

Office of the Minister for Crown/Māori Relations

Chair, Cabinet Crown/Māori Relations Committee

### **Initial scope of Crown/Māori Relations portfolio**

1. This paper sets out the short-term work programme to refine the scope of the Crown/Māori Relations portfolio (the portfolio).

### **Background**

#### *The Crown/Māori relationship*

2. The quality of the relationship between the Crown and Māori in New Zealand since the signing of the Treaty of Waitangi (the Treaty) in 1840 has varied across the country and over time.
3. The Crown accepts, however, that excessive land loss (as well as a wide range of Treaty breaches like the loss of autonomy and control of and access to resources) has harmed Māori social, cultural, environmental and economic development.
4. These historical events form the basis of the claims that the Crown and Māori negotiate to settle. Restoration of the Crown/Māori relationship is one of the Crown's Treaty settlement negotiating principles. The Crown/Māori relationship is, however, broader than just a Crown/iwi one (and broader than Treaty settlements); it covers engagements between the Crown and Māori as individuals, whānau, hapū, iwi, sector groups and organisations who represent Māori in their varying capacities and institutions.
5. 61% of all expected Treaty settlements have been completed. The majority of groups remaining are already in the negotiations process. This Government can achieve settlements with all remaining groups who wish to settle in the next three years.
6. In a post-settlement environment, Māori expect a renewed relationship with the Crown at all levels. The Government must collectively respond to this challenge.
7. A focus of the Crown-Māori Relations portfolio is to maintain trust and confidence by ensuring that both parties are honouring the agreements reached in settlement negotiations. But more importantly it will move the relationship beyond the negotiating table to true partnership in commercial, social and cultural opportunities to the benefit of Aotearoa and expand the relationship beyond the groupings used to settle historical claims.

#### **CURRENT CROWN/MĀORI RELATIONSHIP**

8. Current Crown/Māori interactions generally arise as a result of the Treaty, Treaty settlement agreements, legislative and administrative requirements that provide for Māori participation, government agency policies that provide for Māori engagement because of their significant impacts on Māori and common law and international conventions regarding indigenous rights.
9. The quality and regularity of Crown/Māori engagement and relationships varies across public sector agencies and Ministers. There is no overall framework for a consistent and co-ordinated Government approach and capability across public sector agencies vary.

10. As the Prime Minister stated to groups we met in Waitangi it is arrogant for the government to think that it, alone, can solve the problems that afflict Māori more than other New Zealanders. At Waitangi the Prime Minister said:

“we as a government... know what we have to do... but we won’t always know exactly how to change it. For that we will come to you [Māori], we will ask you to help us, we will form partnerships together because we cannot do it alone”.

11. If we are to address seemingly intractable problems facing some Māori, like the disproportionate representation of Māori in state care and among the prison population, then we need help from Māori to find solutions.

#### *The Crown/Māori Relations portfolio*

12. The creation of the Crown/Māori Relations portfolio acknowledges that we are beginning to move to a post-Treaty settlement period. It indicates a desire to focus on the opportunities that settling claims makes possible. Ensuring the gains made in the Crown/Māori relationships through Treaty settlements are maintained is an important element of the role. There is, however, a risk that the relationship will stagnate if this remains the only focus. Instead, we need to look at ways to demonstrate a true and practical partnership is possible beyond the negotiating table. This will be important in looking to work with Māori to resolve social and environmental challenges and to take opportunities in economic development.

13. I, as the Minister responsible for the portfolio, will:

13.1. look for and facilitate partnership opportunities that arise in a post-Treaty settlement environment and expand opportunities for relationships beyond those established by the settlement of historical claims;

13.2. build the Crown’s understanding and honouring of its Treaty obligations;

13.3. increase opportunities for and quality of Crown/Māori engagement on important issues and promote good practice;

13.4. ensure Treaty settlement commitments are met to maintain trust and confidence;

13.5. provide strategic advice to the Prime Minister and Cabinet on the risks and opportunities in the Crown/Māori relationship; and

13.6. identify and drive projects which enhance partnership between the Crown and Māori which are outside the scope of other Ministers’ portfolios.

#### **Comment**

##### *Crown/Māori Relations priority areas and projects*

14. My priority areas for the next three years are to:

14.1. take the lead on resetting Crown/Māori relationships on hard issues;

14.2. find opportunities for active partnerships between the Crown and Māori. To do this I will examine existing partnership models that are working to understand why they are successful so that their success might be replicated;

- 14.3. measure how healthy the Crown/Māori relationship is over time to drive accountability;
  - 14.4. help government to better engage with Māori on matters of importance;
  - 14.5. support Māori capability and capacity to deal with government;
  - 14.6. lift public sector performance to better respond to Māori issues; and
  - 14.7. develop a way to deal with contemporary Treaty claims and other processes for restitution and reconciliation that fall outside the formal Treaty claims process.
15. To support my priorities Ministry of Justice officials have, with assistance from other government agencies, scoped projects in these priority areas. I will be reporting to Cabinet on these over the next 4-6 months. Some of these projects will see the portfolio, and the Crown/Māori Roopū within the Ministry of Justice lead best practice within Government.
  16. I will work with the Minister of State Services to lift public sector performance and other portfolio Ministers as appropriate. The Minister for Māori Development is leading projects relating to monitoring the effectiveness of public sector effort and building Māori capacity and capability for engagement with the Crown.

#### *Crown/Māori engagements and relationships*

##### ENGAGING WITH MĀORI ON MATTERS OF IMPORTANCE

17. One of the early priorities, particularly following the success of engagement at Waitangi, is to reset the way we engage with Māori across the country. We need to build on the engagement at Waitangi and quickly establish a new framework which could guide Ministers and public sector agencies (the framework). This will include practical models of engagement with Māori and producing guidance and training for the public sector. Ministry of Justice officials will work closely with the State Services Commission to deliver the public sector capability work (discussed in paragraph 14.6).
18. Effective engagement with Māori supports better outcomes and ensures Treaty obligations will be met. Māori are increasingly looking at development opportunities with mutual benefits, and there is a growing realisation that what benefits Māori also benefits wider Aotearoa.
19. The Government should take an inclusive approach to engagements and relationships with Māori, depending on the issue, context and situation. Ministers and public sector agencies should be able to demonstrate how they have engaged early with affected Māori in policy development and service delivery in an effective and efficient manner.
20. The new framework will be underpinned by a statement of the Crown's intent for the Crown/Māori relationship and a set of agreed values. This will be important for Māori as we look to reset and will provide accountability measures for both parties as the relationship develops. The proposed wording for the intent and values is outlined below and will be tested in my upcoming engagement process.

**Table 1: Proposed intent, values and key issues/priorities for the Crown/Māori relationship**

Area for consultation	Proposed detail	
Intent	To work with Māori to respond better to the range of needs, aspirations, rights and interests and provide for active partnership with Māori in the <i>design and implementation</i> of the process and outcomes sought.	
Values	a. Partnership;	The Crown and Māori will act reasonably, honourably and in good faith towards each other as Treaty partners.
	b. Participation;	The Crown will encourage, and make it easier for Māori to more actively participate in the relationship.
	c. Protection;	The Crown will take active, positive steps to ensure that Māori interests are protected.
	d. Recognition of cultural values; and	The Crown will recognise and provide for Māori perspectives and values.
	e. Use of mana enhancing processes.	Recognising the process is as important as the end point; the Crown will commit to early engagement and ongoing attention to the relationship.
Key issues/priorities	To develop a shared vision of the future overarching Crown/Māori relationship; key issues; priorities; action plans and accountability processes for the Crown and Māori.	

21. Two broad steps will form the basis of the guidelines or models that we will further develop before July 2018:
  - 21.1. when considering new policy or initiatives the Government (through its Ministers and agencies) will undertake an initial assessment of the level of impact of issues or opportunities on Māori outcomes and/or rights and interests, including Treaty rights; and
  - 21.2. government will work through the respective policy development or implementation processes with affected Māori. Māori in turn are expected to engage effectively and pragmatically.

PROPOSED INTERIM ENGAGEMENT APPROACH

22. Developing relationships with Māori, and engaging on issues important to Māori, is core government business. This activity will continue despite me looking to discuss with Māori how I can help government to better engage, and build relationships, with Māori. I will seek Cabinet approval of the framework in July 2018 and a final set of guidelines in September 2018.
23. In the interim I propose the following guidance be provided by Cabinet to Ministers, Members of Parliament and government departments:
  - 23.1. the proposed Crown's intent and values set out in this paper be used by Ministers and the public sector to guide practice;
  - 23.2. where the impact of the issue or proposal will be significant for Māori outcomes and/or Māori rights and interests – strong active partnership with Māori in the *design and implementation* of the process and outcomes is required;

- 23.3. where there are issues of national significance, engagement will need to be broad and include discussions with relevant national Māori<sup>1</sup>; and
- 23.4. where there are issues of regional or local significance, engagement will need to be undertaken through existing iwi regional fora or at a local level with affected iwi/hapū and/or regional/local based Māori organisations or local affected groups. This may include regional hui.
24. Collaborative models will require the investment of funds, time and resources by both the public sector and Māori. It will also mean in some circumstances adopting models that provide for more exclusive leadership and decision-making for one or other party where the issues or circumstances warrant (e.g. national security or public health).
25. Where Ministers or departments are unsure about the application of this early guidance or appropriate processes, my officials at the Ministry of Justice (working with Te Puni Kōkiri) will be available to provide advice.

#### IWI CHAIRS FORUM AND IWI LEADERS GROUPS

26. The Iwi Chairs Forum and Iwi Leaders' Groups are important groups in the Crown/Māori relationship (although not exclusively). At the Iwi Chairs Forum in Waitangi on 2 February the Prime Minister advised Iwi Chairs that:
- 26.1. the government acknowledges the knowledge and expertise of Iwi Chairs, and the value they bring to the Crown/Māori relationship; and
- 26.2. the Crown will still deal with Iwi Chairs at the national level as appropriate (along with other Māori organisations).
27. My office and officials will act as a clearing house across government for engagement with the Iwi Chairs and Iwi Leaders until Cabinet has agreed the overall engagement approach in July 2018. In practice, this means:
- 27.1. the Crown/Māori Relations Roopū within the Ministry of Justice should be advised of all policy specific engagements with Iwi Chairs/Iwi Leaders' Groups (whether initiated by the Crown or Iwi Chairs/Iwi Leaders' Groups);
- 27.2. any contracts already in place should be honoured;
- 27.3. no new relationships arrangements should be entered into before July;
- 27.4. for any general policy engagements agencies should continue to progress their work with Iwi Chairs/Iwi Leaders' Groups using the guidance set out in paragraph 23;
- 27.5. if agencies need additional guidance on whether and how to engage with Iwi/Chairs/Iwi Leaders' groups the Minister for Crown/Māori Relations and officials from the Crown/Māori Relations Roopū can assist; and

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<sup>1</sup> Including, but not limited to, Federation of Maori Authorities, Iwi Chairs Forum, Maori Women's Welfare League, National Urban Māori Authorities, NZ Maori Sports groups (e.g. NZ Maori Rugby Union, NZ Maori Tennis, NZ Maori Golf), Ngā Aho Whakaari (Māori in Screen Production), Ngā Kura A Iwi O Aotearoa, Ngā Wananga Collective, Te Kōhanga reo National Trust, Te Matatini, Te Mātāwai, Te Ohu Kaimoana, Te Runanganui o ngā Kura Kaupapa Māori, Te Whakaruruhau o nga reo Irirangi Māori, Māori Wardens and New Zealand Māori Council.

- 27.6. if Ministers need additional guidance on whether and how to engage with Iwi Chairs/Iwi Leaders' Groups they should take the matter to the Cabinet Crown/Māori Relations Committee.

#### *Engagement on scope of the portfolio*

28. In addition to seeking feedback on our engagement approach and models, it is important that we also seek feedback from Māori and more generally New Zealanders on the scope of the portfolio.
29. Like the engagement framework we will establish, our approach to engagement on the scope of the portfolio must ensure broad engagement with affected Māori otherwise we are repeating mistakes of the past. I acknowledge that there are time and cost constraints in ensuring broad engagement and that we need to be smart about how we undertake the engagement.
30. The engagement process I will undertake includes:
- 30.1. kanohi ki te kanohi (face-to-face) engagements including:
- 30.1.1. a series of regional hui (going to the places where people live, rather than just the main centres);
  - 30.1.2. hui with Māori and non-Māori national organisations and other groups (such as rangatahi, academic sector and business leaders); and
  - 30.1.3. a final hui for invited participants in late-May to discuss the issues raised and to develop options; and
- 30.2. the opportunity for people to provide written feedback.
31. The draft pamphlet attached as **Appendix One** will be released, subject to final edits, to support the engagement. The pamphlet provides an overview of the proposed scope and priorities of my portfolio. I seek Cabinet's approval for its release.
32. I will report back to Cabinet on the feedback received and the final scope and priorities of the Crown/Māori Relations portfolio.
33. There is a clear intersect between my role and the Minister of Māori Development. Both portfolios are key in considering the width and breadth of the Crown/Māori relationship. We will continue to strive for clarity around the demarcation between the portfolios as well as opportunities for cooperative effort.

#### *Risks and Mitigation*

34. The primary risk is managing expectations of what a renewed focus the Crown/Māori engagements and relationships will achieve. Expectations may include:
- 34.1. a greater commitment from the Crown to the relationship envisaged by the Treaty;
  - 34.2. a greater desire to try new ways of operating; and
  - 34.3. concerns that a new approach will compromise existing relationships, engagements or obligations.

35. I will respond to any concerns about my focus on Crown/Māori Relations stating:
- 35.1. the establishment of the Crown/Māori Relations portfolio presents an exciting opportunity to signal the Crown's commitment to moving beyond the negotiating table in resetting its relationship with Māori;
  - 35.2. there is a need to improve outcomes for Māori (e.g. in health, justice, employment and wellbeing statistics), deliver on Treaty settlement obligations and give effect to the relationship; and
  - 35.3. it would be premature for the Crown to set in stone the scope of the portfolio without engaging with New Zealanders.

*Timing of decisions by Cabinet*

36. I seek Cabinet agreement now:
- 36.1. that a new framework for Crown/Māori engagements and relationships be developed for us to consider in July 2018. This would replace the previous government's framework;
  - 36.2. to proposed intent and values (outlined in the attached pamphlet) that will be tested in upcoming engagement on the scope of the Crown/Māori Relations portfolio; and
  - 36.3. interim engagement guidance for Ministerial and agency use until July 2018 when the new model will be agreed.
37. I will return to Cabinet in July 2018 to seek agreement to:
- 37.1. the final scope of the portfolio; and
  - 37.2. the overall engagement and relationships framework including:
    - 37.2.1. the Crown's intent for the Crown/Māori relationship;
    - 37.2.2. the values to underpin the Crown/Māori relationship; and
    - 37.2.3. an engagement model to help Ministers and agencies identify how to engage with Māori at the national, regional and local level.
38. I will seek Cabinet agreement in September 2018 to a detailed guide for Ministers and agencies on the engagement model that may include paper, web and/or video based material, training, and/or changes to the Cabinet Office Manual.

**Consultation**

39. The following departments were consulted on earlier versions of this paper: State Services Commission, The Treasury, Te Puni Kōkiri, the Crown Law Office, Ministry for the Environment, Oranga Tamariki, Ministry for Business, Innovation and Employment, Ministry for Culture and Heritage, Ministry of Health, Ministry for Primary Industries, Department of Conservation, New Zealand Police, Ministry for Social Development, Ministry of Education, Land Information New Zealand, Statistics New Zealand and the

Social Investment Agency. The Department of the Prime Minister and Cabinet was informed.

### Financial implications

40. No financial implications arise directly as a result of this paper.

### Recommendations

41. The Minister for Crown/Māori Relations recommends that the Cabinet Crown/Māori Relations Committee:

1. **note** the Minister for Crown/Māori Relations' priority areas for the next three years are to:
  - 1.1. take the lead on resetting Crown/Māori relationships on hard issues;
  - 1.2. find opportunities for active partnerships between the Crown and Māori;
  - 1.3. measure how healthy the Crown/Māori relationship is over time to drive accountability;
  - 1.4. help government to better engage with Māori on matters of importance;
  - 1.5. support Māori capability and capacity to deal with government;
  - 1.6. lift public sector performance to better respond to Māori issues; and
  - 1.7. develop a way to deal with contemporary Treaty claims;
2. **agree** that a new engagement framework for the Crown/Māori relationship will be developed for consideration by Cabinet in July 2018;
3. **agree** that the following proposed intent and values be tested in upcoming engagement on the scope of the Crown/Māori Relations portfolio:

Area for consultation	Proposed detail	
Intent	To work with Māori to respond better to the range of needs, aspirations, rights and interests and provide for active partnership with Māori in the <i>design and implementation</i> of the process and outcomes sought.	
Values	a. Partnership;	The Crown and Māori will act reasonably, honourably and in good faith towards each other as Treaty partners.
	b. Participation;	The Crown will encourage, and make it easier for Māori to more actively participate in the relationship.
	c. Protection;	The Crown will take active, positive steps to ensure that Māori interests are protected.
	d. Recognition of cultural values; and	The Crown will recognise and provide for Māori perspectives and values.

Area for consultation	Proposed detail	
	e. Use enhancing processes.	Recognising the process is as important as the end point; the Crown will commit to early engagement and ongoing attention to the relationship.
Key issues/priorities	To develop a shared vision of the future overarching Crown/Māori relationship; key issues; priorities; action plans and accountability processes for the Crown and Māori.	

4. **agree** the following interim guidance be used by Ministers and the public sector to guide practice until July 2018 when Cabinet will consider the new framework:
  - 4.1. the proposed Crown's intent and values set out in recommendation 3;
  - 4.2. where the impact of the issue or proposal will be significant for Māori outcomes and/or Māori rights and interests – strong active partnership with Māori in the design and implementation of the process and outcomes is required;
  - 4.3. where there are issues of national significance, engagement will need to be broad and include discussions with relevant national Māori organisations; and
  - 4.4. where there are issues of regional or local significance, engagement will need to be undertaken through existing iwi regional fora or at a local level with affected iwi/hapū and/or regional/local based Māori organisations or local affected groups. This may include regional hui;
5. **note** that the proposed intent and values for the Crown/Māori relationship will be tested in an engagement process the Minister for Crown/Māori Relations will undertake in relation to the scope of the Crown/Māori Relations portfolio;
6. **note** the following guidance for engagement with the Iwi Chairs/Iwi Leaders' Groups:
  - 6.1. the Crown/Māori Relations Roopū within the Ministry of Justice should be advised of all policy specific engagements with Iwi Chairs/Iwi Leaders' Groups (whether initiated by the Crown or Iwi Chairs/Iwi Leaders' Groups);
  - 6.2. any contracts already in place should be honoured;
  - 6.3. no new relationships arrangements should be entered into before July;
  - 6.4. for any general policy engagements agencies can continue to progress their work with Iwi Chairs/Iwi Leaders' Groups using the guidance set out in recommendation 4;
  - 6.5. if agencies need additional guidance on whether and how to engage with Iwi/Chairs/Iwi Leaders' groups the Minister for Crown/Māori Relations and officials from the Crown/Māori Relations Roopū can assist; and

- 6.6. if Ministers need additional guidance on whether and how to engage with Iwi Chairs/Iwi Leaders' Groups they should take the matter to the Cabinet Crown/Māori Relations Committee;
7. **note** the Minister for Crown/Māori Relations and the Associate Minister for Crown/Māori Relations will undertake an engagement process that will include:
- 7.1. kanohi ki te kanohi (face-to-face) engagements including:
- a series of regional hui;
  - hui with Māori and non-Māori national organisations and other groups (such as rangatahi, academic sector and business leaders); and
  - a final hui for invited participants in late-May to discuss the issues raised and to develop options; and
- 7.2. the opportunity for people to provide written feedback;
8. **approve** the release of the attached draft pamphlet which, subject to final edits, provides an overview of the proposed scope and priorities of the Crown/Māori Relations portfolio to support the engagement process;
9. **invite** the Minister for Crown/Māori Relations to report back to the Cabinet Crown/Māori Relations Committee in July 2018 on:
- 9.1. the final scope of the portfolio; and
- 9.2. the overall engagement and relationships framework including:
- the Crown's intent for the Crown/Māori relationship;
  - the values to underpin the Crown/Māori relationship; and
  - an engagement model to help Ministers and agencies identify how to engage with Māori at the national, regional and local level; and
10. **invite** the Minister for Crown/Māori Relations to report back to the Cabinet Crown/Māori Relations Committee in September 2018 on a detailed guide for Ministers and agencies on the engagement model that may include paper, web and/or video based material, training, and/or changes to the Cabinet Office Manual.

Authorised for lodgement

Hon Kelvin Davis  
Minister for Crown/Māori Relations