

30 October 2023

REF: OIA 84744

By email: [REDACTED]

Tēnā koe [REDACTED]

Request for Official Information: Treaty settlements

On 6 and 9 September 2023, you requested information under the Official Information Act 1982 (OIA) from the Minister of Finance, Hon Grant Robertson. On 4 October 2023, your request was transferred to The Office for Māori Crown Relations - Te Arawhiti under section 14(b)(ii) of the OIA, as the information requested is more closely associated with our functions and responsibilities.

You have asked five questions to which, the responses are as follows:

1. What is the total amount paid under treaty settlements for the last three years

The total amount of financial and commercial redress provided through Treaty settlements since 6 September 2020 is \$367 million.

2. What is the amount paid in legal and consultancy fees for the above period

In the past three financial years, \$41.6 million has been spent on legal and consultancy fees.

3. We ask why you have not terminated the treaty claim process to save this money

The Crown has an obligation to resolve historical grievances in accordance with the principles of the Treaty of Waitangi, and New Zealand's courts have confirmed the Crown's duty to provide redress for Treaty breaches. In the 2022 High Court case of Ngāti Whātua Ōrākei Trust v Attorney-General (No. 4), the Court said:

The context of Treaty settlements also directly invokes ... the duty to provide redress, and right to receive redress, for breaches of the Treaty — which Somers J described in [the 1987 Court of Appeal decision in New Zealand Māori Council v Attorney-General] as "fair and reasonable recognition of, and recompense for, the wrong that has occurred."

While the Crown has made significant progress in settling Treaty claims with many groups around the country, some groups are still yet to receive a settlement. Terminating the settlement process now would create further injustice, as some groups would benefit from redress, while depriving others of the same.

4. Please explain why the treaty settlement payments are not based on the value of the land confiscated at the time of confiscations opposed to it being based on today's land values

The Crown's offer of financial redress is not based on the value of the land at the time of the historical Treaty breach, nor on today's land values. A full compensation approach or "damages" approach to redress would place too great a burden on the present and future generation of taxpayers. Instead, negotiations are aimed at a fair level of redress, taking all the circumstances into account. The main factors taken account include the amount of land lost to the claimant group, the relative seriousness of the Crown's Treaty breaches, and benchmarks set by existing settlements for similar grievances. You can find more information in the Settlement Redress chapter of *Ka tika ā muri, ka tika ā mua – Healing the past, building a future – A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, which is available online at:

<https://www.govt.nz/browse/history-culture-and-heritage/treaty-settlements/the-red-book/introduction-to-the-red-book/>.

5. Are the recipients of such payments paying tax on them. If not, why not

Recipients of Treaty settlements do not pay tax on them. The Commissioner of Inland Revenue has found that Treaty settlement payments are not taxable because redress is not considered income. The reasoning is set out in detail in interpretation statement IS0043 issued in October 2004 and entitled *Income Tax Treatment of Treaty of Waitangi Settlements*. This interpretation statement can be found online at the following link: <https://www.taxtechnical.ird.govt.nz/-/media/project/ir/tt/pdfs/interpretation-statements/is0043.pdf>

After considering our response to your request, we can advise that it will be published no earlier than 20 working days from the date of this letter at www.tearawhiti.govt.nz. Your personal and other identifying information will be removed.

If you have any concerns about the information in this response being published on our website, please contact us by emailing officialcorrespondence@tearawhiti.govt.nz by 5.00pm on 13 November 2023.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about this process is available at www.ombudsman.parliament.nz or phone 0800 802 602.

Nāku noa, nā

Leah Campbell
Regional Director