



# Vote Treaty Negotiations

2020 Briefing for the Incoming Minister  
for Treaty of Waitangi Negotiations



THE OFFICE FOR MĀORI CROWN RELATIONS

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## He mihi ki te rangatira hou, ki te Minita

Nau mai e te maruata, he ao hou, he tīmatanga hou.

Nau mai, hoki mai e hika, te Minita mō ngā Whakataunga Tiriti o Waitangi.

Kia mihi koe, me te hunga tautoko i a koe i tēnei tūranga.

Kia mihi anō te hunga kua whetūrangitia, inā tata nei, i mua atu hoki.

He kawenga tēnei ka whakatinana i te ngākau pono o te Karauna kia titiro whakamua, kia whakaaro nui ōna hononga ki a ngāi Māori.

He kawenga tēnei ka whakatinana i te ngākau pono o te Karauna kia hoa haere rangatira ia i raro i te Tiriti.

He kawenga tēnei mō te kaihautū e kaha ana, e māia ana, e niwha ana.

He kawengai tēnei e nui ai te hua ka puta i runga i te ngākau atawhai, i te ngākau marae.

Heoi, kei runga rawa o tēnei kawenga, ko te ara ka whāia ki tua e te Karauna me tōna hoa rangatira i raro i te Tiriti - e tū pakari tahi ai rāua ki te arawhiti o te Tiriti o Waitangi - *Te Arawhiti ē!*

## Greetings to the Incoming Minister

The break of day, the light that is a new beginning.

We welcome you back as Minister for Treaty of Waitangi Negotiations.

We greet you and all that supports you in this role.

We acknowledge those who have passed, in times near, and times of past.

This portfolio embodies resetting relationships with Māori.

This portfolio embodies a commitment by the Crown to build towards being a better Treaty partner.

This portfolio is about stronger leadership – being brave, being bold.

This portfolio is about being productive, being kind, being helpful.

Above all, this portfolio is about the journey ahead of us as a Crown, and with our Treaty partner – standing with certainty on the bridge that is the Treaty of Waitangi – *Te Arawhiti ē!*

## Your role as the Minister for Treaty of Waitangi Negotiations

As the Minister for Treaty of Waitangi Negotiations, you support Māori Crown relations by overseeing the work of negotiating the settlement of historical Treaty of Waitangi (te Tiriti o Waitangi)(the Treaty/ te Tiriti)<sup>1</sup> claims (pre-1992).<sup>2</sup> You also oversee the work to progress applications with iwi, hapū, and whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 (Te Takutai Moana Act 2011) and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

When overseeing Treaty/ Tiriti settlement negotiations and recognising customary interests in the Takutai Moana, you collaborate closely with a variety of senior stakeholders, including Cabinet colleagues and Ministers responsible for other Treaty/ Tiriti sector agencies. You also act as a spokesperson for Treaty/ Tiriti settlements, Takutai Moana and Treaty/ Tiriti issues on behalf of the government. This work sees you engaging with Māori and community leaders across the country. The Office for Māori Crown Relations - Te Arawhiti (Te Arawhiti) supports you in this work.

You are responsible for Vote Treaty Negotiations.

### The establishment of the Office for Māori Crown Relations - Te Arawhiti

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To date, Te Arawhiti has supported both the Minister for Treaty of Waitangi Negotiations and the Minister for Māori Crown Relations: Te Arawhiti. Te Arawhiti was established on 1 January 2019 as a departmental agency hosted by the Ministry of Justice. The establishment of Te Arawhiti brought together the previous Office of Treaty Settlements (including the team which administer Te Takutai Moana Act 2011), the Settlement Commitments Unit and a Māori Crown relations team responsible for fostering ongoing relationships between Māori and the Crown.

The establishment of the Māori Crown Relations: Te Arawhiti portfolio reflects the Crown's commitment to honouring its obligations to Māori, focussing on settling historical Treaty/ Tiriti claims, and moving the relationship towards true Treaty/ Tiriti partnership.

### The make-up of Te Arawhiti

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Te Arawhiti (approximately 233 FTE) is led by the Tumu Whakarae – Chief Executive appointed by the Public Service Commissioner. The Tumu Whakarae – Chief Executive is supported by an Executive Team of four Deputy Chief Executives and a wider Leadership Team. The contact details of the Executive Team are set out at **Appendix A**.

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<sup>1</sup>Te Arawhiti recognises that te Tiriti o Waitangi and the Treaty of Waitangi are not interchangeable. However, until such time as the two can be reconciled, reference will be made to both.

<sup>2</sup> The Crown has made a distinction between two types of claims – 'historical claims' and 'contemporary claims.' Historical claims are those arising out of Crown acts or omissions before 21 September 1992. Contemporary claims arise out of Crown actions or omissions after that date.

Te Arawhiti comprises four kāhui and two hāpai. You are supported by:

- Te Kāhui Whakatau which is responsible for working with large natural groups on mandating, negotiating Treaty/ Tiriti settlements, and litigation regarding settlements and the resumption of land;
- Te Kāhui Takutai Moana which is responsible for administering applications under Te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
- Te Hāpai Ō Strategy, Policy, and Legal which provides advice on contemporary Treaty/ Tiriti issues, and works towards putting Māori Crown relationships at the heart of policy development across government; and
- Te Hāpai Ō Organisational Services which supports Te Arawhiti to operate effectively and provides technical expertise and advice to deliver the mahi. Its functions range from finance, human resources, contracts and procurement, to communications, business reporting, business services, land and implementation, and historical research.

### **Strategy and priorities**

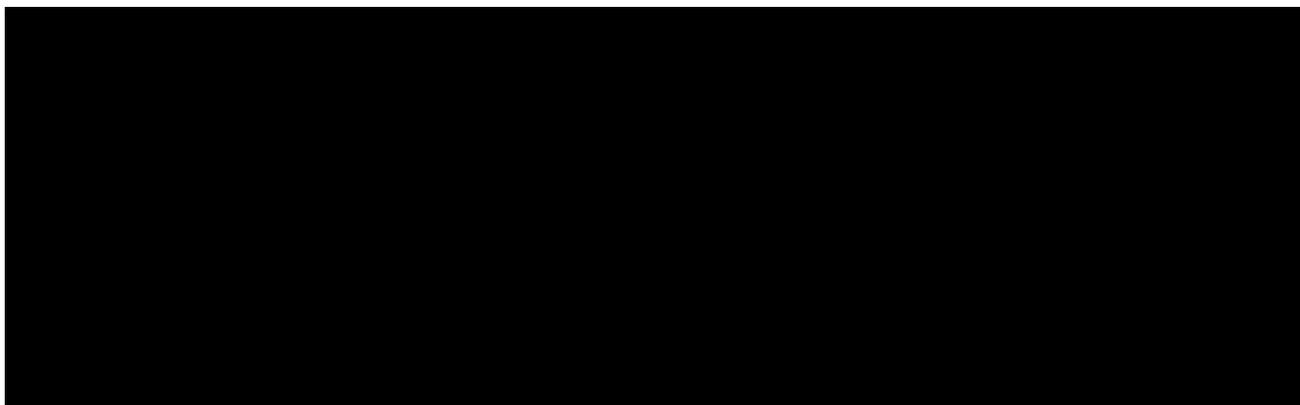
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When negotiating the settlement of historical Treaty/ Tiriti claims, Te Arawhiti works to provide opportunities for all large natural groups yet to enter into direct negotiations with the Crown to do so. Te Arawhiti also works towards the completion of Treaty/ Tiriti settlements with all able and willing groups in a timely but durable manner. Te Arawhiti also reaches out to groups who have not reached settlement to gauge whether there is a new prospect for successful settlement negotiations.

Under Te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Te Arawhiti works with iwi, hapū, and whānau who have applied to engage with the Crown for recognition of their customary rights and provides you advice on the assessment of their applications. Te Arawhiti also administers financial assistance for applicants, delivers a historical research programme, and supports the Attorney-General in the High Court by providing research and other information. Te Arawhiti is working to finalise the draft Crown Engagement Strategy, which is intended to provide an effective and efficient pathway for the progression of applications.

### **Key upcoming decisions**

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## Your role in Māori Crown relations

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Māori Crown relations describes, in its broadest sense, the interaction between two partners – Māori and the Crown. In 1840 the Treaty/ te Tiriti was signed with parties intending to establish an enduring partnership. Treaty/ Tiriti settlements and administering Te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 form a fundamental part of Māori Crown relations.

The Crown's narrative on the Treaty/ te Tiriti has evolved over the past 25 years. The Crown now speaks of realising the true promise of the Treaty/ te Tiriti and of Māori and the Crown working together in partnership to improve economic, cultural, social, environmental, and intergenerational wellbeing outcomes for Māori and all New Zealanders. In this narrative, completing Treaty/ Tiriti settlements is fundamental, and without this basis it is difficult to see how Māori Crown relationships will move forward. Therefore, moving to finalise settlements is vital.

Te Arawhiti is the Crown's lead advisor on Māori Crown relations and focusses on the three phases which shift Māori Crown relations:

- reset Māori Crown relationships;
- sustain Māori Crown relationships; and
- build Māori Crown relationships.

These phases are set out in more detail at **Appendix B**.

### **Reset Māori Crown relationships**

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An initial step for the Crown in building closer partnerships with Māori is to reset relationships with Māori groups that have a difficult history and a resulting strong sense of Māori grievance. Before we can move forward with renewed relationships built on trust and confidence, those grievances need to be addressed.

Your role as the Minister for Treaty of Waitangi Negotiations is significant for resetting and restoring Māori Crown relationships. Te Arawhiti supports your work by settling historical claims and engaging with Māori on Takutai Moana. There is a well-established framework for addressing Treaty/ Tiriti issues that is based on Waitangi Tribunal inquiries, settlement negotiations, and associated legislation. This framework focuses on settling claims in a way that is fair, durable, and final.

When conducting negotiations, an important consideration is the future of Māori Crown relationships and how settlements and Takutai Moana arrangements can best reset relationships in order to build towards achieving true Treaty/ Tiriti partnership with Māori.

Additionally, under the Minister for Māori Crown Relations: Te Arawhiti, Te Arawhiti also works to reset Māori Crown relationships by resolving longstanding and contemporary Treaty/ Tiriti issues

(since 1992), and improving systems for engaging with Māori including, but not limited to, resetting the Crown's relationship with the National Iwi Chairs Forum.

### **Sustain Māori Crown relationships**

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Under the Minister for Māori Crown Relations: Te Arawhiti, Te Arawhiti works to sustain Māori Crown relationships by building on the platform established through the reset phase and making sure the Crown upholds the commitments it has made to Māori in settlements. Te Arawhiti also helps to embed Māori Crown relationships at the heart of policy development and the legislative reform process.

### **Build Māori Crown relationships**

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Building Māori Crown relationships is a whole-of-Crown responsibility. Under the Minister for Māori Crown Relations: Te Arawhiti, Te Arawhiti helps to establish an approach to building Māori Crown relations capability, focussing on public service leadership as well as using the platforms created under the reset and sustain phases to build stronger and better partnerships with Māori.

## **Overview of the Treaty/ te Tiriti settlement framework**

### **What makes up a settlement**

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Settlements play an essential part in resolving grievances caused by the Crown's historical acts and omissions in breach of the Treaty/ te Tiriti. An overview of the settlement process is provided at **Appendix C**.

Through settlements, the Crown acknowledges and apologises for its acts or omissions (including warfare and land confiscation/raupatu) that have resulted in loss of tribal lands accompanied by loss of access to forests, waterways, food resources, wāhi tapu, and other taonga. These losses have also had significant socio-economic repercussions. Settlements can also provide opportunities for parties to address contemporary issues of concern to settling groups such as lack of involvement in decision-making on natural resources with which Māori have strong associations.

Although settlements tend to have the same core elements, importantly, the settlement framework allows for innovation with novel redress being developed to meet the specific aspirations of the settling group. The impact of each innovation must, however, be considered carefully as it is possible for major changes to the settlement framework to undermine a sense of fairness across all settlements and their durability.

### **The key benefits of settlements**

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

A key benefit of settlements is assisting settled groups to once again become strong and resilient leaders in their communities. Settlements contribute to the cultural, social, and economic development of Māori and, through the flow-on effects, to the development of communities and regions. They strengthen the capital of settled groups alongside existing Māori commerce and assets built up outside of settlements.

### **Balancing the timely completion of settlements with durability**

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Successive governments have confirmed their commitment to the timely completion of Treaty/ Tiriti settlements and have not set deadlines on their completion. You have stated publicly that the previous target of 2020 set by the government would not be met and that you estimated the Crown would complete negotiations with willing and able claimant groups in 2024/25. Moreover, Treaty/ Tiriti settlements have gained public understanding and support.

There is a need to balance the timely completion of Treaty/ Tiriti settlements with achieving durable settlements. The readiness of a group to progress through the Treaty/ te Tiriti settlement process is key. The Waitangi Tribunal has made a number of findings in recent years suggesting the Crown has been too keen to achieve settlement and has not taken sufficient time to resolve overlapping claims between Māori or to ensure there is widespread and ongoing support for the mandated entity representing an iwi. In seeking to resolve past wrongs the Crown should not create new grievances. Te Arawhiti has taken heed of these findings, refreshed policy guidelines accordingly and acknowledges the importance of taking the time to achieve durable settlements.

### **Working with Treaty/ Tiriti sector agencies**

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Negotiating Treaty/ Tiriti settlements requires the active involvement of a wide range of agencies responsible for redress and for ongoing partnerships with Māori. To efficiently and effectively achieve milestones and build durable relationships, agencies need to share a consistent understanding of the Treaty/ te Tiriti and the Crown's responsibilities under it, of te ao Māori, and of the importance of prioritising Māori Crown partnerships. Achieving this reset of Māori Crown relationships will remain challenging until the Crown's capability as a whole to work with Māori and its understanding and acceptance of Māori perspectives increases.

Te Arawhiti works collaboratively with agencies to deliver Treaty/ Tiriti settlements and broker partnerships with Māori. It is equally important for Ministers responsible for delivering redress to work together towards achieving true Treaty/ Tiriti partnership. The roles of individual Treaty/ Tiriti sector agencies are set out at **Appendix D**.

### **What has been achieved since 2017**

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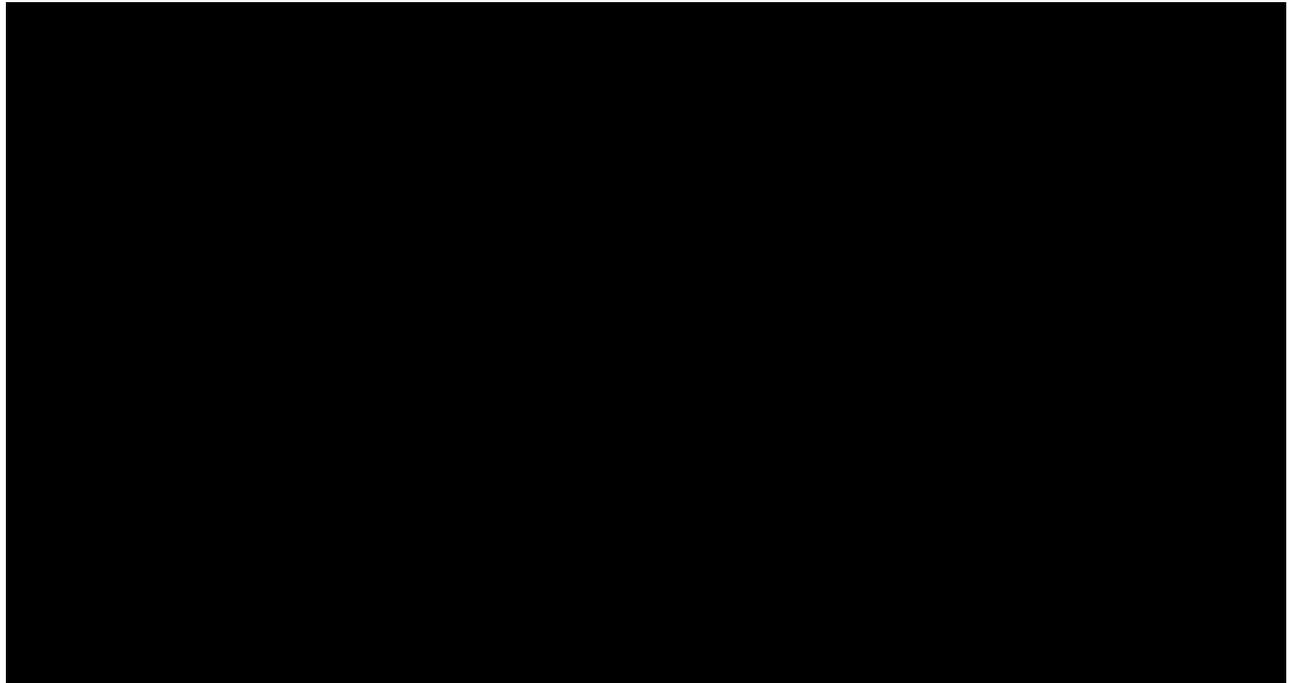
Over the last three years, 29 milestones have been achieved. These encompass six enacted pieces of settlement legislation, four introduced settlement bills introduced, five signed deeds, six initialled deeds, six signed agreements in principle and two recognised mandates. An overview of the current status of Treaty/ Tiriti settlements is attached as **Appendix E**.

# Treaty/ Tiriti settlements looking forward

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## Upcoming milestones

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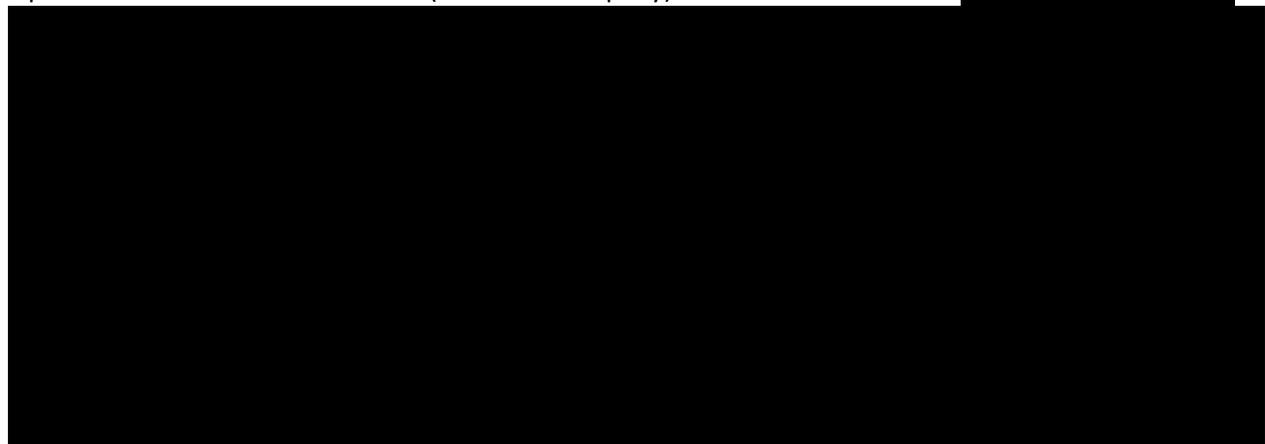
## Ngā hapū o Ngāpuhi

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Over the next three years, one of the key opportunities of your portfolio is to take concrete steps to restore the Crown's relationship with ngā hapū o Ngāpuhi and progress Treaty/ Tiriti settlements with Ngāpuhi. 18.8% of Māori (125,000) affiliate to Ngāpuhi, which is made up of more than 100 hapū (2013 census).

In August 2020, the Crown agreed that Ngāpuhi regional hapū groupings could develop mandate proposals to negotiate the settlement of all their historical Treaty/ Tiriti claims. The Crown also noted its strong preference for a single set of financial and commercial redress negotiations.

The Crown has announced that it is establishing a Ngāpuhi Investment Fund (the Fund). The Fund's purpose is to acquire and develop diverse assets for the Crown to offer as redress in negotiations with ngā hapū o Ngāpuhi, and grow the financial value of the Fund. Expressions of interest from potential directors of the Fund (a Crown company) have been called for.



## Waitangi Tribunal's power of resumption

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The Waitangi Tribunal has jurisdiction to make binding recommendations for the transfer to Māori of Crown Forest Licenced (CFL) land, and land memorialised under section 27B of the State-Owned Enterprises Act 1986, to remedy prejudice caused by Crown Treaty/ Tiriti breaches. The Crown must also pay monetary compensation to recipients of CFL land. In the next 18 months the Tribunal will likely make binding recommendations in four cases:

- **Mangatū CFL land** (7676 ha; maximum compensation \$190 million);
- **Pouākani memorialised land, including Maraetai 2 power station** (approximate value \$600 million);
- **Ngāumu CFL land** (10,322 ha; maximum compensation \$275 million); and
- **Ngāti Kahu memorialised and CFL land** (approximate value \$75 million including 100+ privately-owned properties).

## Natural resources – te ao tūroa

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Other Ministers lead work on natural resources but your familiarity with key issues helps put Māori perspectives at the heart of policy development.

Three major reform projects currently underway provide an opportunity of rare scale for the Māori Crown relationship to provide for Māori rights and obligations they have with te ao tūroa (the natural world) and its taonga:

- a comprehensive review of the resource management system;

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- reforms to the 'three waters' system (drinking water, stormwater and wastewater).

s 9(2)(f)(iv)

## Relativity mechanism

A relativity clause (or relativity mechanism) is contained in both the 1995 Waikato-Tainui (Raupatu) and the 1997 Ngāi Tahu settlement Acts.

The relativity mechanisms provide that, where the total redress amount for all historical Treaty/ Tiriti 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/ Tiriti 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.

## Settlement bills for reinstatement

Deeds of settlement require legislation to give effect to aspects of the settlement redress. There are currently five bills before the House of Representatives. These bills will lapse on the dissolution of Parliament. The new government will need to make a decision on whether they are to be reinstated. As settlement legislation has cross-party support, this is normally a formality for settlement bills. Te Arawhiti will provide advice to your office when requested by the office of the Leader of the House. The bills to be reinstated are the:

- Ahuriri Hapū Claims Settlement Bill;
- Ngāti Hinerangi Claims Settlement Bill;
- Moriori Claims Settlement Bill;
- Ngāi Te Rangi and Ngā Pōtiki Claims Settlement Bill; and
- Tauranga Moana Iwi Collective Redress and Ngā Hapū o Ngāti Ranginui Claims Settlement Bill (omnibus).

# Administering Te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

You are currently the Minister with responsibility for recognising customary interests in the Takutai Moana. Te Arawhiti supports you by administering all applications made under Te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 for recognition of customary interests in the Takutai Moana.

Te Arawhiti ensures you have sufficient evidence and information to support your decision making. It is important that through these processes, relationships with iwi, hapū, and whānau are maintained and built upon. Te Arawhiti also works to ensure that New Zealanders understand decisions on customary interests in the Takutai Moana and that they have an appropriate opportunity to participate.

## Te Takutai Moana Act 2011

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Te Takutai Moana Act 2011 (which repealed and replaced the Foreshore and Seabed Act 2004) was enacted to protect the interests of all New Zealanders in the common marine and coastal area. It recognises the mana tuku iho exercised 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 since 1840. There are two avenues for recognition: by engagement with the Crown to seek a Ministerial determination, or by application to the High Court.

The statutory deadline for applications to the Crown or the High Court was 3 April 2017. 387 Crown engagement applications were received for recognition of customary marine title and/or protected customary rights under the Act. The High Court received 203 applications. 175 of the applications made to the Crown were also made to the High Court (and vice versa), 30 were made to the High Court only, and 207 were made to the Crown only.

As the Minister responsible for recognising customary interests under the Act, you may decide:

- whether to engage with an applicant seeking direct engagement with the Crown; and
- whether to enter into a recognition agreement (if you are satisfied the applicant group has met the tests for customary interests set out in the Act).

## Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

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Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 applies instead of Te Takutai Moana Act 2011 for Ngā Hapū o Ngāti Porou (ngā hapū) applicants in ngā rohe moana (the background to, and the purpose of, this Act is described further in the next section). As with Te Takutai Moana Act 2011, there are two pathways for applicants seeking recognition of their customary interests (Crown engagement and High Court). You are also responsible for Ministerial determinations of customary interests under the Act.

## Achievements to date and looking forward

s 9(2)(f)(iv)

encompassing opportunities and options for resetting and strengthening the Crown's relationship with iwi, hapū and whānau in relation to the Takutai Moana, through:

- recognition of customary interests (invest and intensify);
- marine and coastal reform agenda (system approach); and
- legislative reform (identify and prioritise).

### **Enactment and implementation of Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019**

Ngā hapū and the Crown reached a deed of agreement in 2008 under the Foreshore and Seabed Act 2004 in relation to territorial customary rights in the foreshore and seabed. Under the deed of agreement, the Crown undertook to support ngā hapū to have seven territorial customary rights areas confirmed in the High Court in accordance with the Foreshore and Seabed Act 2004. Rather than progressing with the High Court confirmation and following the repeal and replacement of the Foreshore and Seabed Act 2004, ngā hapū and the Crown instead agreed an amended deed in 2017.

Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 gives effect to the Crown's commitments in the 2017 amended deed. Any existing applications for recognition of customary interests by ngā hapū that had ratified the 2017 amended deed will be determined under this Act (rather than Te Takutai Moana Act 2011) and ngā hapū have until 31 May 2021 to make any further applications.



s 9(2)(ba)(i)

### **Direct engagement with applicant groups**

In addition to ongoing engagement with ngā hapū under their separate Act, Te Arawhiti has existing commitments with applicant groups under Te Takutai Moana Act 2011. These include Ngāti Pāhauwera, Ngāti Porou ki Hauraki, Ngāti Koata, Te Korowai o Ngāruahine, Te Uri o Hau, and Te Whānau a Apanui, all of whom commenced engagement under the Foreshore and Seabed Act 2004. Ngāti Pāhauwera are now focussing on their High Court application and we are working with the other applicant groups on the research necessary to progress their Crown engagement applications.

In January 2020, Te Arawhiti developed a draft Crown Engagement Strategy, setting out an approach that would enable Te Arawhiti to move beyond its existing commitments and sequence engagement with applicants across four coastline areas. Each coastline would contain multiple applicant groups with the draft strategy designed to help address shared and/or overlapping interests. The draft strategy contains five elements:

- prioritising engagement in certain parts of the coastline;
- applying a coordinated approach to engagement along sections of the coastline;
- continuing to uphold the existing commitments;
- taking account of applications being heard in the High Court; and
- considering an approach to engagement in parts of the coastline not initially prioritised.

Te Arawhiti estimates that engagement with applicants in each prioritised tier of coastline would take between four and ten years to complete, depending on the size of the coastline, the overlapping nature of applications, and the level of resourcing applied.

Consultation with applicant groups on the draft Crown Engagement Strategy has been extended because of the impact of COVID-19. The submission period closed on 30 October 2020.

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### **Supporting High Court proceedings**

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Under Te Takutai Moana Act 2011, the High Court is directed to prioritise applications that have been carried over from the Māori Land Court under the Foreshore and Seabed Act 2004. There are four substantive High Court hearings underway for these priority applications, from August 2020 to May 2021: *Edwards* (Whakatōhea), *Reeder* (Ngā Pōtiki), *Clarkson* (Eriha Whānau), *Taylor* (Ngāti Pāhauwera).

Te Arawhiti has a role in supporting the Attorney-General who is appearing in each of these proceedings as an interested party. Te Arawhiti undertakes and provides substantial historical research to support the Attorney-General. Te Arawhiti also provides advice to the Crown Law Office on the assessment of applications and evidence provided by the applicant groups and other interested parties.

In addition to supporting the Attorney-General's appearance at the prioritised hearings, Te Arawhiti supports the Crown Law Office and the High Court in the annual round of case management conferences, which the Court utilises to test with all applicants their readiness to proceed to a substantive hearing. This year's round of conferences was completed in July.

### **Te Kete Kōrero a Te Takutai Moana Information Hub**

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A geospatial tool called Te Kete Kōrero a Te Takutai Moana Information Hub (Kōrero Takutai) was launched in 2019 to provide consistent and transparent information for decision makers, applicants, and affected parties such as local authorities.

Kōrero Takutai is an interactive online tool that provides data-rich, dynamic coastline maps to help with research and evidence-gathering under Te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

### **Reviewing the financial assistance scheme**

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Te Arawhiti is currently conducting a comprehensive review of the Takutai Moana financial assistance scheme, which provides a contribution (85% of assumed costs) to applicant groups for the costs of progressing their applications. The financial assistance scheme is available for both High Court and Crown engagement applicants. The review involves engaging with applicants to understand their experiences to date and is expected to be completed by the end of March 2021.

### **Wai 2660 Waitangi Tribunal kaupapa inquiry**

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In 2017, the Waitangi Tribunal agreed to hear, as a matter of priority, claims regarding Te Takutai Moana Act 2011 through the Tribunal's kaupapa inquiry programme. The inquiry has two stages.

The hearings for Stage One were completed in August 2019 and focussed primarily on the procedural arrangements and resources made available by the Crown to applicants to assist them

with the progression of their applications under Te Takutai Moana Act 2011. The review of the financial assistance scheme (discussed above) reflects a commitment made by Te Arawhiti during the Stage One hearings.

The hearings for Stage Two began in September 2020. Stage Two of the inquiry is focussed on the policies and principles that underpin Te Takutai Moana Act 2011 and whether Crown policy and practice in applying Te Takutai Moana Act 2011 is inconsistent with the Treaty/ te Tiriti. As with Stage One, Te Arawhiti officials will appear, along with other Crown witnesses, at the hearings to give evidence with the Crown Law Office representing.

The Waitangi Tribunal report is expected in late 2021 at the earliest.

## **COVID-19 response and recovery**

It is broadly accepted that the situation brought about by COVID-19 (both the health and economic impacts) will have a disproportionate effect on Māori in the short and long term. Containment and elimination strategies have meant that the predicted effects of the virus on Māori have so far not eventuated.<sup>3</sup> Whether this situation continues depends on the success of elimination efforts, and the extent to which any potential future outbreaks can be contained.

In the medium and long term, efforts to contain and eliminate the virus are likely to have a disproportionately greater economic impact on Māori than on Pākehā. The Māori economy has been estimated to contract by as much as 20%, from an estimated \$50 billion to \$40 billion, due to effects on investments in sectors such as tourism and forestry.<sup>4</sup> During the global financial crisis, Māori unemployment increased from 7.4% to 14.6%, as opposed to an increase from 2.4% to 5% among Pākehā. These developments are likely to have compounding social impacts on Māori communities.

The exact economic and social impact on Māori will depend on a range of factors, including the possibility and extent of future outbreaks, how long New Zealand remains at the various alert levels, the extent of government intervention in the recovery effort, and the extent to which Māori are prioritised in the government's response.

The benefits of settling Treaty/ Tiriti claims over the past 30 years have been front and centre during New Zealand's COVID-19 response, with Māori taking up early and strong leadership of the COVID-19 response. Māori who have settled were able to respond quickly given their existing infrastructure and were able to financially support their communities. They also reached out to Māori that have not settled and were able to join up to support each other's efforts. Settling Treaty/ Tiriti claims and progressing applications under Te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 will continue to be important in the response and recovery to COVID-19 for Māori.

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<sup>3</sup> Recent research indicates that, in the event of an uncontrolled outbreak of the virus, fatality rates for Māori could be 2.5 times that of Pākehā, or possibly higher. This mirrors the Māori experience of previous pandemics. *NZ Herald*, 17 April 2020, 'Covid 19 coronavirus: Death rate for Māori could be more than twice that of Pākehā'

<sup>4</sup> Joshua Hitchcock, *The Spinoff*, 8 April 2020, 'The effects of the Covid-19 recession will hit Māori hardest'

## **COVID-19 Recovery (Fast Track Consenting) Act 2020**

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The COVID-19 Recovery (Fast-Track Consenting) Act 2020 (the Act) received royal assent on 8 July 2020. The Act is intended to urgently promote employment growth and support economic recovery by providing for alternative “fast track” processes for resource consent applications and confirming or modifying designations of land.

You are one of a number of Ministers who will be invited to comment on applications under the Act by the Minister for the Environment and Expert Consenting Panels. The timeframe for providing comments is legislatively prescribed. Te Arawhiti will work with your office to ensure these timeframes are met.

The types of comments you may like to provide include whether the application could affect:

- redress available in current or future Treaty/ Tiriti settlement negotiations; and/or
- applications under Te Takutai Moana Act 2011 and Ngā Rohe Moana o Ngāti Porou Act 2019.

In addition to your comments, Te Arawhiti is also required to work with the Ministry for the Environment on reports under section 17 of the Act, which provides the Minister for the Environment with information on Treaty/ Tiriti settlements and customary rights and title (under Te Takutai Moana Act 2011) that relate to the application and project area.

## **Other material to support you**

This document has given you a brief overview of the Treaty settlement and Takutai Moana processes and the portfolio of the Minister for Treaty of Waitangi Negotiations. Other information and/or briefings are available should you require them.

Te Arawhiti looks forward to discussing this advice with you, in support of the priorities set out by you and your government.

## Appendix A – Contact details for Te Arawhiti Executive Team

		Direct Dial	Mobile Phone
<b>Tumu Whakarae – Chief Executive</b>	Lil Anderson	██████████	██████████
<b>Deputy Chief Executive – Partnerships</b>	Kelly Dunn	██████████	██████████
<b>Deputy Chief Executive – Strategy and Policy</b>	Warren Fraser	██████████	██████████
<b>Deputy Chief Executive – Organisational Support</b>	Darrin Sykes	██████████	██████████
<b>Deputy Chief Executive – Treaty settlements and Takutai Moana</b>	Rachel Houlbrooke	██████████	██████████

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## Appendix B – Three phases towards true Treaty/ Tiriti partnership



# TOWARDS TRUE TREATY PARTNERSHIP

<b>RESET</b> <ul style="list-style-type: none"><li>» Settle historical Treaty claims</li><li>» Resolve longstanding and contemporary issues</li><li>» Engage with Māori on Takutai Moana</li></ul>	<b>SUSTAIN</b> <ul style="list-style-type: none"><li>» Uphold the Crown's Treaty settlement commitments</li><li>» Actively support Crown agencies to engage effectively with Māori</li><li>» Put the Māori Crown relationship at the heart of policy development</li></ul>	<b>BUILD</b> <ul style="list-style-type: none"><li>» Lift public sector capability to work with Māori</li><li>» Broker Māori Crown partnerships</li><li>» Partner in Covid-19 response and recovery</li></ul>
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**Mahi Tahī**      **Pono ki te Raupapa**      **Atawhaitia**

Working together in good faith with humility and authenticity



**Te Arawhiti**  
THE OFFICE FOR MĀORI CROWN RELATIONS

## Appendix C – Key stages in Treaty/ Tiriti settlement negotiations

**Deed of mandate** - The Crown recognises the right of the body mandated by the claimant community to represent that claimant community in negotiations with the Crown.

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

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

**Initial a 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.

**Sign a deed of settlement** - The mandated body, the post-settlement governance entity and the Crown sign the final deed of settlement when the claimant community has accepted, by ratifying, the deed of settlement as settling 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 settling groups 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.

## Appendix D – Treaty/ Tiriti sector agencies

The following agencies play key roles in Treaty/ Tiriti 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 Te Takutai Moana Act 2011, ratification and governance issues with Te Arawhiti, and also monitors Crown actions in response to Waitangi Tribunal recommendations.

### **Department of Conservation**

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

DOC is responsible for abandoned structures under Te Takutai Moana Act 2011.

### **Ministry for Primary Industries**

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

### **Department of Internal Affairs**

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

### **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 Māori 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 CFL 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 of land in the coastal marine area under Te 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.

### **Crown Law Office**

As and when required, and in conjunction with the General Counsel Services team, advises Te Arawhiti on legal issues, represents the Crown at the Waitangi Tribunal and represents the Crown in applications to the High Court under Te Takutai Moana Act 2011 for “recognition orders.”

### **Parliamentary Counsel Office**

Drafts settlement legislation and legislation recognising customary rights under Te Takutai Moana Act 2011.

## Other Agencies

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

Other agencies, including the Ministry of Justice, 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/ Tiriti claims. These include:

### 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/ te Tiriti. 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.

### Crown Forestry Rental Trust

Receives rental proceeds from CFL land on which Crown Forest Assets are located and makes the interest earned from the investment of these proceeds available to assist Māori in the preparation of claims before the Waitangi Tribunal that involve CFL land.

### Local Government

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

### Landcorp

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



## Appendix F – Glossary of Māori terms

<b>Kāhui</b>	Team
<b>Hīkina</b>	To lift, support
<b>Whakatau</b>	To settle, confirm
<b>Whakamana</b>	To uphold, adhere
<b>Hāpai Ō</b>	Support
<b>Tumu Whakarae</b>	Chief Executive
<b>Wāhi tapu</b>	Sacred place, sacred site
<b>Taonga</b>	Property, goods, possession, effects
<b>Raupatu</b>	to conquer, overcome, take without any right
<b>Hapū</b>	Sub-tribe
<b>Takutai Moana</b>	Foreshore and seabed
<b>Kaupapa</b>	Topic, theme
<b>Te ao Māori</b>	Māori world
<b>Pākehā</b>	not of Māori descent
<b>Mana tuku iho</b>	Inherited right or authority derived in accordance with tikanga <sup>5</sup>

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<sup>5</sup> As defined in section 9 of the Marine and Coastal Area (Takutai Moana) Act 2011



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