

# The Treasury

## Budget 2011 Information Release

### Release Document

June 2011

[www.treasury.govt.nz/publications/informationreleases/budget/2011](http://www.treasury.govt.nz/publications/informationreleases/budget/2011)

Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [2] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [3] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [4] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [5] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage
- [6] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [7] 6(a) - to prevent prejudice to the security or defence of New Zealand or the international relations of the government
- [8] 9(2)(h) - to maintain legal professional privilege
- [9] 6(c) - to prevent prejudice to the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
- [10] 9(2)(d) - to avoid prejudice to the substantial economic interests of New Zealand
- [11] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, an [8] appearing where information has been withheld in a release document refers to section 9(2)(h).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

**Vote Treaty Negotiations**

# Four Year Budget Plan

Version 1

30 November 2010

Submitted by:

**Ministry of Justice**

## Section 1: New Baseline and Summary of Changes

### Direction of Change

The Office of Treaty Settlements (OTS), within the Ministry of Justice, is funded through the Vote Treaty Negotiations appropriation to negotiate settlements of historical Treaty of Waitangi claims on behalf of the Crown.

The Government's aspirational goal is to settle all historical Treaty of Waitangi claims by 2014.

The Ministry of Justice is not seeking additional funding for Vote Treaty Negotiations for the 2011/12 financial year. There are, however, a number of risks that will be realised if the current level of funding is reduced.

### Overall Impact

Operating	Impact (\$000s)				
	2010/11	2011/12	2012/13	2013/14	2014/15
Current Baseline	396,616	393,645	388,773	386,973	387,473
Cost of new/increased activities	-	-	-	-	-
Amount reprioritised	-	-	-	-	-
New baseline	396,616	393,645	388,773	386,973	387,473

Capital	Impact (\$000s)				
	2010/11	2011/12	2012/13	2013/14	2014/15
Capital proposals seeking new funding in Budget 2011.	-	-	-	-	-
Capital proposals seeking decisions in Budget 2011 funded within baselines.	-	-	-	-	-
Total capital intentions	32,060	10,000	10,000	10,000	10,000

## Section 2: Vote Priorities and Pressures

### Context

The Office of Treaty Settlements (OTS), within the Ministry of Justice, is funded through the Vote Treaty Negotiations appropriation to negotiate settlements of historical Treaty of Waitangi claims on behalf of the Crown. This includes the provision of strategic advice; pre-negotiation and negotiating settlements of historic Treaty claims; implementing Treaty settlements; representing the Crown at Waitangi Tribunal hearings; and management of a property portfolio for potential use in Treaty settlements.

The current Vote Treaty Negotiations departmental appropriation is broken down as follows.

	2010/11	2011/12	2012/13	2013/14	2014/15
Departmental budget	31,816	29,925	29,353	27,553	28,053

The Ministry of Justice is not seeking additional funding for Vote Treaty Negotiations for the 2011/12 financial year. There are, however, a number of risks to the delivery of Government objectives that will be realised if the current level of funding were reduced.

### Priorities

Settling historical Treaty of Waitangi claims by 2014 is a high priority for the Government. [6]

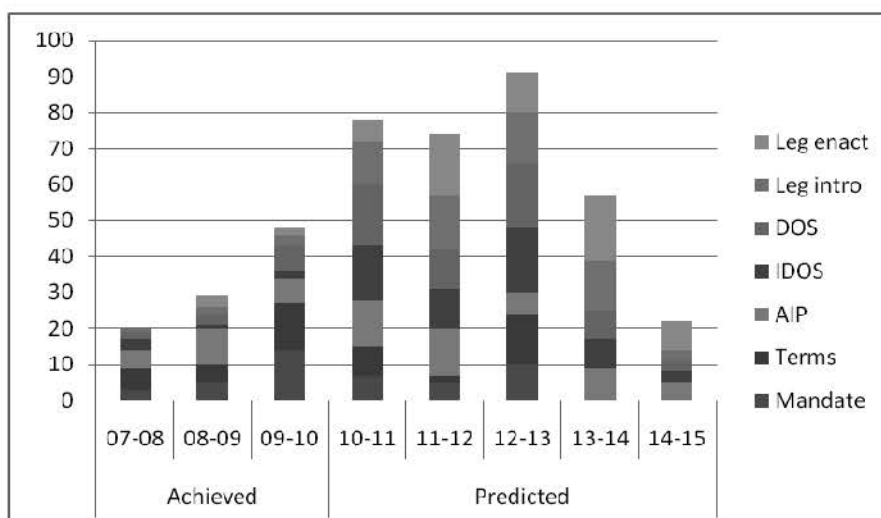
This is the only priority for Vote Treaty Negotiations and the activities within this Vote have been aligned accordingly.

This priority can be broken down into three main areas of focus over the next 12 to 18 months:

1. to settle all Groups that are actively negotiating towards Deeds of Settlement;
2. to continue to focus on remaining negotiations in the greater Auckland region following the achievement of Deeds of Settlement with Kaipara and Tāmaki groups; and
3. to continue to increase settlement momentum by reaching agreement with groups in intensive negotiations and preparing remaining groups for entry into negotiations.

[6]

The milestones achieved over 2009/10 and 2010/11 demonstrate a rate of progress that far exceeds what has been achieved in previous years. Settlement momentum continues to increase over the next four years, as demonstrated in the following graph.



Based on the current Treaty Negotiations Work Programme, during the 2011/12 financial year, the Ministry expects the Government will be able to:

- introduce new legislation for 16 settlements;
- sign 11 Deeds of Settlement;
- sign 11 Agreements in Principle;
- sign two Terms of Negotiation, and
- recognise six Deeds of Mandate.

In addition, within the first six months of the 2012/13 financial year the Ministry expects the Government will be able to sign Deeds of Settlement with all remaining groups in the greater Auckland region.

### **Major pressures and measures to manage them**

The settlement of historical Treaty of Waitangi claims is a complex negotiation process between the Crown and Māori claimant groups and the settlement of claims will often require major policy decisions to be made by Government. There are a number of variables that can affect planned settlement progress and create unbudgeted fiscal pressure.

There are some specific pressures outlined below which have the potential to absorb baseline at the expense of negotiations activity.

### ***Litigation against the Crown***

In some instances, claimant groups may chose to undertake litigation against the Crown. This is a costly procedure for the Crown that can cause delays to settlements and increase the overall cost of the negotiation.

[6]

This expenditure is reactive and largely unavoidable. Failure to successfully defend such actions may result in a liability for historical Treaty grievances in excess of that currently anticipated through enforcement of legal obligation rather than negotiating the settlement of claims. The funding to defend such litigation would otherwise be spent on achieving negotiation milestones.

### ***Relativities Mechanism***

Another fiscal pressure arises from the relativity mechanism. The Waikato (raupatu) and Ngāi Tahu Deeds of Settlement contain contractual clauses requiring top-up payments if total settlement expenditure exceeds \$1 billion in 1994 present value dollars. This trigger point is expected to be reached within the next one to two years.

[2]

### ***Claimant group capacity and capability***

The robustness of claimant group leadership is an essential factor in supporting the 2014 goal. The number of remaining settlements to complete is difficult to quantify as claimant groups have the prerogative to cluster together or break apart for settlements at any stage of the negotiations process.

Claimant groups face a number of pressures when negotiating their settlements. Groups need to demonstrate consistent leadership to maintain their mandate and need the capacity to make decisions and complete the work required to reach negotiation milestones. The resolution of often complex overlapping claims with other iwi / hapū and the management of internal allocation processes for settlement redress can present significant challenges to iwi leadership. The ability of claimant groups to meet the fiscal costs of negotiations is also critical. These challenges can often impact on the ability of claimant groups to move at the pace required.

The Ministry manages a Negotiations Work Programme, approved by the Minister for Treaty of Waitangi Negotiations, which takes into account claimant readiness, overlapping claims and OTS resourcing based on the current configuration of claimant group clusters. Changes to this configuration, in particular the disaggregation of claimant groups, can have a significant impact on the overall cost of negotiations due to the consequential increase to the number of settlements. This will require additional OTS resources and operational expenditure.

One significant focus for the Ministry in the short to medium term is to assist claimant groups to build their capability and capacity. Initiatives to support this are already underway including: increased funding for claimants to boost claimant fiscal capacity; public servant secondments to claimant groups to build claimant group capability; and an iwi mentoring programme that enables groups to seek advice from iwi that have already completed Treaty settlements.

The continuation of annual Te Kōkiri Ngatahi hui will also provide an opportunity for constructive engagement with claimant groups on how to continue to increase settlement momentum.

### ***Claimant funding***

The potential for claimant groups to change their configuration could put pressure on the non-departmental appropriation: *Claimant Funding*.

The fiscal forecast for the payment of claimant funding to eligible groups is aligned to the achievement of planned milestones in the Negotiation Work Programme. [2]

Prior to July 2010, claimant funding was part of the Vote Treaty Negotiations multi-year appropriation. A dedicated annual appropriation for claimant funding was established from July 2010 in order to make transparent the budget for this particular appropriation. The annual appropriation for claimant funding for 2010/11 is \$10 million.

Since the annual appropriation was established, some claimant groups have changed in configuration resulting in additional groups being eligible for, and requiring, claimant funding. [2]

### ***OTS Capacity and Capability***

Additional operating funding for 2010/11 and outyears has allowed OTS to increase its level of resourcing to better support the 2014 goal. There is still, however, a resourcing shortfall compared to the forecast Negotiations Work Programme requirement. This shortfall was known and efficiencies arising from new ways of working were planned to mitigate this. These include:

- a regional approach to sequencing and resourcing negotiations to maximise efficiencies in relation to shared and overlapping redress;
- parallel deed and legislation drafting to reduce the time between a Deed of Settlement being signed and having the Legislation introduced into Parliament;
- a new management structure to facilitate a more flexible approach to resourcing negotiations;
- the establishment of a strategic policy team to resolve generic Treaty settlement related policy issues enabling negotiations staff to focus on the settlement of claims; and

- Chief Crown Negotiators appointed to lead or assist with negotiations.

In addition, good progress has been made in establishing a policy framework to support the 2014 goal. Policy work on conservation, landbank properties and natural resources has been completed, enabling more flexibility in negotiations.

Although settlement momentum has dramatically increased over the last two years, at this stage the efficiencies implemented have not been realised to the expected extent. Each of the pressures outlined above has the potential to absorb funding from baseline that would otherwise be utilised to progress negotiations and the impact of these pressures to date has outweighed the benefits of new ways of working.

A peak in settlement activity planned for the 2012/13 financial year will place further pressure on resources, which will need to be met from within baseline. Opportunities to further realise efficiencies in ways of working are being actively sought in an ongoing basis to assist in mitigating the risk of the fiscal pressures and to make the best possible use of the current funding allocation.

[2]

### **Section 3: Proposed Changes for Budget 2011 (Reprioritisation)**

As part of the reform of the legal aid system, Cabinet agreed OTS would become the sole government funder of claimants in settlement negotiations with the Crown and that legal aid no longer be used to fund these matters.

On 29 November 2010, Cabinet agreed that \$2.402 million of legal aid funding be transferred to Claimant Funding Vote Treaty Negotiations to be used as claimant funding for historical Treaty settlement negotiations. The changes will be made in the March Baseline Update and funding will be allocated in 2012/13, 2013/14 and 2014/15 as follows:

- \$1.200 million to fund set pre-mandate activities; and
- \$1.202 million to fund specific legal or specialist advice for sub groups currently unable to access funding under the Crown claimant funding matrices.

No other changes are proposed to the current baseline for Vote Treaty. The current level of funding is necessary to continue to increase settlement momentum to support the 2014 goal. The impact on the work programme of reducing this level of funding would push out the completion of all historical settlements significantly and lead to discontent from iwi who are ready to progress but who cannot be accommodated within the work programme.

As the settlement of historical Treaty of Waitangi claims is the only priority for Vote Treaty Negotiations, and all work purchased from OTS supports this priority, no changes to the activities undertaken under Vote Treaty Negotiations are proposed.



## Section 4: Summary of Financial Movements

### Four-Year Budget Plan - Financial Summary Report

(Operating - Including Operating Associated with Capital Initiatives 2011)

Vote: Treaty Negotiations	2010/11	2011/12	2012/13	2013/14	2014/15
	\$000	\$000	\$000	\$000	\$000
Share Allocation	0	0	0	0	0
Operating					
Baseline (2010/11 OBU)	396,616	393,645	388,773	386,973	387,473
Changes:					
Centralised Saving					
Total Centralised Saving	0	0	0	0	0
Reprioritisation					
Efficiency savings	0	-549	-858	-858	-1,103
Cost pressures	0	549	858	858	1,103
Total Reprioritisation	0	0	0	0	0
Transfers Outside Vote					
Total Transfers Outside Vote	0	0	0	0	0
Total Changes	0	0	0	0	0
Total Proposed Operating Baseline	396,616	393,645	388,773	386,973	387,473

### Four-Year Budget Plan - Financial Summary Report (Capital 2011)

Vote: Treaty Negotiations	2010/11	2011/12	2012/13	2013/14	2014/15
	\$000	\$000	\$000	\$000	\$000
Capital					
Baseline (2010/11 OBU)	32,060	10,000	10,000	10,000	10,000
Proposals for new Capital Funding					
Refurbish/Replace					
Total Refurbish/Replace	0	0	0	0	0
Improve Functionality					
Total Improve Functionality	0	0	0	0	0
Meet Demand					
Total Meet Demand	0	0	0	0	0
Capital Associated with Operating Initiatives					
Total Capital Associated with Operating Initiatives	0	0	0	0	0
Total Capital Proposals	0	0	0	0	0
Total Proposed Capital Baseline	32,060	10,000	10,000	10,000	10,000