



Ka tika ā muri, ka tika ā mua

He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki te Tiriti o Waitangi me ngā Whakaritenga ki te Karauna

Healing the past, building a future

A Guide to Treaty of Waitangi Claims and Negotiations with the Crown

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- negotiates settlements of historical claims directly with claimant groups, under the guidance and direction of Cabinet
- provides policy advice to the government on generic Treaty settlement issues and on individual claims
- oversees the implementation of settlements, and
- acquires, manages, transfers and disposes of Crown-owned land for Treaty settlement purposes.

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He Inoinga

E te Atua Matua, ko koe te haihanga o te rangi me te whenua, te mātāpuna o te ora, o te tapu. Ko to mātou inoi tēnei kia hōutia tō rongo ki runga i te whenua, ki waenganui i te tangata. Tirohia atawhaitia te kaupapa tātari i ngā take pā ki te Tiriti o Waitangi. Arahina tonutia ngā tikanga kaw i te kaupapa kia Puta mārāma ai te rangatiratanga o te tangata, o te Whenua. Werohia mātou ki te tao o te pono kia tutuki rawatia ēnei take. E te Atua, kia aroha nui nei ki a mātou. Ko koe hoki te timatanga me te whakatutukitanga o ngā mea katoa.

Āmene

O Parent God, you are the creator of the heavens and the earth, and you are the source of life and wholeness. This is our prayer that you cast upon the land, and amongst the people your spirit of reconciliation. Look with loving concern upon the principle of careful consideration for the issues that relate to the Treaty of Waitangi. Constantly guide the processes that carry forward the principle so that there is clear manifestation of the chiefly dignity of people, and of the land. Challenge us with the dart of truth so that the issues may, with integrity, reach fulfilment. Lord, may we have aroha for people and for the land just as you have great aroha for us. For you are the beginning and the fulfilment of all things.

Amen

Karakia by Pā Henare Tate on behalf of Te Rōpu Māori o te Manatū Ture (Māori Focus Group of the Ministry of Justice)

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OTS also wishes to thank those who gave permission to use photographs in this Guide, Pā Henare Tate for the opening prayer and Professor Sir Hugh Kawharu for allowing his translation of the Treaty to be reproduced.

Overview of this Guide

The second edition of *Healing the past, building a future* updates and replaces the first edition published in 1999. Changes have been made to reflect the development of policy and practice since that time. *Healing the past, building a future* is a practical guide to the negotiation and settlement of historical grievances under the Treaty of Waitangi. It also sets out an overview of the historical background to Treaty grievances and settlements, and explains how settlement policy has developed. The first edition of *Healing the past, building a future* was widely read, not only by claimants and their advisers, but also by all those with an interest in the resolution of Treaty claims. The Office of Treaty Settlements hopes the second edition will be equally useful. *Healing the past, building a future* is also available in electronic form at www.ots.govt.nz.

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Treaty

Text of the Treaty of Waitangi – Te Tiriti o Waitangi

Three versions of the Treaty follow. These are the Māori and English texts recognised in the Treaty of Waitangi Act 1975, followed by Professor Sir Hugh Kawharu's English translation of the Māori text. The principles arising from the Treaty are discussed on pages 11 and 20.

The Text in Māori

Te Tiriti o Waitangi

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira – hei kai wakarite ki nga Tangata Maori o Nu Tirani – kia wakaetia e nga Rangatira Maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu – na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a, e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kau ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona, he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tukua rawa atu ke te Kuini o Ingarani ake tonu atu – te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu — ki nga tangata katoa o Nu Tirani te tino Rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua – ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata Maori katoa o Nu Tirani. ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) W. Hobson,
Consul and Lieutenant-Governor.

Na ko matou, ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.

The Text in English

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands — Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON, Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty. [Here follow signatures, dates, etc.]

English Translation of the Māori Text by Professor Sir Hugh Kawharu

Victoria, the Queen of England, in her concern to protect the chiefs and subtribes of New Zealand and in her desire to preserve their chieftainship¹ and their lands to them and to maintain peace² and good order considers it just to appoint an administrator³ one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands⁴ and also because there are many of her subjects already living on this land and others yet to come.

So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a Captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents⁵ to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government⁶ over their land.

The second

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise⁷ of their chieftainship over their lands, villages and all their treasures⁸. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell⁹ land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties¹⁰ of citizenship as the people of England¹¹.

(Signed) W. Hobson
Consul and Lieutenant-Governor

So we, the Chiefs of the Confederation and of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.

Footnotes

The following footnotes are Professor Sir Hugh Kawharu's comments on his translation reproduced with his permission from *Waitangi: Māori and Pākehā perspectives to the Treaty of Waitangi* (Auckland, Oxford University Press, 1989, pages 319-20). The views expressed are those of the author and are not necessarily accepted by the Crown in every detail.

¹ Chieftainship: this concept has to be understood in the context of Māori social and political organisation as at 1840. The accepted approximation today is "trusteeship"; see NZMC Kaupapa 1983.

² Rongo: "Peace", seemingly a missionary usage (rongo – to hear i.e. hear the "Word"– the "message" of peace and goodwill, etc.).

³ Chief: ("Rangatira") here is of course ambiguous. Clearly a European could not be a Māori, but the work could well have implied a trustee-like role rather than that of a mere "functionary". Māori speeches at Waitangi in 1840 refer to Hobson being or becoming a "father" for the Māori people. Certainly this attitude has been held towards the person of the Crown down to the present day – hence the continued expectations and commitments entailed in the Treaty.

⁴ Islands: i.e. neighbouring, not of the Pacific.

- ⁵ Making: i.e. “offering” or “saying” – but *not* “inviting to concur” (c.f. English version).
- ⁶ Government: “Kāwanatanga”. There could be no possibility of the Māori signatories having any understanding of government in the sense of “sovereignty”, i.e. any understanding on the basis of experience or cultural precedent.
- ⁷ Unqualified exercise: of the chieftainship – would emphasise to a chief the Queen’s intention to give them complete control according to *their* customs. “Tino” has the connotation of “quintessential”.
- ⁸ Treasures: “taonga”. As submissions to the Waitangi Tribunal concerning the Māori language have made clear, “taonga” refers to all dimensions of a tribal group’s estate, material and non-material – heirlooms and wāhi tapu, ancestral lore and whakapapa, etc.
- ⁹ Sale and purchase: “hokonga”. Hoko means to buy or sell.
- ¹⁰ Rights and duties: “tikanga”. While “tika” means right, correct, (e.g. “e tika hoki” means that is right), “tikanga” most commonly refers to custom(s), for example of the marae; and custom(s) clearly includes the notion of duty *and* obligation.
- ¹¹ There is, however, a more profound problem about “tikanga”. There is a real sense here of the Queen “protecting” (i.e. allowing the preservation of) the Māori people’s tikanga (i.e. customs) since no Māori could have had any understanding whatever of *British* tikanga (i.e. rights and duties of British subjects). This, then, reinforces the guarantees in Article Two.



Settlement Framework

Settlement Framework



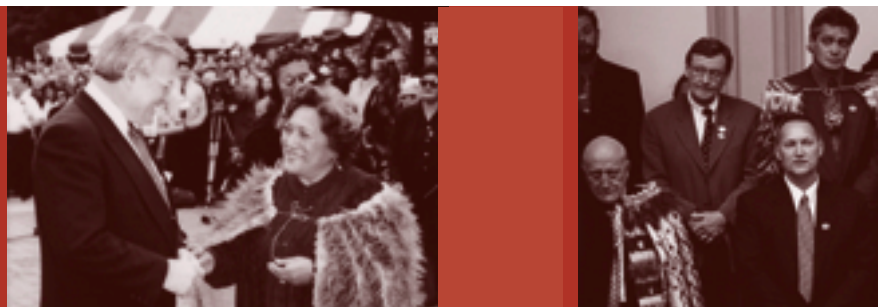


Settlement Framework

Settlement Framework

IN THIS PART WE LOOK AT:

- the status of the Treaty of Waitangi today
- the background to the Crown's Treaty settlement policy – what historical claims are about and progress in reaching settlements to date
- settlement policy and the framework for negotiations



The Status

The status of the Treaty of Waitangi today

The Treaty of Waitangi, signed in 1840, is an agreement between the British Crown and Māori. It has always retained its importance as a founding document of New Zealand. Although the Treaty is not directly enforceable in New Zealand courts, specific legislation does provide for the principles of the Treaty to be given some effect (for example, the State-Owned Enterprises Act 1986). In other cases, legislative provisions might persuade the court that they should be interpreted in accordance with the principles of the Treaty. The Treaty is therefore very significant in New Zealand's legal framework.

In summary, today there are three main ways in which the principles of the Treaty, rather than the words of the Treaty itself, are given effect:

- The Waitangi Tribunal can inquire into claims by any Māori that the Crown has acted in breach of Treaty principles, and make recommendations on redress. In limited circumstances some of these recommendations can become binding.

- The courts can apply Treaty principles when legislation allows them to do so, and many agencies and departments are required by legislation to consider Treaty principles when carrying out their functions.
- The Crown has accepted a moral obligation to resolve historical grievances in accordance with the principles of the Treaty of Waitangi.

These developments and the principles of the Treaty as developed by the Waitangi Tribunal and the Courts are discussed later in this section. But first the historical background to Treaty claims is discussed.

Historical background to Māori claims against the Crown - what are Treaty claims all about?

Introduction

This Guide presents only a very brief summary of the history behind the main types of Māori grievances under the Treaty. For those wishing to explore the subject further, there are many books and reports available on the events outlined below. The following information and comments are of a general nature, and are not intended to pre-judge the outcome of current and future Waitangi Tribunal hearings or negotiations. Both hearings and negotiations on individual claims provide an opportunity to consider in more detail the historical dealings between a claimant group and the Crown.

The signing of the Treaty of Waitangi

The Treaty of Waitangi was signed in good faith by representatives of the British Crown and by Māori rangatira on behalf of their people, between February and September 1840. The Treaty was drawn up in an attempt to protect the interests of the British and Māori at a time of increasing land speculation and uncontrolled settlement by British subjects. It was a forward-looking agreement that sought to establish a peaceful and mutually beneficial relationship between the tangata whenua and British settlers under the protection of the British Crown.

The key features of the Treaty are as follows:

- Article One: sovereignty (English text) or kāwanatanga (Māori text) was conveyed to the Crown.
- Article Two: Māori retained rangatiratanga or “chieftainship” over their resources and taonga for as long as they desired, but yielded to the Crown the right of pre-emption, which gave the Crown the sole right to purchase land from Māori.
- Article Three: Māori were guaranteed all the rights and privileges of British citizens.

The Crown intended Māori to be treated fairly and honourably, particularly in the course of land transactions. It envisaged that land would be acquired in situations where Māori were willing sellers and where the loss of a particular area would not harm the relevant iwi or hapū. These good intentions suffered under the practical difficulties of administering a new colony and building a nation. For instance, the colonial administration was financially under-resourced, suffered from a lack of experienced officials, and was under pressure from settler groups.

Investigations over the last century have revealed that in many instances the Crown’s actions in purchasing Māori land were flawed to a greater or lesser degree. Since 1985, the Waitangi Tribunal has conducted hearings into many matters relating to Māori land and the economic and social impacts of land dealings from 1840 onwards. The Tribunal has also heard Māori claims on other issues that had not been previously investigated.

The relationship and transactions between Māori and the Crown occurred in the context of a complex interaction of two cultures. There is no single or simple explanation for events following the signing of the Treaty, given the rapidly changing economic and social environment and the variety of motivations among Māori, the Crown, and settlers. However, the statistics of the decline in Māori land-holdings are striking, as the maps on page 16 & 17 show. The following summary is based on Tribunal



Illustration: signing of the Treaty of Waitangi (Alexander Turnbull Library)

and other investigations which enable preliminary conclusions to be drawn on broad issues relating to the history of Māori lands. While these relate primarily to significant land losses, their importance is not simply economic, but also concerns wider effects on Māori society and culture.

Pre-1840 land purchases: “old land claims” and “surplus lands”

Before the Treaty, there had been an extensive trade in land. Various Europeans claimed to have bought large parts of the country. Following the signing of the Treaty of Waitangi in 1840, the Crown announced that it would examine all such transactions in order to find out whether the land had been fairly acquired from the proper Māori owners. The aims of this policy were to guard against European purchasers accumulating too much land and to facilitate control over the colonisation of the country, as the preamble of the Treaty envisaged. As a result of investigations by specially appointed commissioners, many of these alleged purchases were held to be invalid, and the land remained with its Māori owners. In cases where the commissioners concluded that a valid sale had taken place, the Crown awarded land to the purchaser. The Crown’s policy was that no claimant (that is, settler purchaser) could be awarded more than 2560 acres, and the Crown retained any surplus land. The Crown believed that, because Māori had agreed to sell the land, their claims to it were extinguished and the Crown’s retention of the surplus was a matter between itself and the European purchaser.

Some hapū and iwi have questioned the validity of the Land Claims Commissioners’ findings on the grounds that the Māori involved had no concept of permanent alienation, and that the transactions were merely conditional arrangements involving no transfer of ownership. Under some present day claims the findings of the commissioners on individual claims are challenged, as is the Crown’s approach to disposing of the “surplus” lands.

The New Zealand Company purchases

The New Zealand Company claimed to have purchased very large areas of land in central New Zealand before the signing of the Treaty. As a result of an agreement with the Crown, however, the Company restricted its claims to specific blocks of land at New Plymouth, Wanganui, Wellington, Manawatu, Porirua and Nelson. These transactions were investigated by Commissioner William Spain in the early 1840s. Meanwhile, the New Zealand Company established several settlements and introduced settlers.

Māori at that time disputed many of the Company’s claims. It is likely that they had not intended to give up their pā, wāhi tapu and cultivations and that there was a lack of mutual understanding of the Company’s reserves policy (generally known as the “Tenths” policy because it provided for one tenth of the land sold to be set aside as reserves for the Māori concerned). Spain found that, with the exception of Porirua, the Company had generally made legitimate purchases of at least some of the areas they claimed. In some cases he recommended that further payment should be made to the Māori vendors. In the case of New Plymouth, Governor Fitzroy rejected the recommendation and the Crown re-negotiated part of the original purchase. Agreements were later reached with Māori at Wellington, Nelson and Wanganui, and Crown titles were issued to the Company and its settlers.

Significant aspects of these arrangements have since been challenged. There are questions about the negotiation of the new terms, and the management of the several categories of reserves.

Pre-emption waiver purchases, and “surplus lands”

Article Two of the Treaty reserved to the Crown the sole right to buy Māori land. Known as *Crown pre-emption*, this policy was applied for most of the period from 1840 to 1865. This policy had three key objectives: to control and regulate European settlement, to avoid confrontation between Māori and

settlers, and to provide the Crown with income from the resale of land to pay for the costs of government, national development, and social services. It is clear that many Māori and settlers, particularly around Auckland, objected to Crown pre-emption. Governor Fitzroy reported in 1844 that the government's authority would be challenged if it did not abandon pre-emption. The Governor then waived the Crown's right of pre-emption to allow Europeans to make direct purchases of Māori land under certain terms and conditions. The waiver operated for a year, during which time settlers acquired large areas of land in and around Auckland.

Purchases under the waiver are likely to involve a number of issues, including whether Māori interests were adequately protected and the owners correctly identified. As with "old land claims", restrictions were placed on the amounts of land that could be awarded to purchasers. Governor Grey later approved limited awards to purchasers, with the Crown retaining the surplus for general European settlement purposes. It is not clear even today how much of this surplus land the Crown retained, but estimates vary from 16,427 acres to 72,127 acres.

Pre-1865 Crown purchases

During the quarter-century following the signing of the Treaty, the Crown purchased large areas of land from Māori in many parts of the country, including almost the whole of the South Island. As noted earlier, throughout most of this period the Crown had a monopoly on purchasing Māori land. It is difficult to make generalisations about these purchases. Each reflects the particular circumstances of specific iwi and hapū, the geographical location and features of specific blocks of land, and the value they were considered to have for European settlement at the time. One example of inappropriate Crown action is the failure to ensure that approval for the sales was properly obtained. The fairness of the terms, the adequacy and protection of reserves for Māori, and inaccurate surveys have also been identified as problems with particular purchases.

Aggressive Crown purchase activity in Taranaki has been linked to armed conflict between competing Māori groups.

Recent research has thrown much new light upon these purchases and the circumstances that lay behind them. The Waitangi Tribunal has identified various breaches of the Treaty of Waitangi and its principles during its inquiries into pre-1865 purchases, as in the case of the Ngāi Tahu claims, and more may be identified during further Tribunal inquiries or in negotiations.

War and land confiscation (raupatu)

During the 1850s, Māori in some parts of the North Island became concerned about the consequences of sales and settlement. This led to inter-tribal agreements to oppose the sale of further land to the Crown. Although Māori views differed, there was significant support for the political objectives that found expression in the establishment of the King Movement (the "Kīngitanga"), centred on the Waikato. The development of these policies frustrated settlers, and the Crown interpreted the King Movement as a general challenge to its authority.

The flashpoint of war was the Crown's improper attempts to buy land offered for sale at Waitara in Taranaki. The local issue was that the Crown had failed to get general agreement with the rangatira and hapū claiming rights over Waitara before it concluded detailed negotiations. The Crown continued to pursue its own purchase policy rather than addressing the basis of Māori concerns about such purchase practices and, in doing so, started the land dispute which consequently sparked off a war in Taranaki in 1860. The Waitara purchase created grave suspicion among Māori generally about the Crown's true intentions towards their lands. This remained when the Taranaki war drew to a close in 1861. Fighting broke out again in Taranaki in 1863, followed by the Crown's invasion of the Waikato a few months later. There were other armed conflicts in different parts of the central North Island until 1869.

The Crown considered its Māori opponents in these conflicts to be rebelling against the Queen's authority, and decided to confiscate land to punish "rebels" and to provide land for European occupation. The Crown accepts that confiscating Māori land after the warfare of the 1860s in Waikato, Taranaki, and the Bay of Plenty was an injustice, and was in breach of the Treaty of Waitangi and its principles. Similar acknowledgements are likely to be appropriate in other districts where there have been confiscations (raupatu). In considering acknowledgements regarding confiscations, the seriousness of any Crown breaches of the Treaty and its principles will also depend on the nature of its accompanying actions. Matters such as the use of excessive force by the Crown and the loss of life clearly need to be taken into account.

The introduction and operation of the Native Land Court

The Native Land Court was established under Acts of Parliament in 1862 and 1865 to bring land held under customary title under a statutory system of individual title. This involved investigating claims to customary ownership of Māori land.

There have been many criticisms of the effects of the Native land laws. These include: the interpretation of customary rights to land, the early limitation of the number of owners who could appear on a title (together with their ability to act as absolute owners rather than trustees for tribal land), the costs of the process, and its tendency to promote excessive sales and the fragmentation of remaining Māori holdings. The court system has been criticised by claimants and some historians for undermining the social structure of Māori society.

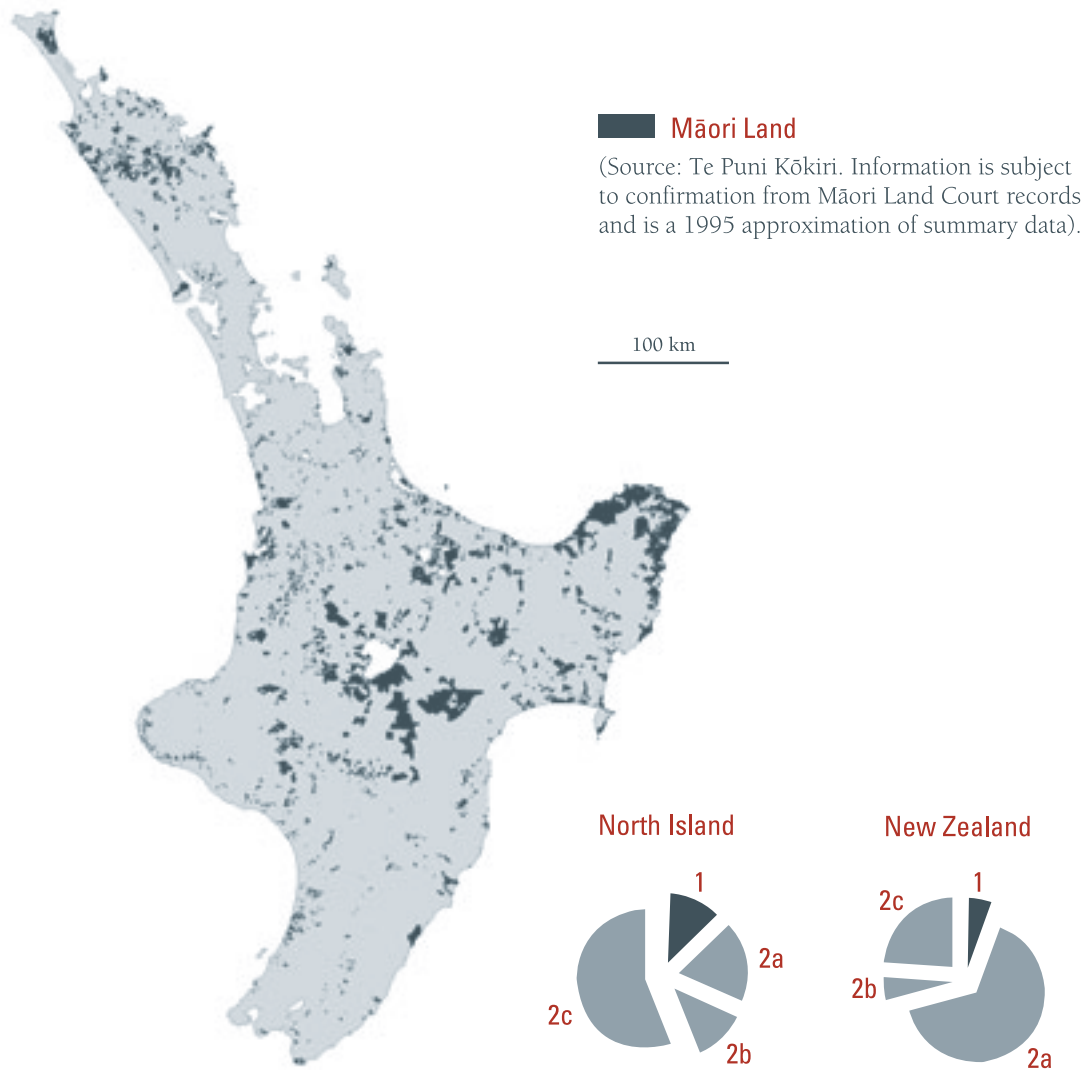
These and other criticisms may prove valid when considering the operations of the Native Land Court system in particular districts. The long-term results of the system are clear. By the end of the 19th Century, many hapū were left with insufficient lands for their subsistence and future development.

Between 1865 and 1899, 11 million acres of Māori land in the North Island had been purchased by the Crown and European settlers (see the maps on pages 16 & 17).

The Crown acknowledges that the operation and impact of the Native land laws had a widespread and enduring impact upon Māori society. In cases where claimants can demonstrate a prejudicial impact in their rohe, the Crown will acknowledge, in the context of an agreed settlement, that it breached its responsibilities under the Treaty of Waitangi.

20th Century

Large scale alienations of Māori land continued well into the 20th Century by such means as the new Māori Land Boards, the Board of Māori Affairs and other government agencies, as well as through the Native/Māori Land Court. These alienations included approximately 3.5 million acres sold between 1910 and 1930. A great deal more was leased during the same period. By 1930, Māori retained only 6% of the land in New Zealand. Many grievances relate to these alienations, and also to Crown actions concerning Māori land development schemes and consolidation schemes. Grievances have also arisen in connection with the gifting of land by Māori to the Crown for specific purposes, such as schools. Often the Crown has not returned such gifted land to the rightful owners once the purpose has been fulfilled, but used it for other purposes or disposed of it. The Crown also accepts that the application of the Public Works Acts, particularly in the 20th Century, sometimes disadvantaged Māori interests. For instance, there may have been inadequate consultation or compensation, or a wāhi tapu or site of cultural significance may have been lost.



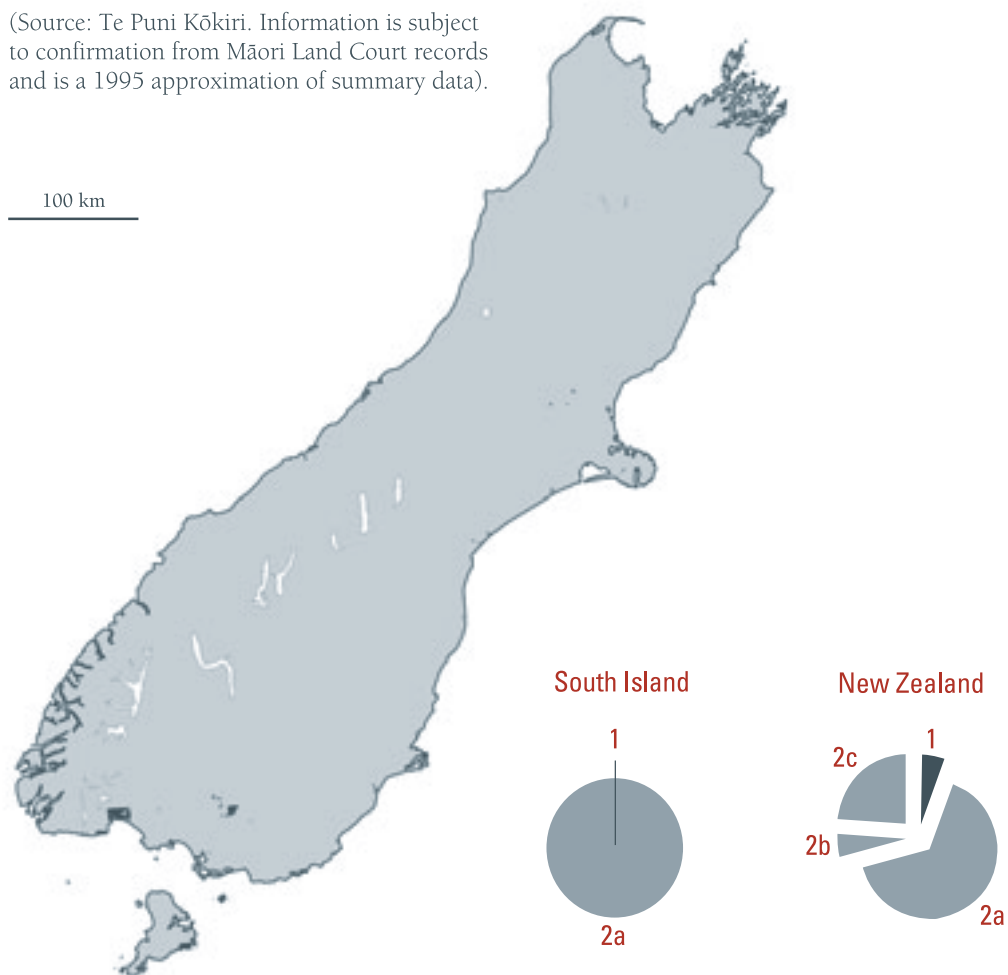
	North Island		New Zealand	
	Sq Km	%	Sq Km	%
1. Māori Land	14,500	12.5	15,000	6
2. Alienated Land				
2a. Crown Purchases to 1860	21,500	19	174,000	65
2b. Raupatu (Confiscations)	14,000	12.5	14,000	5
2c. Post-1865 Purchases/Alienations	64,000	56	64,000	24
Total Land	114,000	100	267,000	100

(Sources: Te Puni Kōkiri, Land Information NZ & NZ Historical Atlas – plates 39 & 41. Approximation of summary data only).

Figure 1.1: Māori land today and types of Māori land alienation 1840 - 1995, North Island

Māori Land

(Source: Te Puni Kōkiri. Information is subject to confirmation from Māori Land Court records and is a 1995 approximation of summary data).



	South Island		New Zealand	
	Sq Km	%	Sq Km	%
1. Māori Land	500	0.5	15,000	6
2. Alienated Land				
2a. Crown Purchases to 1860	152,600	99.5	174,000	65
2b. Raupatu (Confiscations)			14,000	5
2c. Post-1865 Purchases/Alienations			64,000	24
Total Land	153,000	100	267,000	100

(Sources: Te Puni Kōkiri, Land Information NZ & NZ Historical Atlas – plates 39 & 41. Approximation of summary data only).

Figure 1.2: Māori land today and types of Māori land alienation 1840 - 1995, South Island

Other dimensions of Māori claims - wāhi tapu and taonga, language, flora and fauna

The Māori concept of tūrangawaewae, “a place to stand”, indicates the close connections between land, tribal and personal identity and mana.

Widespread loss and alienation of land undermined these connections. In the longer term, the loss and alienation of tribal lands contributed to the breakdown and dispersal of traditional communities, and the loss of Māori language and traditional knowledge.

Customary sources of food and other resources were also reduced, not only because Māori had less land, but because general changes in land use also had a harmful effect on many species and resources. For instance, the draining of wetlands and lagoons affects complex ecosystems of plants, birds and fish. Where such broader effects of land loss and alienation, combined with the general effects of European settlement, arise in hearings or negotiations, it is difficult to separate the results of any Crown actions or omissions from other factors at work.

Claims involving land loss and alienation have many consequences beyond loss of income and a resource base for future development. Wāhi tapu (sacred places) including urupā (burial grounds) were often destroyed, or access to them lost. Sometimes taonga, such as carvings, burial chests and buildings, have been destroyed or acquired from Māori in dubious circumstances.

Māori have also brought claims to the Tribunal relating to more general cultural concerns. These include claims that the Crown has breached its obligations to protect the Māori language as a taonga covered by Article Two of the Treaty. As with the loss of land, these cultural and spiritual concerns go beyond economic issues to questions of identity and self-determination.

Conclusion

As a result of these and other types of permanent alienation, Māori today possess only a small portion of the land that they held in 1840. The Crown accepts that excessive land loss has had a harmful effect on Māori social and economic development in general. This loss of land has been accompanied by the loss of access to forests, waterways, food resources, wāhi tapu and other taonga. In addition, the Crown has not always recognised Māori interests or customary values in relation to natural resources, nor has it protected these in laws and policies. As a result, Māori have lost most of their land as an economic resource and tūrangawaewae, and have also been deprived of traditionally used natural resources and places of spiritual and cultural value.

These historical events form the basis of the grievances of Māori that are being heard and addressed today through the Waitangi Tribunal and negotiations processes.

Milestones

Milestones in the development of Treaty settlements policy

Māori have sought resolution of their grievances about Crown actions for over 150 years. Before the establishment of the Waitangi Tribunal, Māori communities and leaders brought many petitions to the Crown asking for recognition of their Treaty rights or for particular injustices to be put right. Sometimes the Crown responded with special commissions of inquiry (such as the Sim Commission during the 1920s on confiscations) and provided some redress. But the terms of reference for such inquiries were often very limited and there was no consistent policy underlying any resulting “settlements”, which were often neither negotiated nor ratified by the claimant groups. As a result, those settlements often failed to resolve the grievance and in many cases are now seen to be unfair.

Establishment of the Waitangi Tribunal

Dissatisfaction with such previous settlements and lack of action by the Crown on outstanding grievances led to increasing calls during the 1960s and early 1970s for a forum where Māori claims against the Crown could be heard. Action in the ordinary courts was not possible in most cases. A treaty such as the Treaty of Waitangi can only be enforced through the courts if it has been made part of New Zealand law through an Act of Parliament. This did not happen. However, as noted earlier, today some statutes do incorporate references to Treaty principles.

In 1975 the government of the day established the Waitangi Tribunal under the Treaty of Waitangi Act 1975. The main functions of the Tribunal at that time were to:

- hear claims by Māori against the Crown concerning breaches of the Treaty of Waitangi and its principles
- determine the validity of such claims, and
- make non-binding recommendations to the Crown on redress for valid claims.

In exercising these functions the Tribunal was given exclusive authority to determine the meaning and effect of the Treaty as embodied in the Māori and English texts, and to decide issues raised by the differences between them.

At that stage the Tribunal could only hear claims about grievances arising from Crown actions or omissions from 1975 onwards. Even so, establishing the Tribunal was an important step in recognising the importance of the Treaty and its principles.

During the 1980s, political and social interest in the Treaty and related issues continued to grow. This had an effect both on the law, as the courts interpreted it, and on the actions of the government.



Waitangi Tribunal in hearing

In 1985 the law was changed to allow the Waitangi Tribunal to hear claims going back to 6 February 1840. This paved the way for the Tribunal to be given additional functions and powers in the next few years in relation to State-Owned Enterprise land and licensed Crown forest land (see pages 20-21). The Tribunal's membership was also increased to enable it to progress more claims at a time.

1986 - Cabinet requirement to consult Māori

In 1986 Cabinet agreed that, in the area of policy development and legislation, appropriate Māori groups should be consulted on all significant matters affecting how the Treaty is applied. This reflected a major change in the broader public and political view of the Treaty and of Māori interests.

Treaty principles in the courts and legislation

The “Lands” case (1987)

During the 1980s, in response to references to Treaty principles in legislation, judges increasingly showed that they would apply the “principles” in a way that broadly protected Māori interests. The 1987 “Lands” case, *New Zealand Māori Council v. Attorney-General* [1987] NZLR 641, may be described as the fundamental recent case on the Treaty. This case involved Māori concerns about the proposed transfer of Crown land to the new State-Owned Enterprises. Section 9 of the State-Owned Enterprises Act 1986 stated: “Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi”, enabling the courts to define and apply Treaty principles to the Crown’s actions under this specific legislation. When the “Lands” case went to the Court of Appeal, the Court characterised the Treaty relationship as a special relationship “akin to a partnership”. The nature of the relationship is reflected in the following four principles.

- Fiduciary duty: the relationship between the Treaty partners creates responsibilities similar to those of a trustee. The Crown has a duty to actively protect Māori interests.
- Full spirit of cooperation: the Treaty requires that each party act reasonably and in good faith towards the other. This would require the Crown to make informed decisions about matters of significance to Māori. In many cases where there are Treaty implications the responsibility to make informed decisions will require consultation.
- The honour of the Crown: the Treaty is a positive force in the life of the nation, and thus in the government of the country.
- Fair and reasonable redress: the Crown should not impede its capacity to give fair and reasonable redress.

As a result of the “Lands” case, Parliament looked to improve statutory protection of Māori interests. For example, the State-Owned Enterprises Act 1986 was amended by the Treaty of Waitangi (State Enterprises) Act 1988. This amendment ensured that land transferred from the Crown to the new State-Owned Enterprises would still be available for settling Māori claims, through a process known as “resumption”.

The Crown Forest Assets Act 1989 and the Crown Forestry Rental Trust

In 1989, the Court of Appeal twice confirmed its approach in the “Lands” case in cases about Crown forest assets and coal assets. Further legislation followed in the Crown Forest Assets Act 1989. This protected Māori interests in former State forest land – land under mainly exotic forests (i.e. forests planted with non-native trees) – that the Crown had developed. The purpose of this legislation, apart from regulating the management of Crown forest assets, is:

- to permit the transfer of assets (cutting rights in the specified forests) to other parties – and to grant a Crown forestry licence that provides access to the land – while at the same time protecting the claims of Māori to the land, and
- in cases where claims by Māori under the Treaty of Waitangi Act are successful, to enable the Waitangi Tribunal to make binding orders to transfer licensed Crown forest land under the trees to Māori ownership, and for the Crown to pay Māori compensation for the fact that such land is being returned subject to the encumbrance of a Crown forestry licence (i.e. another party retains the cutting rights).

Also, as part of the response to the Court of Appeal’s decision on licensed Crown forest land, the Crown, the New Zealand Māori Council and the Federation of Māori Authorities agreed to establish the Crown Forestry Rental Trust (CFRT). The functions of CFRT are:

- to receive rentals from licensed Crown forest land and hold them in trust until Treaty claims relating to the lands concerned are resolved

- to use the interest from the accumulated rentals to fund research into Māori claims relating to Crown forest land, and to help claimants prepare for negotiations with the Crown
- when the resolution of a Treaty claim relating to licensed Crown forest land results in land being transferred to a claimant group, to transfer the accumulated rentals for that land to the claimant group, and
- when a Treaty claim relating to licensed Crown forest land is resolved without requiring the return of land to the claimant group, to transfer the accumulated rentals to the Crown.

More detail on the protection and possible resumption of licensed Crown forest land is provided on pages 154-156. More detail on claimant funding for research and negotiations is on pages 43, 54-56.

Development of settlement policy and structures

The developments noted above meant that the government needed to co-ordinate its response to Māori claims under the Treaty and to develop clear and consistent policies for settlements. In 1989 the Treaty of Waitangi Policy Unit (TOWPU) was established in the Department of Justice to deal with these issues.

In 1993 Cabinet created the portfolio of Minister in Charge of Treaty of Waitangi Negotiations to give clear leadership to the negotiations process.

The government developed a set of policy proposals for settling claims, which were approved by Cabinet in late 1994 and published as the *Crown Proposals for the Settlement of Treaty of Waitangi Claims*. The Crown proposals were modified following submissions from Māori and others and, subsequently, provided the framework for later settlement negotiations and redress packages. Following a review of the settlement process and policy in 2000, six key principles were established to guide the Crown in future settlements of historical claims under the Treaty of Waitangi.

The principles are intended to ensure settlements are fair, durable, final and occur in a timely manner (see page 30 for a full outline of the principles).

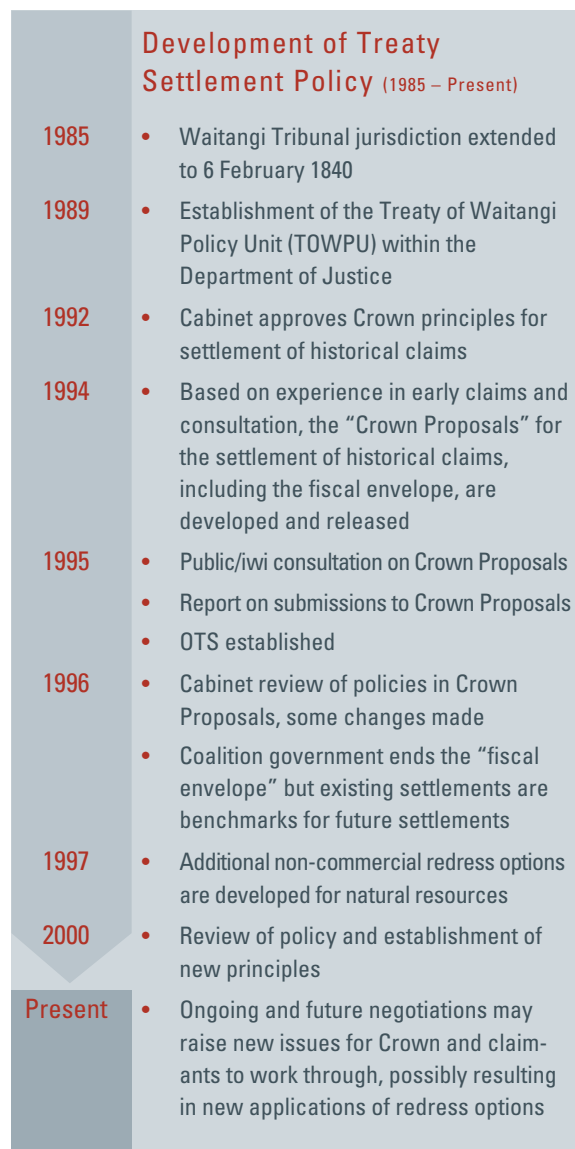


Figure 1.3: development of Treaty settlement policy

The Crown

Who or what is the Crown?

The expression “*the Crown*” is used a lot in this Guide. It refers to the *executive* branch of government (i.e. the branch that carries out the administration of government) and stands for the historical authority of the sovereign (i.e. the Queen or King) as head of state. Today the executive government is made up of the Governor-General (the Queen’s representative), Ministers who are Members of Parliament (the *legislative* or law-making arm of government), and their departments. The Queen herself has no real or personal authority.

While “the Crown” is a convenient way of referring to one party involved in settlement negotiations, it can seem to be something rather abstract or impersonal. Because of our democratic system it can also be said that ultimate authority or sovereignty in fact rests with voters. In this sense the Crown also symbolises the people of New Zealand.

The diagram below shows the components of the Crown or Executive and some of the ministerial positions relevant to the negotiation of historical Treaty settlements.

How the Crown operates in negotiations

All major decisions in the negotiations process are made by Cabinet or by relevant Ministers acting under authority delegated by Cabinet. For instance:

- Cabinet approves Deeds of Settlement before they are signed on behalf of the Crown, and
- the Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs jointly decide whether the Crown should recognise a Deed of Mandate from a claimant group.

The main government agency providing advice and assistance to Ministers and the Cabinet during the negotiations process is the Office of Treaty Settlements (OTS). OTS is also the main point of contact between the Crown and claimant groups.

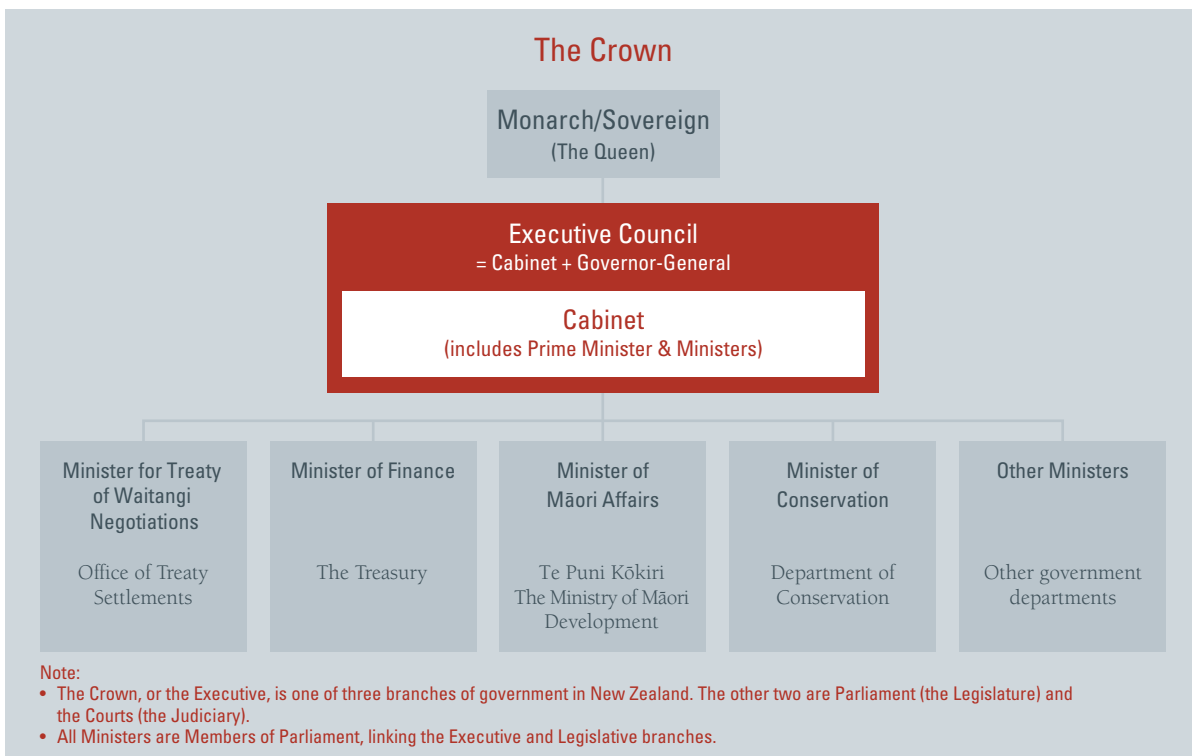


Figure 1.4: the Crown

The Office

About the Office of Treaty Settlements

The Office of Treaty Settlements (OTS) was created in January 1995. It is a separate unit within the Ministry of Justice and reports directly to the Minister for Treaty of Waitangi Negotiations on historical Treaty settlement issues.

What does OTS do?

The main jobs of OTS are to:

- negotiate settlements of historical claims directly with claimant groups, under the guidance and direction of Cabinet
- provide policy advice to the Minister for Treaty of Waitangi Negotiations and Cabinet on generic Treaty settlements issues and on individual claims
- co-ordinate the government departments that are involved in the negotiation and settlement process
- review and provide advice to the Minister for Treaty of Waitangi Negotiations about the mandates of claimant groups and their proposed post-settlement governance entities
- oversee the implementation of settlements, and
- acquire, manage, transfer and dispose of Crown-owned land for Treaty settlement purposes.

This means that OTS is the main point of contact for claimant groups seeking resolution of their historical grievances through negotiations with the Crown. OTS works closely with claimant groups through all stages of the negotiations process to make sure that:

- claimant groups are fully informed about the negotiations process

- all agreed milestones along the route to a negotiated settlement are met, within agreed time limits
- the Crown understands the claimant group's grievances and what they want to achieve through settlement
- there is co-ordinated advice and information from all government departments involved in the negotiations
- the Crown and the claimant group work together, as far as possible, to achieve a negotiated settlement, and
- obligations in Deeds of Settlement, once signed, are carried out as intended and within the agreed time limits.

Structure and people

OTS is led by a Director who has overall responsibility for OTS and leads the policy and negotiations work. Below the Director are Deputy Directors and Negotiation and Settlement Managers.

Negotiation and Settlement Managers are each responsible for a set of specific claims within a region. Each team usually contains several policy analysts from OTS, an OTS historian and representatives from key government departments such as the Department of Conservation and the Treasury. For many claims, a specially appointed Chief Crown Negotiator may lead negotiations.

Teams each have responsibility for a number of claims and conduct active negotiations with claimant groups according to a work programme. This ensures that OTS's resources are used as effectively as possible and that proper care and attention is devoted to each claim.

Although OTS takes the lead role in negotiations, other departments are involved as follows:

Treasury - advice on overall fiscal management of settlement process, and assessment of fiscal risks to the Crown for settlement redress options.

Te Puni Kōkiri - advice on mandating and governance issues, and also monitors Crown action in response to Waitangi Tribunal recommendations.

Department of Conservation - advice on issues affecting conservation land, plant, animal and freshwater fish species.

Crown Law Office - advice to OTS on legal issues and the drafting of Deeds of Settlement and settlement legislation.

Ministry of Fisheries - advice on non-commercial sea fisheries issues.

Ministry for the Environment - advice on resource management issues.

Land Information New Zealand - advice on Crown landholding issues, including Public Works Act 1981 issues.

Parliamentary Counsel Office - drafting of settlement legislation.

It should be noted at this point that the resources available to the Crown for the negotiation of settlements are, like those of all other Crown agencies, limited. This means that from time to time the Crown must work out which areas of its existing and potential workload have the highest priority. This may mean, for example, that claimant groups that have completed all the necessary research, and resolved all overlapping claims and mandate issues, are given a higher priority in the negotiations process by OTS.



Figure 1.5: the Office of Treaty Settlements organisational structure

Progress with Treaty settlements so far

At a glance: summary of Treaty settlements to date

The current Treaty settlement process has resulted in a number of settlements. These range from the large Waikato-Tainui, Ngāi Tahu and Central North Island Collective settlements, to smaller settlements such as Hauai, Te Uri o Hau and Ngāti Tūrangitukua.

The nature and amount of redress provided in each settlement package largely depends on the severity of the breaches of the Treaty and their extent, as reflected in the amount of land alienated and how this was achieved (for instance, through confiscation or by purchase).

The settlements to date reflect a combination of a variety of redress options. Some early settlements consist solely of financial and commercial redress. Since 1997, most settlement packages have been made up of a Crown Apology, cultural redress and financial and commercial redress. Part 3 explains redress options in more detail.

The table to the right sets out the settlements achieved to date. The dollar amounts do not include claimant funding or the value of any land that the Crown may have gifted to a claimant group. The figure of \$170 million for Commercial Fisheries includes a sum of \$20 million, an estimate of the value of Māori entitlements to 20% of the quota for any new species brought under the Quota Management System.

In addition, there have been several part-settlements. These include the purchase and transfer by the Crown of cultural redress property of particular significance to a claimant group, and the transfer of a number of railway properties to the relevant claimant groups, as part of their future Treaty settlement package.

Please contact OTS directly for further details about individual settlements. Information on individual settlements is also available at the OTS website (www.ots.govt.nz).

Settlement	Financial and commercial redress amount	Year of deed
Waitomo ¹	N/A (see note below)	1989
Ngāti Rangiteaorere	\$ 760,000	1991
Commercial Fisheries	\$ 170,000,000	1992
Hauai	\$ 715,682	1993
Ngāti Whakaeu	\$ 5,210,000	1994
Waikato-Tainui raupatu	\$ 170,000,000	1995
Waimakuku	\$ 375,000	1995
Rotomā	\$ 43,931	1996
Te Maunga	\$ 129,032	1996
Ngāi Tahu	\$ 170,000,000	1997
Ngāti Tūrangitukua	\$ 5,000,000	1998
The Pouakani People ²	\$ 2,650,000	1999
Te Uri o Hau	\$ 15,600,000	2000
Ngāti Ruanui	\$ 41,000,000	2001
Ngāti Tama	\$ 14,500,000	2001
Ngāti Awa (and ancillaries)	\$ 43,390,000	2003
Ngāti Tūwharetoa (Bay of Plenty)	\$ 10,500,000	2003
Nga Rauru Kītahi	\$ 31,000,000	2003
Te Arawa Lakes ³	\$ 2,700,000	2004
Ngāti Mutunga (Taranaki)	\$ 14,900,000	2005
Te Roroa	\$ 9,500,000	2005
Affiliate Te Arawa Iwi and Hapū	\$ 38,600,000	2006 ^(revised 2006)
CNI Forests on-account settlements ⁴	\$ 171,340,380	2008
Taranaki Whānui ki te Upoko o te Ika	\$ 25,025,000	2008
Ngāti Apa (North Island)	\$ 16,000,000	2008
Waikato-Tainui (River Claims) ⁵	N/A	2009
Ngāti Manawa	\$ 12,207,780	2009
Ngāti Whare	\$ 9,568,260	2009

¹ Waitomo: the Crown transferred land at the Waitomo Caves to the claimant group, subject to a lease, and provided a loan of \$1,000,000.

² The Pouakani People: the Crown also transferred Tahae Farm to the Pouakani People in settlement of a boundary dispute with the Crown.

³ Excludes \$7.3 million paid in to capitalise the annuity Te Arawa received from the Crown and address and remaining annuity issues.

⁴ The Central North Island settlement provides on-account redress for a collective of groups, including the Affiliate Te Arawa Iwi and Hapū. As each of these groups conclude comprehensive settlements, their share of the CNI settlement will be listed separately, and the total value listed against the CNI settlement will be reduced accordingly. Ngāti Rangitihī joined the CNI Collective on 4 November 2008, increasing the value of the CNI settlement.

⁵ The Waikato River settlement provides funding for co-management, clean up of the Waikato River and other initiatives. These payments are not redress in the settlement of Waikato-Tainui's historical claims.

Figure 1.6: summary of Treaty settlements to date

Settlement of Māori interests in fisheries

On 23 September 1992 the Crown and representatives of Māori signed a Deed of Settlement settling Māori interests in commercial fisheries and making provision for statutory recognition of Māori customary sea fisheries. The Deed was given effect by the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

The Deed and legislation arose as a result of a dispute between the Crown and Māori about the Quota Management System (QMS). The Māori Fisheries Act 1989 was an earlier attempt to resolve the issues. It provided for the transfer from the Crown to Māori of 10% of the total allowable catch for all species then subject to the QMS.

However, there remained disputes between the Crown and Māori on the nature and extent of Māori fishing rights and their status. To finally resolve these, the Deed dated 23 September 1992 was entered into between the Crown and Māori representatives. This Deed provided that:

- Māori would enter into a joint venture with Brierley Investments Limited to acquire Sealord Products Limited, a major fishing company
- the Crown would pay to Māori a sum of \$150 million to be used for the development and involvement of Māori in the New Zealand fishing industry, including participation in the acquisition of Sealord Products Limited, and
- the Crown would introduce legislation to:
 - transfer to Māori 20% of any further quota allocation for additional species as they came under the QMS
 - recognise Māori customary fishing practices through regulations, and
 - reconstitute the Māori Fisheries Commission as the Treaty of Waitangi Fisheries Commission.

On 14 December 1992 the Treaty of Waitangi (Fisheries Claims Settlement) Act was passed to put the Deed into effect. The purpose of the legislation was threefold:

- to give effect to the settlement of claims relating to Māori commercial fishing rights
- to make better provision for Māori non-commercial, traditional and customary fishing rights and interests, and
- to make better provision for Māori participation in the management and conservation of New Zealand's fisheries.

The legislation constituted a full and final settlement of all Māori claims to commercial fishing rights. It also provided that non-commercial customary Māori fishing, relating to fish controlled by the Fisheries Act, could take place only within regulations made under that Act. Non-commercial customary rights and interests still give rise to ongoing Treaty obligations on the Crown, including when the Crown develops customary fishing regulations. Although issues relating to allocating the settlement assets (quota, shares in fishing companies and cash) remain outstanding, the settlement means that a significant asset is now controlled by and on behalf of Māori.



Ngati Ruanui toa at Deed of Settlement signing

Approach

The Crown's general approach to Treaty settlements

Definitions of historical and contemporary claims

The Crown has made a distinction between two types of claim - "historical claims" and "contemporary claims". *Historical claims* are those arising out of Crown acts (things the Crown did) or omissions (things the Crown failed to do) before 21 September 1992. The acts or omissions include those done by or on behalf of the Crown or by or under legislation. *Contemporary claims* arise out of Crown actions or omissions after that date. This Guide deals with negotiations for historical claims only.

The date of 21 September 1992 was chosen because that is when Cabinet agreed on the general principles for settling Treaty of Waitangi claims. A "cut-off" date was needed so as to be able to make consistent comparisons between the redress provided to different claimant groups.

How are contemporary claims resolved?

The settlement of historical claims does not remove the Crown's ongoing obligations under the Treaty or the law. However, greater awareness today of Treaty obligations is likely to reduce the risk of contemporary breaches. If they do occur, contemporary claims may be resolved in a number of ways, depending upon the kind of Crown action or omission that led to the grievance.

As with historical grievances, any Māori may bring a claim about a contemporary matter to the Waitangi Tribunal. In some cases, where specific Treaty obligations have been recognised in legislation, such as the Resource Management Act 1991, Māori may be able to bring a case in the courts or specialist tribunals.

The Office of Treaty Settlements is not responsible for the negotiation of contemporary claims. Any response by the Crown to such claims involves the government department or agency that has responsibility for the relevant policy area. For instance, the Ministry of Economic Development led the Crown response on contemporary claims about television and radio broadcasting rights and, once resolved, the responsibility for Crown policy in this area was passed to Te Puni Kōkiri. Similarly, the Crown's response to contemporary claims on Crown minerals is managed by the Ministry of Economic Development.



Figure 1.7: historical and contemporary Treaty claims

Crown guidelines for the resolution of historical claims

The Crown wants to negotiate settlements of historical Treaty claims that are lasting and acceptable to most New Zealanders. It also wants to be consistent in its approach to the many claimant groups involved in negotiations, while acknowledging that each claimant group is different. To meet these objectives the following guidelines have been developed. These are:

- the Crown will explicitly acknowledge historical injustices – that is, grievances arising from Crown actions or omissions before 21 September 1992
- Treaty settlements should not create further injustices
- the Crown has a duty to act in the best interests of all New Zealanders
- as settlements are to be durable, they must be fair, achievable and remove the sense of grievance
- the Crown must deal fairly and equitably with all claimant groups
- settlements do not affect Māori entitlements as New Zealand citizens, nor do they affect their ongoing rights arising out of the Treaty or under the law, and
- settlements will take into account fiscal and economic constraints and the ability of the Crown to pay compensation.

The guidelines are explained under the following headings:

The Crown will explicitly acknowledge historical injustices

The Crown's acknowledgement of and apology for well-founded breaches of the Treaty and its principles is vital to rebuilding the relationship between the Crown and claimant groups. It is also important for the claimant groups to record their agreement that their historical grievances have been finally settled, so that both parties can move on to a more positive future. Clear statements on these matters are included in Deeds of Settlement.

Treaty settlements should not create further injustices – either to claimant groups or anyone else

This includes the claimant group seeking redress, other claimant groups and other New Zealanders generally. In negotiating the settlement of historical claims, the Crown does not want to create new injustices. In practice this means:

- the settlement itself should be fair for the claimant group concerned
- in providing settlement redress to one claimant group the Crown should not harm the interests of other claimant groups, and
- existing private property rights should be respected.

The Crown has a duty to act in the best interests of all New Zealanders

The Crown must govern in the interests of all New Zealanders. In considering redress options it must balance the grievances and aspirations of Māori claimant groups with matters such as continued protection of and public access to conservation areas, and the overall management in the national interest of resources such as water, petroleum and geothermal energy.

As settlements are to be durable, they must be fair, achievable and remove the sense of grievance

Settlements will not last if they are seen to be unfair and do not remove the sense of grievance. The process of negotiation is intended to ensure that the Crown and a claimant group sign a Deed of Settlement only when both parties are satisfied that it is fair, and the claimant groups agree that their grievances will be finally settled. Settlements must also be achievable in a practical sense. For instance, the loss of traditional seasonal migration routes and access to plant and animal resources are an important part of some claims. While this way of life can not be restored, the Crown and claimant groups have developed several redress instruments – such as seasonal camping entitlements on Crown land (see pages 134-135) – to recognise claimant groups' interests in such resources today.

The Crown must deal fairly and equitably with all claimant groups

This means that the Crown must have consistent policies and processes and that the redress for each group should be fair in relation to the redress received by other groups. However, the Crown also acknowledges that each claimant group has different interests and particular claims against the Crown.

Settlements do not affect Māori entitlements as New Zealand citizens or on-going Treaty or legal rights

Article Three of the Treaty guarantees to Māori that they will enjoy the rights and privileges of British citizens. These rights and privileges are in addition to the rights guaranteed under Article Two. Māori receive settlement funds and other assets as redress for historical Treaty breaches. The settlement of historical claims relating to Crown actions or omissions that occurred prior to 21 September 1992 does not limit current rights and benefits that Māori might be entitled to receive as New Zealanders, nor any existing rights under the Treaty of Waitangi or aboriginal title and customary law.

Settlements will take into account fiscal and economic constraints and the ability of the Crown to provide redress

Because of the nature and size of the losses that Māori have borne, it is unlikely in most instances that redress made many decades later will fully compensate claimants financially. There are also difficulties in working out historical and contemporary values, and assessing the value of improvements made by the Crown or settlers. However, generations of Māori have suffered financial and other losses as a result of Crown Treaty breaches. Most of their original land has long since passed into non-Māori, private ownership. It is clear that the Crown is not in the position to meet the cost of putting right all wrongs. It is also clear that in many cases no economic compensation is possible for cultural losses.

The Crown aims to strike a balance to negotiate fair, just, and practical settlements that include a range of remedies to meet cultural aspects of claims as well as providing financial and commercial redress. Redress necessarily reflects present-day social and economic realities.

Crown negotiating principles

To complement the Crown guidelines, and following a review of the historical Treaty settlement policy framework at the beginning of 2000, the government developed a set of six principles. The principles are intended to ensure that settlements are fair, durable, final and occur in a timely manner.

The principles are as follows:

Good faith

The negotiating process is to be conducted in good faith, based on mutual trust and cooperation towards a common goal.

Restoration of relationship

The strengthening of the relationship between the Crown and Māori is an integral part of the settlement process and will be reflected in any settlement. The settlement of historical grievances also needs to be understood within the context of wider government policies that are aimed at restoring and developing the Treaty relationship.

Just redress

Redress should relate fundamentally to the nature and extent of breaches suffered, with existing settlements being used as benchmarks for future settlements where appropriate. The relativity clauses in the Waikato-Tainui and Ngāi Tahu settlements will continue to be honoured, but such clauses will not be included in future settlements. The reason for this is that each claim is treated on its merits and does not have to be fitted under a predetermined fiscal cap.

Fairness between claims

There needs to be consistency in the treatment of claimant groups. In particular, “like should be treated as like” so that similar claims receive a similar level of financial and commercial redress. This fairness is essential to ensure settlements are durable.

Transparency

First, it is important that claimant groups have sufficient information to enable them to understand the basis on which claims are settled. Secondly, there is a need to promote greater public understanding of the Treaty and the settlement process.

Government-negotiated

The Treaty settlement process is necessarily one of negotiation between claimant groups and the government. They are the only two parties who can, by agreement, achieve durable, fair and final settlements. The government’s negotiation with claimant groups ensures delivery of the agreed settlement and minimises costs to all parties.

The protection of potential settlement assets

As part of the development of an overall policy framework for the settlement of historical claims, the Crown has developed a number of ways in which Crown assets are protected if there is the possibility they may later be needed for use in Treaty settlements. Surplus Crown-owned land, for example, may be included in landbanks specifically set up to provide a ready source of Crown property for use in Treaty settlements. These landbanks are administered by OTS.

There are two main types of landbank:

Crown Settlement Portfolio (CSP) - all surplus Crown-owned land within the former raupatu or confiscation boundaries specified under the New Zealand Settlements Act of 1863 is automatically landbanked.

Regional landbanks - operate in all areas not covered by the Crown Settlement Portfolio. Where land in these areas is declared surplus, it is advertised and any Māori who has a claim registered with the Tribunal may apply to have it included in the regional landbank. If the Crown agrees, the property is included in the appropriate landbank.

In the recent past the Crown also established a number of Claim Specific Landbanks (CSLB). Although these continue to operate, no further such landbanks are likely to be established now that the entire country is covered by regional landbanks.

The protection of potential settlement assets and the role of the Waitangi Tribunal

There are two ways in which the Waitangi Tribunal can become involved in the protection of potential settlement assets:

- Statutory memorials, and
- Statutory protection of Crown forest assets

Statutory memorials were established under the Treaty of Waitangi (State Enterprises) Act 1988. This added a new section to the State-Owned Enterprises Act 1986 and required that memorials (a formal notation or record) be placed on all titles to Crown land transferred to State-Owned Enterprises under that Act. As a result and under certain circumstances the Waitangi Tribunal has the power to order the Crown to take back or 'resume' such land for use in a Treaty settlement, even if that land has been transferred to a third party.

The Tribunal has similar powers in relation to Crown-owned land that is subject to a Crown forestry licence. These powers are provided in the Crown Forest Assets Act 1989.

Generally speaking, the Crown hopes it can negotiate settlements with claimant groups without requiring resumptions.

*For full details on how these protection mechanisms were established and how they work please see **Part 4, Supporting Information: Protection of potential settlement assets.***

Key settlement policies

The development of the principles of the Treaty of Waitangi by the Waitangi Tribunal and the Courts, the Crown guidelines for the resolution of historical claims, the Crown negotiating principles and the completion of a substantial body of research into the historical background to grievances, have allowed a set of policies to be established which put into practice the Crown's intention to resolve historical claims under the Treaty of Waitangi. These policies are covered in more detail in both the preceding and subsequent chapters and references to these sections are noted in the following summary. In brief:

- Treaty settlement policy applies only to historical claims - claims arising from actions or omissions by or on behalf of the Crown or by or under legislation, on or before 21 September 1992 (see page 27).
- The Crown is ready to negotiate most claims involving raupatu, pre-1865 Crown purchases, subsequent Crown purchases and/or breaches arising from the operations and impact of the Native land laws. Provided that clear evidence of harm to the claimant group is available, exhaustive research is not required before starting negotiations (see page 42).
- The Crown seeks a comprehensive settlement of all the claims of a claimant group. This is to ensure all historical grievances have been addressed and enable the Crown and the claimant group to begin a new relationship (see page 44).
- The Crown strongly prefers to negotiate claims with large natural groupings rather than individual whānau and hapū.
- A secure mandate on the part of the claimant negotiators is required before negotiations can start. This assures both the Crown and the claimant group that their mandated representatives have been properly authorised. The claimant group must also ratify any resulting Deed of Settlement before it is binding (see pages 44-53, 69-71).
- Overlapping claims or interests of other claimant groups must be addressed to the satisfaction of the Crown before the Crown will conclude a settlement involving any of the sites or assets concerned (see pages 58-60).
- A suitable governance entity is required before settlement assets can be transferred. The Crown does not dictate how settlement assets are to be used, but requires assurance that claimant groups have established an entity that is acceptable to the whole claimant group, and is representative, transparent and accountable (see pages 71-77).
- The Crown has to set limits on what and how much redress is available to settle historical claims. Redress must be fair, affordable and practicable in today's circumstances, bearing in mind settlements already reached, other matters for which the government must provide, and existing legal frameworks - for example, the Resource Management Act 1991 (see pages 87-89 and 98).
- Settlements are final. In exchange for the settlement redress, the settlement legislation will prevent the courts, Waitangi Tribunal or any other judicial body or tribunal from re-opening the historical claims (see pages 57 and 77).
- Settlements are intended to be neutral in their effect on the continued existence of any Treaty of Waitangi or remaining aboriginal title or customary rights claimant groups may have. This means that Māori are still able to pursue claims based on the continued existence of aboriginal title or customary rights. The Crown also retains the right to dispute the existence of such title or rights in future. It also means that while settlements settle all claims arising from acts or omissions by the Crown prior to 21 September 1992, claimant groups retain the right to pursue claims for acts or omissions by the Crown after that date that may have resulted in breaches of the Treaty of Waitangi and its principles.