



MINISTRY OF
JUSTICE
Tabū o te Ture



**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

2014 Briefing for the Incoming Minister

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Published by the Ministry of Justice
October 2014 © Crown Copyright
ISBN 978-0-478-32443-3 (print)
ISBN 978-0-478-32444-0 (online)

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Introduction

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 group within the Ministry of Justice tasked with negotiating the settlement of historical Treaty of Waitangi claims with iwi and administering the Marine and Coastal Area (Takutai Moana) Act 2011.

Settling Treaty of Waitangi Claims

Settling Treaty claims resolves the historical grievances of Māori under the Treaty of Waitangi. The grievances addressed by the Office of Treaty Settlements relate to the Crown's actions or omissions prior to 21 September 1992. The Crown's goal in settling Treaty claims is to achieve fair and durable settlements that contribute to the cultural, social and economic development of Māori and enhance the Crown-iwi relationship.

Marine and Coastal Area (Takutai Moana) Act 2011

The Marine and Coastal Area (Takutai Moana) Act 2011 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. Legal expression may take the form of Customary Marine Title or non-exclusive Protected Customary Rights. Māori whānau, hapū and iwi can seek recognition through two avenues; by engaging with the Crown to seek a Ministerial determination or by applying to the High Court. The Office of Treaty Settlements provides advice to the Minister to assist in Ministerial determinations. It also instructs Crown Law Office in relation to High Court applications.

The Purpose of this Briefing

This briefing explains the role and structure of the Office of Treaty Settlements, its place in the wider Ministry of Justice, your role and responsibilities as Minister and the current negotiations work programme. It provides a starting point for further discussions about your priorities, expectations and opportunities in the Treaty negotiations portfolio and current issues you should be aware of especially in the context of the Office of Treaty Settlements' reducing baseline.

Upcoming Decisions

The Office of Treaty Settlements will seek decisions from you in the next 1 to 3 months on:

- > **[Withheld under section 9(2)(j) of the Official Information Act 1982]**

We look forward to working with you on these matters and others regarding Treaty settlements and the Marine and Coastal Area (Takutai Moana) Act 2011.

The Present: Treaty Settlements Context

Achievements and Momentum

72 deeds of settlement have been signed to date representing over 70 percent of New Zealand's land mass.

32 deeds of settlement have been achieved in the last 3 years.

During this time, negotiations benefited from an established Treaty settlement policy framework and political commitment.

In the last twenty years, successive New Zealand Governments have prioritised completing Treaty settlements as soon as possible and have set aspirational goals accordingly. These targets created considerable momentum in settlement negotiations and has resulted in the Crown and iwi making significant progress towards settling all historical claims. Treaty settlements have now progressed to a point where there is a widening gap between those iwi who have completed Treaty settlement negotiations with the Crown and those who are yet to settle.

At September 2014 72 deeds of settlement have been signed representing claims covering 70 percent of New Zealand's land mass. This is more than half the total number of deeds the Office of Treaty Settlements anticipates will be required to complete Treaty settlements with all willing and able groups. 32 of these deeds of settlement were achieved in the last 3 years.

Treaty settlements are the product of intensive negotiation and require pragmatism, commitment and political leadership from Crown and iwi representatives. Negotiations in the past 3 years have benefited from consolidation of the knowledge the Crown and iwi have about how to conduct successful negotiations. They have also benefited from:

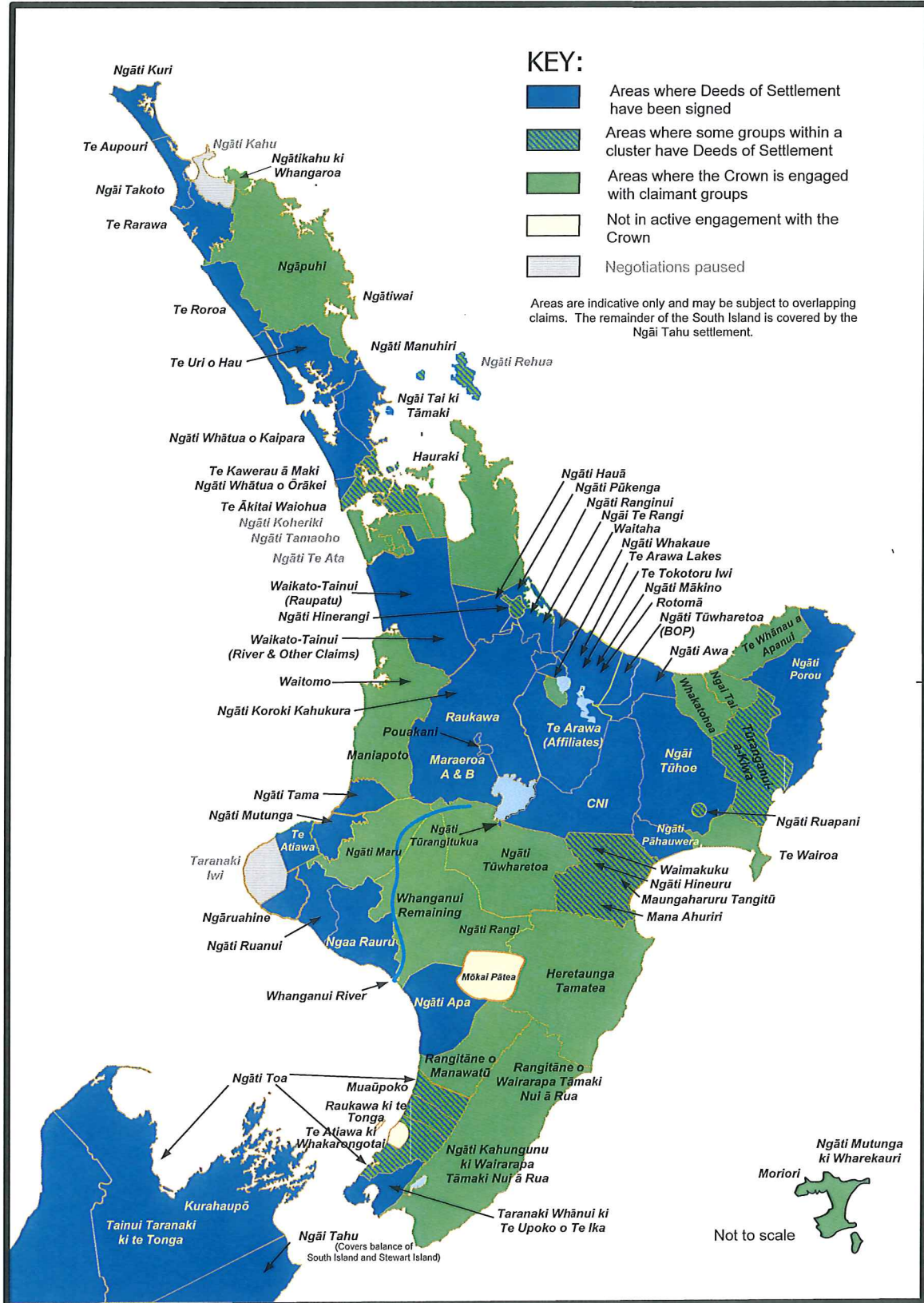
- > an established framework for Treaty settlement redress policy. The current framework provides clear parameters, certainty for negotiating parties and equally allows the Crown and iwi to explore bespoke arrangements where appropriate. Recent examples of such arrangements are recognition of the Whanganui River as intrinsically connected to iwi with its own legal identity; and the establishment of Te Urewera as a legal identity governed by a Board of Ngāi Tūhoe and Crown appointees; and
- > political commitment to concluding Treaty settlements. This is evidenced by increased resourcing for the Office of Treaty Settlements enabling more negotiations to be conducted at the same time, support from key stakeholders in Treaty sector agencies, the re-establishment of the Cabinet Committee on Treaty of Waitangi Negotiations in 2009 and the cross party support Treaty settlement legislation has generally received in the House.

In some cases the Crown and iwi have been able to navigate Treaty settlement negotiations more quickly than in the past. The Ngāti Hauā settlement was concluded in record time, progressing from terms of negotiation to deed of settlement in 7 months. Achieving settlements quickly is exceptional, however, and requires extraordinary pragmatism and motivation from Crown and iwi. This is rare given the negotiating parameters within which the Office of Treaty Settlements works and the redress aspirations of iwi.

Looking to the future, in most cases the Office of Treaty Settlements has

good information on the profile of each group yet to settle, including those negotiations the Crown anticipates will be more challenging and time-consuming. Shortly after the election we will seek your direction on a work programme that allows us to sustain momentum and give priority to negotiations with iwi who are willing and able to settle with the Crown while remaining within current policy parameters. This will take into account the impact of other Government policies such as proposed changes to the Resource Management Act.

Treaty Settlements Progress Map



Status of Treaty Settlements and Negotiations

What is a Treaty Settlement?

A Treaty settlement is an agreement between the Crown and a Māori claimant group to settle all of that claimant group's historical claims against the Crown.

The four core components of a settlement package are an agreed historical account, a Crown apology, cultural redress and commercial and financial redress.

A Treaty settlement is an agreement, ultimately enshrined in legislation, between the Crown and a Māori claimant group to settle all of that claimant group's historical claims against the Crown. The four core components of a settlement package are an agreed historical account, a Crown apology, cultural redress, and commercial and financial redress.

Progress towards reaching a Treaty settlement is measured with key milestones which can vary depending on the negotiation. The milestones are:

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 - Outline the "ground rules" and objectives for the negotiations.

Agreement in principle - A non-binding agreement reached 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 and the Crown sign the final Deed of Settlement when 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 iwi 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.

The Crown and iwi have made significant progress towards settling all historical Treaty claims. At September 2014 72 deeds of settlement have been signed representing claims covering 70 percent of New Zealand's land mass. This is more than half the total number of deeds the Office of

Progress towards Settling Claims

The Crown and iwi have made significant progress towards settling all historical Treaty claims.

Since 1 January 2014 35 Treaty settlement milestones have been achieved including the signing of 5 deeds of settlement and the enactment of 10 pieces of legislation.

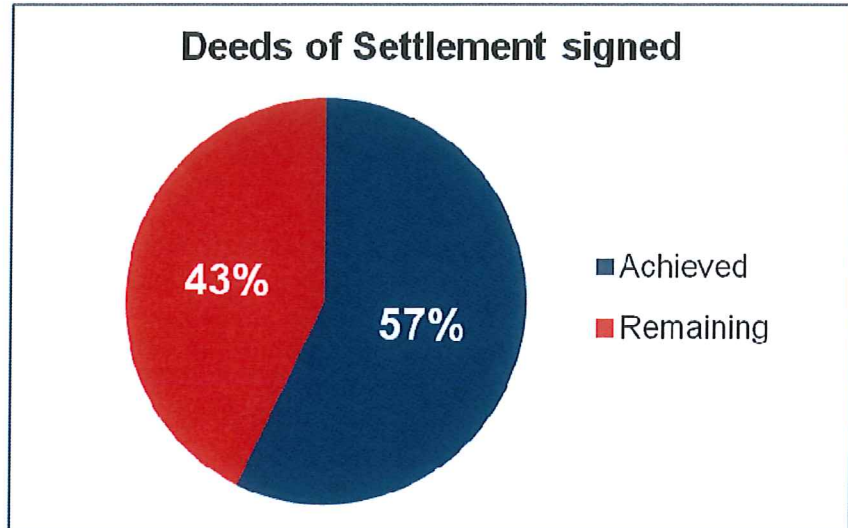
Treaty Settlements anticipates will be required to achieve full and final settlements with iwi who are willing and able to settle. Since 1 January 2014 the negotiations milestones achieved by the Crown and iwi are:

Milestone	Achieved	Iwi	Date
Deeds of Mandate Recognised	4	Ngāpuhi	14 Feb
		Ngāti Hinerangi	20 Feb
		Ngāitai ki Tōrere	4 Jun
		Ngāti Rangī	6 Aug
Terms of Negotiation Signed	3	Ngāti Hinerangi	20 Feb
		Ngāti Tama (Wellington)	28 Mar
		Ngāti Whakaue	3 Apr
Agreements in Principle Signed	3	Rangitāne o Wairarapa	28 Mar
		Ngāti Kahungunu ki Heretaunga Tamatea	11 Jun
		Te Tira Whakaemi o Te Wairoa	11 Jun
Deeds of Settlement Initialled	4	Whanganui River	26 Mar
		Ngāruahine	4 Jun
		Te Ātiawa (Taranaki)	4 Jun
		Ngāti Hineuru	24 Jul
Deeds of Settlement Signed	5	Ngāti Kuri	7 Feb
		Te Kawarau ā Maki	22 Feb
		Ngāruahine	5 Aug
		Whanganui River	9 Aug
		Te Ātiawa (Taranaki)	9 Aug
Legislation Introduced	6	Te Kawarau ā Maki	16 Apr
		Hawkes Bay Regional Planning Committee	16 Apr
		Te Aupouri	16 Apr
		Ngāi Takoto	16 Apr
		Te Rarawa	16 Apr
Legislation Enacted	10	Ngāti Raukawa	12 Mar
		Ngāti Rangiteaorere	9 Apr
		Ngāti Rangiwewehi	9 Apr
		Tapuika	9 Apr
		Maungahauru Tangitū Hapū	9 Apr
		Ngāti Toa Rangātira	17 Apr
		Tainui Taranaki ki te Tonga	17 Apr
		Kurahaupō	17 Apr
		Ngāi Tuhoe	24 Apr
		Tāmaki Collective	24 Apr

Appendix A sets out the total number of Treaty settlement milestones achieved to date.

The signing of a deed of settlement marks a significant point in negotiations as it is the point at which a comprehensive and final

agreement is reached between the Crown and the claimant group, who have expressed their support for the settlement package through ratifying the deed. To date 72 deeds of settlement have been completed and 32 of these have been signed in the last 3 years. Of the total expected number of deeds this represents:



Appendix B sets out Treaty settlement milestones achieved and remaining.

Progress with Legislation

Treaty Settlement Legislation

Treaty settlements require legislation to be enacted. Legislation is needed to ensure the finality of the settlement by removing the ability of the courts and the Waitangi Tribunal to inquire into historical claims or the deeds of settlement signed with iwi. It also provides for statutory instruments (e.g. statutory vesting of land, overlay classifications, Statutory Acknowledgements and Deeds of Recognition and removes statutory memorials from land titles in the claim area) and allows the Crown to vest land in the iwi's post-settlement governance entity.

In the past 2 years Treaty settlement legislation has benefited from Parliament's ability to extend sitting hours. As long as Treaty settlements maintain momentum it is likely extended sitting hours will continue to be required to progress Treaty settlement legislation.

Business Items for Reinstatement

We recommend you reinstate each of the 6 business items that lapsed on the dissolution of Parliament

The Office of Treaty Settlements is responsible for 6 business items that lapsed on the dissolution of Parliament. These are:

- > Ngāti Hauā Claims Settlement Bill, awaiting third reading;
- > Ngāti Koroki Kahukura Claims Settlement Bill, awaiting third reading;
- > Te Hiku Claims Settlement Bill, awaiting first reading;
- > Te Kawerau ā Maki Claims Settlement Bill, awaiting first reading;
- > Hawke's Bay Regional Planning Committee Bill, awaiting first reading; and
- > Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill, awaiting first reading.

Our recommendation is that each of these 6 Bills be reinstated. We will report to you separately on the implications of reinstating these business items.

Mechanism for Reinstatement

The Cabinet Office, assisted by the Office of the Clerk of the House of Representatives, will provide the Leader of the House with a schedule of business that has lapsed and is available for reinstatement. Standing Orders provide that parliamentary business is resumed at the stage that it had reached in the previous Parliament.

It has been the practice for the last two Parliaments that all business is reinstated. If this is not the case for the incoming Parliament, it is likely that the Leader of the House will work with Ministers to identify which items of business within their portfolios will be reinstated. To assist you with these decisions officials will provide you with advice on the implications of reinstating or not reinstating each item of business for which you are responsible.

The Marine and Coastal Area (Takutai Moana) Act 2011

History of the Marine and Coastal Area (Takutai Moana) Act 2011

Protects the interests of all New Zealanders in the marine and coastal area of New Zealand.

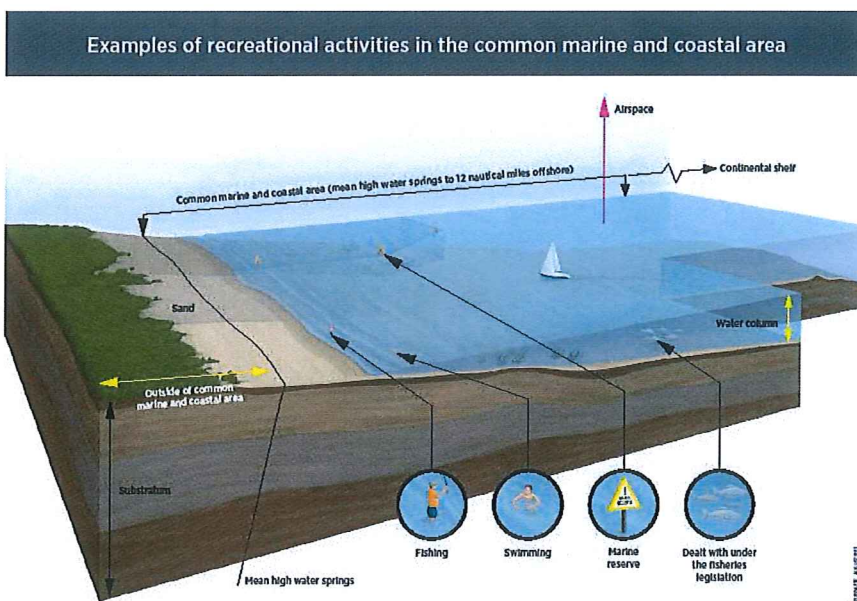
Recognises the mana tuku iho exercised in this area by iwi, hapū and whānau as tangata whenua.

Can recognise interests through Customary Marine Title or Protected Customary Rights.

Customary interests can be investigated through application to the High Court or Ministerial determination.

The Marine and Coastal Area (Takutai Moana) Act 2011 protects the interests of all New Zealanders in the marine and coastal area of New Zealand and recognises the mana tuku iho exercised in this area by iwi, hapū and whānau as tangata whenua. The Act also provides for the legal expression of customary interests and their exercise in the common marine and coastal area.

The Marine and Coastal Area (Takutai Moana) Act 2011 replaced the Foreshore and Seabed Act 2004. It restored any customary interests in the common marine and coastal area previously extinguished by the Foreshore and Seabed Act and created a common space of this area so it cannot be owned by any person or group. The common marine and coastal area excludes existing private titles and certain conservation areas. Existing lawful rights and uses in the marine and coastal area, including commercial activities and public rights of access, navigation and fishing, are protected.



The Marine and Coastal Area (Takutai Moana) Act 2011 also changed the test for the existence of customary title, removing the requirement for applicants to have continuously owned land abutting the common marine and coastal area. The test now requires applicant groups to have held a specified area in accordance with tikanga and exclusively used and occupied this area from 1840 to the present day without substantial interruption.

Under the Marine and Coastal Area (Takutai Moana) Act 2011 iwi, hapū

and whānau can apply to have two distinct categories of right recognised; Customary Marine Title and Protected Customary Rights.

Traditionally the Minister for Treaty of Waitangi Negotiations has delegated responsibility under the Marine and Coastal Area (Takutai Moana) Act 2011 as assigned by the Prime Minister. This responsibility excludes those sections of the Act which give other Ministers statutory powers.

Customary Marine Title

Customary Marine Title is an exclusive right. It recognises the relationship that exists and will continue to exist, between iwi, hapū or whānau applicants and those parts of the common marine and coastal area where rights have been found to have survived. Customary Marine Title is inalienable; meaning the area in question cannot be sold, and cannot be converted to freehold title.

Protected Customary Rights

Protected Customary Rights recognise customary activities, uses and practices exercised non-exclusively in the common marine and coastal area. Examples include the collection of hangi stones or drift wood and the launching of waka.

Avenues to Investigate Customary Interests

Customary rights can be recognised through an application to the High Court or Ministerial determination. Both avenues apply the same legal tests and confer the same rights.

There are two avenues by which iwi, hapū or whānau can seek recognition of surviving customary interests. Both avenues apply the same legal tests and confer the same rights.

Application to the High Court – The Marine and Coastal Area (Takutai Moana) Act 2011 restored access to the Courts for the recognition of customary rights which had been removed by the Foreshore and Seabed Act 2004. Applications can be made to the Court for a Recognition Order for either Customary Marine Title or Protected Customary Rights. The Crown and third parties can, subject to the High Court Rules, participate in this process.

Ministerial Determination – As an alternative, iwi, hapū or whānau can apply directly to engage the Crown. It is the Minister's role, assisted by advice from officials, to decide whether to engage with applicant groups through this avenue and enter a formal Terms of Engagement. Once this step is completed, information relevant to the tests in the Marine and Coastal Area (Takutai Moana) Act 2011 is gathered. This stage includes ascertaining the interests of third parties. Legal submissions on the tests in the Act are then prepared to provide you with the information required to assess if the Crown can be satisfied the tests in the Marine and Coastal Area (Takutai Moana) Act 2011 have been met in all or part of the specified application area. The Minister, subject to Cabinet approval, then determines that a Recognition Agreement can be entered into.

Recognition Orders vs. Recognition

Whether a Recognition Order is granted or a Recognition Agreement is entered into depends on the avenue through which the applicant chooses to pursue their customary rights. A Recognition Order is given by the High

Agreements

Court while a Recognition Agreement is entered into by the applicant and the responsible Minister on behalf of the Crown. Both apply the same legal tests and confer the same rights.

Deadline for Applications

3 April 2017

The deadline for all applications, whether they be with the High Court or for Ministerial determination, is 3 April 2017. There is currently no deadline for when these applications have to be processed by.

Progress with Applications to Date

You will be required to make the first Ministerial Customary Rights determinations in relation to Ngāti Porou and Ngāti Pahauwera within 12 months.

The number of applications the Crown has received from iwi, hapū or whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 has increased steadily since April 2011. **Appendix C** sets out the number of applications by iwi, hapū or whānau and the status of these applications. At September 2014, there have been 37 applications made including those carried over from the Foreshore and Seabed Act 2004. 19 of these applications are currently active.

High Court Applications

There have been no new applications made to the High Court since the Marine and Coastal Area (Takutai Moana) Act 2011 was passed. In December 2014 the High Court will hear its first application for a Customary Marine Title Recognition Order.

Applications to the Crown

You will be required in the next 12 months to make the first Ministerial determinations on whether or not the tests for customary rights have been met for Ngāti Porou and Ngāti Pahauwera. A retired High Court Judge, Dame Justice Judith Potter, has been appointed to assist you evaluate iwi and the Crown's evidence and legal submissions against the tests for customary marine title.

Relationship with Treaty Settlements

Treaty settlements and Crown engagement under the Marine and Coastal Area (Takutai Moana) Act 2011 are completely separate.

Treaty settlement negotiations and engagement between the Crown, iwi, hapū and whānau under the Marine and Coastal Area (Takutai Moana) Act 2011 are completely separate and the Office of Treaty Settlements has a different role under each. Whereas historic Treaty settlements are negotiated, the recognition of customary rights under the Act is the result of a fact-based legal determination.

Another key difference is that the Crown can engage with iwi, hapū or whānau under the Act whereas it prefers to deal with 'large natural groups' or iwi for the purposes of Treaty settlements.

It is important when settling historic Treaty claims that negotiations do not purport to address rights in the common marine and coastal area e.g. in relation to arrangements over harbours.

Role and Responsibilities of Minister

Decision Making

As Minister, you have a decision making role at almost every key stage of Treaty settlement negotiations.

As the Minister for Treaty of Waitangi Negotiations you have a decision making role at almost every key stage of negotiations. At a procedural level you are responsible for approving most negotiations-related Cabinet papers, reports, Ministerial correspondence, properties to be landbanked for future settlements, ratification strategies, ratification results and the suitability of post-settlement governance entities. You will be responsible for approving upper-limits on claimant funding and the Office of Treaty Settlements will administer and release this funding as allocated. You are also jointly responsible with the Minister of Māori Affairs for recognising mandates for groups entering Treaty settlement negotiations.

It is normal for Cabinet to mandate you to enter into agreements in principle and deeds of settlement with mandated claimant groups on behalf of the Crown. You are also responsible for the introduction of Treaty settlement legislation to the House and, as far as possible, the passage of this legislation.

As Minister 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 settlement date.

Leadership

Providing leadership is a vital component of your role as Minister. Leadership requires you to engage with a variety of senior stakeholders including Cabinet colleagues, Ministers responsible for other Treaty sector agencies and act as a spokesperson for Treaty settlements and Treaty of Waitangi issues on behalf of the Government. You will also be required to engage with iwi and community leaders on Treaty settlements.

Leadership is often required in relation to bespoke or unusual redress, especially where there is a perception that public rights may be impacted, or where the support of Ministerial colleagues is required. You may increasingly be expected to, in conjunction with the Minister for Māori Affairs, provide leadership in relation to discussions about the Crown-Māori relationship.

Strategy and Negotiations

In relation to Treaty settlements, you will make decisions on negotiations strategies and the prioritisation of the Office of Treaty Settlements' work programme. The Office of Treaty Settlements will provide advice to support you in this decision making. As Minister, the mana you hold will occasionally mean you need to have 'Rangatira to Rangatira' conversations with iwi leaders, often to move past a difficult negotiations issue or conversely, to initial or sign an agreement in principle or deed of settlement. The Office of Treaty Settlements will support you in these conversations.

Reporting from the Office of Treaty Settlements

The Office of Treaty Settlements will seek early engagement with you about your preferred operating style. In the past, the Minister has met weekly with the Office of Treaty Settlements' leadership team to receive updates on progress and discuss important issues relating to Treaty settlement negotiations and the Marine and Coastal Area (Takutai Moana) Act 2011. Members of the leadership team also work with you individually on specific negotiations issues.

As negotiations progress with claimant groups, the Office of Treaty Settlements will report to you and other relevant Ministers seeking your preliminary agreement to redress (all redress is subject to approval by Cabinet) or direction on difficult negotiations issues. You will receive a weekly report from the Office setting out, at a high level, progress with each current negotiation and regular updates on the overall work programme for the Office.

Marine and Coastal Area (Takutai Moana) Act 2011

You make determinations under the Marine and Coastal Area (Takutai Moana) Act 2011 in relation to applications for Customary Marine Title or Protected Customary Rights.

Shared Responsibilities with other Ministers

Traditionally the Minister for Treaty of Waitangi Negotiations has delegated responsibility under the Marine and Coastal Area (Takutai Moana) Act 2011 as assigned by the Prime Minister. Excluded from this responsibility are those sections of the Act which give other Ministers statutory powers. For example the Minister of Conservation and the Minister for Primary Industries have statutory functions under the Act and the Minister of Justice is responsible for regulations under the Act. The Minister for Land Information New Zealand has responsibility for reclaimed land and the final gazettes to put on register.

You are jointly responsible with the Minister of Māori Affairs for recognising the authority of groups applying for recognition of customary rights under the Act.

Your Responsibilities

As Minister you make determinations under the Marine and Coastal Area (Takutai Moana) Act 2011 in relation to applications for Customary Marine Title or Protected Customary Rights by groups in direct engagement with the Crown.

The Treaty Settlement Sector

Key Government Stakeholders

A list of key stakeholders is set out at Appendix D.

An 'All of Crown' Approach

An all-of-Government approach is necessary as iwi grievances are with the Crown not individual agencies.

Role of Ministers

Keeping settlements a top priority across Agencies

The Office of Treaty Settlements is the sole agency responsible for the negotiation of historical Treaty settlements on behalf of the Crown. The advice of Treaty sector agencies on aspects of settlements relating to their areas of expertise is vital to the Office's ability to negotiate settlements.

Treaty sector agencies can be involved in negotiations in a variety of ways. The key stakeholders and their role in Treaty settlements are set out at **Appendix D**. These include entering into long-term commitments such as sale and leaseback of property, arrangements over natural resources, requirements to consult or co-operate with settling iwi or managing the transfer of redress assets post-settlement. The Office of Treaty Settlements co-ordinates the input of other sector agencies as necessary.

In April 2009 the Government's commitment to completing Treaty settlements as soon as possible was re-confirmed. The importance of Treaty sector agencies working collaboratively, aligning priorities and ensuring full and timely information sharing was also noted by the newly re-established Treaty of Waitangi Cabinet Committee at this time.

Treaty settlements, and the redress negotiated through them, impact on the portfolios of a wide range of Ministers. An all-of-Government approach is necessary because iwi grievances are with the Crown, not individual agencies. Iwi, in their claims and expectations about how these claims will be dealt with, do not see the Crown as being made of constituent parts.

The pace and success of negotiations depends greatly on the ability of agencies to engage with the Office of Treaty Settlements and balance Treaty settlement work such as negotiating redress and post-settlement implementation with their core functions, other priorities and available resources. To maintain momentum Treaty settlements must remain a priority across agencies.

The extent to which individual Ministers engage with negotiations varies depending on how their portfolio interests feature in Treaty settlements. Some Ministers will be required to approve items of redress regularly while others will need to engage only periodically on specific negotiations or redress issues.

The Office of Treaty Settlements will discuss your priorities and expectations regarding Treaty settlement timeframes with you as soon as possible. The outcome of this discussion will assist the Office of Treaty Settlements to inform Treaty sector agencies of the level of resourcing required to participate in Treaty settlement negotiations and implement Treaty settlement redress. We anticipate some agencies may struggle to prioritise Treaty settlements. Working closely with key sector agency representatives has assisted those agencies to receive regular work

programme updates and plan their engagement with the Office of Treaty Settlements and negotiations accordingly. A clear message across Government reinforcing the message that Treaty settlements are a priority for Ministers would be beneficial to clarify expectations.

Local Government

Local Government does not form part of the Crown but plays a pivotal role in implementing redress to provide for iwi involvement in natural resource management. Iwi seek stronger decision-making roles with local authorities through Treaty settlements.

Regional councils have devolved responsibility for management of some natural resources including water, the coast and air under the Resource Management Act 1991. Local Government has been devolved responsibility for making decisions about how Māori will be involved in the decision making processes of local authorities under the Local Government Act 2002.

Next Steps

Sustainable momentum

Reaching the 'end' of Treaty settlements will require continued determination and pragmatism from iwi and the Crown.

[Withheld under section 9(2)(g)(i) of the Official Information Act 1982]

Opportunities

Current Treaty settlements policy provides clear parameters without excluding the ability of Crown and iwi to explore 'bespoke' redress.

The Crown and iwi have a great deal of accumulated knowledge about how to conduct successful negotiations. This should be reflected in the Office of Treaty Settlements work programme.

The Crown and iwi have reached a stage where over half the anticipated total number of Treaty settlements have been completed and we have an estimate of the time and resource required to conclude settlements with willing and able groups. To reach the end will require continued determination and pragmatism from iwi and the Crown. It will also require the Office of Treaty Settlements to plan carefully and devise a work programme that reflects the challenging negotiations to come and decreasing departmental resources.

[Withheld under section 9(2)(g)(i) of the Official Information Act 1982]

Refinement of Treaty settlement policy

The Treaty settlements policy framework has been refined in the twenty years since substantive negotiations between the Crown and iwi began. The current framework provides clear parameters and certainty for negotiating parties about the types of redress available for negotiation. Equally the Crown has found a way to balance a solid policy framework with the need to explore bespoke arrangements with iwi where appropriate. Recent examples of bespoke redress are the Whanganui River, which was recognised as being intrinsically connected to iwi and will be a legal identity in its own right; and the establishment of Te Urewera as a legal identity governed by a Board of Ngāi Tūhoe and Crown appointees.

Negotiations work programme

The Office of Treaty Settlements has accumulated knowledge and experience about how to conduct successful Treaty settlement negotiations. This experience has shown the most important aspects of a realistic and achievable work programme are:

- > allowing sufficient time to ensure the quality and durability of settlements;
- > reflecting the many variables that impact on negotiations;
- > building contingencies into timeframes for negotiations milestones;
- > recognising it is rare for iwi to have the capacity to complete negotiations quickly;
- > acknowledging final settlement packages rarely comprise solely of 'standard' redress.

A revised work programme will take this information into consideration to better identify what can be achieved, and when, with the resources we estimate iwi and Crown have to devote to negotiations over the next financial year and outyears. We will meet with you to discuss your priorities and expectations regarding the Office of Treaty Settlements'

work programme at the earliest opportunity.

Marine and Coastal Area (Takutai Moana) Act 2011

[Withheld under section 9(2)(j) of the Official Information Act 1982]

[Withheld under section 9(2)(g)(i) of the Official Information Act 1982]

The first Ministerial determinations will make transparent to other applicants how the tests are being applied. This may influence how other iwi, hapū and whānau engage with the Act.

[Withheld under section 9(2)(j) of the Official Information Act 1982]

Priorities

[Withheld under section 9(2)(j) of the Official Information Act 1982]

Risks and Issues

Recognising and reflecting iwi “willingness” and capability in the Office of Treaty Settlements’ work programme and allocation of resources is important.

As part of negotiations planning, the Office of Treaty Settlements identifies and plans strategies to mitigate risk in negotiations. We have identified the following risks and issues that need to be addressed or mitigated against at an Office-wide level.

Iwi “willingness” and capability

Treaty settlements are the product of intensive negotiations between two parties. Recognising the strengths and weaknesses, capability and capacity of iwi negotiating partners is vital when planning a realistic negotiations work programme. Previously the Crown’s default approach is to persist with negotiations even when claimant groups are making little progress. This has resulted in resources being retained on negotiations that are moving slowly or have reached a stumbling block that cannot be overcome. While continuing to engage with claimant groups in such circumstances can lead to success in some situations this is not always the case. Negotiations often ‘stall’ at the mandate stage.

To ensure future resources are allocated effectively and respond to budgetary constraints the Office of Treaty Settlements needs to decisively reprioritise resources to negotiations that are more likely to be successful. To apply this policy consistently requires the Office to decide whether a group is “willing” and “able.” “Willing” groups are those taking actions or making decisions that demonstrate they are prepared to negotiate and settle in line with the Crown’s core policy parameters i.e. full, final and comprehensive settlements that are quantum-bound. “Able” groups are those steadily meeting deadlines and delivering on the work required to progress negotiations. Those groups that do not fit as being “willing” and “able” may have resources moved away from their negotiations to those where achieving settlement is more likely.

The Office of Treaty Settlements also expects there will be some challenging settlement negotiations to come with claimant groups with whom we will never achieve settlements under the current policy settings.

Implementation of Treaty settlement redress can require significant resource from the relevant agency. It is important post-settlement commitments are met to avoid damage to the Crown-iwi relationship.

[Withheld under section 9(2)(h) of the Official Information Act 1982]

Claimant groups entering negotiations have high redress expectations especially in relation to the Crown's ability to provide 'bespoke' redress. The Office of Treaty Settlements must manage these expectations.

Decisions Required

The “willing” and “able” test will mitigate the risk of devoting a large amount of time and resources to these groups.

Implementation of Treaty settlements

While individual agencies are responsible for implementing the Treaty settlement arrangements they have committed to, Treaty settlements are entered into by the Crown not individual agencies. The Crown as a whole is responsible for ensuring these commitments are met. Implementation can require significant resource from agencies depending on the extent and complexity of redress. Should agencies fail to meet their post-settlement commitments the relationship between the iwi and the Crown as a whole is damaged. The Post Settlement Commitments Unit, part of the Policy Group within the Ministry of Justice, has a role in ensuring commitments made by the Crown in settlements are met.

[Withheld under section 9(2)(h) of the Official Information Act 1982]

Increasing complexity of negotiations

Claimant groups entering negotiations appear to have higher redress expectations than ever before especially in relation to the Crown's ability to provide 'bespoke' redress in addition to 'standard' redress mechanisms. A recent example of bespoke redress are the arrangements between Whanganui River iwi and the Crown in respect of the Whanganui River. In the same environment of raised expectations the Crown's policy settings and parameters provide limited flexibility. This is intentional to preserve fairness and relativity between settlements. The Office of Treaty Settlements anticipates current Crown policy will be challenged by some claimant groups in upcoming settlements and will manage this to ensure disparity between claimant group aspirations and Crown policy does not unreasonably protract negotiations.

In the future the Office of Treaty Settlements expects the Crown will increasingly be required to manage expectations around ancillary settlements over harbours and maunga.

[Withheld under section 9(2)(g)(i) of the Official Information Act 1982]

The Office of Treaty Settlements: Organisation and Responsibility

Responsibilities

The Office of Treaty Settlements is a separate business group within the Ministry of Justice. It reports directly to the Minister for Treaty of Waitangi Negotiations and is responsible for negotiating the fair, comprehensive, final and durable settlement of historical Treaty of Waitangi claims with Māori. Treaty claims, where referred to in this document, mean those claims relating to the acts or omissions of the Crown prior to 21 September 1992.

In addition to settling Treaty claims, the Office of Treaty Settlements is responsible for the administration and implementation of the Marine and Coastal Area (Takutai Moana) Act 2011. The Office works with groups who have applied to engage directly with the Crown. The Office of Treaty Settlements also provides instruction to the Crown Law Office with regard to applications made to the High Court for Recognition Orders.

Leadership Team

The Office of Treaty Settlements is led by the Deputy Secretary Treaty who is also the Director of the Office. The Deputy Secretary is supported by a Chief Advisor and a Leadership Team. The structure of the Leadership Team is set out at **Appendix E**.

Composition of Staff

Staff at the Office of Treaty Settlements comprise of Negotiation and Settlement Managers, the Marine and Coastal Area Manager, Resource and Capability Managers, Historians, Land Advisors, Negotiations Analysts and Implementation Advisors along with other roles.

Negotiation and Settlement Managers have oversight over teams focussed on achieving settlement milestones, such as agreements in principle and deeds of settlement, with various claimant groups. There is a team responsible for work relating to the Marine and Coastal Area (Takutai Moana) Act 2011.

Chief Crown Negotiators

The Minister for Treaty of Waitangi Negotiations has in the past appointed Chief Crown Negotiators to represent the Crown in negotiations with claimant groups. This person is responsible for setting negotiations strategies and closing negotiations and is accountable to the Minister. The Office of Treaty Settlements is moving towards a model of Lead Negotiators accountable to the Deputy Secretary.

Relationship with the Post Settlement Commitments Unit

The Ministry of Justice has recently established the Post Settlement Commitments Unit within the Policy Group of the Ministry of Justice. This Unit works with the rest of the Crown, local government and iwi to safeguard the durability of Treaty settlements. It will also consider 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.

Landbank

The Protection Mechanism is run by the Office of Treaty Settlements and ensures surplus Crown-owned land is considered for possible use in Treaty settlements before it is sold on the open market. Properties that meet the Protection Mechanism criteria are purchased and held in the Office of Treaty Settlements Landbank. The Landbank team sits within the Organisational Development and Support Group of the Ministry of Justice and manages these properties. The Office of Treaty Settlements prepares advice on future landbanking decisions and assists the Landbank team with issues requiring discussion with claimant groups during negotiations.

Place in Wider Ministry of Justice

About the Ministry of Justice

The Ministry of Justice employs approximately 3500 full-time equivalent staff most of whom work in operations at more than 100 locations across New Zealand. The Ministry advises the Minister of Justice, Minister for Courts, Minister for Treaty of Waitangi Negotiations and the Attorney-General.

The Ministry of Justice administers 3 votes; *Vote Justice*, *Vote Courts* and *Vote Treaty Negotiations*; and is mandated to lead the Justice sector. The Justice sector comprises the Department of Corrections, New Zealand Police, Crown Law Office, the Serious Fraud Office, the Ministry of Social Development (in relation to youth justice) and other Crown entities and agencies.

Key Responsibilities

Under *Vote Treaty Negotiations*, the primary responsibilities of the Ministry of Justice are to:

- > support the Crown and iwi in settling historical Treaty of Waitangi claims;
- > provide claims management, research, report writing and inquiry support to the Waitangi Tribunal;
- > oversee the implementation of settlements and preserve Crown Landbank property values; and
- > administer the Marine and Coastal Area (Takutai Moana) Act 2011 and provide advice on the implementation of this Act, engage with groups under the Act for Recognition Agreements, and instruct the Crown Law Office to represent the Crown in applications to the High Court under the Act for Recognition Orders.

Ministry of Justice Organisational Structure

The Ministry of Justice is led by a Strategic Leadership Team responsible for the strategic direction and performance of the Ministry, as set out in the diagram at **Appendix F**.

Vote Treaty Negotiations Appropriations

The Office of Treaty Settlements' baseline decreases from 2014/2015 and will decrease further in 2015/2016 and out years.

Vote Treaty Negotiations funds the Office of Treaty Settlements and is administered by the Ministry of Justice. The two priorities for this Vote are negotiating the settlement of historical Treaty of Waitangi claims and engaging with groups under the Marine and Coastal Area (Takutai Moana) Act 2011.

The *Vote Treaty Negotiations* appropriations are:

Departmental budgets Year Ending 30 June 2015	Budget \$000
Property Portfolio Management	11,143
Policy Advice – Treaty Negotiations and Marine and Coastal Area (Takutai Moana) Act	1,397
Representation - Waitangi Tribunal and Courts	2,083
Treaty Negotiations and Marine and Coastal Area (Takutai Moana) Act	<u>28,414</u>
Treaty Negotiations and Marine and Coastal Area (Takutai Moana) Act MCA	31,894
Total Departmental Funding	43,037

Departmental budgets: 2013/14 to 2017/18					
Budget \$000	2013/14	2014/15	2015/16	2016/17	2017/18
Total Departmental funding	46,975	43,037	32,798	32,800	32,697

Non-Departmental budget Year Ending 30 June 2015	Budget \$000
Agreed Payments for Foreshore and Seabed Deeds of Agreement	2,400
Claimant Funding	8,102
Contribution Toward Determining Customary Interests in the Marine and Coastal Area	3,450
Debt Write-offs	120
Depreciation	3,600
Historical Treaty of Waitangi Settlements 2014 - 2018 (Multi-year appropriation)	350,000
Total Non-Departmental Funding	367,672

Non-Departmental Budgets: 2013/14 to 2017/18					
Budget \$000	2013/14	2014/15	2015/16	2016/17	2017/18
Total Departmental funding	369,121	367,672	376,872	367,972	367,972

Non-Departmental Capital Budget Year Ending 30 June 2015	Budget \$000
Purchase of Assets for Possible Use in Future Treaty of Waitangi Settlements	10,000

Non-Departmental Capital Budgets: 2013/14 to 2017/18

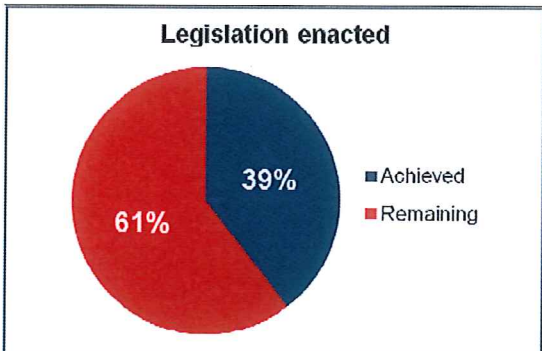
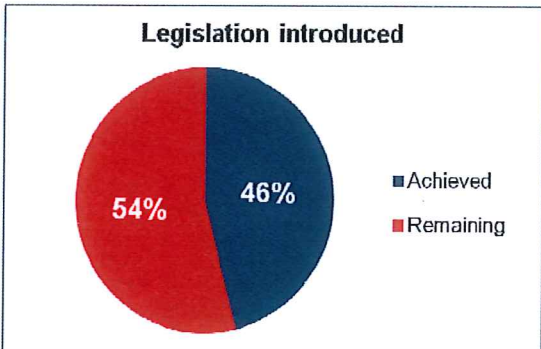
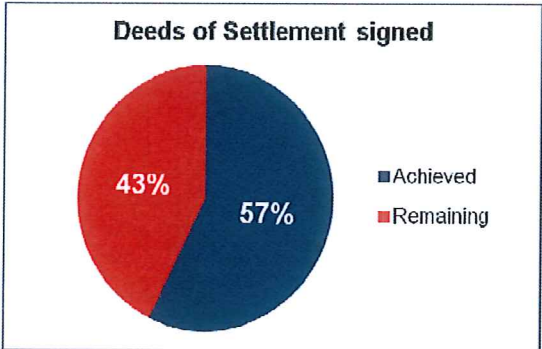
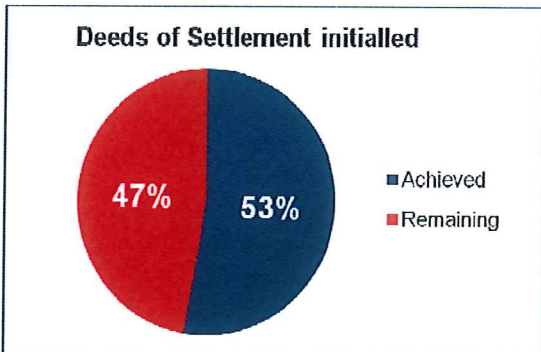
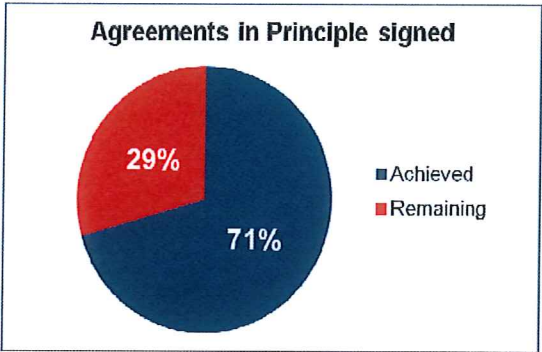
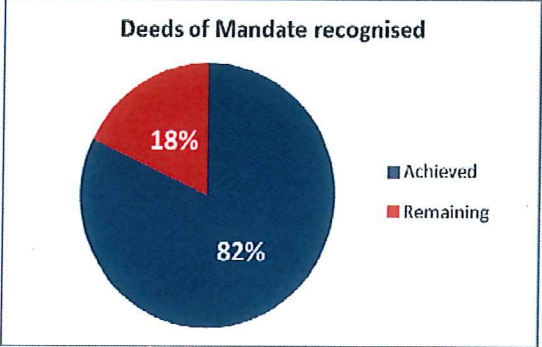
Budget \$000	2013/14	2014/15	2015/16	2016/17	2017/18
Non-Departmental Capital funding	34,655	10,000	10,000	10,000	10,000

Appendix A: Treaty Settlement Milestones to Date

The negotiations milestones achieved by the Crown and iwi to date are:

Milestone	Achieved	Remaining	Total
Deeds of Mandate Recognised	90	19	109
Terms of Negotiation Signed	90	21	111
Agreements in Principle Signed	79	33	112
Deeds of Settlement Initialled	58	50	108
Deeds of Settlement Signed	72	52	124
Legislation Introduced	51	58	109
Legislation Enacted	43	66	109
Grand Total	483	299	782

Appendix B: Treaty Settlement Milestones Achieved and Remaining



Appendix C: Status of Marine and Coastal Area (Takutai Moana) Act 2011 Applications

A number of applications have been submitted by whānau, hapū or iwi since April 2011 for recognition of customary rights. The finer details of these applications as well as a number of engagements transferred from the Māori Land Court and Ministerial engagement under the Foreshore and Seabed Act 2004 are set out below:

High Court Applications

In Interlocutory Phase	Scheduled for a High Court Hearing	Withdrawn by the Court through inaction by applicant	Expected Public Notification by applicant	Adjourned for direct engagement with the Crown	Total High Court Applications transferred from the Māori Land Court and High Court (2004 Act)
[Withheld under section 9(2)(h) of the Official Information Act 1982]					12

Carry-Over Applications for Ministerial Determinations

Realignment with 2011 Act	Active Engagement	Not Presently Engaged	Total Carry-Over Applications from 2004 Act
1	2	2	5

Applications for Ministerial Determinations made under the 2011 Act

Minister declined to engage	Crown Engagement	Pre-Engagement Assessment	Withdrawn due to lack of essential information	Awaiting Additional Information	Applications made under the 2011 Act
10	3	2	4	1	20

Appendix D: Key Stakeholders and their Roles in Treaty Settlements

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.

DOC 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 the settlement.

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 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 newly established General Counsel Services team, advises the Office of Treaty Settlements on legal issues and represents the Crown at the Waitangi Tribunal and represents the Crown in applications to the High Court 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.

The Ministry of Justice, of which the Office of Treaty Settlements is part, Crown agencies including New Zealand Police, the Ministry of Defence and Landcorp often provide

properties for purchase and sometimes sale and leaseback.

Other Agencies

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

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 of Māori

Affairs in consultation with the Minister of Justice. The Tribunal is supported by the Ministry of Justice through the Special Jurisdictions Tribunals Unit.

The Crown Forestry Rental Trust

Receives rental proceeds from Crown forest licensed 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 Crown forest 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

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

Appendix E: Office of Treaty Settlements Leadership Team Structure

[Withheld under section 9(2)(a) of the Official Information Act 1982]

Appendix F: Ministry of Justice Organisational Structure

