

CROWN/MĀORI RELATIONS HUI NOTES

**Date of hui:** 20 March 2018

**Venue:** Matiu Room, Whare Waka, WELLINGTON

**Attendees:** Hon Kelvin Davis, Minister for Crown/Māori Relations  
Deborah Mahuta-Coyle, Senior Ministerial Advisor to Hon Davis  
Tihema Baker, Private Secretary to the Minister for Crown/Māori Relations  
Nancy Watters, Private Secretary to the Associate Minister for Crown/Māori Relations  
Te Rau Kupenga, Crown Facilitator  
Lil Anderson, Deputy Secretary Crown/Māori Relations, Ministry of Justice

***Focus group***

Annette Sykes  
Dr Carwyn Jones  
Paul Beverley  
Professor Mark Hickford  
Sir Geoffrey Palmer  
Linda Te Aho

**Apologies:** Dr Moana Jackson

**Secretariat:** Benesia Smith, Specialist Advisor, Ministry of Justice, Tāhū o te Ture  
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These notes provide a broad overview of the key points raised by participants and are not minutes of the hui. The headings used in this note correlate with some of the information contained in the pamphlet *Te Ara Whakamua ā tātou – Crown/Māori relations* (which can be found at <https://www.justice.govt.nz/maori-land-treaty/crown-maori-relations/initial-proposals-from-government/>).

**Main issues and opportunities**

*Crown-Māori Relationship*

- The current relationship is based on breaches of the Treaty of Waitangi and a settlement process. The honour of the Crown needs to be restored.

- There is a need to be more future focused, and to set up a system that is consistent with Te Tiriti o Waitangi. Relationships should be business as usual rather than part of settlements.
- There is a need to move beyond a consultation mind set to real partnership and engagement.
- Changes required - relationship principles, intelligence and capability, behaviour and system changes are required to enable a relationship change.
- In Crown-Māori engagement we need to be careful not to mix whanaungatanga up with mana and tino rangatiratanga. The Treaty requires respect for these at all times. The Treaty is clear that there are two peoples in a partnership, with roles and responsibilities. We need a system that all are party to, rather than the relationship becoming who you might be related to.
- However, tikanga and whanaungatanga are important values for Crown-Māori engagement.
- Would like to see the terminology of Te Tiriti normalised, particularly the values of Te Tiriti. To date only culture seems to be recognised. Proprietary rights also need to be addressed.
- Greater equity and inclusiveness for all Māori is essential. Under settlement accords (e.g., Waikato-Tainui) some iwi get to sit down with the Crown. This is a privileged position that not all iwi currently have. Settlements are not equal. Some allow for partnership in practice, but need to see greater equity, inclusiveness and partnership across the board.
- Crown-Māori relations do not happen in a vacuum. The Crown needs to stop undermining Crown-Māori relations through its other actions/decisions, such as expanding Waikeria prison.

#### *Treaty & Te Tiriti o Waitangi*

- The Treaty is the most important feature of the Crown-Māori relationship.
- Despite years of discussion the Treaty remains the most divisive issue. There is a large body of Pākehā opposition to the Treaty, but the problem is they do not really know what it means.
- The Government needs to address this. The Royal Commission on Social Policy (1988) recommended then that Parliament and the Government should enter into a discussion on the constitutional position of the Treaty.
- The Government needs a strong conceptual framework for what it is trying to do. It needs to be Treaty based, and clear where the Government stands and where the nation needs to be.
- The Government needs to establish a programme of public education on New Zealand history, Māori history and Te Tiriti o Waitangi.
- To make progress on Crown-Māori relationships you must crack the issue of what the Treaty means now for this generation.
- A “deliberative democracy” process was suggested – working with a randomly selected group of 30 Pākehā and 30 Māori on their understanding of the Treaty and related issues.
- We have a more hopeful future if the position of the Treaty can be tidied up, systematised and accepted.
- There has been progress. Treaty settlements have been a good step, but the Treaty is always speaking, and needs to be at the centre of the Crown-Māori relationship going forward.
- Tino rangatiratanga has not been dealt with adequately.

### *Improving the Crown-Māori relationship*

- There is a need to demonstrate change in the Crown, to restore the honour of the Crown.
- A concrete agenda is needed, that delivers to Māori what hasn't but needs to be. It needs to be prioritised, as the work required would take more than three terms of government.
- The Government should undertake a "stocktake" by running a Treaty/Māori perspective ruler over our legislation, regulation and policies. This could provide the beginning of an agenda. This could usefully identify what really needs to be addressed, which may not be obvious, the practice for so long now has been to respond to crises.
- Fundamental reforms of the 1980s involving the Resource Management Act, the Local Government Act and the State Sector Act were noted as being effective in establishing a constructive environment for the Crown-Māori relationship. That approach could be revisited. Some changes might need to be legislative, others not.
- Māori have diverse realities, so there is a range of groups that the Government needs to engage and do messaging with.
- Institutional capability and capacity needs to be addressed at many levels for both central and local government (see separate section below).
- System bias/discrimination against Māori needs to be addressed (see separate section below).
- A compelling narrative for change is required to develop the social licence needed to move the issues and conversation forward, to have the political discussion that is required.
- A concrete agenda/work programme should include the following: constitutional position of the Treaty; local government status; capacity and capability building – central and local government; institutional/systemic discrimination; water; shared outcomes; putting partnership into practice (e.g., the Department of Conservation has some useful approaches - local level solutions in particular).
- Other suggestions included:
  - A Treaty of Waitangi Commissioner (or other central body with a Treaty commission type function) to measure progress on the recommendations of the last 21 years and to provide independent advice to Parliament.
  - An institutional entity to do some of the heavy lifting in the environmental space (e.g., water rights). There was concern that the EPA model in NZ lacks effectiveness.
  - Legislative power for the judiciary to strike down legislation and other laws that are inconsistent with the terms of the Treaty of Waitangi.

### *Local & Central Government Capability*

- Central and local government have substantial capability and capacity issues that adversely affect their ability to relate to and partner with Māori, to understand and incorporate Māori perspectives, and understand and address issues relating to the Treaty or Te Tiriti o Waitangi.
- Inter-agency communication - local and national offices need to communicate with each other
- Capability building will need to be conscious of and address the underlying voicelessness of Māori in government decision-making (both central and local government).
- The Government system has been systematically weakened through a lack of government investment in it. Greater Māori capacity and capability is needed within government.

- There is weakness in the level to which central government governs local government. Local government would benefit from a stronger constitutional position in the state, but at the same time this is seriously fraught as they currently operate with a high level of dysfunction.
- Local government is where many injustices occur for Māori.
- Local government capacity is so deficient that they can barely enforce rights and interests of Māori (e.g., monitoring of the RMA and insufficient proactive local government behaviour and relationship are key sources of negative iwi engagement (Auckland, Napier).
- Māori representation on local authorities – if moving towards Māori wards then other changes also need to be put in place to support them and for substantive long-term change and community understanding. They will fail to make effective change on their own.
- A clear conceptual framework over the top is required, that defines local government in NZ and its roles and responsibilities in the Treaty/Māori space.
- Officials behaviour needs to appropriately reflect a healthy Crown/Māori relationship.
- Often issues with local authorities come from an impediment in law (eg, current law preventing councils partnering with Māori in reserves administration).
- Signposts for success, officials are legally and politically empowered to be able to find a way to work/partner with Māori. There is currently a lack of confidence and knowledge of opportunities in this regard by officials. Local government needs power and confidence.
- Current practice of ‘engagement and reconciliation’ does not capture the full sense of the Treaty of Waitangi promise.
- Treaty settlements only deal with part of the Crown/Māori relationship. Agencies compartmentalise issues and don’t take a holistic view – so they are often only dealing with part of the picture. Te Awa Tupua is an example of how the lens has changed, but it took six years to negotiate a framework (and many years of tribunal hearings and earlier negotiations) to move towards this more holistic approach. Opportunity to raise capability of local and central government to deal with Treaty and Maori issues.
- Central and local government should consider new models of engagement (e.g., deliberative democracy techniques that involve citizen panels).
- The State Services Commission needs to address capability within government with a bicultural framework that covers all government activity (policy, service delivery and implementation).

#### *Systemic discrimination against Māori*

- Underlying the current situation and thinking is a potent colonial inheritance (e.g., in the way that rights are described as proprietary when for Māori they are simply collective rights).
- The current situation is discriminatory in that everything is first framed or developed through a Crown or Pākehā lens, and Māori views are ultimately interpreted through that same lens into a Crown or Pākehā context. The power dynamic for what is Treaty compliant is not based in tikanga, creating discrimination against Māori in the very environment in which Māori rights are asserted.
- Decolonisation is required at many levels (Ministers, public service, local government) to:
  - most importantly, allow a Māori lens/perspective to become first nature
  - enable a constructive Treaty / Crown-Māori relations discussion or dialogue
  - enable government to function effectively for Māori.

- Bias in the system is reflected in the disproportionate number of Māori being charged, going to court and being incarcerated. Māori imprisonment rates are an immediate crisis for the Government and Māori.

#### *Public Education / Changing Social Conscience*

- A compelling narrative for change is required to develop the social licence needed to move the issues and conversation forward, to have the political discussion that is required for recognising the Crown/Māori relationship and the living Treaty.
- The Government needs a plan to educate communities, including exemplars of how people are positively relating, how the Crown and Māori are relating, the benefits for communities and the nation, and that it is not racist for the government to prioritise results for Māori.
- The Government must be able to show that life will be better and fairer for all as a result of greater investment in improved Crown-Māori relations.
- Homai te Rā! - to commemorate the New Zealand Wars - was noted as an opportunity for moving the conversation forward.
- The Crown-Māori relations role needs to address racism directly (including unconscious and systemic bias/discrimination).
- The discussion needs to happen at all levels. There is a need for a level of kaitiaki (for guidance) up top, but discussion at all levels. The Treaty is the starting point.
- The shift required can't be achieved in a Crown-Māori relations vacuum. All NZ must be engaged to create momentum for constitutional change. There are useful German, Australian and South African models of engaging communities to achieve significant change.
- A republic – concern was expressed about any prospect of a republic emerging out of a Crown-Māori relations discussion, and the implications for the ongoing Crown-Māori relationship.

#### *Proprietary Rights*

- It must be Māori who define Māori rights and understandings of tino rangatiratanga.
- Māori rights are at the centre of current settlements, engagement, etc. Proprietary rights need to be defined with reference to two systems of law. There is a need to understand tikanga as law, rights and constitutionally. The discussion of rights needs to take place in this framework. Currently Treaty principles and rights are framed, in the courts, against existing structures/institutions.
- Agree with the values for a platform, and recommend 'recognition of proprietary rights of Māori'

#### **Ngā uara: Values**

- Features of the relationship need to include Māori from the start, be dynamic, reflect mana on both sides (rangatiratanga), gain trust, equity and inclusiveness for all iwi (not all iwi have the same audience directly with Crown)
- Values framing the dialogue on Crown-Māori relations should be drawn from the Treaty, rather than being framed by the Crown.

### **Possible Crown/Māori Relations priorities**

- Need to establish a relationship approach (system) that is consistent with Te Tiriti o Waitangi.
- Greater equity and inclusiveness for all Māori is essential.
- Crown needs to stop undermining Crown-Māori relations through its other actions/decisions.
- Government needs a strong Treaty-based conceptual framework for what it is trying to do, including clarifying the constitutional position of the Treaty.
- A concrete agenda (work programme) is needed (see suggested issues above).
- Undertake a stocktake by running a Treaty ruler over legislation, regulation and policies.
- Address Treaty and Māori issues capability and capacity in central and local government.
- Decolonisation required to allow a Māori lens to become first nature for government.
- A clear conceptual framework that defines local government role in the Treaty/Māori space.
- The Crown-Māori relations role needs to address racism directly (including unconscious and systemic bias/discrimination).
- National programme of education on New Zealand history, Treaty and Te Tiriti.
- Change social conscience through changing the nation's narrative.
- The Government must show that improved Crown-Māori relations will make life better and fairer for all.

### **References:**

- Treaty chapter in new book co-authored by Sir Geoffrey Palmer and with Andrew Butler – yet to be published.
- Te Ara Hou / The New Way – Report of the Ministerial Committee of Inquiry into the Prisons System (1989) Prison Review. Crown: Wellington (Roper Report).

### **AGREED ACTIONS:**

1. Tāhū o te Ture to distribute notes to all attendees for review prior to finalising and uploading to the Crown/Māori Relations website.