



**Office of Treaty Settlements**

Te Tari Whakatau Take e pā ana  
ki te Tiriti o Waitangi

PART OF THE MINISTRY OF JUSTICE

# Vote Treaty Negotiations

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2017 Briefing for the Incoming Minister



MINISTRY OF  
**JUSTICE**  
*Tabu o te Iure*

New Zealand Government

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# The role of the Minister for Treaty of Waitangi Negotiations

As the Minister for Treaty of Waitangi Negotiations you are responsible for Vote Treaty Negotiations and oversee the work of the Office of Treaty Settlements. The Office of Treaty Settlements is a unit within the Ministry of Justice tasked with negotiating the settlement of historical Treaty of Waitangi claims (Treaty claims) and administering applications under the Marine and Coastal Area (Takutai Moana) Act 2011.

## Treaty settlements

Settling Treaty claims resolves the historical grievances of Māori under the Treaty of Waitangi. Historical claims allege that certain Crown actions or omissions before 21 September 1992 breached the Treaty of Waitangi. Māori who have historical claims registered with the Waitangi Tribunal can choose to have their claims heard by the Tribunal before entering negotiations or seek direct negotiations with the Crown without a Tribunal inquiry in to their claims. The Crown strongly prefers to negotiate settlements with large natural groups (usually iwi).

Direct negotiations fall under the responsibility of the Minister for Treaty of Waitangi Negotiations. The Waitangi Tribunal, as an independent commission of inquiry, falls under the responsibility of the Minister of Justice.

## The importance of Treaty settlements

Settlements play an essential role in resolving historical injustices under the Treaty of Waitangi. The goal is to achieve fair and durable settlements to enable Māori and other New Zealanders to move forward.

Settlements acknowledge historical acts or omissions by the Crown that may have resulted in the erosion of traditional tribal structures and practices, loss of tribal lands accompanied by loss of access to forests, waterways, food resources, wāhi tapu and other taonga.

Settlements also help to reset relationships between the Crown and Māori which have been strained by many years of grievance and often the exclusion of Māori from meaningful engagement on issues of deep significance to them. The negotiating table often presents the first opportunity for iwi to connect with Ministers and agencies across a spectrum of issues. The positive connections then established through the negotiations between iwi and various levels of government present significant opportunities for rebuilding relationships and jointly define aspirations for the future.

Settlements are transformative. They contribute to the cultural, social and economic development of Māori and, by extension, the development of communities and regions. They strengthen the capital of iwi alongside existing Māori commerce and assets built up outside of settlements.<sup>1</sup>

The Treaty settlement process has been reviewed and refined several times (spanning different administrations) since its inception in the early 1990s.

While not all elements of the Treaty settlement process are universally supported, settlements have been signed with 61% of all expected groups and have traditionally enjoyed broad cross-party support. Treaty settlements have also gained greater public understanding and support over the last two decades.

While the framework is consistently applied there is sufficient flexibility for innovative approaches to meet the aspirations of negotiating groups. The key stages in Treaty settlement negotiations are set out below.

### **Key stages in Treaty settlement negotiations**

**Deed of mandate** - The Crown recognises the mandate of an entity endorsed by the claimant community to represent that claimant community in negotiations with the Crown.

**Terms of negotiation** - Outline the “ground rules” and objectives for the negotiations.

**Agreement in principle** - A non-binding agreement between the Crown and mandated body which outlines, at a high-level, all redress proposed to settle the claims. Technical and drafting details are agreed during the deed of settlement and legislation stages.

**Initialling a deed of settlement** - An initialled deed of settlement sets out in technical detail the historical claims and the redress agreed between the Crown and mandated body. For the purposes of the Crown’s internal accountancy this is the point at which the value of the settlement is counted against the multi-year appropriation.

**Ratification** - During ratification, the claimant community has the opportunity to vote on the final Crown offer as set out in the initialled deed of settlement. At this stage the claimant community often also votes on the proposed post-settlement governance entity to receive, hold and manage settlement redress on their behalf.

**Signing a deed of settlement** - The mandated body, the post settlement governance entity and the Crown sign the final Deed of Settlement when you and the Minister for Māori Development are satisfied that the claimant community has accepted, by ratifying, the deed of settlement as concluding all their historical claims. The deed of settlement is given effect through legislation.

**Legislation** - The Crown (Parliamentary Counsel Office) drafts a Treaty Claims Settlement Bill for introduction to Parliament. This legislation is agreed to by the negotiating group and gives effect to the ratified deed of settlement. It also authorises settlement redress, as relevant, to transfer to the ratified post-settlement governance entity.

*See Appendix A for information on key decision points for the Crown and claimant groups*

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<sup>1</sup> In December 2016 TDB Advisory released a report estimating the value of post-settlement governance entity assets at \$6 billion and Chapman Tripp estimates the Māori economy to be worth approximately \$50 billion

<https://www.chapmantripp.com/Publication%20PDFs/2017%20Chapman%20Tripp%20Te%20Ao%20Maori%20-%20trends%20and%20insights%20E-VERSION.pdf> [page 2]

## Decision making

As the Minister for Treaty of Waitangi Negotiations you make decisions at every stage of negotiations, from mandate recognition through to the passage of settlement legislation.

Some decisions are jointly made with other Ministers. For example, you and the Minister for Māori Development have delegated authority to formally recognise the mandates of groups and the results of settlement ratification processes. Also, you have joint delegation with the Minister of Finance for some financial and commercial aspects of Treaty settlements such as approving on-account payments (from financial redress) before the formal transfer of settlement assets.

It is normal for Cabinet to authorise you to enter into agreements in principle and deeds of settlement with mandated entities on behalf of the Crown. Further, Cabinet has delegated authority to you and the Minister of Finance to make financial offers up to a certain level. In most cases, however, Cabinet approval will be needed for a final redress package to be agreed.

You are responsible for the introduction of Treaty settlement legislation to the House and the passage of this legislation.

## Leadership

You will engage with a variety of stakeholders including Cabinet colleagues, Ministers responsible for other Treaty sector agencies and Māori and community leaders.

You will be required to act as a spokesperson for Treaty settlements on behalf of the Government. You might also, in conjunction with other Ministers, act as a spokesperson on Treaty of Waitangi issues or other aspects of the Crown-Māori relationship.

Treaty settlements, and the redress negotiated through them, impact on the portfolios of a range of Ministers. The extent to which individual Ministers engage with negotiations varies depending on the negotiation. Some Ministers will be required to approve items of redress in almost every settlement. For example, most settlements provide for the transfer of land currently held by the Department of Conservation. Other departments will be involved less often on specific negotiations or redress issues.

## Rangatira to Rangatira

Most negotiations, under current arrangements, are led on your behalf by Chief Crown Negotiators or Lead Negotiators who were appointed by the previous Minister.

There will be situations, however, where you (and sometimes other Ministers) will be called upon to lead negotiations. In these situations, 'Rangatira to Rangatira' conversations with iwi leaders have historically proven helpful. The Office of Treaty Settlements will support you in these conversations.

# Marine and Coastal Area (Takutai Moana) Act 2011

The Prime Minister, under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act), decides which Minister has primary responsibility for administering the Act. This briefing is drafted on the basis that this delegation will continue.

The Act was enacted to protect the interests of all New Zealanders in the common marine and coastal area. The Act recognises the mana tuku iho exercised in this area by iwi, hapū and whānau as tangata whenua and provides for the legal expression of customary interests in the common marine and coastal area as exercised before, and since, 1840. There are two pathways for recognition:

1. by engagement with the Crown to seek a Ministerial determination (Crown engagement pathway); or
2. by application to the High Court (High Court pathway).

The deadline for making applications for both pathways under the Act was 3 April 2017. There were approximately 380 applications for direct engagement with the Crown and 200 applications to the High Court, with considerable overlap between the two. Together, the applications cover the entire coastline of New Zealand.

The delegated Minister will make determinations under the Act in relation to applications for customary marine title or protected customary rights by groups that have sought direct engagement with the Crown. This differs significantly from the role you will play in Treaty settlement negotiations in that the Crown engagement pathway is a process of assessing evidence against statutory tests.

The Office of Treaty Settlements provides advice to assist in Ministerial determinations. It also instructs the Crown Law Office in relation to High Court applications.

Ministerial decisions are required at two points in the Crown Engagement pathway:

1. whether to engage with the applicant; and
2. determination of whether the tests in the Act have been met.

The delegated Minister and the Minister for Māori Development are jointly responsible for recognising the mandate given by an iwi, hapū or whānau to an applicant, to act on their behalf for recognition of customary rights under the Act.

The Minister of Conservation, the Minister of Justice and the Minister for Land Information have some responsibilities under the Act. For example, the Minister of Justice is responsible for regulations and the Minister for Land Information New Zealand has responsibility for issuing title to reclaimed land.

In 2008 the Crown entered an agreement with Ngāti Porou under the Foreshore and Seabed Act 2004. A bill giving effect to an amended agreement is ready for introduction.

In May 2017 the previous Minister made a Ministerial determination that Ngāti Pāhauwera had met the tests of the Act. A recognition agreement is yet to be signed.

# Introducing the Office of Treaty Settlements

The Office of Treaty Settlements is a discrete business unit within the Ministry of Justice and is the agency responsible for leading the negotiation of fair, comprehensive, final and durable settlements of historical Treaty claims with Māori. In the remainder of this briefing groups in negotiation with the Crown (or who have yet to negotiate) will be referred to as “claimant groups”; they are usually (but not always) iwi.

The Office of Treaty Settlements (approximately 140 staff) is led by the Director. The Director is supported by the leadership team. The contact details of the leadership team are set out at Appendix B.

The Director reports directly to you rather than through the Secretary of Justice.

The Office of Treaty Settlements will seek early engagement with you about your preferred operating style. Typically previous Ministers have met with the Office of Treaty Settlements’ leadership team weekly to receive updates on progress and discuss important issues relating to Treaty settlement negotiations and the Marine and Coastal Area (Takutai Moana) Act 2011. The Minister often meets with the Director to touch base on various settlement negotiation issues, Crown-Māori issues or discuss overarching strategy.

## Chief Crown Negotiators

In leading negotiations on your behalf Chief Crown negotiators are responsible for establishing strong relationships with iwi negotiators and Māori leaders, setting negotiations strategies and closing negotiations. They are accountable to you.

These negotiators are contracted by the Director of the Office of Treaty Settlements and work closely with Office of Treaty Settlements staff.

## The Treaty settlement sector

### **A whole of Crown approach – close collaboration with other departments**

The advice and cooperation of Treaty sector agencies on aspects of settlements relating to their areas of responsibility and expertise is vital to the Crown’s ability to negotiate settlements.

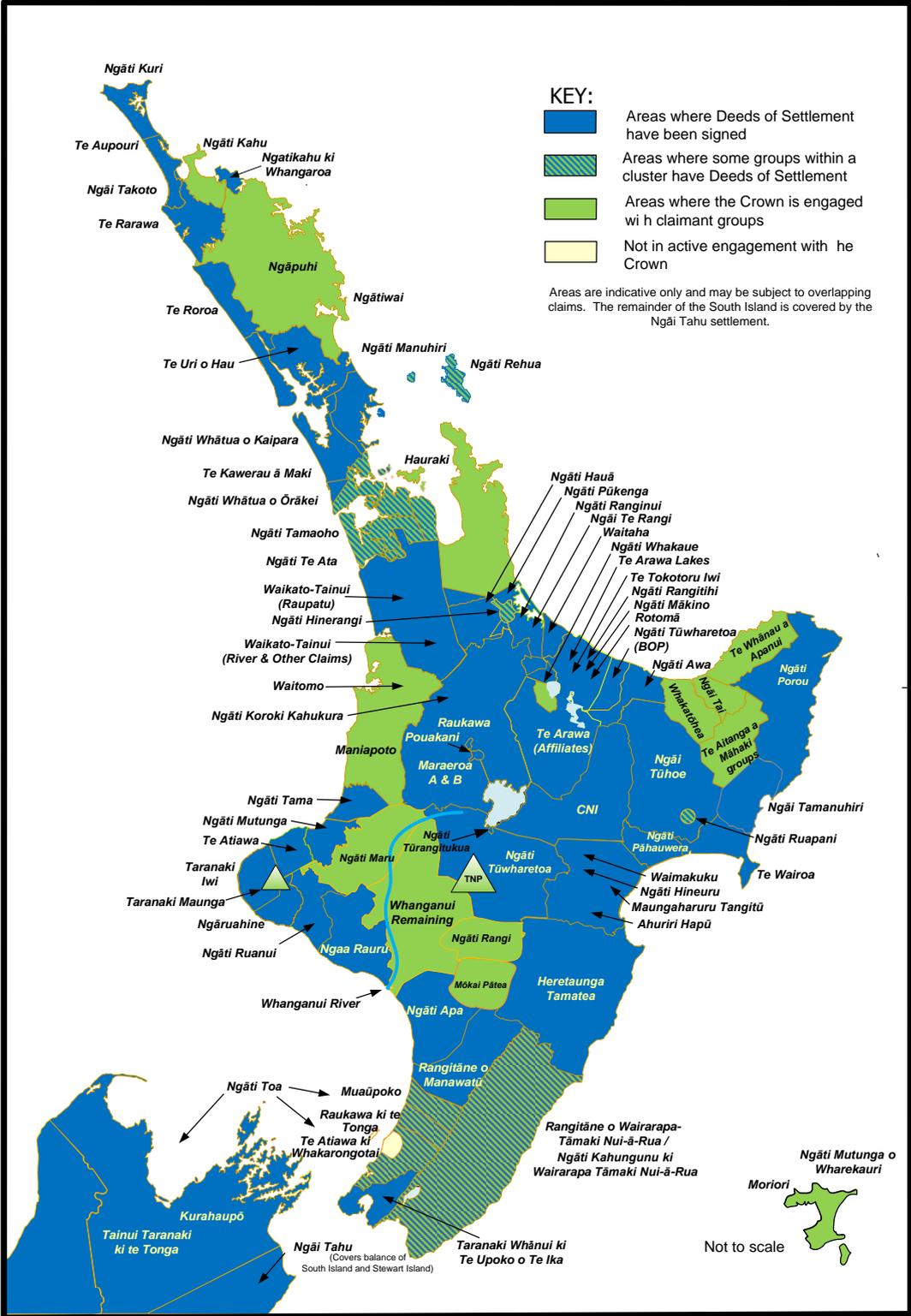
An overview of the roles of individual departments is set out at Appendix C.

## **Association with Post Settlement Commitments Unit**

The Post-Settlement Commitments Unit, within the Policy Group of the Ministry of Justice, works with other government agencies, local government and post-settlement governance entities to safeguard the durability of Treaty settlements. It also considers Crown-iwi relationships within the context of the wider Crown-Māori relationship.

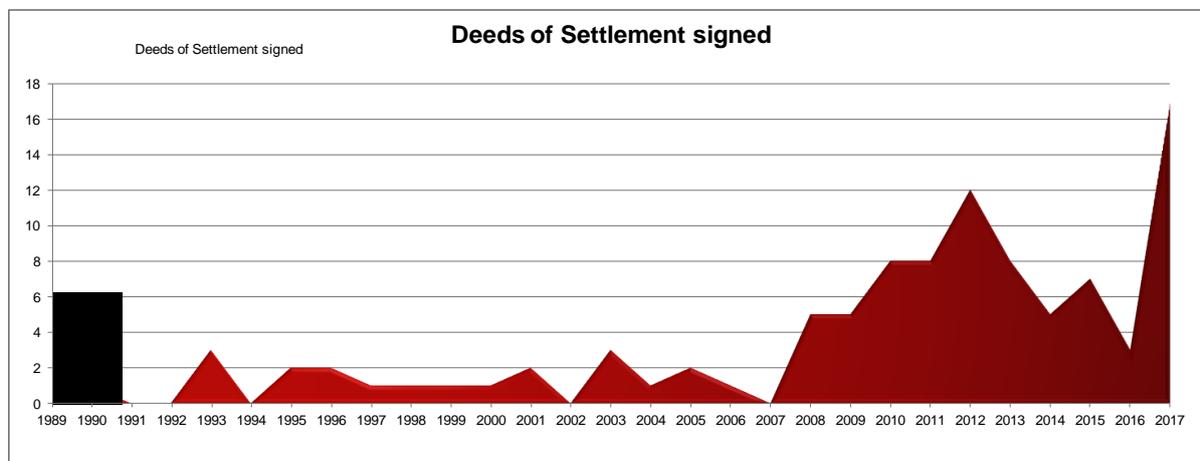
The Office of Treaty Settlements and the Post-Settlement Commitments Unit work closely together, particularly in responding to proposals from other Ministers which could impact on Treaty settlements or the Crown-Māori relationship more generally.

# Progress and current status of work



## Treaty settlements

As at October 2017, 85 deeds of settlement have been signed by the Crown and claimant groups (or around 61% of all expected settlements).



The Crown is yet to reach deeds of settlement with approximately 53 anticipated claimant groups. The Crown is actively engaged in negotiations with 47 of these groups and some are close to settlement.

Since October 2016 the Office of Treaty Settlements has been implementing a strategy which aims to provide the best opportunity to complete historical Treaty of Waitangi settlements with all willing and able groups in 2020.

In Budget 2017 the Office of Treaty Settlements received an additional \$12.2m over two years to resource the strategy. In addition \$0.8m was provided to enable other government agencies to resource the expanded work programme. Under the strategy the momentum of Treaty settlement negotiations increased significantly.

If the same momentum is maintained deeds of settlement with all willing and able groups will be achievable in 2020. Most groups currently in negotiations, or about to be, have indicated a desire for this momentum to continue. Decisions on the next phase of the strategy will be sought soon.

The strategy has been effective because it had clear and unambiguous goals, allowed for flexibility and had wide ranging support. The strategy created belief within the Office of Treaty Settlements, other government agencies and Māori that the achievement of milestones within condensed timeframes was possible and did not affect the quality of the negotiated outcomes; in fact in some cases tight timeframes enhanced both the relationship and the redress.

## Relativity Mechanism

A relativity clause (or Relativity Mechanism) is contained in both the 1995 Waikato-Tainui (Raupatu) and the 1997 Ngāi Tahu settlements.

The Relativity Mechanisms provide that, where the total redress amount for all historical Treaty settlements exceeds \$1 billion in 1994 present-value terms, the Crown is obligated to make payments to maintain the real values of the Waikato-Tainui and Ngāi Tahu settlements as a proportion of all Treaty settlements. The agreed relativity proportions are 17% for Waikato-Tainui and 16% for Ngāi Tahu. All payments arising from the Relativity Mechanism clauses are part of the final settlements for both Waikato-Tainui and Ngāi Tahu.

The Relativity Mechanisms were triggered in 2012. Both iwi are entitled to make claims for further relativity payments on a five yearly-basis until 2040.

## Business items for reinstatement

Except where no legal enactment is required, all deeds of settlement require legislation to be passed through Parliament. 60 settlements have been enacted through the legislative process, with 8 further bills currently on the Order Paper (or agenda) of the House of Representatives.

The Office of Treaty Settlements is responsible for 10 business items that lapsed on the dissolution of Parliament. These are:

- Iwi and Hapū of Te Rohe Te Wairoa Claims Settlement Bill;
- Ngāti Tamaoho Claims Settlement Bill;
- Heretaunga Tamatea Claims Settlement Bill;
- Ngāti Tūwharetoa Claims Settlement Bill;
- Ngāi Tai ki Tāmaki Claims Settlement Bill;
- Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Bill;
- Ngāi Te Rangi and Ngā Pōtiki Claims Settlement Bill;
- Tauranga Moana Iwi Collective Redress and Ngā Hapū o Ngāti Ranginui Claims Settlement Bill (omnibus);
- Te Pire Haeata ki Parihaka / Parihaka Reconciliation Bill; and
- Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill.

# Appropriations

## Vote Treaty Negotiations

2017/18 Annual and Permanent Appropriations	Budget \$000
Non-Departmental Other Expenses	16,552
Multi-Category Expenses and Capital Expenditure	33,476
<b>Total Annual and Permanent Appropriations</b>	<b>50,028</b>

Multi-Year Appropriations	\$000
<b>Historical Treaty of Waitangi Settlements 2016 - 2020 (M74)</b>	Original Appropriation 1,400,000
Commences: 30 June 2016 Expires: 30 June 2020	Estimated Actual for 2016/17 379,146
<b>Historical Treaty of Waitangi Settlements 2017 - 2021 (M74)</b>	Original Appropriation 1,400,000
Commences: 30 June 2017 Expires: 30 June 2021	Estimated Actual for 2016/17 -

Total 2017/18 Annual and Permanent Appropriations and Multi-Year Appropriation Forecasts	Budget \$000
Total Annual and Permanent Appropriations	50,028
Total MYA Non-Departmental Other Expenses Forecasts	350,000
<b>Total Annual and Permanent Appropriations and Multi-Year Appropriation Forecasts</b>	<b>400,028</b>

## Appendix A – Key decision points for the Crown and claimant groups

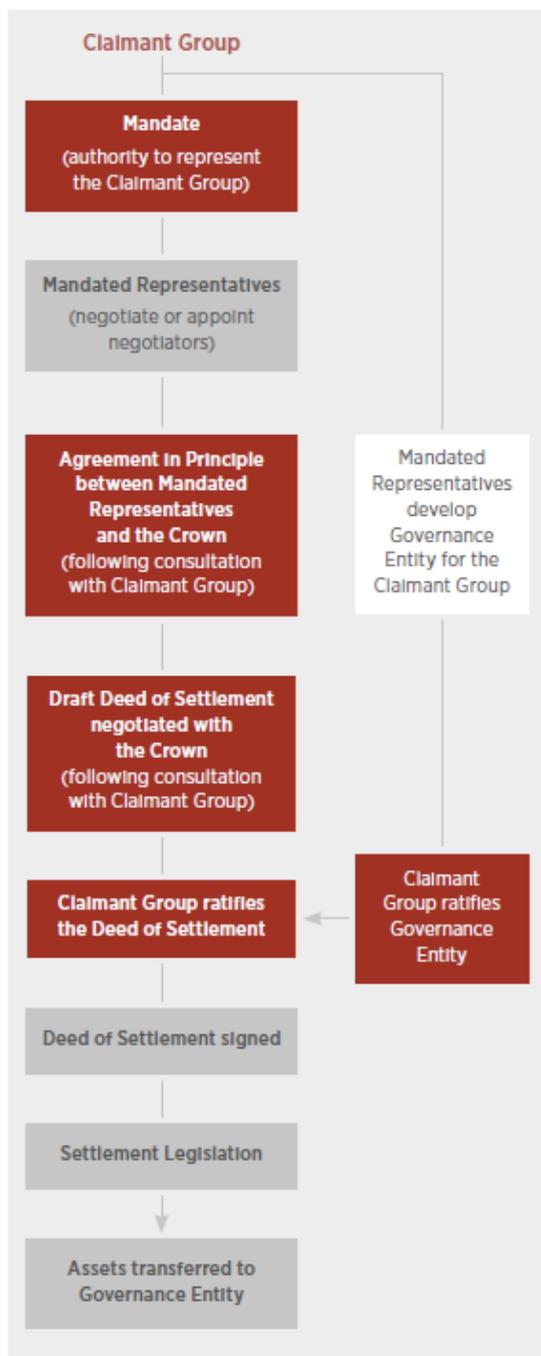


Figure 2.2: Key decision points for claimant groups

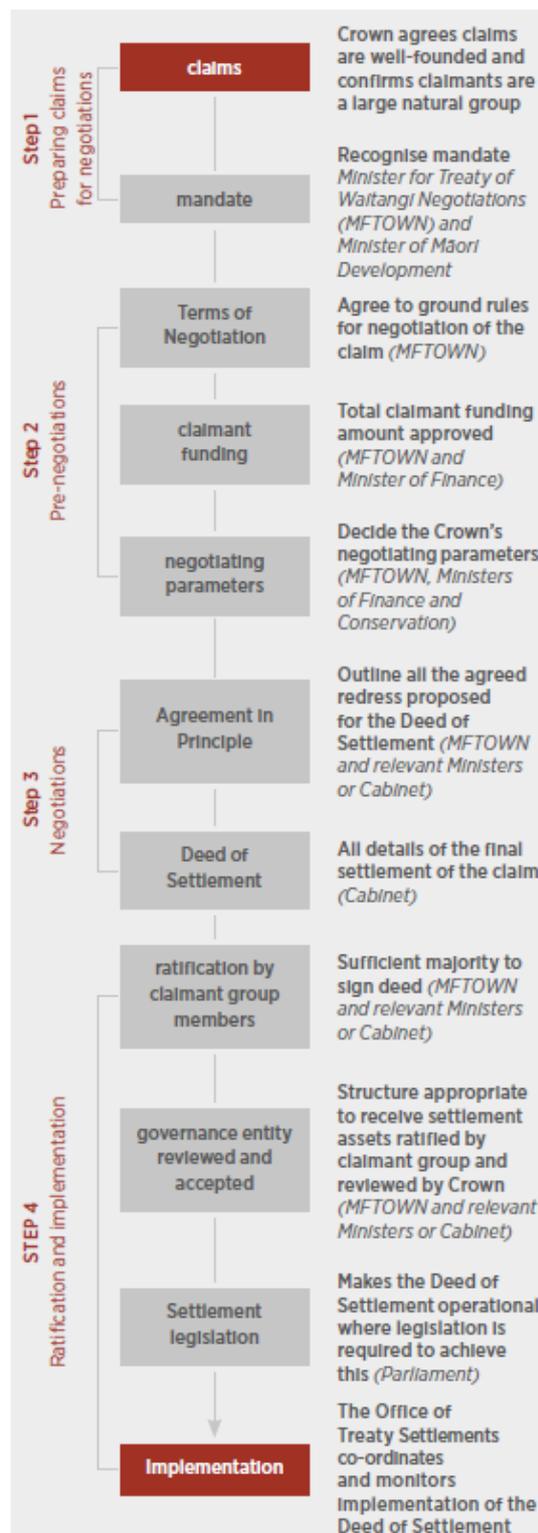


Figure 2.3: Key decision points for the Crown

## Appendix B – Contact details for Office of Treaty Settlements Leadership Team

		Direct Dial	Mobile Phone
Director	Lil Anderson	04 918 8732	Section 9(2)(a)
Deputy Secretary & Lead Negotiator, Te Raki	Nigel Fyfe	04 495 5914	Section 9(2)(a)
Regional Director, Te Waenga	Leah Campbell	04 913 9202	Section 9(2)(a)
Regional Director, Te Hauāuru	Julie Tangaere	04 914 3099	Section 9(2)(a)
Regional Director, Te Rāwhiti	Warren Fraser	04 494 9771	Section 9(2)(a)
Deputy Director, Policy and Operations	Libby Masterton	04 466 2108	Section 9(2)(a)

## **Appendix C – Treaty sector agencies**

The following agencies play key roles in Treaty settlements:

### **The Treasury**

Advises on overall fiscal management of settlement processes, consistency with wider regulatory and policy frameworks and assessment of fiscal risks to the Crown for settlement redress options.

### **Te Puni Kōkiri**

Advises on mandating, authority under the Marine and Coastal Area (Takutai Moana) Act 2011, ratification and governance issues with the Office of Treaty Settlements, and also monitors Crown action in response to Waitangi Tribunal recommendations.

### **The Department of Conservation**

Advises on issues affecting conservation land (which is frequently transferred to iwi as redress), and flora and fauna. It commonly accepts long-term implementation obligations including a variety of relationship arrangements.

The Department of Conservation is responsible for abandoned structures under the Marine and Coastal Area (Takutai Moana) Act 2011.

### **The Ministry for Primary Industries**

Advises on commercial and non-commercial fisheries issues, primary sector and bio-security issues.

### **The Department of Internal Affairs**

Advises on issues affecting local government, in particular on arrangements for involving iwi in the management of natural resources where management is delegated to local authorities.

### **The Ministry for the Environment**

Advises on resource management and environmental issues.

The Ministry for the Environment is one of the key agencies involved in developing new arrangements for involving iwi in natural resource management, as part of settlements.

### **Land Information New Zealand**

Advises on Crown landholding issues, including Public Works Act 1981 issues and on the transfer of title. LINZ also negotiates the provision of areas of Crown land as redress and holds and manages licensed Crown forest land until it can be returned as redress. The New Zealand Geographic Board facilitates place naming redress.

LINZ also manages the Treaty Settlements Land Bank.

LINZ is responsible for reclamation under the Marine and Coastal Area (Takutai Moana) Act 2011.

### **Ministry for Culture and Heritage**

Advises on culture and heritage matters, including the custody, care and ownership of newly-found taonga.

### **Ministry of Education**

Advises on issues affecting school sites and other education property. The Ministry of Education also provides education land as redress and negotiates agreed leases for these sites.

### **The Crown Law Office**

As and when required, and in conjunction with the General Counsel Services team within the Office of Treaty Settlements, advises the Office on legal issues and represents the Crown at the Waitangi Tribunal and in the High Court regarding applications under the Marine and Coastal Area (Takutai Moana) Act 2011 for “recognition orders.”

### **The Parliamentary Counsel Office**

Drafts settlement legislation and legislation recognising customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011.

### **Other Agencies**

Other Government agencies that are key stakeholders with regard to Treaty settlements are the Ministry of Business, Innovation and Employment, Inland Revenue, the Department of Corrections and the Department of the Prime Minister and Cabinet.

The Ministry of Justice, of which the Office of Treaty Settlements is part, Crown agencies including New Zealand Police and the Ministry of Defence often provide properties for purchase and sometimes sale and leaseback.

### **Independent Organisations**

Independent agencies also contribute to the resolution of historical Treaty claims. These include:

#### **The Waitangi Tribunal**

An independent permanent commission of inquiry charged with making findings and recommendations on claims brought by Māori that the Crown has breached the principles of the Treaty of Waitangi. Its members are appointed by the Governor-

General on the recommendation of the Minister for Māori Development in consultation with the Minister of Justice. The Tribunal is supported by the Ministry of Justice.

### **The Crown Forestry Rental Trust**

Receives rental proceeds from Crown forest licensed land and makes the interest earned from the investment of these rentals available to assist Māori in the preparation of claims before the Waitangi Tribunal that involve, or could involve, Crown forest licensed land.

### **Local Government**

Local government does not form part of the Crown but plays a pivotal role in redress providing for the involvement of iwi in natural resource management.

### **Landcorp**

Landcorp land is sometimes considered for use in Treaty settlements where this land is of strong cultural significance to a claimant group.

**Ministry of Justice**  
**Tāhū o te Ture**

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