this Bill (but not in respect of the interpretation or implementation of the deed or the Bill which remains subject to the Courts)⁹.

MAIN PROVISIONS

The following is based on the Explanatory note of the Bill.

Preamble and commencement

The Preamble sets out an historical account taken from the deed and provides background to the which comes into force on the day after the date on which it receives the Royal assent (*Preamble and Clause 2*).

Acknowledgements, apology, and interpretation

The Bill records the acknowledgements and apology given by the Crown to Te Arawa in Maori and English, as set out in the deed. The Bill records the intention of

⁸ Te Arawa Lakes Settlement Bill, 2006 No 25-1, Explanatory note, General policy statement, pp. 6 and 7.

⁹ Te Arawa Lakes Settlement Bill, 2006 No 25-1, Explanatory note, General policy statement, pp. 7 and 8.

Parliament that the provisions of the Bill are to be interpreted in a manner that best furthers the agreements expressed in the deed and defines various terms used in the Bill (*Part 1, Subpart 1, Clauses 6 – 9; Part 1, Subpart 2, Clauses 11 – 14*).

Settlement of claims

The Bill provides for the finality of the settlement of the Te Arawa lakes historical claims. As is usual in claims settlement legislation, the Bill provides that no Court, Tribunal, or other judicial body may inquire into any of those claims, the validity of the deed, the adequacy of the redress provided under the deed or the Bill, or the Bill itself. The Bill also amends the Treaty of Waitangi Act 1975 to exclude the jurisdiction of the Waitangi Tribunal to consider claims covered by the deed or the Bill. However, Courts, Tribunals (including the Waitangi Tribunal), and other judicial bodies retain jurisdiction in respect of the interpretation or implementation of the deed or the Bill (*Part 1, Subpart 3, Clauses 15 and 16 (amending Section 6 of the Treaty of Waitangi Act 1975)*).

Perpetuities

As is standard in claims settlement legislation, the Bill provides an exemption from the rule against perpetuities and any relevant provisions of the Perpetuities Act 1964. The exemption applies to the Trustees and their ability to hold or deal with Trust property, and in respect of documents entered into by the Trustees to give effect to certain provisions of the deed. It also clarifies that if the Trust is or becomes a charitable trust, any application of the rule against perpetuities and the provisions of the Perpetuities Act 1964 must be determined in accordance with the general law (*Part 1, Subpart 4, Clause 17*).

Vestings, boundaries, registration and inalienability

The Bill vests in trust the fee simple estate in each Te Arawa lakebed in the Trustees, subject to the scheduled encumbrances and the clauses that protect existing interests. The Crown's ownership of the Crown stratum is confirmed. The Bill provides for the registration of the fee simple estate in the Te Arawa lakebeds in the names of the Trustees as at the settlement date.

The Bill sets out the rules relevant to the determination of the boundaries of the Te Arawa lakebeds, including the application of the common law rules of accretion, erosion, and avulsion. The Bill provides that the freehold estate in the lakebeds is inalienable and must not be made subject to a mortgage or other charge, but lesser interests (such as leases) may be granted (*Part 2, Subpart 1, Clause 23; Part 2, Subpart 1, Clauses 24, 29 and 30*).

Navigation and recreational activities

The Bill confirms the application of right of navigation in, on, or over the Te Arawa lakebeds and defines the scope of recreational activities and provides for the conditions under which these activities may take place in or on, or otherwise affect, the Te Arawa lakebeds or the Crown stratum (*Part 1, Subpart 2, Clauses 31 and 32*).

Existing structures

The Bill provides for existing structures to remain in or on the Te Arawa lakebeds and to continue to be used, occupied, accessed, repaired, or otherwise dealt with. They also set out the conditions that apply, and provide that the Trustees, as the owners of

the lakebeds, are not liable for existing structures (*Part 2, Subpart 2, Clauses 33 – 35*).

Existing commercial activities

The Bill defines the scope of existing commercial activities as activities that, immediately before the date of settlement, are or may have been capable of being conducted lawfully in or on, or so as to affect, the relevant Te Arawa lakebed. The conditions under which these activities may take place are set out. Also provided for are certain kinds of activities, as described in the Cultural Redress Schedule of the deed, to be treated as if they were a commercial activity, whether or not the activity is conducted for a commercial purpose or any pecuniary gain results from carrying out the activity (*Part 2, Subpart 2, Clause 36*).

Public utilities

The Bill defines a public utility and public utility authority in terms of categories of statutory functions. The definition of public utility also expressly includes the structures and activities of the Department of Conservation, the Institute of Geological and Nuclear Sciences Limited, and the National Institute of Water and Atmospheric Research Limited.

The Bill also provides for the rights applying to public utilities in relation to the Te Arawa lakebeds. They set out the conditions that apply if a public utility is not authorised by legislation and those that apply if it is so authorised. The provisions clarify that if a public utility is also an existing structure or a specified existing commercial activity, the provisions of the Bill relevant to those matters apply, rather than the provisions for public utilities.

The common law right of navigation and the right to undertake recreational activities provided for by the Bill do not apply to a public utility. The provisions relating to existing commercial activities (Clause 36(3) - described above) do not apply to an existing commercial activity that is also a public utility, unless the existing commercial activity is of a kind specified in the Cultural Redress Schedule of the deed (which excludes activities of the Department of Conservation, the Institute of Geological and Nuclear Sciences Limited, and the National Institute of Water and Atmospheric Research Limited) (*Part 2, Subpart 2, Clause 37 – 40*)

New commercial activities and new structures

The Bill provides that, after the settlement date, no new commercial activity may be undertaken or structure erected or modified in or on a Te Arawa lakebed without the written consent of the Trustees as the owners of the lakebeds. The Trustees may impose conditions on the grant of their consent (*Part 2, Subpart 2, Clause 41*).

Limits as to effect of Part 2 of the Bill

The Bill provides that activities authorised in relation to the Te Arawa lakebeds by an enactment or rule of law are not affected by the arrangements provided for in Part 2 of the Bill (and described above), and that the consent of the Trustees for structures or activities in, on, or that affect the lakebeds is not required except as expressly provided for in the Bill. They also provide that the consent of occupiers (as defined) is not required for such activities or structures (*Part 2, Subpart 2, Clauses 42 – 43*).

Status of lakebeds under Local Government (Rating) Act 2002

The Bill clarifies the status of the Te Arawa lakebeds as non-rateable for the purposes of the Local Government (Rating) Act 2002, and the circumstances when that exemption does not apply. The Crown is liable for rates payable for certain existing structures and activities. The conditions that apply in respect of rates payable for new public utilities are also included (*Part 1, Subpart 2, Clauses 44 – 46*).

Rotorua Lakes Strategy Group

The Bill provides for the establishment of the Rotorua Lakes Strategy Group (the Group), its purpose, membership, and jurisdiction, and for its status under the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987. The Rotorua District Council and the Bay of Plenty Regional Council are required to establish the Group.

It also provides that the Group, despite the membership of persons appointed by the Trustees, is a permanent joint committee under the Local Government Act 2002. It is stated that the purpose of the Group is to contribute to promoting the sustainable management of the specified Rotorua lakes and catchments, for the use and enjoyment of present and future generations, and to recognise and provide for the traditional relationship of Te Arawa with their ancestral lakes (*Part 3, Subpart 1, (Clauses 47 - 51)*).

Protocols

The Bill contains provisions for the issue of protocols by the Minister of Conservation, the Minister of Fisheries, the Minister for Arts, Culture and Heritage, and the Minister for the Environment. The form for each of the protocols is provided in the deed. Each protocol sets out how the relevant agency will interact with the Trustees in relation to the matters specified in the protocol. The Bill provides that the protocols are subject to the Crown's obligations under law and government policy and it sets out the limits to the rights that arise under the protocols (*Part 3, Subpart 2 (Clauses 52 - 58)*).

Statutory acknowledgement

The Bill provides for the Crown's acknowledgement of the statement made by Te Arawa of its particular association with the statutory area, defined as the Crown stratum, and related definitions. The subpart sets out the purposes of the statutory acknowledgement and the limits that apply in relation to it. It also provides that the Crown is not precluded from providing a statutory acknowledgement to persons other than Te Arawa in relation to the statutory area. The text of the statement of association is set out in the deed (*Part 3, Subpart 3, Clauses 59 to 69*).

Place names

The Bill provides for the names of specified places to be changed, for certain new place names to be assigned, and for some traditional names to be restored. The changes have the same effect as if they had been made under the New Zealand Geographic Board Act 1946 (*Part 3, Subpart 4, Clause 71*).

Fisheries redress

The Bill makes provision for the management of certain indigenous species (included species) in the Te Arawa fisheries area for the purpose of non-commercial food

gathering. It stipulates that commercial fishing is not permitted in that area (*Part 3, Subpart 5, Clauses 72 - 79*).

Regulations

The bill empowers a regulatory scheme to enable the Trustees to undertake specified management functions, including:

- making certain appointments relevant to the management of the specified fisheries;
- making bylaws, including bylaws to prohibit or restrict fishing as necessary for the sustainable utilisation of included species (*Part 3, Subpart 5, Clause 74*).

Commercial fishing

The Bill specifies the process to be followed if a recommendation is made by the Trustees that commercial fishing be permitted for any included species in the Te Arawa fisheries area (*Part 5, Subpart 5, Clause 75*).