

# **VOTE** *Treaty* *Negotiations*

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# *Treaty Negotiations*

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## Overview

Vote Treaty Negotiations contains a multi-year appropriation of \$400 million for the five-year period 2000/01 to 2004/05. This appropriation is for the settlement of historical Treaty of Waitangi claims and provides for the transfer of assets (cash and property) from the Crown to claimants.

Annual appropriations sought for Vote Treaty Negotiations in 2001/2002 total \$27.83 million. Expenses are forecasted to be incurred as follows:

- \$6.783 million (24.4% of the annual appropriations) for the purchase of policy advice, negotiation settlement and implementation of historical Treaty claims from the Office of Treaty Settlements.
- \$2.460 million (8.8% of the annual appropriations) for the purchase of Crown representation at Waitangi Tribunal hearings from the Office of Treaty Settlements.
- \$4.366 million (15.7% of the annual appropriations) for purchasing of property management services from the Office of Treaty Settlements.
- \$0.824 million (3.0% of the annual appropriations) for funding of the Ngai Tahu Ancillaries Claims Trust.
- \$10.0 million (35.9% of the annual appropriations) for purchasing of land by the Crown for historical Treaty of Waitangi claim purposes.
- \$3.40 million (12.2% of the annual appropriations) for the payment of interest on the outstanding settlement redress to Te Uri o Hau and Ngati Ruanui.

The Office of Treaty Settlements expects to receive on behalf of the Crown \$3.92 million from landbank property operations, \$0.156 million from Waitomo loan interest and capital repayments and \$6.5 million in capital receipts, from the sale of property. Details of how the appropriations are to be spent appear in Parts B1, B2, C, D and E of this Vote. Details of Crown revenue appear in Part F.

## Terms and Definitions Used

<b>Crown Negotiating Brief</b>	A Crown Negotiating Brief is a document approved by authorised Ministers before direct negotiations between the Crown and the claimants begin. This Crown Negotiating Brief establishes the Crown’s position on the nature and extent of the Treaty breaches. It also sets out the parameters within which redress options may be negotiated.
<b>Deed of Mandate</b>	A Deed of Mandate defines the claimant group which is the subject of the claim. It specifies the names of the mandated representatives and explains how that authority was attained from the beneficiaries. It provides assurances for the Crown that it is dealing with the appropriate representatives of the claimant group and informs those claimants and beneficiaries of the claimant group who are not directly involved in the negotiations process of what is happening.
<b>Deed of Settlement</b>	A Deed of Settlement is a legal document specifying the terms and conditions of settlement of the Treaty claims. Where required to give effect to those terms and conditions, legislation to enact will follow once a Deed of Settlement is ratified and signed by both the Crown and the claimants.
<b>Historical Claims</b>	Historical claims are those relating to alleged breaches of the Treaty of Waitangi before 21 September 1992.
<b>Protection Mechanism</b>	<p>There are three ways the Crown purchases surplus Crown land to protect it for possible use in future Treaty of Waitangi settlements. These are:</p> <p>Crown Settlement Portfolio (CSP)</p> <ul style="list-style-type: none"> <li>holds all surplus Crown properties within confiscation (raupatu) boundaries. “Confiscation boundaries” refers to areas of land confiscated under the New Zealand Settlements Act 1863</li> </ul> <p>Claim-specific landbanks</p> <ul style="list-style-type: none"> <li>hold land for a specific claimant group which falls within their claim boundary. The claimant group chooses which properties it wishes to include in the landbank up to the value of the landbank cap</li> <li>Regional landbanks hold land outside CSP and claim-specific areas. This enables the Crown to protect land outside these areas.</li> </ul>
<b>Terms of Negotiation</b>	Terms of Negotiation establish the ground rules for the formal talks between the Government and claimant, setting out the agreed terms by which they will negotiate with each other, and specifies the objectives of the negotiations.

## Footnotes

<b>Note 1</b>	In addition to the amounts shown in this table, actual Other Expenses under the multi-year appropriation for historical Treaty of Waitangi settlements were \$165.577 million in 1994/95, \$11.318 million in 1995/96, \$45.488 million in 1996/97, \$123.322 million in 1997/98, \$9.195 million in 1998/99, \$11.248 million in 1999 /2000 and \$16.298 million in the period 1 July 2000 until 28 Feb 2001. The amount under the multi-year appropriation for the five-year period 2000/01 to 2004/05 is \$400 million.
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# *Treaty Negotiations*

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VOTE MINISTER: Minister in Charge of Treaty of Waitangi Negotiations

ADMINISTERING DEPARTMENT: Ministry of Justice

The Minister of Justice is the Responsible Minister for the Ministry of Justice

## Part A - Statement of Objectives and Trends

### Part A1 - Objectives for Vote Treaty Negotiations

#### *Related Government Outcomes*

The appropriations sought for Vote Treaty Negotiations will make a significant contribution to the Government's objective of settling Treaty claims. These will fund activities aimed at making significant progress towards the negotiation of fair, durable and affordable settlements to well-founded historical grievances arising under the Treaty of Waitangi.

#### *Output Classes*

The appropriations will fund activities including the following:

- **Policy Advice – Treaty Negotiations** – high quality generic and claim-specific policy advice will be provided to achieve durable Treaty settlements. Emphasis will be given to assisting the Government develop its settlement framework including advising on representation and mandate issues and advice on outstanding types of historical Treaty claims. Crown negotiating teams will provide effective leadership and co-ordination to negotiate Treaty settlements in accordance with Government directions. Robust negotiation mandates will be developed and advice provided to the Minister and Cabinet on negotiation strategies. Negotiations will be conducted to reach critical milestones such as Heads of Agreement, Deeds of Settlement, and preparation for Settlement legislation. Advice will be provided on ratification procedures for settlements and the form and function of governance entities to receive redress. Implementation of settlements will minimise the Crown's risk of non-compliance with its obligations arising from unconditional Deeds of Settlement.
- **Representation - Waitangi Tribunal** – ensuring that the Crown undertakes research into historical Treaty grievances and has its position represented with well prepared documentation and evidence at Waitangi Tribunal hearings.
- **Land Portfolio Management** – advice on the Protection Mechanism, acquisition, management, transfer and disposal of Crown-owned land for Treaty claim purposes.

### *Links Between the Output Classes and the Government's Outcomes*

The links between the classes of outputs being purchased and Government's desired outcome of achieving the fair, durable and affordable settlement of historical Treaty of Waitangi claims are shown below:

<b>Departmental Output Class</b>	<b>These Outputs are Provided with the Specific Goal of:</b>
Policy Advice - Treaty Negotiations	<ul style="list-style-type: none"> <li>• advising on, and ensuring, the adequacy of the Crown's policy and operational framework for the direct negotiation and durable settlement of well founded historical Treaty claims</li> <li>• developing, and advising on, a Crown position on the nature and extent of Treaty breaches arising from historical claims</li> <li>• for specific claims, advising on claimant representation to directly negotiate the settlement of well-founded claims</li> <li>• negotiating the settlement of specific Treaty claims, in accordance with the Crown's settlement priorities and within approved parameters.</li> <li>• coordinating, and advising on, the Crown's compliance with, and the implementation of, the terms and conditions of all unconditional Deeds of Settlement, including: <ul style="list-style-type: none"> <li>– property transfers and capital payments</li> <li>– agreed non-commercial redress and other arrangements</li> <li>– overseeing the preparation of settlement legislation and advising the select committee and Minister during its passage through the House</li> <li>– Providing strategic advice to the Crown on its historical Treaty litigation.</li> </ul> </li> </ul>
Representation - Waitangi Tribunal	<ul style="list-style-type: none"> <li>• ensuring that the Crown undertakes research into historical Treaty grievances and is represented with well prepared documentation and evidence at Waitangi Tribunal hearings.</li> </ul>
Land Portfolio Management	<ul style="list-style-type: none"> <li>• ensuring that the Crown operates as a "good landlord" in respect of the lands and properties acquired and held for potential use in Treaty settlements</li> <li>• ensuring that the lands and properties held are maintained in at least the same condition as when acquired for the land portfolio</li> <li>• ensuring that the annual revenue forecast for the land portfolio is met and expenditure is within budget.</li> </ul>

In addition, appropriations in Vote Treaty Negotiations will fund the settlement of historical Treaty claims and the purchase of land for Treaty claims and related purposes. These appropriations will also contribute to the Government's strategy for fair, durable and affordable settlement of well-founded historical Treaty claims.

## **Part A2 - Trends in Vote Treaty Negotiations**

### *Output Trends*

Vote Treaty Negotiations came into existence on 1 July 1994. Output class appropriations are divided into; D1 Policy Advice - Treaty Negotiations; D2 Representation - Waitangi Tribunal; and D3 Land Portfolio Management.

The appropriation for output class D1 Policy Advice - Treaty Negotiations remained as the same level as 2000/2001. This reflects the negotiation of a Deed of Settlement between the Crown and Te Uri o Hau and Ngati Ruanui and the negotiation of Heads of Agreement with Ngati Awa.

In summary, during 2000/01:

#### **Pre-negotiations 2000/01**

- acceptance of claimant mandate for Nga Rauru
- agreement of Terms of Negotiation with Nga Rauru, Ngati Kuri, and Te Aupouri
- pre-negotiation discussions with various claimant groups including Muriwhenua iwi.

#### **Negotiations 2000/01**

- negotiating and signing a comprehensive Deed of Settlement between the Crown and Te Uri o Hau.
- negotiating and signing of a revised Heads of Agreement with Ngati Awa
- negotiating and initialling a comprehensive Deed of Settlement between the Crown and Ngati Ruanui
- on-going negotiations for Deeds of Settlement with several other claimant groups.
- commenced negotiations to heads of Agreement of Deeds of Settlement with Tuwharetoa ki Kawerau, Nga Rauru and Muriwhenua.

#### **Implementation 2000/01**

- completed the Deed of Settlement between the Crown and Waikato-Tainui involving:
  - transfer of two remaining properties to Waikato-Tainui
  - payment of interest on the balance of the unpaid settlement redress
  - capital payment of the last instalment of the settlement redress.

Also in this financial year, legislation to give effect to the Pouakani Deed of Settlement was passed.

The funding for D1 Policy Advice - Treaty will remain at its 2000/2001 level in the 2001/02 financial year to provide for negotiations, or pre-negotiations, with up to 12 claimants and to implement settlements.

In summary, during 2001/02, OTS will undertake the following:

### **Pre-negotiations 2001/02**

- claimant mandates may be presented to the Crown for assessment

Terms of Negotiation are expected to be agreed with each of the groups for which a mandate is approved.

### **Negotiations 2001/2002**

- undertake negotiations towards Deeds of Settlement with groups already having Heads of Agreement, and other mandated claims groups
- where required settlement legislation will be requested for the 2002 legislative programme
- provide advice to the Minister and Select Committee on settlement legislation.

### **Implementation 2001/02**

- settlement legislation for conditional settlements is expected to be introduced, and the settlement implementation substantively progressed in accordance with the Deeds of Settlement e.g. Te Uri o Hau and Ngati Ruanui
- implement other aspects of the Pouakani and Te Uri o Hau Deed of Settlement according to Deed timelines.

### **Land Management**

The appropriation for output class D3 Land Portfolio Management remains at its 2000/01 level of \$4.366 million. 2000/01 saw a larger number of properties than originally estimated being held as part of the property portfolio, resulting in higher holding costs for this output class.

The landbanks have been stabilised, and over the next year disposals are expected to exceed acquisitions. However, on average, properties are being held for longer periods of time. There are a number of properties in the landbanks with higher than the average estimated holding costs.

### *Crown Expenditure and Revenue Trends*

The Office of Treaty Settlements administers Crown expenditure and revenue associated with the settlement of historical Treaty of Waitangi claims.

Crown expenditure consists of:

- annual appropriations for claims settlement interest
- an annual appropriation to fund the Ngai Tahu Ancillaries Claims Trust
- a multi-year appropriation for historical Treaty of Waitangi settlements
- an annual appropriation to purchase surplus Crown land for landbanking and for direct transfer to a claimant group.

The Deed of Settlement between the Crown and Te Uri o Hau was signed on 13 December 2000. Interest on the outstanding settlement amount is to be paid until settlement occurs. The redress is paid either in cash or land assets are transferred, the value of which is set off against the settlement.

The Ngai Tahu Ancillary Claims Trust was established in 1998/99 with a budget of \$0.134 million for 1998/99, \$0.473 million for 1999/2000, and \$1.65 million in 2000/2001. This Trust is funded from a separate appropriation. The appropriation for 2001/2002 is \$0.824 million.

The multi-year appropriation for the settlement of historical Treaty of Waitangi claims has been recalculated in 2000/01 from \$546.767 million over 1998/99 to 2002/03 to \$400 million over 2000/01 to 2004/05. The multi-year appropriation is updated every year to cover a new five-year period.

The appropriation for the Purchase or Development of Capital Assets meets the costs of purchasing properties for landbanking. Surplus Crown land is purchased for potential use in the future settlement of historical Treaty of Waitangi claims. Since 1994/95 landbank acquisitions have increased under the broadened parameters for protecting surplus Crown land but have now stabilised. This appropriation is also used to purchase property for direct transfer to claimants.

Non-tax revenue is derived from the commercial operation of properties held in the landbanks.

Capital receipts for sale of property are wholly dependent on the land held in the landbank relative to each claim and the timing of the relevant claim settlement. Neither the amount of land actually held at a future point nor the timing of future settlements can be forecast with any precision.



## Trends in Vote Treaty Negotiations - Summary of Appropriations and Crown Revenue

Types of Appropriation	1996/97	1997/98	1998/99	1999/2000	2000/01		2001/02 Appropriations to be Used				
	Actual \$000	Actual \$000	Actual \$000	Actual \$000	Budget \$000	Estimated Actual \$000	By the Department Administering the Vote		For Non-Departmental Transactions		Total \$000
							Annual \$000	Other \$000	Annual \$000	Other \$000	
<b>Operating Flows</b>											
Classes of Outputs to be Supplied	13,337	14,601	13,517	13,436	13,609	13,609	13,609	-	-	-	13,609
Benefits and Other Unrequited Expenses	-	-	-	-	-	-	N/A	N/A	-	-	-
Borrowing Expenses	-	-	-	-	-	-	N/A	N/A	-	-	-
Other Expenses	11,296	28,806	9,237	8,961	3,916	3,916	-	-	4,224	-	4,224
<b>Capital Flows</b>											
Capital Contributions	11,972	-	-	-	-	-	-	-	-	-	-
Purchase or Development of Capital Assets	73,483	58,382	36,031	37,669	12,000	12,000	N/A	N/A	10,000	-	10,000
Repayment of Debt	-	-	-	-	-	-	N/A	N/A	-	-	-
<b>Total Appropriations</b>	110,088	101,789	58,785	60,066	29,525	29,525	13,609	-	14,224	-	27,833
<b>Total Crown Revenue and Receipts</b>	11,442	11,516	20,887	18,038	10,832	10,832	N/A	N/A	N/A	N/A	10,582

## Part B - Statement of Appropriations

### Part B1 - Details of 2000/01 Appropriations

Appropriations	2000/01				2001/02		Description of 2001/02 Appropriations
	Vote		Estimated Actual		Vote		
	Annual \$000	Other \$000	Annual \$000	Other \$000	Annual \$000	Other \$000	
<b>Departmental Output Classes (Mode B Gross)</b>							
D1 Policy Advice - Treaty Negotiations	6,783	-	6,783	-	<b>6,783</b>	-	- Advice on generic Treaty issues and specific historical Treaty claims. Negotiation of historical Treaty claims. Where appropriate, the preparation of settlement legislation, and the valuation, disclosure and preparation and execution of legal documentation required to enable the transfer of settlement assets to claimants.
D2 Representation - Waitangi Tribunal	2,460	-	2,460	-	<b>2,460</b>	-	- Ensuring that the Crown undertakes research into historical Treaty grievances and has its position represented with well prepared documentation and evidence at Waitangi Tribunal hearings.
D3 Land Portfolio Management	4,366	-	4,366	-	<b>4,366</b>	-	- Acquisition, management, transfer and disposal of Crown-owned land for Treaty claim purposes.
<b>Total Appropriations for Departmental Output Classes (Mode B Gross)</b>	13,609	-	13,609	-	13,609	-	
<b>Other Expenses to be Incurred by the Crown</b>							
Waikato-Tainui Interest	637	-	637	-	-	-	- Interest payable as part of the Waikato-Tainui settlement on the diminishing balance of the value of the redress.
Ngai Tahu Ancillary Claims Trust	1,650	-	1,650	-	<b>824</b>	-	- Funding of the Ngai Tahu Ancillary Claims Trust to return particular properties to identified beneficiaries.
Pouakani Interest	584	-	584	-	-	-	- Interest payable on the outstanding balance of the redress due to Pouakani.

Interest Payments on Settlements	1,045	-	1,045	-	<b>3,400</b>	-	Interest payable on the outstanding value of redress for signed Deeds of Settlement. Provision for Te Ariki should a deed of Settlement be signed.
<b>Total Appropriations for Other Expenses to be Incurred by the Crown</b>	3,916	-	3,916	-	4,224	-	
<b>Purchase or Development of Capital Assets by the Crown</b>							
Land, Stock, Plant Purchases	12,000	-	12,000	-	<b>10,000</b>	-	Surplus Crown land is purchased for Treaty claim purposes from Crown agencies and departments, for claim-specific and regional landbanks, the Crown Settlement Portfolio, and specific Settlements.
<b>Total Appropriations for Purchase or Development of Capital Assets by the Crown</b>	12,000	-	12,000	-	10,000	-	
<b>Total Appropriations</b>	29,525	-	29,525	-	27,833	-	

**Part B2 - Details of Multi-Year Appropriation (see note 1)**

Appropriations	Current Appropriation	Description of Appropriations
<b>Other Expenses to be Incurred by the Crown</b>		
<b>Historical Treaty of Waitangi Settlements</b>		
Term	2001-2005	The multi-year appropriation reflects the Crown's commitment to settling historical Treaty of Waitangi claims and the uncertain timing of achieving settlement for each claim. The multi year appropriation of \$400 million covers a five year period, and the amount is reviewed annually to ensure that it is sufficient and reasonable to meet claims for this period.
Original Appropriation	400,000	
Adjustments	-	
Total Appropriation	400,000	
Actual to date (March)	16,298	
Remaining	383,702	

## Part C - Explanation of Appropriations for Output Classes

### Part C1 – Departmental Output Classes

For more detailed analysis of Output Classes, including financial and non-financial performance measures, please refer to the Ministry of Justice's Departmental Forecast Report (DFR).

#### *Output Class D1 – Policy Advice - Treaty Negotiations*

##### **Description**

Under this output class the Minister in Charge of Treaty of Waitangi Negotiations will purchase the following Services:

- Ministerial services, which includes replies to ministerial correspondence, Official Information Act requests and Parliamentary questions on issues that impact on the Treaty of Waitangi negotiations
- Advice on issues that impact on historical claims arising under the Treaty of Waitangi, including overall strategies for settling historical Treaty claims and the development of generic approaches to policy issues which affect the settlement of more than one claim
- Advice to the Minister on specific historical Treaty claims, up to and including advice on the Crown Negotiation Brief
- Negotiation of Treaty claim settlements proceeding from approved Crown Negotiation Briefs up to the ratification by both parties of Deeds of Settlement
- Preparation of settlement legislation
- Property valuation, disclosure and preparation and execution of associated legal documentation
- Coordination of, and reporting on, Crown implementation of agreed settlements.

#### *Output Class D2 – Representation - Waitangi Tribunal*

##### **Description**

This output class includes services provided to the Minister in Charge of Treaty of Waitangi Negotiations relating to ensuring that the Crown undertakes research into historical Treaty grievances and has its position represented with well prepared documentation and evidence at Waitangi Tribunal hearings.

#### *Output Class D3 – Land Portfolio Management*

##### **Description**

This output class includes advising the Crown on its strategy for historical Treaty claims litigation. It also includes providing services to the Minister in Charge of Treaty of Waitangi Negotiations relating to the acquisition, management, transfer and disposal of Crown-owned land for Treaty claim purposes and advice on Māori interests in land subject to the Protection Mechanism.

- Acquisition of land involves claimant groups, vendors and the Crown, and includes acquisition or resumption of land for claim-specific landbanks, regional landbanks or the Crown Settlement Portfolio and subsequent transfer to a relevant claimant group as part of a Treaty Settlement
- Management of land acquired or resumed for potential use in Treaty settlements includes managing tenancies, collecting revenues, paying outgoings, maintaining properties to agreed standards and complying with legislative requirements on the Crown as land owner
- Transfer and disposal of land including transferring land to claimants as part of a settlement, or as part of the return of Category A sites (Wahi Tapu) landbanked under the previous Protection Mechanism policy and the disposing of landbanked property that claimants no longer require for settlement purposes.

### **Part C2 – Non-Departmental Output Classes**

No output classes will be purchased from other parties for this Vote.

## Part D - Explanation of Appropriations for Other Operating Flows

### **Part D3 - Other Expenses**

Information regarding these appropriations is provided in Parts B1 and B2.

#### *Historical Treaty of Waitangi Settlements*

A brief description of this appropriation is provided in Part B2.

The multi-year appropriation is used for the payment of redress arising from Deeds settling historical Treaty of Waitangi claims. The appropriation allows the Government to commit expenditure up to four years in advance and was first used in the 1994/95 financial year.

## Part E - Explanation of Appropriations for Capital Flows

### **Part E1 - Capital Contributions**

There are no appropriations in respect of capital contributions.

#### *Net Worth of Entities Owned*

The taxpayers' funds of the Office of Treaty Settlements are included in the Statement of Financial Position of the Ministry of Justice.

### **Part E2 - Purchase or Development of Capital Assets by the Crown**

#### *Landbank Purchases*

A brief description of this appropriation is provided in Part B1.

Further detail is provided in the Terms and Definitions section under Protection Mechanism.

This appropriation also covers properties purchased under the Deeds of Settlement.



## Part F - Crown Revenue and Receipts

### Part F1 - Current and Capital Revenue and Receipts

	2000/01		2001/02	Description of 2001/02 Crown Revenue
	Budgeted \$000	Estimated Actual \$000	Budget \$000	
<b>Current Revenue</b>				
Non-Tax Revenue				
Landbank Properties	4,176	4,176	3,926	Expected revenue arising from landbanked properties.
Waitomo Loan Interest	43	43	33	Interest received from a loan for the Treaty of Waitangi Waitomo Settlement in 1990.
Total Non-Tax Revenue	4,219	4,219	3,959	
<b>Total Current Revenue</b>	4,219	4,219	3,959	
<b>Capital Receipts</b>				
Property Sales	6,500	6,500	6,500	Sale of properties from claim landbanks. Claim-specific landbanks have a predetermined expenditure cap. Once a landbank reaches its cap, new surplus Crown property can only be added if property in the landbank of an equivalent value is sold. In other cases, landbank properties not required for settlement are sold.
Waitomo Loan Repayments	113	113	123	Repayments of the principal of a loan for the Treaty of Waitangi Waitomo Settlement in 1990.
<b>Total Capital Receipts</b>	6,613	6,613	6,623	
<b>Total Crown Revenue and Receipts</b>	10,832	10,832	10,582	