

Treaty Negotiations Policy

INTRODUCTION

The settlement of historical Treaty grievances is vitally important to New Zealand moving forward. National is committed to the expeditious completion of final, durable settlement of historical grievances.

The record of the National Party on Treaty settlements has not been equalled by the Labour government's performance over the last nine years. To date, 22 final settlements have been reached. Of those, ten were taken from the start of negotiation to final settlement under National in the 1990s. Negotiations on another nine were initiated by National, with legislation passed by the current government. Since 1999, Labour has taken just three Treaty claims from start to completion.

National will devote fresh energy to this important area. We aim to achieve just and durable settlement of all historic Treaty claims by 2014.

I. PROVIDING POLITICAL LEADERSHIP

The hands-on involvement of Jim Bolger and Sir Douglas Graham, particularly in the fisheries, Tainui, and Ngai Tahu settlements, showed the level of commitment by National to the just resolution of historical grievances. One of the reasons why the Treaty settlement process has not advanced far over the past nine years is because of the lack of political commitment from Labour.

Under a National-led government, the Minister of Treaty Negotiations will play an active, hands-on role in leading the settlement process, supported by the Prime Minister and the Minister of Finance where required.

National will:

Aim to achieve just and durable settlement of all historical Treaty claims by 2014.

Move the Office of Treaty Settlements from the Ministry of Justice to another central agency such as the Department of Prime Minister and Cabinet. This will reflect the high level of engagement and leadership National will bring to the Treaty settlements process and enable a whole-of-government approach to rectifying historical grievances.

2. INDEPENDENT SETTLEMENT FACILITATORS

An open, transparent negotiating process will greatly help settlement negotiations. Under Labour, the Waitangi Tribunal has criticised the Crown for:

- A lack of good faith.
- Not acting as an honest broker.
- An approach of "picking favourites" to the detriment of other claimant groups.

Trust in the Crown has been seriously eroded and this threatens to undermine the negotiating process. National will establish independent settlement facilitators to ensure both negotiating parties act in good faith and to keep the negotiating process moving forward.

To ensure durable settlements and the end to Treaty litigation, post settlement liaison needs to be more effective to ensure that there are proper lines of communication between the Crown and settlement parties. Such liaison would ensure the Crown remains aware of its ongoing obligations

and will learn of any problems emerging in the post-settlement regime. This will greatly enhance the durability of Treaty settlements.

In Canada, the Federal government appoints ex-ambassadors and senior business people to assist in the negotiating process to resolve historical grievances. These people have the negotiating skills, experience, and mana to do a good job. New Zealand has a great resource of retired diplomats, business people, and public figures who would be well-suited to assist in moving the settlement process forward as independent settlement facilitators. Facilitators would act as neutral chairs in the negotiating process and provide post-settlement liaison. This would provide greater continuity and enhance trust in the process.

National will:

- Appoint independent settlement facilitators to chair negotiations, keep the process moving forward, and ensure both parties act in good faith.
- Empower the independent settlement facilitators to provide post-settlement liaison between the Crown and claimant groups in order to enhance durability.

3. MANDATE AND PRE-NEGOTIATION ISSUES

One of the biggest hurdles to entering into negotiations with the Crown is determining who has the mandate to represent claimant groups in those negotiations. While this issue is for Māori to determine, greater certainty can be provided about what evidence the Crown reasonably needs to satisfy itself that the mandate of claimant negotiators is valid.

National will:

- Empower the independent settlement facilitators to advise claimant groups on pre-negotiation and mandate issues so they can move forward to settlement negotiations more quickly.
- Provide clear guidelines on the evidence the Crown reasonably needs in order to satisfy itself that the mandate of claimant negotiators is valid.

4. REFINING THE NEGOTIATION PROCESS

Labour's "one size fits all" negotiating methodology has been criticised by the Waitangi Tribunal. Many claimants with whom the Office of Treaty Settlements (OTS) negotiates do not have the expertise, preparation, and resources of, for example, Ngai Tahu. More flexibility in negotiation is required.

OTS does a good job in a difficult field, but improvements can be made. For example, at least five negotiating teams were involved in negotiating the Te Roroa settlement. When one team of negotiators moves on, a new team is required to upskill. Institutional memory within OTS is lost and this is an impediment to Māori when negotiating settlements. The independent settlement facilitators, being involved in all stages of negotiation and settlement, can provide some continuity for claimant groups throughout the process.

National acknowledges that the money set aside for Treaty settlements has not kept pace with the actual increase in overall prices, and land prices in particular. As a result, the amount of land that can be returned has reduced since National began the settlement process. Some claimants settling today

consider the amount of land being offered is often too little and unfair. National agrees that a problem exists and we will review this issue.

National will:

- Review the impact of increases in prices, and in particular land prices, on Treaty settlements.
- Enhance continuity in the settlement process by appointing independent settlement facilitators to assist in all stages of negotiation and settlement.
- Focus on results, not process.

5. THE WAITANGI TRIBUNAL

The Waitangi Tribunal has played an extremely important role in the life of our nation over the past 25 years. Its reports are of a high quality. It does what it can with the resources it receives, but it needs more support. National will provide that support.

If Treaty settlements are to be completed in a timely fashion, the Waitangi Tribunal must be able to sit full-time. This will help the Tribunal work through the cases currently before it in a timely manner.

The Crown's conduct of litigation in the Tribunal needs to be closely examined. The Native Land Court failed in its responsibilities to Māori, yet the Crown continues to defend its actions before the Tribunal. The Crown should cease to defend the indefensible, and only defend when the relevant Crown action can be shown to have been reasonable and appropriate. Such an approach would shorten many Tribunal hearings and allow claimant groups to enter negotiations with the Crown much more quickly.

National will:

- Provide sufficient support to allow the Waitangi Tribunal to sit full-time, including reviewing the remuneration and support offered to members.
- Review the current operations of the Tribunal to ensure hearings are conducted in a timely manner and that the wider settlement process is not unnecessarily delayed.
- Review the Crown's conduct in litigation in the Tribunal to speed up the settlement process.

6. CROWN FOREST RENTAL TRUST AND FORESTRY ASSETS

The Crown Forest Rental Trust (CFRT) was established to receive and disperse forestry rentals from Crown forests withheld from sale pending validation of Treaty claims. On reaching settlements, the relevant forest or a part of it, together with the consequential accumulated rentals, could be used in the settlement with any residue being retained by the Crown. Recently, Labour has attempted to gift itself \$63 million held by the Trust for use in Treaty settlements with the perverse result that the Crown could make a profit out of breaching its Treaty obligations and responsibilities.

National will:

- Ensure Crown forest rentals are applied strictly in accordance with the terms of the CFRT.

7. SETTLEMENT LEGISLATION

Once the Crown has reached a settlement with claimant groups, empowering legislation should be passed as soon as practically possible. The delay and uncertainty caused by unnecessarily protracted legislative practices is unconscionable. In the 1990s, it took National on average nine months to pass settlement legislation. Under Labour, that same process has taken on average more than 20 months.

National will:

- Speed up the time taken to pass settlement legislation.

8. THE FORESHORE AND SEABED

National believes that a simple repeal of the Foreshore and Seabed Act is no longer a viable option. Since the Act was passed, Ngati Porou and Whanau a Apanui have in good faith negotiated agreements with the Crown. Other groups such as Te Rarawa have entered negotiations relating to the foreshore and seabed. Under these agreements, the Crown has made commitments and recognised certain rights – those agreements need to be honoured.

National will:

- Honour agreements made under the Foreshore and Seabed Act.