



# Vote Treaty Negotiations

**2023 Briefing for the Incoming Associate  
Minister for Treaty of Waitangi  
Negotiations**

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## Mihi

E te rangatira, to tatou Minita Tuarua, te Honore Ginny Andersen, ko tenei tenei to matou mihi mahana ki a koe.

Nau mai haere mai ki tenei mahi nunui mo nga iwi Maori, ara ko te mahi whakatau kereme, ko te mahi takutai moana, me era atu tumomo mahi e tautoko ana i te whakawhitinga o te arawhiti.

Kei konei matou o kaiawhina, o kaitautoko hei tuara mahau.

No reira, tena koe.

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

As the Associate Minister for Treaty of Waitangi Negotiations, you support Māori Crown relations through your delegations. The Minister for Treaty of Waitangi Negotiations has delegated to you the following functions:

- all matters relating to the implementation of the Takutai Moana strategy, all matters relating to the Relativity Mechanism process, and dealing with fast-track consenting applications;
- replying to Ministerial correspondence and Parliamentary Questions on issues relating to the above;
- dealing with aspects of historical claims under negotiation where there is a portfolio conflict of interest with any of my other portfolios, and;
- other initiatives as agreed from time to time by us.

This briefing provides you will a broad overview of the Treaty of Waitangi Negotiations portfolio to help situate you. More detailed briefings tailored to your delegations will be provided.

## Your role in Māori Crown relations

The Crown's view of the Treaty/ te Tiriti has evolved over time. The Crown is now working towards 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. Treaty/ Tiriti settlements are fundamental to restoring this partnership, and without this basis it is difficult to see how Māori Crown relationships will move forward.

Te Arawhiti is the Crown's lead advisor on Māori Crown relations. Its work spans three broad purposes; to restore, sustain, and build Māori Crown relationships as illustrated at **Appendix A**.

### Restore Māori Crown relationships

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Your role as the Associate Minister for Treaty of Waitangi Negotiations is important in helping to restore Māori Crown relationships. To build closer partnerships with Māori today, the Crown must acknowledge and address past breaches of the Treaty of Waitangi. By addressing these issues, we

can restore the Crown's honour and move forward with renewed relationships built on trust and confidence.

The Treaty Settlements Framework is the Crown's policy framework for addressing historical Treaty/ Tiriti claims. While settlement policies have evolved over time the framework remains focussed on settling claims in a way that is fair, durable, and final.

Your role as the Associate Minister also holds central responsibility for the Takutai Moana strategy, which also contributes to restoring relationships with Māori. The Takutai Moana legislation sets out a statutory test and process for determining Māori customary rights in the takutai moana that, in the past, were not recognised.

### **Sustain Māori Crown relationships**

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Responsibility for sustaining and building Māori Crown relationships sits primarily with the Minister for Māori Crown Relations: Te Arawhiti. This work involves building on the platform established through the restore phase by ensuring the Crown upholds its Treaty settlement commitments and by promoting partnership opportunities that present themselves post settlement.

Sustaining Māori Crown relationships within your portfolio areas involves, amongst other things, ensuring government policy or legislative reforms do not cut across Treaty settlement commitments or rights provided for in takutai moana legislation.

### **Build Māori Crown relationships**

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The build space envisages progressing the Māori Crown relationship towards true Treaty partnership. Under the Minister for Māori Crown Relations, 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 restore and sustain phases to build stronger and better partnerships with Māori.

### **Te Arawhiti functions and priorities**

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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 Takutai Moana team), Te Kāhui Whakamana (Settlement Commitments Unit) and Te Kāhui Hīkina (Māori Crown Relations team).

Our name, Te Arawhiti, symbolises the bridge between Māori and the Crown, and the past and the future. The purpose of Te Arawhiti, the bridge, is to help guide the Māori Crown relationship from historical grievance towards true Treaty partnership, and to help guide the Crown, as a Treaty partner, across the bridge into te ao Māori.<sup>1</sup>

When negotiating the settlement of historical Treaty/ Tiriti claims, Te Arawhiti works to provide opportunities for all claimant groups yet to enter direct negotiations with the Crown to do so.

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<sup>1</sup> Section 14 of the Public Service Act 2020 recognises the role of the public service in supporting the Crown in its relationships with Māori under the Treaty of Waitangi (te Tiriti o Waitangi). This includes developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives.

Te Arawhiti works towards the completion of Treaty/ Tiriti settlements with all willing and able 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 the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Te Arawhiti works with whānau, hapū and iwi applicant groups who have applied under those Acts for recognition of customary interests. This includes groups who have applied to the Crown and/or to the High Court for recognition of their customary rights. Te Arawhiti also provides advice on the assessment of applications made to the Crown. Te Arawhiti administers financial assistance for applicant groups, delivers an historical research programme, and supports the Attorney-General in the High Court (and appeal courts) by providing instructions, historical research, and geospatial information. Te Arawhiti delivers this programme of work in accordance with the Takutai Moana Engagement Strategy, agreed by Cabinet in 2021 to provide an effective and efficient pathway for the progression of applications.

### **The make-up of Te Arawhiti**

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Te Arawhiti (approximately 189 FTE) is led by the Tumu Whakarae – Chief Executive, appointed by the Public Service Commissioner. Glenn Webber is the current acting Tumu Whakarae. Lil Anderson will be returning from secondment as Tumu Whakarae in April 2023. The Tumu Whakarae is supported by an Executive Team of five Deputy Chief Executives. The contact details of the Executive Team are set out at **Appendix B**.

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 supporting the progression of whānau, hapū and iwi groups' applications under the 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 policy advice on Treaty settlement negotiations and the Treaty settlement framework
- **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.<sup>2</sup>

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<sup>2</sup> The other two Te Arawhiti kāhui are Te Kāhui Whakamana and Te Kāhui Hikina. Both kāhui primarily report to the Minister for Māori Crown Relations: Te Arawhiti. Te Kāhui Whakamana works with the Crown, local government, and settled iwi to safeguard the durability of historical Treaty settlements. Te Kāhui Hikina (Māori Crown Relations) supports the Minister for Māori Crown Relations: Te Arawhiti, Hon Kelvin Davis, to deliver on the responsibilities of the portfolio.

# 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 restore relationships between Māori and the Crown which have been strained by many years of grievance and the exclusion of Māori from meaningful participation in 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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Since the earliest settlements in the 1990s successive governments have confirmed their commitment to the timely completion of Treaty/ Tiriti settlements. Significant progress has been made. **Appendix D** shows the current status of Treaty settlements.

In recent years governments have moved away from setting deadlines on the completion of Treaty settlements in recognition of the time required not only to work through the issues raised in negotiations but to do so in a way consistent with the overall aim to restore the relationship with the claimant group.

Settlement negotiations, including with the largest iwi, Ngāpuhi, have become more complex. This often reflects greater iwi aspiration for the restored relationship they wish to achieve.

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 matters such as overlapping claims between Māori or to ensure there is widespread and ongoing support for the mandated entity representing a claimant group. Relationship quality and settlement durability are the primary drivers, rather than pace and just getting it done.

In seeking to resolve past wrongs the Crown should not create new grievances. As a result of these findings Te Arawhiti has 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. 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 restoration 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 E**.

### **What has been achieved since 2020**

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Over the last three years, 40 milestones have been achieved. These encompass eight enacted pieces of settlement legislation, ten settlement bills introduced, eight deeds signed, six deeds initialled, three agreements in principle signed and two mandates recognised. An overview of the current status of Treaty/ Tiriti settlements is attached as **Appendix D**.

### **Relativity mechanism**

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Your delegation makes you responsible for all matters relating to the Relativity Mechanism process. A relativity clause 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.

Both iwi are entitled to make claims for further relativity payments on a five-yearly basis until 2040. The Minister for Treaty of Waitangi Negotiations recently authorised the payment of approximately \$200 million in five-yearly payments to the iwi. This payment has been made. Other matters remain in dispute and the parties are engaging on what the process to resolve those disputes will be.



Treaty/ Tiriti settlements looking forward

### **Upcoming milestones**

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As of January 2023, approximately 70% of all deeds have been signed. This figure may alter as settling groups come together or split apart for negotiation purposes.

In the 2022/23 financial year, we anticipate three pieces of settlement legislation could be enacted, six deeds could be initialled and/or signed, and three agreements in principle could be signed.

There are challenges for many of the remaining settlements. Most remaining groups have aspirations for redress outside existing Crown policy parameters, are involved in collective negotiations, in litigation or have extensive overlapping interests work to complete. Mandate/large natural group issues and overlapping interests issues will need to be carefully worked through. Both the Crown's and claimants' readiness and capability to enter negotiations will be an important consideration for Te Arawhiti's settlement work programme.

### **Takutai moana legislation**

Your delegation makes you responsible for the implementation of the Takutai Moana strategy as discussed below. The Minister for Treaty of Waitangi Negotiations will remain responsible for recognising customary interests in the takutai moana on behalf of the Crown, under the Takutai Moana Act 2011 and Ngā Rohe Moana of Ngā Hapū o Ngāti Porou Act 2019 (the takutai moana legislation).

Te Arawhiti works with and alongside whānau, hapū and iwi groups to ensure the Minister for Treaty of Waitangi Negotiations has sufficient evidence and information to support decision making. Te Arawhiti also supports whānau, hapū and iwi groups who are seeking recognition of customary interests from the Courts rather than from the Crown.

It is important that through these processes, relationships with whānau, hapū and iwi are maintained and built upon. Te Arawhiti also works to ensure that New Zealanders understand the relationships between public interests and customary interests under the takutai moana legislation and to ensure opportunities for the public to provide information on their interests to be considered in decision-making.

### **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 and to recognise the customary interests of whānau, hapū and iwi in the common marine and coastal area.

The Act recognises the mana tuku iho exercised by whānau, hapū and iwi and as tangata whenua and provides for the legal expression of customary interests exercised since 1840. These interests may be recognised as customary marine title and protected customary rights.

The statutory deadline for applications under the takutai moana legislation 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.

Ministers may enter into a recognition agreement with an applicant group if they are satisfied the group has met the tests for recognition of customary marine title or protected customary rights as set out in the Act. Recognition agreements are given effect to through an Act of Parliament.

If customary marine title is recognised the customary marine title group may exercise specified rights in relation to their customary marine title area, including:

- the right to say yes or no to certain activities that need resource consents or permits (RMA permission right)
- the right to seek recognition of wāhi tapu and wāhi tapu areas and restrict access if this is necessary (a wāhi tapu protection right)
- the right to ownership of minerals other than petroleum, gold, silver, uranium and, if the Ngai Tahu (Pounamu Vesting) Act 1997 applies, pounamu
- the right to create and lodge a planning document for management of natural and physical resources, which then must be taken account of by local authorities and relevant government agencies.

Customary marine title cannot be sold. Public access, fishing and other recreational activities in a customary marine title area are unaffected (except for some lawful restrictions, including for the protection of wāhi tapu and wāhi tapu areas).

If protected customary rights are recognised, the protected customary rights group may carry out the protected activity without the need to have a resource consent. Local authorities cannot grant resource consents for any activity that would have an adverse effect on the exercise of the protected customary right (with some exceptions).

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

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Underpinning the takutai moana relationship between ngā hapū o Ngāti Porou and the Crown is a 2008 Deed of Agreement (the Deed) reached under the Foreshore and Seabed Act 2004 (FSA). Ngāti Porou were the only group under the FSA to negotiate and reach a deed of agreement with the Crown.

The Deed gives legal expression to, and protection and recognition of, the mana of ngā hapū o Ngāti Porou in relation to their rohe moana as unbroken, inalienable, and enduring. The Deed was amended in 2017 to reflect changes in legislation including the enactment of te Takutai Moana Act 2011.

Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 was passed to give effect to Crown commitments in the amended Deed and provides the framework for recognition of customary interests within ngā rohe moana. The Act applies to all hapū of Ngāti Porou who ratified the amended Deed and are represented by a management arrangement trust. Applications for recognition of customary interests by hapū of Ngāti Porou who have not yet ratified the amended Deed and/or are not represented by a management arrangement trust remain under te Takutai Moana Act 2011. The statutory tests for recognition of customary interests under both Acts are the same, however, the connected rights have some variations.

As with the Takutai Moana Act 2011, the Minister for Treaty of Waitangi Negotiations has been responsible for recognising customary interests on behalf of the Crown, the Minister must first be satisfied the hapū have met the statutory tests for recognition of customary marine title or protected customary rights (called protected customary activities in Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019). Recognition is given effect to through Orders in Council.

### **Whakamana Accord Forum**

In 2019, prior to the Act's third reading, ngā hapū and the Crown signed a Whakamana Accord (the Accord). The Accord initiated a formal relationship in ngā rohe moana between the Crown and ngā hapū. It provides for an annual Whakamana Forum between ngā hapū and the Crown to address issues of shared importance relating to ngā rohe moana, to be held alongside the annual Ngāti Porou – Crown Taumata. The Minister for Treaty of Waitangi Negotiations is the co-chair for the Whakamana Forum, while the Prime Minister co-chairs the Taumata. The date for the 2023 Taumata and Whakamana Forum has not yet been set.

### **Waitangi Tribunal kaupapa inquiry into the Takutai Moana Act 2011 (Wai 2660)**

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

Stage 1 of the inquiry focused primarily on the procedural arrangements and resources made available by the Crown to applicants to assist them with the progression of their applications under the Takutai Moana Act 2011. This was completed in June 2020 when the Tribunal released its Stage 1 report. The changes to the takutai moana financial assistance scheme and the engagement strategy (both discussed below) respond to the findings and recommendations in the Stage 1 report.

The hearings for Stage 2 of the inquiry began in September 2020 and concluded in November 2021. Stage 2 focussed on the policies and principles that underpin the Takutai Moana Act 2011 and whether Crown policy and practice in applying the Takutai Moana Act 2011 is inconsistent with the Treaty/ te Tiriti. The Tribunal is expected to release its Stage 2 report in the first half of 2023 and we will continue to engage with you on this.

### **Recognition of customary interests under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019**

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In September 2020, the first Ministerial determinations of customary marine title in ngā rohe moana were made. [REDACTED]

[REDACTED] Te Arawhiti are continuing to support the management arrangement trusts to prepare for these determinations.

### **Recognition of customary interests in the Courts**

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In 2018, the first High Court recognition order was made following the *Re Tipene* hearing with the High Court recognising customary marine title for a whanau group near two of the titi islands in Foveaux Strait.

Over 2020-2022, High Court hearings have been held for applications in parts of the eastern and western Bay of Plenty, Hawke's Bay, and East Coast and Wairarapa coastlines. Further hearings are

scheduled in 2023 and 2024 for parts of the Te Raki, Kāpiti/Wellington and Wairarapa coastlines. Recognition orders from the hearings already concluded are yet to be finalised.

Appeal proceedings are also underway. The Court of Appeal is scheduled to hear appeals in 2023 from judgments issued in *Re Edwards (Te Whakatōhea)* and *Re Taylor (Ngāti Pāhauwera)*. The Supreme Court is considering an application for leave to appeal in relation to an 'all of New Zealand' application that was dismissed by the High Court on the grounds that it was improperly brought.

The Attorney-General appears in the High Court hearings as an interested party representing the interests of all the public (including Māori), and in the Court of Appeal and Supreme Court as an interested party, intervenor and/or respondent depending on the circumstances. Te Arawhiti undertakes and provides historical research and geospatial mapping to support the Attorney-General in High Court hearings. Te Arawhiti also provides instructions and information to the Crown Law Office for these hearings and for related case management and judicial conferences, interlocutory hearings, and appeal proceedings.

### **Takutai Moana Engagement Strategy**

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You are responsible for the implementation of this strategy which was agreed by Cabinet in 2021. The strategy enables Te Arawhiti to engage with all whānau, hapū and iwi applicant groups across 20 coastal areas to timeframes informed by the groups themselves. The strategy seeks to achieve the fair, transparent, and timely determination of applications under the takutai moana legislation.

Cabinet agreed that engagement with applicant groups would be collaborative and focus on building an understanding of the relevant tikanga, preparing the historical research and evidence needed to meet the legal tests for recognition, and on working through shared or overlapping interests. Cabinet also agreed that support from Te Arawhiti will be available to all applicant groups, irrespective of whether recognition is being sought from the High Court or from the Crown.

### **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 by Te Arawhiti 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 the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

### **Takutai moana financial assistance scheme**

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Te Arawhiti administers the takutai moana financial assistance scheme (the scheme) which supports applicant groups in meeting the costs of progressing applications for recognition of customary interests under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. The Minister for Treaty of Waitangi Negotiations and the Minister of Finance have been jointly responsible for the scheme.

In February 2022, Cabinet agreed fundamental changes to the policy settings for the scheme following a comprehensive review by Te Arawhiti and relevant findings and recommendations by the Waitangi Tribunal in its Wai 2660 Stage 1 report. Budget decisions enabling implementation of the

changes were made in May 2022. Te Arawhiti completed the necessary operational changes over the second half of 2022, and the new settings were implemented at the beginning of 2023. The changes to the scheme increased the funding available to applicant groups, improved the structure of the scheme and introduced the option of grant funding. Te Arawhiti will monitor the impact of the changes for applicant groups over 2023 and will report back to, and seek further decisions from, joint-Ministers where required.

## Ngāpuhi

Ngāpuhi is our country’s largest iwi with a resident population of at least 165,000 people (based on the 2018 Census) and an estimated 200,000 people worldwide. Previous attempts to achieve a collective Ngāpuhi mandate have not been successful.

In December 2019, the Crown invited mandate proposals from Ngāpuhi hapū groupings to negotiate the settlement of their historical Treaty claims. Since then, hapū groupings have started to form. Two hapū groupings have been confirmed and are developing mandate strategies. We anticipate there may be more hapū groupings that eventuate.

[REDACTED]

[REDACTED]

[REDACTED] In December 2022, the Waitangi Tribunal released the first part of its Stage 2 Te Paparahi o Te Raki Inquiry (Wai 1040) report. The report affirmed its Stage 1 conclusion that rangatira did not cede sovereignty in signing the Treaty/te Tiriti and made a number of recommendations. Agreeing the process for engagement with Ngāpuhi and progressing discussions on these issues will be a key undertaking over the coming months.

The Ngāpuhi Investment Fund Limited (trading as Tupu Tonu) was established in 2020. Tupu Tonu is a Crown-owned company tasked with acquiring and developing a portfolio of high value assets for the Crown to offer to Ngāpuhi as redress in negotiations. A portion of its annual net cash investment returns is provided to Ngāpuhi hapū and whānau through a disbursements programme. The Minister for Treaty of Waitangi Negotiations and the Minister of Finance are the shareholding Ministers of Tupu Tonu.

## Waitangi Tribunal’s power of resumption

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. This jurisdiction is commonly referred to as the Tribunal’s “resumption” jurisdiction. The Crown must also pay monetary compensation to recipients of CFL land.

Two current Waitangi Tribunal inquiries are considering binding recommendations:

- **Mangatū CFL land** (includes maximum compensation of \$190 million): This land was offered to the “Māhaki cluster” of Gisborne-area groups as part of a comprehensive Treaty settlement.

However, the settlement is paused while the groups seek the land and associated compensation through Tribunal binding recommendations. We are awaiting a High Court decision following judicial review of the Tribunal's interim recommendations for transfer and maximum compensation.

- **Ngāti Kahu memorialised and CFL land** ( [REDACTED] including 100+ privately-owned properties): The Tribunal has chosen to hold a broad inquiry into unheard claims before considering binding recommendations. The process will involve Ngāpuhi groups as well as Ngāti Kahu in the Muriwhenua (Far North) inquiry district and is likely to take several years.

## Natural resources – te ao tūroa

Natural resource arrangements, such as the preparation of strategy documents and mechanisms for participating in decision-making, are often vitally important components of Treaty settlement negotiations. This will continue to be the case for current and future negotiations.

Almost every Treaty settlement interacts with the Resource Management Act 1991 to some extent. In addition, some of the arrangements provided through te Takutai Moana Act (as a result of recognition of customary interests in the common marine and coastal area) connect to the Resource Management Act.

Cabinet has agreed to repeal and replace the Resource Management Act within this parliamentary term. To that end the Natural and Built Environment Bill and the Spatial Planning Bill were introduced to Parliament in December 2022.

The reforms are intended to improve resource management outcomes for Māori but there is a relatively long transition phase, and, over that period, Treaty settlement negotiations will continue to include natural resource arrangements.

Reform of the resource management system, including a new freshwater allocation system, and the Three Waters reforms provide an opportunity of rare scale to provide for Māori rights and obligations associated with te ao tūroa (the natural world) and its taonga.

## COVID-19 response and recovery

The situation brought about by COVID-19 (both health and economic impacts) has had a disproportionate effect on Māori, and these impacts will continue in the coming years.

The benefits of settling Treaty/ Tiriti claims over the past 30 years were evident during New Zealand's COVID-19 response, with Māori taking up early and strong leadership. Māori who have settled were better 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.

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

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Your delegation makes you responsible for fast-track consenting applications. The COVID-19 Recovery (Fast-Track Consenting) Act 2020 (the Act) seeks 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 will be one of several 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 works with the Minister's office to ensure these timeframes are met.

Te Arawhiti is also required to work with the Ministry for the Environment on reports under section 17 of the Act. This 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.




The Act is set to self-repeal on 8 July 2023.

## **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 and your delegation areas. Other information and/or briefings will be provided to you in accordance with your delegation.

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

## Appendix A – The work of Te Arawhiti: to restore, sustain and build Māori Crown relationships



# TOWARDS TRUE TREATY PARTNERSHIP

<b>RESTORE</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 Kaupapa**      **Atawhaitia**

Working together in good faith with humility and authenticity



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

		Direct Dial	Mobile Phone
Acting Tumu Whakarae – Chief Executive	Glenn Webber	n/a	██████████
Returning Tumu Whakarae – Chief Executive	Lil Anderson	n/a	██████████
Deputy Chief Executive – Treaty Reconciliation and Takutai Moana	Tui Marsh	n/a	██████████
Deputy Chief Executive – Treaty Reconciliation Pourongomau ō Nga	Eru Lyndon	n/a	██████████
Deputy Chief Executive – Strategy and Policy	Warren Fraser	██████████	██████████
Deputy Chief Executive – Partnerships	Kelly Dunn	██████████	██████████
Deputy Chief Executive – Organisational Support	Jacquelyn Shannon	██████████	██████████

## 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.

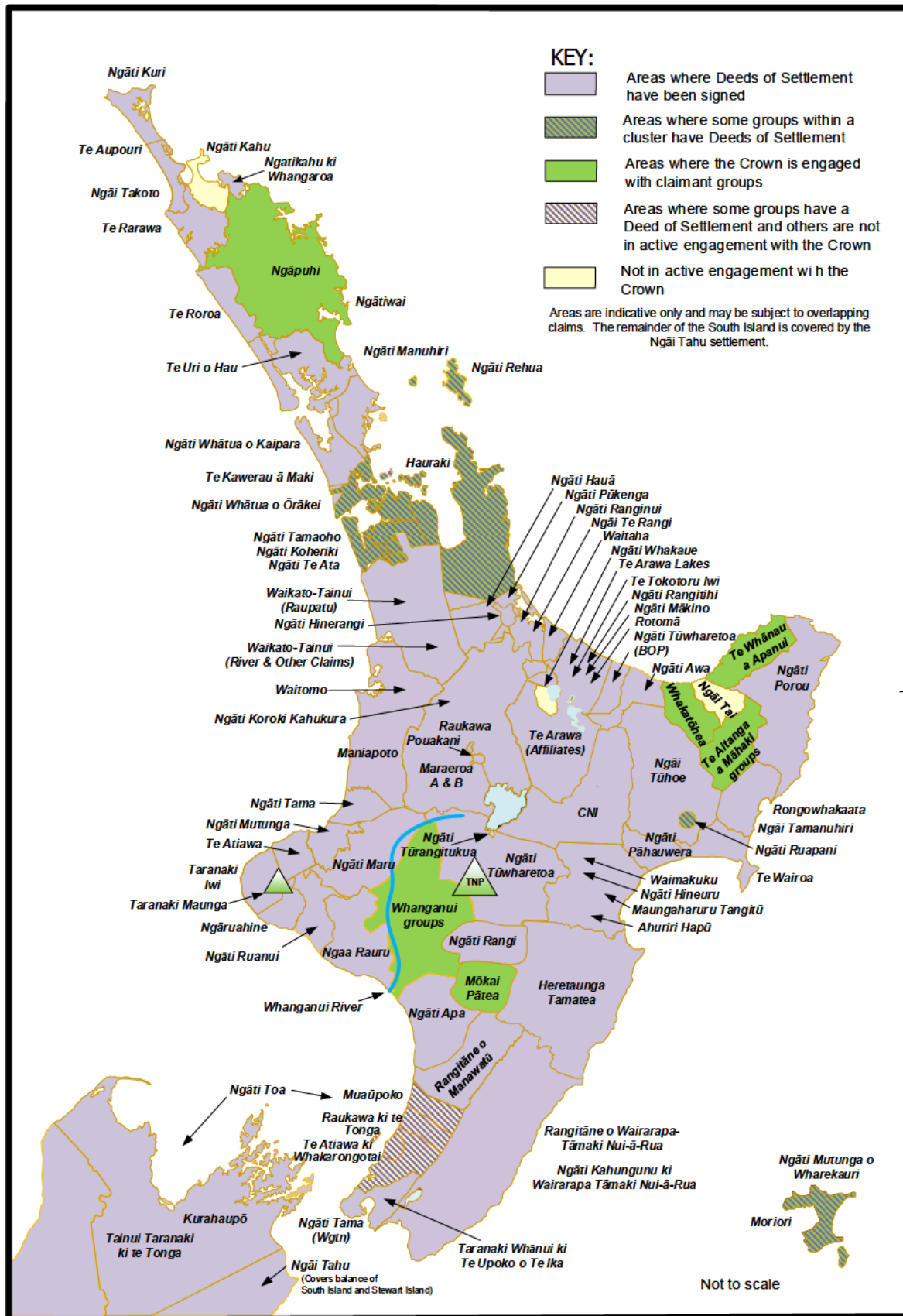
**Initial a deed of settlement** - Sets out in technical detail the historical claims and the redress agreed between the Crown and mandated body. For the purposes of the Crown’s internal accountancy this is the point at which the value of the settlement is counted against the multi-year appropriation.

**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 – Current status of Treaty/ Tiriti settlements



## Appendix E – Treaty/ Tiriti sector agencies

The following agencies support Te Arawhiti and play key roles in Treaty/ Tiriti settlements via:

### **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>3</sup>

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<sup>3</sup> As defined in section 9 of the Marine and Coastal Area (Takutai Moana) Act 2011



**The Office for Māori Crown Relations - Te Arawhiti**

**[tearawhiti.govt.nz](http://tearawhiti.govt.nz)**

**[contactus@tearawhiti.govt.nz](mailto:contactus@tearawhiti.govt.nz)**

**04 494 9800**

**National Office**

**Justice Centre | 19 Aitken St**

**DX SX10088 | Wellington | New Zealand**



**THE OFFICE FOR MĀORI CROWN RELATIONS**