



Ka tika ā muri, ka tika ā mua

He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki te Tiriti o Waitangi me ngā Whakaritenga ki te Karauna

Healing the past, building a future

A Guide to Treaty of Waitangi Claims and Negotiations with the Crown

Putanga whakarāpopotonga Summary edition

Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi

Office of Treaty Settlements

Te mana pupuri ki te Karauna

Ka taea te tā ētahi wāhanga o te Aratohu nei, i runga i te tono ki te Kaiwhakahaere, Te Tari Whakatau Take e Pā Ana ki te Tiriti o Waitangi, me mārama hoki te noho mai o ngā kōrero mō te takenga mai o ngā kōrero.

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Titiro whānui ki te aratohu nei

I te tau 1999 i whakaputaina e Te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi (OTS) te tānga tuatahi o *Ka tika ā muri, ka tika ā mua*. Nō te tau 2002, ko te putanga tuarua, e whakaata ana i te whakahiatonga o ngā kaupapa here me ngā mahi mai i te tau 1999.

Ehara i te mea e whakarerekē ana tēnei Whakarāpopotonga Putanga o *Ka tika ā muri, ka tika ā mua*, i ngā kaupapa here. Ko tāna kē, he whakatakoto i tētahi aratohu ki te whakawhitiwhitinga kōrero me te whakataunga o ngā whakamaui i roto i ngā tau i raro i te Tiriti o Waitangi. Ka whai tata ia i te putanga tuarua.

Ko tā te Tari Whakatau Take e pā ana ki te Tiriti o Waitangi he:

- whakarite whakataunga hāngai ki ngā rōpū kaikerēme, i raro i te ārahitanga me ngā tohutohu a te Rūnanga Kāwanatanga
- tuku āwhina taha kaupapa here ki te kāwanatanga mō ngā take whānui e pā ana ki ngā whakataunga Tiriti, mō ngā take hoki e pā ana ki tēnā, ki tēnā kerēme takitahi.
- whakahaere i te whakatinanatanga o ngā whakataunga
- kōhi, whakahaere, whakawhiti, i ngā whenua a te Karauna e wātea ana mō ngā take whakataunga Tiriti.

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Overview of this Guide

In 1999, the Office of Treaty Settlements (OTS) published the first edition of *Healing the past, building a future*. In 2002, the second edition was published, reflecting the development of policy and practice since 1999.

This summary edition of *Healing the past, building a future* does not reflect any changes in policy. Rather, it provides an abbreviated guide to the negotiation and settlement of historical grievances under the Treaty of Waitangi, closely based on the second edition.

The Office of Treaty Settlements

- negotiates settlements of historical claims directly with claimant groups, under the guidance and direction of Cabinet
- provides policy advice to the government on generic Treaty settlement issues and on individual claims
- oversees the implementation of settlements, and
- acquires, manages, transfers and disposes of Crown-owned land for Treaty settlement purposes.

Kupu Whakataki

Kupu Whakataki



Ka nui taku hari ki te hora i te tānga tuarua o te putanga *Ka tika ā muri, ka tika ā mua*. Ko tā te puka nei he whakarato pārongo taketake ka mārama ki te tini, mō te tikanga whakataunga kerēme i raro i te Tiriti o Waitangi. Ka rawe kē ki ngā tāngata te putanga tuatahi.

E rua ngā take i rawea te puka nei. Tuatahi ake, ka nui ngā kōrero e rēre ana i te ao tōrangapū mō ngā whakataunga i raro i te Tiriti, ka nui hoki te iwi kei te rapu i te whānuitanga o ngā kōrero. Nā reira, ki te rahi atu ngā pārongo tōtika mō te kaupapa nei, ka pai ake ngā whitiwhitinga kōrero. Tuarua ake, kua tino nui rawa atu ngā rōpū kerēme kua tīmata ki te whakawhitiwhiti kōrero me te Karauna, kei te whakaaroaro rānei kia kuhu ki ētahi whakawhitiwhitinga kōrero me te Karauna. He rerekē tā rātou titiro ki ngā painga o te puka nei - me pēhea e ea ai ō rātou whakamau mai anō, ko wai hei māngai mō rātou, he aha ētahi o ngā putanga, he aha te wāhi ki a rātou i roto i ngā whakataunga? He mea nui mō rātou kia mōhio ki ngā whakautu ki ēnei pātai, kia wawe te ahu whakamua o ā rātou kerēme.

Ahako te mea kāore i whakarerekētia ngā kaupapa here me ngā tikanga mai i te tānga tuatahi, he mea pai tonu kia āta whakaaro mō ngā nekehanga i ngā marama tekau mā waru kua taha. Kua whakahōuhia ngā ripanga kei ngā whakarangi 10 me 11, e aha ai, e whai wāhi ai ngā whakataunga e toru kua mana mai i te putanga tuatahi, tae atu ki ngā kerēme turuki i whakatauhia i te taha o te whakataunga whānui mō Ngāti Awa.

Ki te hiahia tātou kia tūturu ngā whakataunga, me pono ngā tikanga whakahaere i te kaupapa. Kei te pūmau te kāwanatanga nei kia whakataungia wawetia ngā kerēme o mua. Kua huri ngā mahi ināianei, atu i ngā rangahau me ngā whakamārama a Te Rōpū Whakamana i te Tiriti o Waitangi, ki te whakataunga o ngā kerēme whai muri i ngā whiriwhiringa, tatū rawa ki te hanganga o tētahi hononga i waenganui i te Karauna me ngā iwi. Me mārama, me wātea ki te katoa ngā pārongo mō te tikanga whakatau kerēme, kia ngāwari ai te haere o ngā mahi nei.

Ehara te mahi whiriwhiri whakataunga tika, tūturu, whakamutunga i te mahi māmā. Heoi, ka taea mēnā kei te pūmau te tautoko mai a te Karauna me te iwi. Ki te tutuki te mahi, ka nui ngā painga. Mā te whakatau mārire i ngā kerēme o mua ka taea e tātou te ahu whakamua. Mā te whakatika i ngā hē o mua, ka tareka te hanga tahi i tētahi ao mō tātou mō ngā rā kei te tū.

Heoi nā,

Hōn Mark Burton

Minita Nōna te Mana Whakarite Take e pā ana ki te Tiriti o Waitangi

Foreword



I am pleased to introduce the reprinted summary edition of *Healing the past, building a future*. This booklet is designed to make key information about the Treaty of Waitangi settlement process more accessible to a wider audience, and its first print run was very popular.

There are two reasons for the booklet's popularity. One is that the role of the Treaty and Treaty settlements has been subject to intense political debate in recent times, and more New Zealanders have taken it upon themselves to find out more about it. Good information can only be a positive contribution to that debate. The second reason is that more claimant groups than ever before are beginning negotiations, or talking amongst themselves about doing so. For them, the issues are closer to home – how do we achieve a resolution of our longstanding grievances, who will speak for us, what are the possible outcomes, and how will we get a say in what happens? Having answers to those questions is vital for groups to progress their claims.

While there are no substantive changes to the policies and processes described in this book, reprinting it is an opportunity to reflect progress that has been made in the last eighteen months. The tables on pages 10 and 11 have been updated to include the three new settlements that have been signed, as well as the ancillary claims that were settled in conjunction with the wider Ngāti Awa settlement.

If we want settlements to be durable, we need to maintain the integrity of the settlement process. This government is also committed to concluding the settlement of historical grievances as soon as possible. The focus of the settlement process is shifting from the investigation and description of historical grievances through the work of the Waitangi Tribunal, to the resolution of those issues through negotiations and the building of new post-settlement relationships between the Crown and iwi. To ease that transition, it is important that transparent information about the negotiation process is available.

The negotiation of fair, durable, final and timely settlements is no easy task. It requires commitment and support from both the Crown, iwi, and the people they represent. But the task is a rewarding one. Our future as a nation depends on the peaceful resolution of past grievances. When we have healed the wrongs of the past, we can look forward to building a future together.

Hon Mark Burton
Minister in Charge of Treaty of Waitangi Negotiations.



Anga Whakatau

Te tūranga o te Tiriti o Waitangi i ēnei rā

Nō te tau 1840 ka hainatia te Tiriti o Waitangi, he whakaritenga i waenganui i te Karauna me ngā Māori. Mai anō ka tū ia ki tētahi wāhi nui, nā te mea nāna, ka tū te whenua i Aotearoa. Ahakoa te mea kāore e taea e ngā kōti o Aotearoa te whakamana ngā whakahau ka taka i te Tiriti, kua takoto ētahi ture e whai kiko ai ngā mātāpono o te Tiriti (hei tauira, ko te *State-Owned Enterprise Act 1986*). Kei ētahi atu tauira ture ngā kōrero e kī ana, me titiro rātou i raro i ngā mātāpono o te Tiriti. Nā reira, he nui te wāhi ki te Tiriti i roto i te anga ture o Aotearoa.

Hei whakarāpopotonga kōrero, e toru ngā wāhi nui ka whakamanatia ngā mātāpono (kaua ko ngā kupu anake) o te Tiriti:

- Ka āhei Te Rōpū Whakamana i te Tiriti o Waitangi te pātai mō ngā whakapae tērā ka tukuna e (t)ētahi Māori, kua takahia e te Karauna ngā mātāpono o te Tiriti, ka āhei anō hoki ia te tuku taunakitanga me pēhea te whakatika hapa. Hei ētahi wā ruarua noa, ka taea ētahi taunakitanga te whakamana ā-ture.
- Ka āhei ngā kōti te whakahāngai i ngā mātāpono o te Tiriti i ngā wāhi ka whakaaetia e te ture; he maha ngā pokapū me ngā tari kāwanatanga kua whakahaua i raro i te ture, kia aro ki ngā mātāpono o te Tiriti i roto i ā rātou mahi katoa.
- Kua whakaae te Karauna, he kawenga matatika tōna, kia whakaea i ngā whakamaui i roto i ngā tau, i raro i ngā mātāpono o te Tiriti o Waitangi.



Settlement Framework

The Settlement Framework

The status of the Treaty of Waitangi today

The Treaty of Waitangi, signed in 1840, is an agreement between the British Crown and Māori. It has always retained its importance as a founding document of New Zealand. Although the Treaty is not directly enforceable in New Zealand courts, specific legislation does provide for the principles of the Treaty to be given some effect (for example, the State-Owned Enterprises Act 1986). In other cases, legislative provisions might persuade the courts that they should be interpreted in accordance with the principles of the Treaty. The Treaty is therefore very significant in New Zealand's legal framework.

In summary, today there are three main ways in which the principles of the Treaty, rather than the words of the Treaty itself, are given effect:

- The Waitangi Tribunal can inquire into claims by any Māori that the Crown has acted in breach of Treaty principles, and make recommendations on redress. In limited circumstances some of these recommendations can become binding.
- The courts can apply Treaty principles when legislation allows them to do so, and many agencies and departments are required by legislation to consider Treaty principles when carrying out their functions.
- The Crown has accepted a moral obligation to resolve historical grievances in accordance with the principles of the Treaty of Waitangi.

Ngā kōrero hītori e pā ana ki ngā kerēme a ngā Māori ki te Karauna – he aha te tikanga o ngā kerēme?

I hainatia te Tiriti o Waitangi i runga i te pono e ngā māngai o te Karauna me ngā rangatira Māori ki te taha o ō rātou tāngata, i waenganui i ngā marama o Pēpuere / Huitanguru me Hepetema / Mahuru, 1840. I hainatia te Tiriti hei tiaki i ngā pānga o ngā Pākehā, o ngā Māori i te wā e hokona noatia ai ngā whenua, e putu noa ana te tau mai o ngā tāngata whai Pākehā. He pae tawhiti te titiro o tēnei whakaritenga, ka whai kia mārie, kia ora tahi te noho a te tangata whenua me ngā tāngata whai Pākehā i raro i te maru o te Karauna o Peretānia.

Ko ngā āhuatanga nui o te Tiriti e whai iho nei:

- Ko TE TUATAHI: I whakawhitia e te kāwanatanga (tuhinga Māori), *sovereignty* rānei (tuhinga Pākehā) ki te Karauna
- Ko TE TUARUA: Ka whakaae ki ngā Māori te rangatiratanga ki runga i ō rātou taonga katoa, heoi ka puritia e te Karauna te mana hoko mai i ngā whenua o te Māori ki a ia anake
- Ko TE TUATORU: Ka tukua ki te Māori ngā tikanga katoa rite tahi ki ana mea ki ngā tāngata o Ingarangi.

I hiahia te Karauna kia tika, kia hōnore ngā pāhekoheko me ngā Māori, ka pā nui tēnei ki ngā hokonga whenua. Ko te hiahia a te Karauna, kia hokona mai ngā whenua e hiahia ana te Māori kia hokona, ā, kia kua hoki he paheketanga ka pā ki ngā Māori i taua hokonga - hapū, iwi rānei. Kāore i eke ēnei hiahia, nā te uaua o te whakahaere i tētahi whenua maru (*colony*) hōu me te hanga whenua motuhake hōu. Hei tauira, kāore i rahi te pūtea whakahaere i te whenua maru tauhōu nei, kāore ōna āpiha matatau ki te whakahaere kaupapa pēnei, i te kaha hoki te hāmama o ngā waha o ngā tāngata whai.

Kua tūhurangia e ngā rangahau o te rau tau kua pahure ki te maha o ngā wā, i hapa (hapa nui, iti rānei) te Karauna i roto i ana hokonga whenua o te Māori. Hei tauira, kei te whakaae te Karauna, i mahi hē ia, i takahi ia i ngā mātāpono o te Tiriti o Waitangi i a ia ka raupatu i ngā whenua o te Māori i muri i ngā pakanga o te tekau tau atu i 1860 ki Waikato, ki Taranaki, ki Te Moana a Toitehuatahi.

Ko te putanga o ēnei me ētahi atu momo wāwāhi whenua, iti noa iho te whenua kua mahue ki te Māori o ngā whenua i roto i ōna ringaringa i te tau 1840. Kei te whakaae te Karauna, he kino ka pā ki te Māori i te hokonga o te rahi o ngā whenua Māori, kino ki te taha hapori, kino ki te taha ōhanga. Tāpae atu ki te ngaronga o ngā whenua, ko te ngaronga o ngā ngahere, ngā awaawa, ngā mahinga kai, ngā wāhi tapu, ngā taonga maha atu. I tua atu, ehara i te mea kei te pūmau te Karauna i ngā wā katoa ki ngā tikanga tuku iho me ngā pānga a te Māori ki ngā taonga o te taiao, kāore anō ētahi kia tiakina i raro i te ture, i roto hoki i ngā kaupapa here. Ko te putanga, kua ngaro te nuinga o ngā whenua o te Māori – tō rātou tūrangawaewae, tō rātou oranga; kua kore hoki rātou e āhei ki ngā rawa o te taiao, ki ngā wāhi nui ki te taha wairua, ki te taha tikanga hoki.

Ka noho ēnei āhuatanga ki te pūtake o ngā whakamau a ngā Māori kei te rongohia, kei te tirohia, mā roto i Te Rōpū Whakamana i te Tiriti o Waitangi me ngā whakawhitiwhitinga kōrero.



Te Rōpū Whakamana i te Tiriti o Waitangi.

Historical background to Māori claims against the Crown – what are Treaty claims all about?

The Treaty of Waitangi was signed in good faith by representatives of the British Crown and by Māori rangatira on behalf of their people, between February and September 1840. The Treaty was drawn up in an attempt to protect the interests of the British and Māori at a time of increasing land speculation and uncontrolled settlement by British subjects. It was a forward-looking agreement that sought to establish a peaceful and mutually beneficial relationship between the tangata whenua and British settlers under the protection of the British Crown.

The key features of the Treaty are as follows:

- Article One: sovereignty (English text) or kāwanatanga (Māori text) was conveyed to the Crown.
- Article Two: Māori retained rangatiratanga or “chieftainship” over their resources and taonga for as long as they desired, but yielded to the Crown the right of pre-emption, which gave the Crown the sole right to purchase land from Māori.
- Article Three: Māori were guaranteed all the rights and privileges of British subjects.

The Crown intended Māori to be treated fairly and honourably, particularly in the course of land transactions. It envisaged that land would be acquired in situations where Māori were willing sellers and where the loss of a particular area would not harm the relevant iwi or hapū. These good intentions suffered under the practical difficulties of administering a new colony and building a nation. For instance, the colonial administration was financially under-resourced, suffered from a lack of experienced officials, and was under pressure from settler groups.

Investigations over the last century have revealed that in many instances the Crown’s actions in purchasing Māori land were flawed to a greater or lesser degree. For example, the Crown also accepts that confiscating Māori land after the warfare of the 1860s in Waikato, Taranaki, and the Bay of Plenty was an injustice, and was in breach of the Treaty of Waitangi and its principles.

As a result of these and other types of permanent alienation, Māori today possess only a small portion of the land that they held in 1840. The Crown accepts that excessive land loss has had a harmful effect on Māori social and economic development in general. This loss of land has been accompanied by the loss of access to forests, waterways, food resources, wāhi tapu and other taonga. In addition, the Crown has not always recognised Māori interests or customary values in relation to natural resources, nor has it protected these in laws and policies. As a result, Māori have lost most of their land as an economic resource and tūrangawaewae, and have also been deprived of traditionally used natural resources and places of spiritual and cultural value.

These historical events form the basis of the grievances of Māori that are being heard and addressed today through the Waitangi Tribunal and negotiations processes.



Waitangi Tribunal in hearing.

Te haere o ngā whakataunga Tiriti tae ki tēnei wā

Kua whakataungia ētahi o ngā take kua whakatakotoria ki mua i te aroaro o Te Rōpū Whakamana i te Tiriti, mai i ngā kaupapa nui, pēnei i ngā whakataunga a Waikato-Tainui rāua ko Ngāi Tahu, tae ki ngā mea āhua pakupaku pēnei i a Pouākani.

Mā te ripanga o raro iho nei e whakaatu ngā whakataunga, tatū ki te Māhehe 2006. Kāore i kuhuna ngā moni āwhina i ratou ki ngā kaikerēme, te uara rānei o te whenua kua tukua e te Karauna ki tētahi rōpū kaikerēme.

Rōpū kerēme	Whakatika hapa	Tau
Haonga Ika Ōhanga	\$ 170,000,000	1992
Ngāti Rangiteaorere	\$ 760,000	1993
Hauai	\$ 715,682	1993
Ngāti Whakaue	\$ 5,210,000	1994
Raupatu ki Waikato-Tainui	\$ 170,000,000	1995
Waimakuku	\$ 375,000	1995
Rotomā	\$ 43,931	1996
Te Maunga	\$ 129,032	1996
Ngāi Tahu	\$ 170,000,000	1997
Ngāti Tūrangitukua	\$ 5,000,000	1998
Ngā Tāngata o Pouakani	\$ 2,000,000	1999
Te Uri o Hau	\$ 15,600,000	2000
Ngāti Ruanui	\$ 41,000,000	2001
Ngāti Tama	\$ 14,500,000	2001
Ngāti Awa (me ngā kerēme turuki)	\$ 43,390,000	2003
Ngāti Tūwharetoa (Bay of Plenty)	\$ 10,500,000	2003
Ngā Rauru Kītahi	\$ 31,000,000	2003
Ngā Roto o Te Arawa	\$ 2,700,000	2004
Ngāti Mutunga	\$ 14,900,000	2005
Te Roroa	\$ 9,500,000	2005

Āhua 1: whakarāpopotonga o ngā whakataunga Tiriti ki Māhehe 2006.

I tua atu, kua mana ētahi whakataunga haurua, me kī. Ko ētahi o ēnei whakataunga, ko te hokonga me te whakawhitinga a te Karauna i ētahi taonga nui ki te rōpū kaikerēme, te whakawhiti rānei i ētahi whenua, rawa rerewē ki ētahi rōpū kaikerēme ka whai pānga ki aua whenua, ki aua rawa, hei wāhanga o tā rātou whakataunga Tiriti ā tōna wā.

Me whakapā tika ki OTS mō te roanga atu o ngā whakamārama mō ngā whakataunga a tēnā, a tēnā.

Ngā aratohu a te Karauna ki te whakatutukitanga o ngā kerēme o nehe

Kei te hiahia te Karauna kia whakatutuki whakataunga o ngā kerēme Tiriti ka tū mō tētahi wā roa, ka pai hoki ki te nuinga o ngā tāngata o Aotearoa. Ka hiahia anō ia kia rite tana mahi ki te taha o tēnā, o tēnā rōpū kaikerēme kei roto i ngā whitiwhitinga kōrero, ahakoa tana aro nui ki te rerekē o tēnā, o tēnā rōpū. E tutuki ai ēnei whāinga, kua whakahiatotia ētahi aratohu.

Ko ēnei aratohu:

- ka whakaae mārika te Karauna ki ngā hapa i roto i ngā tau – me kī, ngā hapa i hua i ngā mahi, i ngā kore mahi rānei a te Karauna i mua i te 21 Hepetema / Mahuru 1992
- me kaua e hua ake ētahi atu hapa i te whakataunga o te hapa tuatahi
- he kawenga tō te Karauna ki te mahi mō te painga o ngā tāngata katoa o Aotearoa
- ki te tū ngā whakataunga mō te wā roa, kia tika, kia taea ngā mea kei roto i te whakataunga, kia unuhia te pōuri me te mamae
- me tika te mahi a te Karauna ki tēnā, ki tēnā rōpū kaikerēme
- kāore he pānga o ngā whakataunga ki ngā āheinga o te Māori ki ngā tika a te kirirarau, kāore hoki āna pānga ki ngā tika ka hua ake i te Tiriti i tētahi atu ture rānei, ā te wā kei te tū
- ka whakaaro nui ki te kaha o te ōhanga me ngā kaute, tae noa ki te āheinga o te Karauna ki te utu paremata.

Progress with Treaty settlements so far

The current Treaty settlement process has resulted in a number of settlements. These range from the very large Waikato-Tainui and Ngāi Tahu settlements, to smaller settlements such as Pouakani.

The table below sets out the settlements achieved as of March 2006. The dollar amounts do not include claimant funding or the value of any land that the Crown may have gifted to a claimant group.

Claimant Group	Redress	Year
Commercial Fisheries	\$ 170,000,000	1992
Ngāti Rangitearere	\$ 760,000	1993
Hauai	\$ 715,682	1993
Ngāti Whakaue	\$ 5,210,000	1994
Waikato-Tainui Raupatu	\$ 170,000,000	1995
Waimakuku	\$ 375,000	1995
Rotomā	\$ 43,931	1996
Te Maunga	\$ 129,032	1996
Ngāi Tahu	\$ 170,000,000	1997
Ngāti Tūrangitukua	\$ 5,000,000	1998
The Pouakani People	\$ 2,000,000	1999
Te Uri o Hau	\$ 15,600,000	2000
Ngāti Ruanui	\$ 41,000,000	2001
Ngāti Tama	\$ 14,500,000	2001
Ngāti Awa (including ancillary claims)	\$ 43,390,000	2003
Ngāti Tūwharetoa (Bay of Plenty)	\$ 10,500,000	2003
Ngā Rauru Kītahi	\$ 31,000,000	2003
Te Arawa (Lakes)	\$ 2,700,000	2004
Ngāti Mutunga	\$ 14,900,000	2005
Te Roroa	\$ 9,500,000	2005

Figure 1: summary of Treaty settlements as at March 2006.

In addition, there have been several part-settlements. These include the purchase and transfer by the Crown of cultural redress property of particular significance to a claimant group, and the transfer of a number of railway properties to the relevant claimant groups, as part of their future Treaty settlement package.

Please contact OTS directly for further details about individual settlements.

Crown guidelines for the resolution of historical claims

The Crown wants to negotiate settlements of historical Treaty claims that are lasting and acceptable to most New Zealanders. It also wants to be consistent in its approach to the many claimant groups involved in negotiations, while acknowledging that each claimant group is different. To meet these objectives the following guidelines have been developed. These are:

- the Crown will explicitly acknowledge historical injustices – that is, grievances arising from Crown actions or omissions before 21 September 1992
- Treaty settlements should not create further injustices
- the Crown has a duty to act in the best interests of all New Zealanders
- as settlements are to be durable, they must be fair, achievable and remove the sense of grievance
- the Crown must deal fairly and equitably with all claimant groups
- settlements do not affect Māori entitlements as New Zealand citizens, nor do they affect their ongoing rights arising out of the Treaty or under the law, and
- settlements will take into account fiscal and economic constraints and the ability of the Crown to pay compensation.

Ngā mātāpono a te Karauna ka pā ki ngā whiriwhiringa

Hei tautoko i ngā aratohu a te Karauna, ā, whai muri hoki i tētahi arotake o te anga kaupapa here o ngā whakataunga Tiriti i te wāhanga tōmua o te tau 2000, ka whakahiatotia e te kāwanatanga ētahi mātāpono e ono. Ko te titiro, mā ngā mātāpono e tika ai, e wā roa ai, e wā tika ai, e oti ai ngā whakataunga.

E whai iho nei aua mātāpono rā.

Te ngākau pono

Me whakahaere ngā whiringa i waenganui i te Karauna me te Māori i runga i te ngākau pono, i runga i te whirinakitanga me te mahinga ngātahitanga, e tutuki ai tērā e whāia ai.

Te whakapakari anō i te hononga

Ko te whakaora anō i te hononga i waenganui i te Karauna me te Māori tētahi wāhanga nui o ngā tikanga whakataunga, ka kitea hoki i roto i ngā whakataunga tērā ka tū. Me titiro ki te whakataunga o ngā whakamau i roto i ngā tau, i roto i te horopaki o ngā kaupapa here whānui a te kāwanatanga, e aru ana ia kia kaha, kia pakari anō te hononga Tiriti i waenganui i te katoa.

Te whakatika hapa

Me aro te whakatikanga hapanga ki te āhua me te korahi o te takahitanga ka pā; hei ngā wāhi e tika ana, ka noho ngā whakataunga kua tū hei whakatauritenga mō ngā whakataunga tērā ka tū ā tōna wā. Ka whakamanatia tonutia ngā wāhanga o ngā whakataunga mō Waikato-Tainui rāua ko Ngāi Tahu e pā ana ki ngā whakatauritenga, heoi, kāore e whai wāhi te wāhanga whakatauritenga ki roto i ngā whakataunga tērā ka tū. Ko te take, ka tirohia ia kerēme i runga i tōna ake kaha, ehara i te mea me taka ki raro i tētahi taumata pūtea.

Te tika i waenganui i ngā kerēme

Kia ōrite tonu ngā whakahaere ki tēnā, ki tēnā kaikerēme. Me kī, 'kia rite te titiro ki ngā kaikerēme e ōrite ana ō rāua / rātou rahi', e rite ai te korahi o te whakatikanga hapanga taha pūtea, umanga ka whakaritea. Mā tēnei mahi tika e pūmau ai ngā whakataunga.

Kia mārama

Tuatahi, he mea nui kia whiwhi kōrero ngā kaikerēme e mārama ai rātou he aha te pūtake o ngā whakataunga kerēme. Tuarua, kia kaha tonu te whakamōhio haere i ngā tāngata katoa mō te Tiriti me ngā tikanga whakataunga.

Mā te Kāwanatanga e whiriwhiri

Ko te tikanga whakatau kerēme Tiriti, he tikanga whiriwhiri kōrero i waenganui i ngā kaikerēme me te kāwanatanga. I roto i te whakaritenga, ko rāua anake ngā taha e āhei ai te whakatutuki i ngā whakataunga pūmau, tika, oti atu. Mā te whiriwhiri kōrero a te kāwanatanga ki ngā kaikerēme e tū ai tētahi whakataunga ki waenganui i ngā taha katoa, e iti ai hoki te utu ki ngā taha katoa.

Crown negotiating principles

To complement the Crown guidelines, and following a review of the historical Treaty settlement policy framework at the beginning of 2000, the government developed a set of six principles. The principles are intended to ensure that settlements are fair, durable, final, and occur in a timely manner.

The principles are as follows:

Good faith

The negotiating process is to be conducted in good faith, based on mutual trust and cooperation towards a common goal.

Restoration of relationship

The strengthening of the relationship between the Crown and Māori is an integral part of the settlement process and will be reflected in any settlement. The settlement of historical grievances also needs to be understood within the context of wider government policies that are aimed at restoring and developing the Treaty relationship.

Just redress

Redress should relate fundamentally to the nature and extent of breaches suffered, with existing settlements being used as benchmarks for future settlements where appropriate. The relativity clauses in the Waikato-Tainui and Ngāi Tahu settlements will continue to be honoured, but such clauses will not be included in future settlements. The reason for this is that each claim is treated on its merits and does not have to be fitted under a predetermined fiscal cap.

Fairness between claims

There needs to be consistency in the treatment of claimant groups. In particular, “like should be treated as like” so that similar claims receive a similar level of financial and commercial redress. This fairness is essential to ensure settlements are durable.

Transparency

First, it is important that claimant groups have sufficient information to enable them to understand the basis on which claims are settled. Secondly, there is a need to promote greater public understanding of the Treaty and the settlement process.

Government-negotiated

The Treaty settlement process is necessarily one of negotiation between claimant groups and the government. They are the only two parties who can, by agreement, achieve durable, fair, and final settlements. The government’s negotiation with claimant groups ensures delivery of the agreed settlement and minimises costs to all parties.

Ngā kaupapa here nui mō ngā whakataunga

Nā te whakahiatotanga mai o ngā mātāpono o te Tiriti o Waitangi e Te Rōpū Whakamana i te Tiriti me ngā Kōti, ngā aratohu a te Karauna mō te whakataunga o ngā kerēme o mua, ngā mātāpono whiriwhiri a te Karauna, tae noa ki te nui o ngā rangahautanga mō ngā whakamau o mua, kua puea ake ai ētahi kaupapa here e whakatinana ana i te hiahia o te Karauna ki te whakatutuki i ngā kerēme o mua i raro i te Tiriti o Waitangi. Hei whakarāpopoto:

- ka pā ngā kaupapa here o te Tiriti o Waitangi ki ngā kerēme o mua anake – me kī, ngā kerēme i puea ake i ngā mahi, i ngā kore mahi, i runga i te ingoa o te Karauna, i raro rānei i te ture, i te 21 o Hepetema / Mahuru 1992, i mua rānei.
- Kei te takatū te Karauna kia whiriwhiri i te nuinga o ngā kerēme e pā ana ki te raupatu, ngā hokonga a te Karauna i mua i 1865, ngā hokonga a te Karauna ka whai, tae noa ki ngā takahitanga i hua ake i te whakamahinga me te pānga o ngā ture whenua Māori. Mēnā kei te mārāma whānui ngā whiunga i pā ki tētahi rōpū kaikerēme, ehara i te mea me pau te kaha ki te rangahau kōrero, ka āhei ngā whiriwhiringa te whakahaerehia.
- Ka aru te Karauna i tētahi whakataunga whānui o ngā kerēme katoa o tētahi rōpū kaikerēme. Mā tēnei e tutuki ai te katoa o ngā takahitanga o mua, e tareka ai e te Karauna rāua ko te rōpū kaikerēme te tīmata i tētahi hononga hōu.
- Ko te tino hiahia o te Karauna kia whiriwhiri kōrero ki tētahi kohinga tangata rahi, kāpā te whānau kotahi, te hapū kotahi rānei.



Ngā toa o Ngāti Ruanui i te hainatanga o te Whakaaetanga Whakataunga.

- E haere ai ngā whiriwhiringa, me tae mai ngā kaiwhiriwhiri me ā rātou mana kōkiri pakari, i mua i te tīmatanga o ngā whiriwhiringa. Mā tēnei e mōhio ai te Karauna rātou ko ngā rōpū kaikerēme he mana tika o ngā kaiwhiriwhiri. Mā te rōpū kaikerēme rawa tētahi Whakaaetanga Whakataunga e whakarite, kātahi anō ka kīia kua mana.
- Me whakatau rā anō ngā kerēme, ngā pānga rānei o ētahi atu rōpū kaikerēme, ki te pai o te Karauna, kātahi anō ka whakatau te Karauna i tētahi kōrero mō ngā wāhi, ngā rawa rānei kei te kōrerotia.
- I mua i te whakawhitinga o ngā rawa whakataunga, me tū tētahi rōpū whakahaere e tika ana. Kāore he kōrero a te Kāwanatanga mō te whakapaunga o ngā rawa whakataunga, engari me takoto he kōrero mai i ngā rōpū kaikerēme, kua tū tētahi rōpū whakahaere e pai ana ki te rōpū kaikerēme puta noa, e whai wāhi ana ngā wehenga katoa o te rōpū kaikerēme, e āta kitea ana ngā whakahaere, he kawenga hoki ōna.
- Me whakatū taumata te Karauna mō te korahi o nga rawa ki te whakatika hapa o mua. Kia tika tonu te whakatika hapa, kia taea te utu i te whakatau, kia hāngai tika tōna wā, i runga i te titiro ki ērā o ngā whakataunga kua tutuki, ki ngā take atu hei waha mā te kāwanatanga, tatū rawa ki te anga hanganga ture o tēnei wā – hei tauira, ko te *Resource Management Act 1991*.
- He tūturu ngā whakataunga. Hei utu mō te whakatikanga hapanga, mā te whakataunga e kati te huarahi hoki atu ai ngā kaikerēme ki ngā kōti, Te Rōpū Whakamana i te Tiriti, ki tētahi atu rōpū rānei ki te whakatuwhera anō i ā rātou kerēme o mua.
- Ko te titiro, kāore he pānga o ngā whakataunga ki ngā tika i raro i te Tiriti o Waitangi, ngā tika taketake, ngā tika tuku iho rānei tērā kei te puritia e tētahi rōpū kaikerēme. Ko te tikanga o tēnei, ka whakataungia ngā kerēme katoa mō ngā mahi, mō ngā kore mahi a te Karauna i te rā 21 Hepetema / Mahuru 1991, i mua rānei; heoi, ka āhei tonu ngā kaikerēme te whai kerēme mō ngā mahi, mō ngā kore mahi a te Karauna nō muri i taua rā tērā i takahi i te Tiriti o Waitangi me ōna mātāpono.

Key settlement policies

The development of the principles of the Treaty of Waitangi by the Waitangi Tribunal and the courts, the Crown guidelines for the resolution of historical claims, the Crown negotiating principles, and the completion of a substantial body of research into the historical background to grievances, have allowed a set of policies to be established which put into practice the Crown's intention to resolve historical claims under the Treaty of Waitangi. In brief:

- Treaty settlement policy applies only to historical claims – claims arising from actions or omissions by or on behalf of the Crown or by or under legislation, on or before 21 September 1992.
- The Crown is ready to negotiate most claims involving raupatu, pre-1865 Crown purchases, subsequent Crown purchases, and/or breaches arising from the operations and impact of the native land laws. Provided that clear evidence of harm to the claimant group is available, exhaustive research is not required before starting negotiations.
- The Crown seeks a comprehensive settlement of all the claims of a claimant group. This is to ensure all historical grievances have been addressed and enable the Crown and the claimant group to begin a new relationship.
- The Crown strongly prefers to negotiate claims with large natural groupings rather than individual whānau and hapū.
- A secure mandate on the part of the claimant negotiators is required before negotiations can start. This assures both the Crown and the claimant group that their mandated representatives have been properly authorised. The claimant group must also ratify any resulting Deed of Settlement before it is binding.
- Overlapping claims or interests of other claimant groups must be addressed to the satisfaction of the Crown before the Crown will conclude a settlement involving any of the sites or assets concerned.
- A suitable governance entity is required before settlement assets can be transferred. The Crown does not dictate how settlement assets are to be used, but requires assurance that claimant groups have established an entity that is acceptable to the whole claimant group, and is representative, transparent, and accountable.
- The Crown has to set limits on what and how much redress is available to settle historical claims. Redress must be fair, affordable, and practicable in today's circumstances, bearing in mind settlements already reached, other matters for which the government must provide, and existing legal frameworks – for example, the Resource Management Act 1991.
- Settlements are final. In exchange for the settlement redress, the settlement legislation will prevent the courts, Waitangi Tribunal or any other judicial body or tribunal from re-opening the historical claims.
- Settlements are intended to be neutral in their effect on the continued existence of any Treaty of Waitangi or remaining aboriginal title or customary rights claimant groups may have. This means that while settlements settle all claims arising from acts or omissions by the Crown prior to 21 September 1992, claimant groups retain the right to pursue claims for acts or omissions by the Crown after that date that may have resulted in breaches of the Treaty of Waitangi and its principles.



Ngāti Ruanui toa at Deed of Settlement signing.



Tikanga whiriwhiringa

Tikanga whiriwhiringa

Tiriti whānui

He rerekē ngā whiriwhiringa ki tēnā, ki tēnā rōpū kaikerēme, nā te mea he rerekē ngā kerēme me ngā pānga a tēnā, a tēnā rōpū. Waihoki, e whā ngā wāhanga o ngā whiriwhiringa mō ngā kerēme o mua i raro i te Tiriti o Waitangi; kei ngā whārangi ka whai, te roanga atu o ngā whakamārama.



Āhua 2: ngā wāhanga nui e whā o ngā whiriwhiringa i waenganui i te Karauna me tētahi rōpū kaikerēme.

Ngā whiriwhiringa, te tikanga whakahaere i Te Rōpū Whakamana i te Tiriti

I raro i te Ture Tiriti o Waitangi 1975, ka āhei te tangata Māori, ahakoa ko wai, te whakatakoto kerēme ki mua i te aroaro o Te Rōpū Whakamana i te Tiriti. Ka taea te whakatakoto kerēme, kāore he mana kōkiri. Me rēhita ngā kerēme ki Te Rōpū Whakamana i te Tiriti, kātahi anō ka tīmata he rangahautanga, he whiriwhiri rānei a te Karauna rāua ko te rōpū kaikerēme. Ina rēhitatia tētahi kerēme, ka āhei te rōpū kaikerēme te whiriwhiri tika ki te Karauna, te haere rānei kia rongohia tā rātou kerēme e Te Rōpū Whakamana i te Tiriti i mua i ngā whiriwhiringa.

Ahakoa te mea ka āhei te tangata Māori ahakoa ko wai te whakatakoto kerēme ki Te Rōpū Whakamana i te Tiriti o Waitangi, me te mea anō, kāore he aha mēnā karekau tana mana kōkiri, ka whai te Karauna, kia whiriwhiri kōrero me ngā māngai kua whai mana kōkiri, ā, ko tōna tino hiahia, kia whiriwhiri kōrero ki ngā kohinga tāngata rahi.



Process

The Negotiation Process

Overview

Each negotiation with a claimant group is different because that group has different claims and interests. However, the negotiation of historical Treaty of Waitangi claims usually involves four steps, covered in further detail in the following pages.



Figure 2: four main steps of negotiations between a claimant group and the Crown.

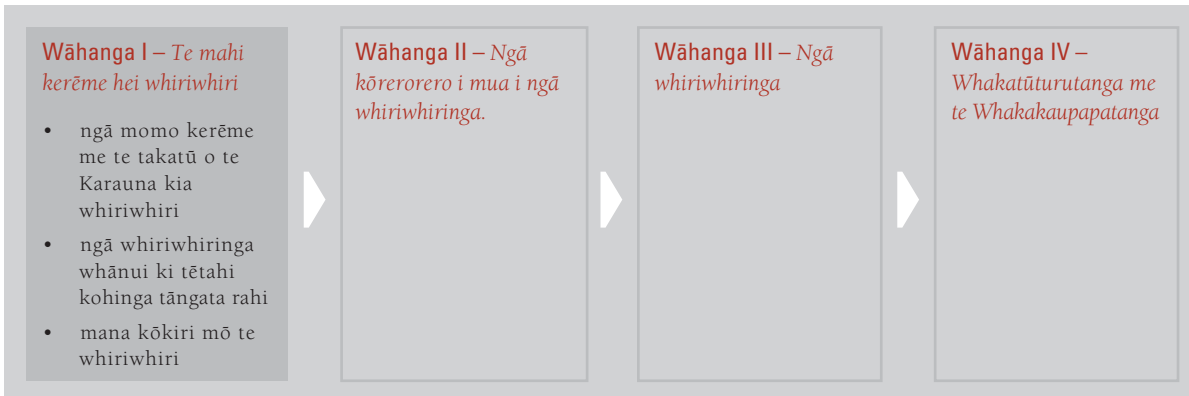
Negotiations and the Waitangi Tribunal process

Under the Treaty of Waitangi Act 1975, any Māori may make a claim to the Waitangi Tribunal. It is not necessary to have a mandate for making a claim. Claims need to be registered with the Waitangi Tribunal before the Tribunal can begin an inquiry or the Crown can begin negotiating with a claimant group. Once a claim is registered, claimant groups can seek negotiations with the Crown straight away, or may choose instead to have their claims heard by the Tribunal before entering negotiations.

While any Māori may make a claim to the Waitangi Tribunal and it is not necessary to have a mandate to make a claim, the Crown seeks negotiations with mandated representatives and strongly prefers to negotiate with large natural groupings.

Wāhanga Tuatahi

Te mahi kerēme hei whiriwhiri



Āhua 3: wāhanga I – te mahi kerēme hei whiriwhiri.

Ko te mahi kerēme hei whiriwhiri:

- me whakarato te rōpū kaikerēme ki te Karauna āna rangahautanga e whakaatu ana kua whakawhiua rātou e ngā mahi, ngā kore mahi ranei a te Karauna, he takahitanga o te Tiriti o Waitangi me ōna mātāpono.
- me whakaae te Karauna i takahia e ia ōna kawenga i raro i te Tiriti o Waitangi me ōna mātāpono
- me aromatawai te Karauna mēnā ka tutuki i te rōpū kaikerēme me ōna kereme ngā paearu mō ngā whiriwhiringa whānui a te Karauna ki tētahi kohinga tāngata rahi
- me whai mana kōkiri ngā māngai o ngā rōpū kaikerēme mai i te rōpū kaikerēme, e mana ai ā rātou whiriwhiringa, ā,
- ka aromatawai te Karauna i te mana kōkiri, ae, me aro nui, kua rānei.

Ki te hiahia tētahi rōpū kaikerēme ki te uru ki ētahi whiriwhiringa, me rēhita te kerēme ki Te Rōpū Whakamana i te Tiriti o Waitangi. Ka whakaterengia e ngā kaikerēme ā rātou kerēme o mua, mā te whakapā ki te OTS rānei, ki te Minita rānei Nōna te Mana Whakarite Take e pā ana ki te Tiriti o Waitangi.

Ngā momo kerēme me te takatū a te Karauna kia whiriwhiri kōrero.

Ngā momo kerēme

Ka whai wāhi ngā momo rironga whenua e whai ake nei ki te nuinga o ngā kerēme o mua, arā:

- ngā hokonga whenua i mua i te tau 1865, tae rawa ki ngā hokonga whenua i mua i te hainatanga o te Tiriti i whakamanatia (“Ngā Kerēme Whenua Tahito”), ngā hokonga Karauna, ngā hokonga whenua tūmataiti nō muri i te hainatanga o te Tiriti, i te wā i whakatahangia e te Karauna tōna mana ki te hoko whenua Māori
- ngā whenua Māori i raupatutia e te Karauna i raro i te Ture mō te Whakanoho i te Hunga Mārie (New Zealand Settlements Act) 1865.
- Ngā whakawhitinga nō muri i te tau 1865 i raro i ngā momo ture whenua Māori

Ka nui ngā rangahautanga a Te Rōpū Whakamana i te Tiriti o Waitangi, Ngā Kaitiaki Reti Ngahere Karauna (Crown Forestry Rental Trust), ngā kaikerēme, te Karauna hoki, mō ēnei tūmomo kerēme. Me kī, ko ngā pūrongo a Te Rōpū Whakamana i te Tiriti o Waitangi e pā ana ki a Ngāi Tahu, Muriwhenua, Te Whanganui-a-Tara i hāngai ki ngā hokonga nō mua i te tau 1865; ko ngā pūrongo mō Taranaki rāua ko Ngāti Awa i hāngai ki ngā kerēme mō te raupatu, ko ngā Pūrongo Rangahau Whānui, ka whakarāpopoto i ngā rangahau mō ngā mahi me ngā pānga o ngā ture whenua Māori, mō te maha hoki o ngā take i pā ki te whakawehe i te Māori i ōna whenua.

Step One

Preparing Claims for Negotiations

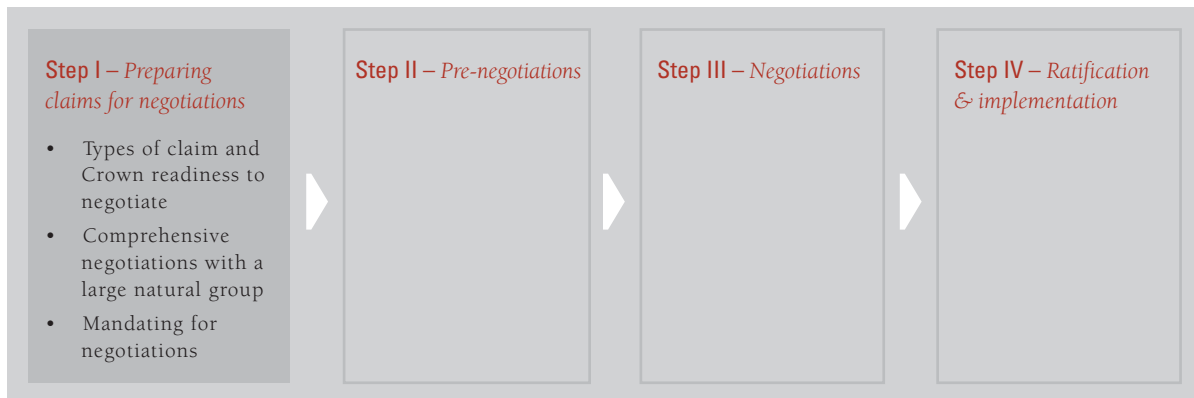


Figure 3: step I – preparing claims for negotiations.

Preparing claims for negotiations involves:

- the claimant group providing the Crown with sufficient research to show that they have been harmed by Crown actions or omissions in breach of the Treaty of Waitangi and its principles
- the Crown accepting that it breached its obligations under the Treaty of Waitangi and its principles
- the Crown assessing whether the claimant group and the claims to be settled meet the criteria for comprehensive negotiations with a large natural group
- representatives of the claimant group obtaining a mandate from the claimant group to negotiate the claims, and
- the Crown assessing the mandate and deciding whether to recognise it.

A claimant group wishing to enter negotiations must have a claim registered with the Waitangi Tribunal. Claimants initiate the settlement process for their historical claims by approaching either OTS or the Minister in Charge of Treaty of Waitangi Negotiations to begin negotiations.

Types of claim and Crown readiness to negotiate

Types of claim

Most historical Treaty claims involve one or more of the following types of land loss:

- pre-1865 land transactions, including pre-Treaty purchases later investigated and validated (“Old Land Claims”), Crown purchases, and post-Treaty private purchases made during the Crown’s waiver of its pre-emptive right to purchase Māori land
- confiscation of Māori land by the Crown under the New Zealand Settlements Act 1863, and/or
- transactions after 1865 under the various native/Māori land laws.

The Waitangi Tribunal, the Crown Forestry Rental Trust, claimants, and the Crown have now done a great deal of historical research into these three types of claim. In particular, the Waitangi Tribunal’s Ngāi Tahu, Muriwhenua, and Wellington reports dealt with purchases before 1865, the Taranaki and the Ngāti Awa reports considered confiscation, and the Rangahaua Whānui National Overview reports summarised research on the operation and impact of the native land laws, along with many other matters affecting the alienation of Māori land.

Ko te hua o tēnei me ētahi atu rangahau, kei te mārama te Karauna ki ngā momo kerēme o mua e pā ana ki ngā pito whenua puta noa i te motu, tae rawa ki te korahi o te whenua Māori ka riro. Ka whakaae te Karauna, he mahi tūkinu tana raupatunga i ngā whenua ki Taranaki, ki Waikato, ki Te Moana a Toitehuatahi i te tekau tau atu i te tau 1860, he takahitanga hoki tēnei o te Tiriti o Waitangi me ōna mātāpono. Kāore e kore ka pērā anō te whakaaetanga a te Karauna i ētahi atu wāhi i raupatutia he whenua Māori. Ka whakaae anō te Karauna he pānga nui, wā roa āna hokonga whenua i ngā tau ki mua i te 1865 ki runga i te Māori, pērā ki ngā mahi a ngā ture whenua Māori hei muri i te tau 1865.

Te hononga kei waenganui i ngā takahitanga a te Tiriti me te whakatika hapa

Ahakoia te mea e takatū ana te Karauna kia kuhu ki ētahi whiriwhiringa me ētahi rōpū kaikerēme i rongo i ngā takahitanga o te Tiriti me ōna mātāpono, i raro i ngā momo rironga whenua matua e toru, kāore ia e whakaae me ōrite te whakatikanga hapanga i tēnā, i tēnā kēhi. Ahakoia te mea i rite ngā pānga o te rironga whenua ki ngā Māori puta noa (kāpā te momo rironga) – he rerekē te kawenga o te Karauna i tēnā, i tēnā kēhi.

Ngā whiriwhiringa hōhonu

E tika ai tana whakautu i ngā kerēme o mua katoa a tētahi rōpū kaikerēme, ko te tino hiahia o te Karauna kia whiriwhiri whakataunga mō ngā kerēme o mua katoa (ngā kerēme e pā ana ki ngā mahi, ngā kore mahi rānei a te Karauna i mua i te 21 o Hepetema / Mahuru 1992) a tētahi rōpū kaikerēme i te wā kotahi. Koirā te tikanga o te whiriwhiringa hōhonu.

Ko tētahi whāinga nui o ngā whakataunga Tiriti, ko te whakatika i te whakamau a ngā rōpū kaikerēme mō ngā mahi o mua a te Karauna. Ka whai hua te Karauna rātou ko ngā rōpū kaikerēme kia mahia wawetia tēnei mahi i runga i te tika, i runga i te pai. Nā reira e tika ana kia hōhonu ngā whakataunga, kia whakatikangia ngā hapa katoa ka pā ki tētahi rōpū kaikerēme. Ki te whakatutukitia haerehia te whakataunga i roto i te roanga o te wā, tērā ka rongo tonu ngā kaikerēme i te whakawhiu, ā, ka noho māharahara tonu rātou. Ko tētahi anō painga o te whakataunga mutunga, he iti te utu, he iti te wā ka whakapaua e te Karauna rātou ko ngā kaikerēme ki ngā whiriwhiringa me te whakatinanatanga.

Ngā whiriwhiringa me ngā kohinga tāngata rahi

Ko te tino hiahia o te Karauna kia whiriwhiri kōrero me ngā kohinga tāngata rahi ā-iwi; kāpā ngā hapū, whānau takitahi o tētahi iwi. Ki te pēnei, ka ngāwari ake te whakahaere, te mahi i tētahi whakataunga, ka ngāwari hoki te titiro ki ngā pānga maha ki tētahi whenua, rawa rānei. Ka iti ake ngā utu whiriwhiringa a te Karauna, a ngā kaikerēme hoki.

Ka taea e te Karauna me ngā kaiwhiriwhiri whai mana kōkiri - mā roto i ngā whiriwhiringa ki ngā kohinga tāngata rahi – te whakahiato tētahi kōpaki whakataunga e whai wāhi ana te whānuitanga o ngā whakatikanga hapanga. Ko te whakatika hapa te rerenga kōrero e whakamārama ana i ngā huarahi e taea ai e te Karauna te whakatika ngā hē i mahia e ia. Mā te whānui o ngā whakatikanga hapanga, tērā ka pūmau te whakataunga, nā te mea he maha ake ngā hiahia ka taea te whakatika.

Ngā panga o te hapū, te whānau

He wā anō, tērā ka taea te whiriwhiri me (t)ētahi hapū, whānau rānei e noho wehe ana i ngā kerēme a te iwi i roto i tētahi whakataunga. Tērā ka whai wāhi ēnei tūmomo tōpūtanga tāngata ki tētahi kōpaki whakataunga whānui.

Mana kōkiri mō ngā whiriwhiringa

He aha te mana kōkiri?

Ko te whai mana kōkiri, ko te tikanga e tohua ai e tētahi rōpū kaikerēme ko wai hei māngai mō rātou; i tua atu, he tuku mana ki aua māngai ki te whiriwhiri kōrero, whakaritenga me te Karauna, mō te rōpū kaikerēme.

Ko tētahi o ngā wāhanga nui rawa atu o te tikanga whakataunga Tiriti, ko te whakatau ko wai ngā māngai ki ngā whiriwhiringa. He maha ngā whakamau o mua ka pā ki ngā whakaritenga i waenganui i te Māori me te Karauna, mō ngā wāhi i kuhu te Karauna ki ētahi whiriwhiringa me ētahi tāngata kāore ā rātou mana kōkiri. Mā te mana kōkiri pakari e tiaki te katoa o ngā taha o te tikanga whakataunga; te Karauna, ngā māngai whai mana kōkiri, te rōpū kaikerēme nāna ngā māngai.

As a result of this and other research, the Crown now has a good understanding of the types of land-based historical claims in every area of the country and the amount of land that was lost by Māori. The Crown accepts that confiscating land after the warfare of the 1860s in Taranaki, Waikato, and the Bay of Plenty was an injustice, and was in breach of the Treaty of Waitangi and its principles. Similar acknowledgements are likely to be appropriate in other districts where there have been confiscations (raupatu). The Crown also acknowledges that Crown purchases prior to 1865 had a widespread and enduring impact on Māori society, as did the operations of the native land laws after 1865.

Relationship between type of Treaty breach and redress

While the Crown is prepared to enter negotiations with claimant groups who suffered from breaches of the Treaty and its principles relating to any of the three main types of land alienation, it does not accept that the same amount of redress should be available in each case. Although the impact of land loss on Māori society was often similar regardless of the way land was lost, the culpability (extent to which a party is wrong or to blame) of the Crown does differ from case to case.

Comprehensive negotiations

So that it can be sure that it has properly addressed all the historical claims of a claimant group, the Crown strongly prefers to negotiate settlements of all the historical claims (claims relating to acts or omissions by the Crown prior to 21 September 1992) of a claimant group at the same time. That is what is meant by comprehensive negotiations.

A key objective of negotiations for Treaty settlements is to help set right the grievances that claimant groups have about historical Crown actions. It is in the interests of both the Crown and claimant groups for this to be done as effectively and efficiently as possible. It therefore makes sense for settlements to be comprehensive, providing redress for all the wrongs done to a claimant group. Settlements made “bit by bit” over a long time-span would risk leaving the sense of wrong to linger, and might never achieve a sense of final resolution. Comprehensive settlements also reduce the costs and time involved in negotiations and implementation for both the Crown and claimant groups.

Negotiations with large natural groups

The Crown strongly prefers to negotiate settlements with large natural groups of tribal interests, rather than with individual hapū or whānau within a tribe. This makes the process of settlement easier to manage and work through, and helps deal with overlapping interests. The costs of negotiations are also reduced for both the Crown and claimants.

Comprehensive negotiations with large natural groups also allow the Crown and mandated representatives to work out a settlement package that includes a wide range of redress. Redress is the term we use for all the ways the Crown can make amends for the wrongs it has done. Having a wide range of redress means that the settlement is more likely to be lasting because it meets a greater number of needs.

Hapū or whānau interests

In some circumstances, it may be possible to deal with distinct hapū or whānau interests that are separate from the main tribal claims within a settlement. Distinct recognition for these groups can be part of a wider settlement package.

Mandating for negotiations

What is mandating?

Mandating is the process by which the claimant group chooses representatives and gives them the authority to enter into discussions and agreements with the Crown on their behalf. In some cases, the claimant group may confirm the mandate of an existing representative organisation, for example, their iwi rūnanga. This mandate then gives the existing representatives the authority to appoint negotiators on behalf of the claimant group.

Mandating claimant representatives to negotiate is one of the most important stages in the Treaty settlement process. Many of the grievances of the past relate to agreements made between Māori and the Crown, where the Crown dealt with people who did not have the authority to make agreements on behalf of the affected community. A strong mandate protects all the parties to the settlement process: the Crown, the mandated representatives, and the claimant group that is represented.

Me whakaatu ngā kaiwhiriwhiri ko rātou ngā māngai mō te rōpū kaikerēme, ā, kia tau ki roto i te rōpū kaikerēme te tirohanga, kei te pai ngā tāngata i tohungia hei māngai mō rātou. He kawenga ō ērā ka tohungia hei kaiwhiriwhiri, me rite tā rātou whakamōhio i te rōpū kaikerēme o te haere o ngā whiriwhiringa kōrero me te Karauna.

Ko te tikanga rapu mana kōkiri, whakatūria ai ētahi hui e taea ai e ngā tāngata o te rōpū kaikerēme te whakaputa ō rātou whakaaro mō ā rātou māngai i roto i ngā whiriwhiringa me te Karauna. Kia whānui tonu te pānui i ngā momo hui nei, kia taea ai e te tokomaha rawa o te rōpū kaikerēme te whai wāhi ki ngā whiriwhiringa, ko wai hei māngai mana kōkiri mō rātou.

Pērā i ngā hāpori katoa, kei reira ngā tāngata, ngā rōpū whakahē e ātete ana i te hunga kua tohungia hei māngai mō rātou. He wā anō ka puta ngā rōpū me ngā tāngata ātete ki waho o te tikanga whiriwhiri kōrero kua whakatūria. Ina whiwhi mana kōkiri ngā māngai, me whakamārama rātou i te mea, kei aua tāngata, rōpū ātete te tikanga ki te hiahia rātou kia whai wāhi ki te tikanga whakatau kerēme, ahakoa kei hea te kaupapa e haere ana.

Kei te rōpū kaikerēme te tikanga ko wai hei māngai whai mana kōkiri mō rātou

Kei te rōpū kaikerēme te tikanga ko wai hei māngai whai mana kōkiri mō rātou, kei te rōpū kaikerēme anō hoki te tikanga hei whiriwhiri ko wai mā ā rātou kaiwhiriwhiri. Kāore te Karauna e hiahia ki te whakapōrearea i ngā tikanga, engari ka hiahia te Karauna kia mōhio kei te pūmau te mana kōkiri i mua i te kuhunga ki ngā whiriwhiringa, nā te mea he mea waiwai te mana kōkiri ki ngā whakataunga, i tua atu, kei te whakapaua ngā moni tūmatanui ki te tikanga whakataunga.

Ko te mana kōkiri mō ngā whiriwhiringa anake

Tērā he āwangawanga ā ngā rōpū kaikerēme, i te tukunga o te mana kōkiri ki āna māngai, kei te tuku te rōpū kaikerēme i te mana me te whakahaere o ngā rawa whakataunga ki a rātou. Kei te hē tēnei. Ko te mana kōkiri, ka whakamana i ngā māngai kia kuhu ki ngā whiriwhiri mō tētahi Whakaaetanga Whakataunga

hukihuki anake. Me whai whakaaro rā anō ngā tāngata katoa o tētahi rōpū kaikerēme mō te whakamanatanga, mō te kore whakamanatanga rānei o tētahi Whakaaetanga. Ko te mana i runga i ngā rawa whakataunga kīia ai, ko te kaitiaki whakataunga; ko tā tēnei wāhanga, he whakatū i tētahi whakahaere ā-ture. Pērā i te Whakaaetanga Whakataunga tūturu, mā te rōpū kaikerēme rā anō ia e whakarite.

Te wāhi nui ki te whai whakamaherehere tōmua mai i a OTS rāua ko Te Puni Kōkiri (TPK)

He mahi nui te rapu i te mana kōkiri pakari e aroa nuitia ai e te Karauna. He rerekē ngā huarahi hei whai mā tēnā kaikerēme, mā tēnā kaikerēme (koirā te take kāore i kuhuna he tauira tūturu ki tēnei Aratohu), heoi ka taea e OTS te tuku tauira ki ngā rōpū kaikerēme o ngā tikanga kua whai hua, me te āta whakamārama ngā mea e tika ana mō tētahi Whakaaetanga Tuku Mana. Ko te whakamaherehere a OTS ki ngā rōpū kaikerēme ki te mana kōkiri mō ngā whiriwhiringa, me whakapā rātou ki a OTS *Claims Development Team* i mua i te tikanga whai mana kōkiri. Me whakapā hoki rātou ki TPK.

Te tikanga aro ki te mana kōkiri

Kua whakahiatotia e te Karauna tētahi huarahi ōkawa hei whakaū:

- kei te whiriwhiri te Karauna me ngā māngai tika a te rōpū kaikerēme
- kua whai mana kōkiri tika ngā māngai ki te whiriwhiri i tētahi tāpaetanga mō tētahi whakataunga o ngā kerēme Tiriti o mua a tētahi rōpū kaikerēme
- he tikanga ā ngā māngai e pūmau ai ō rātou kawenga, putanga, ā,
- kua whakahiatotia e ngā māngai mana kōkiri tētahi tikanga hei tohu i te tokomaha rawa atu o ngā tāngata o tētahi rōpū kaikerēme ka taea – ko te whakatū rēhita o ngā tāngata o te rōpū kaikerēme te huarahi he rite te whāia.

Ina whakaae ana te Karauna ki ngā taunakitanga a te hunga e tonu kia tū hei māngai mō te rōpū kaikerēme, ka aro ia ki te mana kōkiri o aua māngai ki te whiriwhiri kōrero mō te rōpū kaikerēme.

Mandated representatives need to demonstrate that they represent the claimant group, and the claimant group needs to feel assured that the representatives legitimately gained the right to represent them. This can only be achieved through a process that is fair and open. Those finally chosen as mandated representatives will also have a responsibility to keep claimant group members informed of progress throughout negotiations with the Crown.

The mandating process will usually involve a series of hui that allow members of the claimant group to express their views about who should represent them in negotiations with the Crown. These hui will need to be advertised widely so as many members of the claimant group as possible have the opportunity to participate.

As in every community, there is often opposition from groups or individuals who reject those claiming to represent them. Sometimes opposing groups or individuals may refuse to participate in the subsequent negotiations. Once mandated, the representatives should make clear that those individuals or groups have the opportunity to participate in the settlement process at any stage.

The choice of mandated representatives is a matter for the claimant group

It is for the claimant group to decide who will represent them and to determine an appropriate way to select their representatives. The Crown does not wish to interfere in matters of tikanga (custom), but the Crown does need assurance that the mandate is secure before starting negotiations. That is because mandating is central to the durability of settlements and because public funds are involved in the settlement process.

Mandate is for negotiations only

Claimant groups may be concerned that in mandating representatives for negotiations they are also handing over control and management of settlement assets. This is not the case. A mandate to negotiate only gives the mandated representatives the authority to negotiate a draft Deed of Settlement. All members of the claimant group must then have a say on whether the Deed is accepted or not. Control over settlement assets

is known as post-settlement governance and involves setting up a legal entity for this purpose. As with the final Deed of Settlement, the governance entity is subject to ratification by the claimant group.

Importance of seeking early advice from OTS and Te Puni Kōkiri (TPK)

Obtaining a strong mandate that the Crown can recognise can be a demanding process. Different groups will need to take different approaches (this is why a “real life” example is not included in this Guide), but OTS can give claimant groups examples of processes that have worked so far, and explain in more detail the specific requirements for a Deed of Mandate. OTS strongly advises any group wanting to obtain a formal mandate for negotiations to consult with the OTS Claims Development Team before starting the mandating process. They should also seek advice from TPK.

Mandate recognition process

The Crown has developed a formal procedure to verify that:

- the Crown is dealing with the right claimant group representatives
- the representatives are properly mandated to negotiate an offer for the settlement of the claimant group’s historical Treaty claims
- the mandated representatives have a process in place to ensure they are accountable, and
- the mandated representatives have developed a process to identify as many claimant group members as possible – this usually involves establishing, if they have not already done so, a register of members.

Once the Crown is satisfied that the people seeking to represent the claimant group have provided sufficient evidence to verify the above information, it can recognise the representatives’ mandate to negotiate on behalf of the claimant group.

He aha ia te Whakaaetanga Tuku Mana?

Ko te tuhinga nui i roto i te aru i te mana kōkiri, ko te Whakaaetanga Tuku Mana. He tuhinga ōkawa tēnei, he mea whakatakoto nā te rōpū kaikerēme, e whakamārama ana i ngā mea ka āheitia i raro i te mana kōkiri, he aha ngā tikanga i whāia i mana ai taua mana kōkiri.

Ko tā te Whakaaetanga Tuku Mana ka:

- whakamārama ko wai te rōpū kaikerēme
- whakatakoto i te kerēme e meatia ana ka whakataungia
- tohu ki te whenua ka pā te kerēme, ā,
- whakatakoto kei a wai te mana kia tū hei māngai mō te rōpū kaikerēme i roto i ngā whiriwhiringa me te Karauna.

Te Aromatawai o te Whakaaetanga Tuku Mana e OTS

Ko OTS ka aromatawai i te Whakaaetanga Tuku Mana, ko TPK ka tuku whakamaherehere atu. Kei te Minita Nōna te Mana Whakarite Take e pā ana ki te Tiriti o Waitangi rāua ko te Minita mō Ngā Take Māori te kawenga ake mō te tūtohu i ngā mana kōkiri.

Ka aromatawaia te Whakaaetanga Tuku Mana e OTS, e TPK; he motuhake ā rāua aromatawai. Mā tēnei huarahi, ko te koronga mō te Whakaaetanga Tuku Mana, ka:

- mārama pai ko wai te rōpū kaikerēme, he aha tā rātou kerēme hei whakatau
- whakaatu kua tae kē ngā kōrero ki te rōpū kaikerēme puta noa, ā, e whakaae ana rātou ki ngā māngai e aru ana i te mana kōkiri kia whai i ngā whiriwhiringa ki te Karauna
- whakamana i ngā māngai ka whiriwhiri kōrero mō tētahi whakataunga tūturu o ngā kerēme o mua katoa o te rōpū kaikerēme
- ka whakatū i ngā kawenga o ngā māngai ki te rōpū kaikerēme
- ka tohu mēnā he hunga ātete e whakahē ana i te mana kōkiri, ka whakaatu hoki i te nui o taua hunga ātete
- whakamārama i ngā kerēme inaki a ētahi atu

Hei āwhina mā ngā rōpū kaikerēme e whai ana kia kuhu ki ētahi whiriwhiringa, kua whakahiatotia e OTS tētahi rārangi e whakaatu ana he aha ngā mea e hiahiatia ana mō te Whakaaetanga Tuku Mana. (Ka wātea ēnei ki te tono koe.)

Te pānui i te Whakaaetanga Tuku Mana

Ki te tutuki i tētahi Whakaaetanga Tuku Mana ngā paearu a te Karauna, ka pānuitia e OTS mā ngā pāpāhotanga o te rohe, o te motu, kua tae mai ki a ia te Whakaaetanga Mana Kōkiri. Ka tono a OTS ki ngā rōpū whai pānga mō ō rātou whakaaro, ā rātou tirohanga. Ko te tikanga, e whā wiki te roa mō ngā tāngata kia tuku i ō rātou whakaaro e pā ana ki te Whakaaetanga Tuku Mana.

Ehara i te mea e mea ana tēnei mahi a te Karauna, kāore ia i te whakapono ki te mana kōkiri, kei te herea rāneitia ia ki taua mana kōkiri. Ko te tikanga o te pānui haere i te Whakaaetanga Tuku Mana, kei te rapu te Karauna i ngā tirohanga a ngā tāngata katoa he pānga ā rātou ki ngā whiriwhiringa tērā ka tū. Kātahi ka tahuri a OTS (ko TPK kei te awhi) ki te arotake i ngā tirohanga me ngā whakaaro kua tae mai e pā ana ki te Whakaaetanga Tuku Mana. E tika ana kia noho a TPK ki waenganui i ēnei mahi, i te mea kei a ia ngā pūnaha, ngā hononga ki ngā hapori Māori.

Te whakatau a ngā Minita

Whai muri i ngā arotakenga i ngā tirohanga me ngā whakaaro kua tae ake e pā ana ki te Whakaaetanga Tuku Mana, ka tuku pūrongo a OTS (ko TPK kei te awhi) ki te Minita Nōna te Mana Whakarite Take e pā ana ki te Tiriti o Waitangi rāua ko te Minita mō Ngā Take Māori. Kei ngā Minita nei te whakaaetanga o te mana kōkiri. I te wā ka haere ngā whiriwhiringa, ka titiro tonu rāua mēnā kei te puritia tonutia te mana kōkiri hei māngai mō te rōpū kaikerēme, e te hunga i whakaae atu rāua.

Ka aroturukitia te haere o te mana kōkiri, ka mutu, he kawenga ō ngā māngai whiwhi mana kōkiri, kia rite te tuku pūrongo ki a OTS rāua ko TPK mō te tautoko haere tonu o te rōpū kaikerēme i a rātou hei māngai, tae noa ki ā rātou tuku kōrero whakamārama haere ki te rōpū kaikerēme puta noa.

What is a Deed of Mandate?

The key document in the mandate recognition process is the Deed of Mandate. This is a formal statement prepared by the claimant group, which outlines information on what the mandate covers and how the claimant group approved it.

A Deed of Mandate:

- defines the claimant group
- states the claims that are intended to be settled
- identifies the area to which claims relate, and
- states who has authority to represent the claimant group in negotiations with the Crown.

Review of Deed of Mandate by OTS

OTS reviews Deeds of Mandate, with advice from TPK. Final responsibility for the decision to recognise a mandate is held by the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Māori Affairs.

OTS and TPK undertake separate reviews of a claimant group's Deed of Mandate. In so doing, they seek to determine whether the Deed of Mandate:

- clearly defines the claimant group and the claims to be settled
- shows that the wider claimant group members have been consulted and that they support the representatives seeking the mandate to pursue negotiations with the Crown
- provides authorisation for the representatives to negotiate a comprehensive settlement of all the claimant group's historical claims
- shows that representatives are accountable to the wider claimant group
- acknowledges any opposition to the mandate and describes the extent of that opposition, and
- identifies overlapping claims.

To assist claimant groups seeking to enter negotiations, OTS has developed a detailed checklist showing what is required in a Deed of Mandate. (This is available on request.)

Publicising the Deed of Mandate

If a Deed of Mandate meets the Crown's requirements, OTS will make known in local and national media that it has received the Deed of Mandate. OTS will also ask for views or comments on the Deed from interested parties. Usually four weeks are provided for people to send in their comments on the Deed of Mandate.

This step does not mean that the Crown doubts the mandate, or that it is bound to accept it. Publicising the Deed in this way means that the Crown is taking reasonable steps to seek the views of all those with an interest in the proposed negotiations. OTS, in consultation with TPK, then reviews any comments on the Deed. TPK is well placed to advise on these matters, as it has a regional network with links into Māori communities.

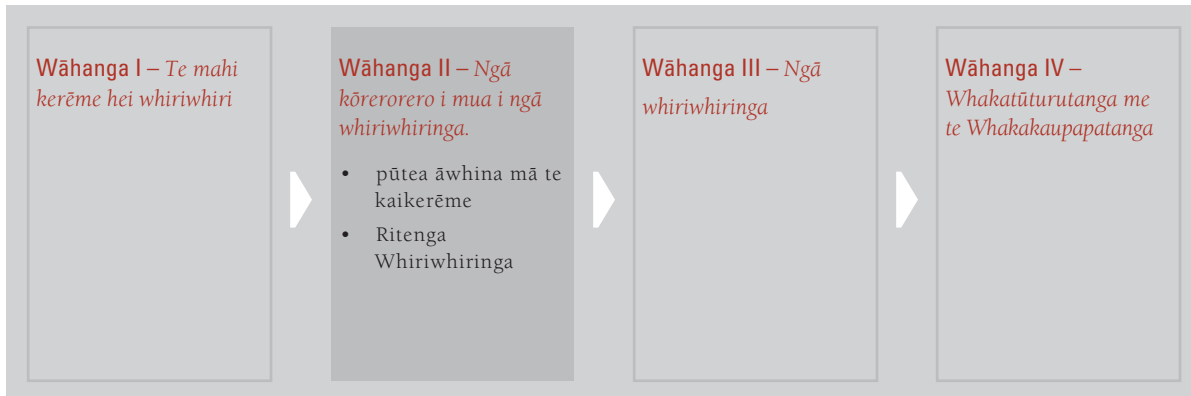
Decision by Ministers

After reviewing and considering any comments received on the Deed of Mandate, OTS, in consultation with TPK, reports to the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Māori Affairs. These Ministers decide, on behalf of the Crown, whether to recognise the mandate. Recognition of the mandate by Ministers is conditional on the representatives retaining their mandate to represent the claimant group throughout negotiations.

Mandates are monitored and mandated representatives are required to provide regular reports to OTS and TPK on the continued support for their mandate and on consultation with the wider claimant group.

Wāhanga Tuarua

Ngā kōrerorero i mua i ngā whiriwhiringa



Āhua 4: wāhanga II – ngā kōrerorero i mua i ngā whiriwhiringa.

I te wā i mua i ngā whiriwhiringa:

- whai muri i ngā whitiwhitinga kōrero ki ngā māngai whai mana kōkiri a tētahi rōpū kaikerēme, ka whakatau te Karauna he aha te rahi o te āwhina ka rātoā e ia ki te rōpū kaikerēme mō ngā utu o ngā whiriwhiringa
- ka noho te Karauna rātoū ko ngā māngai whai mana kōkiri ki te kōrero me te whakaae ōkawa ki ngā whāinga me te āhua o ngā whiriwhiringa. Ka whakatakotoria tēnei whakaritenga ki tētahi Ritenga Whiriwhiringa.

He āwhina pūtea mā ngā kaikerēme mō ngā utu o ngā whiriwhiringa

Ehara i te mea ka whakarato pūtea āwhina te Karauna mō te katoa o ngā utu a tētahi rōpū kaikerēme i a ka whiriwhiri kōrero mō ana kerēme o mua. Engari, ka tukua e te Karauna he āwhina mō tētahi wāhi o ngā whakapaunga a ngā rōpū whai mana kōkiri, e whai iho nei:

- ngā utu mō ngā kōrerorero i mua i ngā whiriwhiringa – te whai i te mana kōkiri (ka utua ina aro ana te Karauna ki te mana kōkiri), te whakaae ki ngā Ritenga Whiriwhiringa, te tīmata i ngā whiriwhiringa ōkawa hoki

- ngā utu mō ngā whiriwhiringa – te whakaoti i tētahi Whakaaetanga Whakataunga hukihuki. Ka taea te nanao ki tēnei āwhina hei whakahiato i tētahi rōpū whakahaere i te whakatutukitanga o te whakataunga, ā,
- te utu mō te ritenga – te whakahaere i tētahi tikanga mā te rōpū kaikerēme, e taea ai e rātoū te whakaae ki tētahi Whakaaetanga Whakataunga.

Ko ēnei pūtea āwhina kei runga ake i ngā moni me ētahi atu rawa ka tukua ki te rōpū kaikerēme hei whakaae i nga kerēme whakatikanga hapanga Tiriti, tae rawa ki ngā reti ngahere Karauna kua kohia.

Kāore i roa i muri i te whakaaetanga ki te mana kōkiri o tētahi rōpū kaikerēme, ka aromatawaia e OTS te rahi o te āwhina a te Karauna ki ngā utu a te rōpū kaikerēme mō ngā whiriwhiringa. Ko ētahi o ngā āhuatanga ka tirohia e te Karauna, ko te rahi o te rōpū kaikerēme, te whiwhiwhi o ngā kerēme, ngā kerēme tāpae a ētahi atu, mehemea kei te kotahi te whakaaro o te rōpū kaikerēme mō ngā whiriwhiringa tērā ka tū.

He kawenga anō o ngā māngai whai mana kōkiri ki te rōpū kaikerēme mō tā rātoū whakapau i ngā pūtea; mā tēnei huarahi e kite ai te rōpū kaikerēme kei te tika te nanao ki ngā pūtea āwhina.

Step Two

Pre-negotiations

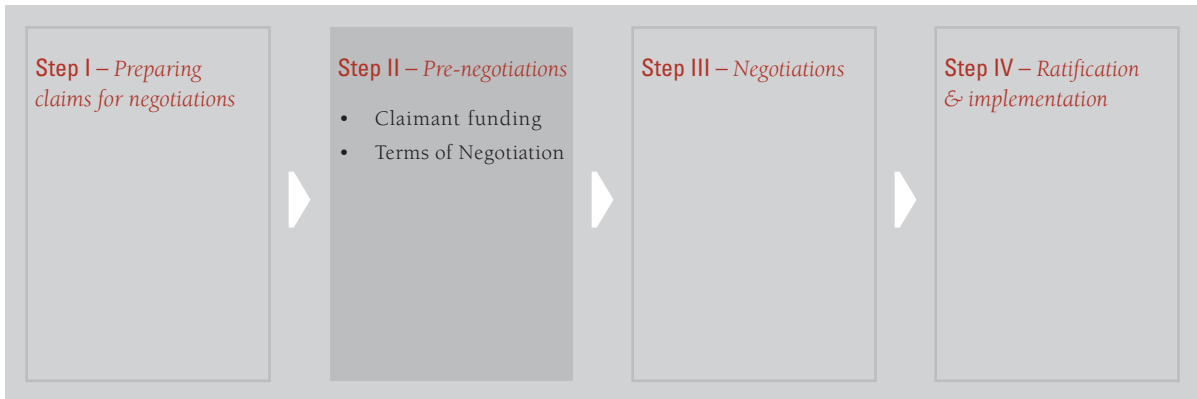


Figure 4: step II – pre-negotiations.

During pre-negotiations:

- after discussion with the mandated representatives of a claimant group, the Crown decides how much funding it will contribute to help the claimant group with the cost of negotiations, and
- the Crown and mandated representatives discuss and formally agree on the objectives of the negotiations and the way they will negotiate. This agreement is set out in the Terms of Negotiation.

Claimant funding to help with the costs of negotiations

The Crown does not necessarily provide funding for all the costs that a claimant group has to meet when negotiating its historical claims. But the Crown will **contribute** towards certain expenses for mandated groups:

- the costs of pre-negotiations – obtaining a mandate (payable once the Crown recognises the mandate), agreeing Terms of Negotiation, and starting formal negotiations

- the costs of negotiations – reaching a draft Deed of Settlement. This funding may also be used to develop a post-settlement governance entity, and
- the costs of ratification – carrying out a process for the claimant group to confirm a Deed of Settlement.

This funding will be over and above any money or other assets eventually given to the claimant group as redress for its historical Treaty claims, including any accumulated Crown forestry rentals.

Soon after a claimant group's mandate has been recognised, OTS makes an assessment of the amount the Crown will contribute to the claimant group's costs for negotiation. Factors the Crown considers include the size of the claimant group, the complexity of the claims, whether there are overlapping claims, and whether or not the claimant group is in strong agreement about the proposed negotiations.

Mandated representatives will also need to be able to account for the use of the funding to their wider claimant group, in order to assure the group that they are managing the claim properly.

Ko te hiahia:

- kia whakamōhio atu ngā māngai whai mana kōkiri ki te rōpū kaikerēme he aha te rahi o te pūtea āwhina, he aha te titiro ki te whakapau
- kua tū he hinonga ā-ture hei wāhi nohoanga mō te pūtea āwhina
- kua tū he tikanga, he kaupapa here mō te tiaki i ngā pūtea āwhina kaikerēme
- kua tū ngā tikanga utu ā-roto, e tika ai te haere o ngā mahi, hei taurira, kia kaua e taea e te māngai mana kōkiri takitahi te whakamana utunga mōna anō.

Ka taea e OTS te whakarato pārongo mō ngā utu tērā ka pā ki tētahi rōpū kaikerēme, tae rawa ki ngā utu mō ngā mātanga e hiahiatia ana, e tutuki ai i ngā māngai whai mana kōkiri ngā whiriwhiringa mō tētahi whakataunga.

Ngā Kaitiaki Reti Ngahere Karauna

Mō ngā kerēme e pā ana ki ngā ngahere whenua Karauna, ka taea ngā pūtea āwhina mō te rangahau, te whai mana kōkiri, ngā whiriwhiringa i Ngā Kaitiaki Reti Ngahere Karauna (CFRT).

Whakatūria ai Ngā Kaitiaki Reti Ngahere Karauna, hei pupuri i ngā moni reti mai i ngā whenua ngahere Karauna whai raihana, kia tau rā anō ngā kerēme Tiriti e pā ana ki aua whenua. Ka whakamahia e CFRT te huamoni mai i ngā moni reti kua kohia, hei utu i ngā rangahau mō ngā kerēme Māori e pā ana ki ngā ngahere whenua Karauna, hei awahi hoki i ngā kaikerēme i ā rātou whiriwhiringa me te Karauna. Ina whakatauhia e tētahi kerēme Tiriti e pā ana ki tētahi ngahere whenua Karauna whai raihana kia whakawhitia te whenua ki tētahi rōpū kaikerēme, ka whakawhitia e CFRT ngā moni reti kua kohia mō taua whenua, ki te rōpū kaikerēme.

Ritenga Whiriwhiringa – te whakatakoto i ngā tikanga me ngā whāinga mō ngā whiriwhiringa

Whai muri i te whakaaetanga ki te Whakaaetanga Tuku Mana, me noho te Karauna rātou ko ngā māngai whai mana kōkiri ki te kōrero me pēhea te haere o ngā whiriwhiringa. Me whakaae rātou ki ngā ‘tikanga ake’ me ngā whāinga mō ngā kōrero ōkawa i waenganui i te Karauna me ngā māngai whai mana kōkiri. Kīia ai ēnei, ko ngā Ritenga Whiriwhiringa, ka tuhia ki tētahi ritenga here kore kei waenganui i ngā taha e rua. Kāore he here o tēnei ritenga i te mea i tēnei wā, kua whakaae ngā taha e rua kia whiriwhiri kōrero anake, ka mutu. Ko te tikanga, kia āhei rātou te ‘wehe atu’ i ngā whiriwhiringa, ki te hiahia rātou. Hāunga, i te wā o ngā whiriwhiringa, ko te titiro, kia ū ngā taha e rua ki ngā Ritenga. Nā reira he taumata nui te haina i te Ritenga Whiriwhiringa i roto i te hikoi roa ki tētahi whakataunga; mō te maha o ngā rōpū kaikerēme, ko tēnei hainatanga o te Ritenga Whiriwhiringa te wā tuatahi kua haina rātou me te Karauna mai anō i te wā o te Tiriti o Waitangi.

Ngā mea waiwai o te Ritenga Whiriwhiringa

Mā ia rōpū kaikerēme e whiriwhiri ngā kupu o tā rātou Ritenga. Hāunga, ko ētahi wāhanga o te Ritenga ka whakatakoto i ngā whāinga o te Karauna me ana tikanga i roto i ngā whakataunga Tiriti. Mā te whakaae rā anō a te rōpū kaikerēme ki te Karauna me ōna whāinga whānui e pā ana ki te tikanga whakataunga Tiriti, me ōna whāinga ka hāngai ki ia whakataunga takitahi, kātahi anō ka āhei te tīmata o ngā whiriwhiringa.

Ki tā te Karauna titiro, kia mārama tonu te Ritenga, ko wai te rōpū kaikerēme ka whai hua i te whakataunga. He mea nui tēnei te whakamārama ko wai te rōpū kaikerēme ki te Karauna, nā te mea ko tētahi o ōna whāinga mō tētahi whakataunga pai, kia whānui te takoto o te whakataunga. Ko tēnei e kī ana, ki te whakaae tētahi rōpū kaikerēme ki tētahi whakataunga, ka ea ngā kerēme katoa o mua a taua rōpū kaikerēme. Ko te whakamāramatanga mō te kerēme o mua, arā, ko ngā kerēme katoa a tētahi rōpū kaikerēme i puea ake i tētahi mahi, kore mahi rānei a te Karauna i mua i te 21 o Hepetema / Mahuru 1992. Kapia katoa ai e tēnei ngā kerēme katoa e hāngai ana kua rēhitatia me Te Rōpū Whakamana i te Tiriti o Waitangi, tae rawa ki ētahi atu kerēme a tētahi rōpū kaikerēme mō ngā mahi, kore mahi rānei a te Karauna i mua i te 21 o Hepetema / Mahuru 1992. Ko ētahi o ēnei, ko ngā kerēme e pā ana ki te Tiriti, ngā hanganga ture, ngā ture noa (tae noa ki te ture tuku iho me te ture taketake).

It is also preferable that:

- claimant groups are advised by their mandated representatives of the amount provided and how it is intended to be used
- there is a legal entity in place to receive the funding, such as a trust
- internal processes and policies are in place for the management of the claimant funding, and
- all internal payments are authorised through appropriate processes so that, for example, individual mandated representatives should not approve their own payments.

OTS will be able to provide information on the costs a claimant group is likely to incur, including the costs of specialist advice needed to assist mandated representatives complete their task of negotiating a settlement.

Crown Forestry Rental Trust

For claims relating to licensed Crown forest land, funding for research, mandating, and negotiations may also be available from the Crown Forestry Rental Trust (CFRT).

The CFRT was established to receive rentals from licensed Crown forest land and hold them in trust until Treaty claims relating to the lands concerned are resolved. The Trust uses the interest from the accumulated rentals to fund research into Māori claims relating to Crown forest land, and to help claimants prepare for negotiations with the Crown. When the resolution of a Treaty claim relating to licensed Crown forest land results in land being transferred to a claimant group, the CFRT transfers the accumulated rentals for that land to the claimant group.

Terms of Negotiation – setting the ground rules and objectives for negotiations

Following recognition of the Deed of Mandate, the Crown and mandated representatives need to discuss how they will run the negotiations. This involves agreeing on “ground rules” and objectives for the formal talks between the Crown and mandated representatives. These are called the Terms of Negotiation (or Terms) and are written into a non-binding agreement between the parties. The agreement is not binding because the parties at this stage have only agreed to negotiate. They should be free to “walk away” from negotiations at any time if they choose. However, it is expected that the parties will keep to the Terms while in negotiations. Signing Terms of Negotiation is therefore a significant milestone towards settlement and is often the first agreement claimant groups have signed with the Crown since the Treaty of Waitangi.

Key requirements of Terms of Negotiation

Each claimant group negotiates the wording of their Terms. However, parts of the Terms also set out the Crown’s objectives and basic approach to Treaty settlements. Negotiations can only proceed if the claimant group accepts that the Crown also has objectives both generally, in relation to the Treaty settlement process, and in relation to specific settlements.

From the Crown’s point of view, the Terms need to clearly define the claimant group who will benefit from the settlement. The definition of a claimant group is important because a key Crown objective of a successful settlement is that it be comprehensive. This means that a settlement accepted by the claimant group settles all the historical claims of a claimant group. Historical claims are defined as all the claims of a claimant group that result from the actions or omissions of the Crown prior to 21 September 1992. This covers all relevant claims registered with the Waitangi Tribunal and any other claims that the claimant group might have regarding the actions or omissions of the Crown prior to 21 September 1992. It includes claims relating to the Treaty, legislation, or common law (including customary law and aboriginal title).

Ko ētahi atu whāinga o te Karauna ka takoto ki te Ritenga e pā ana ki te whakataunga:

- kia tangohia te wairua whakamaui i te rōpū kaikerēme
- kia tika, kia pūmau, ā,
- ka noho hei pūtake mō tētahi hononga i waenganui i te rōpū kaikerēme me te karauna, i runga i te Tiriti o Waitangi me ōna mātāpono.

Ko te kōrero kei te Ritenga ka kī, whai muri i te whakatutukitanga o ngā kerēme katoa o mua a tētahi rōpū kaikerēme:

- kāore he mana o ngā kōti, o Te Rōpū Whakamana i te Tiriti o Waitangi, o tētahi atu rōpū rānei, ki te wānanga i ngā take i kapia e te whakataunga (tae noa ki te pono, ki te rahi o te whakataunga), ā,
- ka hīkina ngā here *memorial* kei runga i te taitara o ngā whenua kei roto i te rohe e kerēmehia ai, kāore rānei i te kerēmehia e ētahi atu rōpū.

He waiwai ēnei ritenga ki te pūmau te whakataunga.

Hāunga te whakataunga pūmau, ka taea tonu e te rōpū kaikerēme, tētahi wāhanga rānei ōna, te whai kerēme ki te Karauna mō ngā mahi, kore mahi rānei āna i muri i te 21 o Hepetema / Mahuru 1992, tae rawa ki ngā kerēme mō te taitara taketake, te tika tuku iho rānei. Ka puritia e te Karauna ki a ia anō te tika kia tohe mō aua kerēme, mō aua momo taitara, tika hoki.

Other Crown objectives set out in the Terms are that the settlement to be negotiated:

- is intended to remove the sense of grievance of the claimant group
- will be fair and durable, and
- provides the foundation for an improved relationship between the Crown and the claimant group based on the Treaty of Waitangi and its principles.

The Terms provide that, after reaching settlement of *all* historical claims of a claimant group:

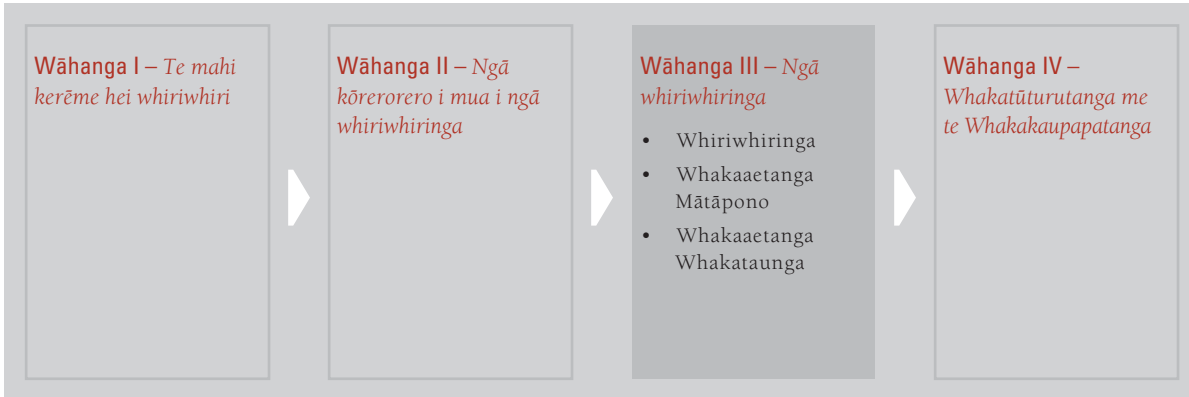
- neither the courts nor the Waitangi Tribunal, nor any other body, will be able to consider the issues covered by the settlement (including the validity or adequacy of the settlement), and
- memorials on the titles of properties within the claim area not subject to claims by other groups will be lifted.

These provisions are essential if the settlement is to be final.

However, a comprehensive settlement will still allow a claimant group or a member of a claimant group to pursue claims against the Crown for acts or omissions after 21 September 1992, including claims based on the continued existence of aboriginal title or customary rights. The Crown also retains the right to dispute such claims or the existence of such title or rights.

Wāhanga Tuatoru

Ngā whiriwhiringa



Āhua 5: wāhanga III – ngā whiriwhiringa.

I te wā o ngā whiriwhiringa, ka whakatakotoria e te Karauna rātou ko ngā māngai whai mana kōkiri ā rātou kaupapa mō te whakatau i te kerēme, mō te whakatutuki hoki i tētahi whakataunga. Mēnā e whakaaetia whānuitia ana ngā kaupapa, ka hāngai ngā kōrerorero ki ngā kōrero kei ngā kaupapa katoa. He rite te wā ka hainatia ai e te Karauna rātou ko ngā māngai whai mana kōkiri tētahi Whakaaetanga Mātāpono, hei tohu i tā rātou whakaaetanga mō te wāriu o te whakataunga (kīia ai tēnei, ko te *settlement quantum*), me te whānui me te āhua o ētahi atu whakatikanga hapanga tērā ka whakaratoa (tirohia Wāhanga IV, whārangi 50).

Te whiriwhiri mō te hanganga me ngā tikanga

Ko wai mā ngā tāngata kei ngā taha e rua o te tēpu whiriwhiri, ka pēhea hoki tā rātou mahi? He kawenga ō ngā kaiwhiriwhiri kei tēnā, kei tēnā taha o te tēpu ki ngā tāngata, ki ngā rōpū nā rātou nei i tuku te mana whiriwhiri ki a rātou.

Te Karauna

Ko te kōrero *te Karauna*, he nui te mahia ki tēnei Aratohu. E kōrero ana ia mō te taha whakahaere o te kāwanatanga (arā, te wāhanga o te kāwanatanga kei a ia ngā mahi whakahaere i te kāwanatanga), me te taha mana hītori o te Kīngi / Kuini. I ēnei rā, ko te taha whakahaere o te kāwanatanga, ko te Kāwana Tianara (māngai mō te Kuini), ngā Minita he Mema Paremata rātou (te wāhanga hanga ture o te kāwanatanga), tae rawa ki ā rātou tari.

Ko te Rūnanga Kāwanatanga te rōpū kei waenganui pū i ngā whakataunga mō ngā whakahaere a te Kāwanatanga. Mai i konei puta atu ai te reo kotahi a ngā Minita; mai konei taea hoki ai e rātou te whakatau ngā take nui a te kāwanatanga.

Ka tukuna e te Rūnanga Kāwanatanga ngā kawenga mō te nuinga o ngā whiriwhiringa ki te Minita Nōna te Mana Whakarite Take e pā ana ki te Tiriti o Waitangi, ki ētahi atu Minita he pānga ō rātou. He āpiha katoa te rōpū whiriwhiri a te Karauna, ka whiriwhiri rātou i runga i te ingoa o te Minita.

I mua i te tuhi a ngā māngai o te Karauna rātou ko ngā māngai whai mana kōkiri i ā rātou reta ki te Whakaaetanga Whakataunga hei tohu whakaritenga, me whakaae rā anō te Rūnanga Kāwanatanga ki te whakatikanga hapanga kei te Whakaaetanga Whakataunga hukihuki.

Step Three

Negotiations

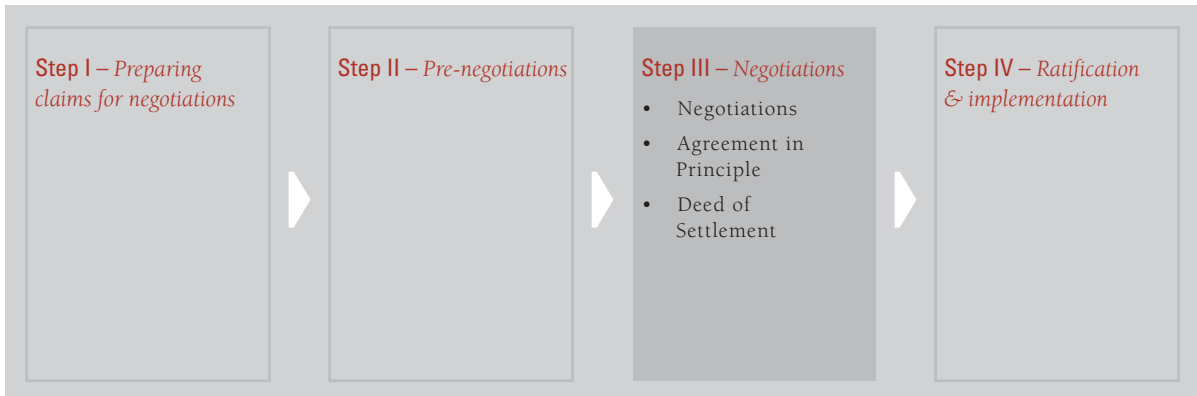


Figure 5: step III – negotiations.

During the negotiations step, the Crown and the mandated representatives put forward their proposals for settling the claim and try to reach an agreement. If there is broad agreement, the discussions then concentrate on the details of those proposals. Usually the Crown and the mandated representatives sign an Agreement in Principle to signal their agreement on the monetary value of the settlement (what is known as the “settlement quantum”), and the scope and nature of other redress to be provided. When all the details of the redress have been agreed, these are set out in a draft Deed of Settlement for approval by Cabinet and for ratification by the claimant group (see Step IV, page 51).

Negotiating structures and processes

Who are the people involved on each side of the negotiating table and how do they work together? On each side, the actual negotiators report to and are accountable to the people or institutions who give them authority to negotiate.

The Crown

The expression “*the Crown*” is used a lot in this Guide. It refers to the *executive* branch of government (i.e. the branch that carries out the administration of government) and stands for the historical authority of the sovereign (i.e. the Queen or King) as head of state. Today the executive government is made up of the Governor-General (the Queen’s representative), Ministers who are Members of Parliament (the *legislative* or law-making arm of government), and their departments.

Cabinet is the central decision-making body of executive government. It provides a collective forum for Ministers to decide significant government issues.

Cabinet entrusts the responsibility for most negotiations to the Minister in Charge of Treaty of Waitangi Negotiations and other relevant Ministers. The Crown negotiating team, which is made up of officials, then negotiates on the Minister’s behalf.

Cabinet must approve the redress in the draft Deed of Settlement before it can be initialled by the Crown and the mandated representatives and put to claimant group members for ratification.

Rōpū Whiriwhiri a te Karauna

Kei a OTS te kawenga mō te kōtuitui i te rōpū whiriwhiri a te Karauna. Ko te tikanga, e toru ngā tāngata neke atu ranei o te rōpū, tāpae atu ko ngā mātanga. Ko te kaiārahi o te rōpū, ko te Kaiwhakahaere Whiriwhiringa / Kaupapa Here a OTS; ka whai wāhi mai ngā āpiha mai i ētahi atu tari Karauna pērā i te Kaitohutohu Kaupapa Rawa, i Te Papa Atawhai, tāpae atu ko ngā mātanga pēnei i ngā rōia.

Rōpū Whiriwhiri a te rōpū kaikerēme

Ko ngā māngai whai mana kōkiri ngā kanohi mō te rōpū kaikerēme ki roto i ngā whiriwhiringa. Tērā ka tohu rātou i tētahi rōpū whiriwhiri mā rātou, ka tū rānei ko rātou tonu hei kaiwhiriwhiri. Ko ngā kawenga o ngā kaiwhiriwhiri, ki ngā māngai whai mana kōkiri, ā, ko ngā kawenga o ngā māngai whai mana kōkiri, tika ki te rōpū kaikerēme. (tirohia whārangi 10).

- rōpū whiriwhiri – kei te rōpū kaikerēme te tikanga mō te korahi me te āhua o te ropu kaiwhiriwhiri – engari ko ngā wheako ka tohu, kia tokorima te rahi o ngā kaiwhiriwhiri ake. Kei te rōpū kaikerēme anō te tikanga mō te whakatū “Kaiwhiriwhiri Matua” kāore rānei.
- ngā mātanga – kei te rōpū kaikerēme te tikanga me pēhea te whakakuhu i ngā mātanga ki te rōpū kaiwhiriwhiri. Hei ētahi kēhi, ko rātou kei roto i te rōpū kaiwhiriwhiri; he wā anō, kāore rātou i roto i te rōpū kaiwhiriwhiri, engari ka tīkina inā hiahiatia ana mō ētahi wāhanga o te kēhi. Ka taea e OTS te whakarato pārongo mō ngā momo mātanga ka hiahiatia i ngā wāhanga o te kēhi e tika ana.

Ngā rōpū atu kei roto i ngā whiriwhiringa whakataunga.

Ko ngā whiriwhiringa, kei waenganui i te Karauna rātou ko te rōpū kaikerēme. Ahakoa he pānga nui ā ētahi atu rōpū ki te putanga o ngā whiriwhiringa, pēnei i te kāwanatanga ā-rohe, ngā tāngata takitahi, ētahi atu rōpū rānei, kāore he ‘tūru mō rātou’ i ngā whiriwhiringa. Hāunga, tērā pea mā te whitiwhiti kōrero me ētahi atu tāngata, rōpū i te wā o ngā whiriwhiringa, ka taea te whakapai ake te tikanga hapanga ka wātea, ka taea hoki te whakamārama whānui te huarahi ki te whakatutukitanga o te whakataunga tērā ka tū ā tōna wā.

I roto i ngā whiriwhiringa, ko te Karauna kei te manaaki i ngā pānga a ngā tāngata katoa o Aotearoa. Kei te mōhio te kāwanatanga, he nui ngā tāngata kei te whai haere i ngā kōrero e pā ana ki te tikanga whakatau kerēme Tiriti. Me kī, kāore i te pai kia kōrerohia whānuitia ngā huarahi whakatau kerēme, kia tū rā anō tētahi whakaaetanga whānui kei waenganui i te Karauna rātou ko ngā māngai whai mana kōkiri. Hāunga tērā, i te pakaritanga haerenga o tētahi whakataunga kua whiriwhiria, he wā ka tuwhera hei whakapāho whānui i ētahi kōrero mai i ngā whiriwhiringa; hei ētahi wā, he ara pai tēnei hei whai, e mauru ai ngā māharahara o te tini mō te haere o ngā whakataunga kerēme Tiriti. Mā ēnei pāho kōrero, ka taea e te Karauna rātou ko te rōpū kaikerēme te whakatau take e pā ana ki te tikanga hapanga, i runga i tā rātou mārama ki ngā papānga ki te haporī whānui.



Ngā rōpū mahi a te Karauna rāua ko Te Uri o Hau.

Crown negotiating team

OTS is responsible for co-ordinating the Crown negotiating team. The team will usually have three or more members, led by an OTS Negotiations/Policy Manager, with the involvement of officials from other Crown departments including Treasury and the Department of Conservation, and may be supported by specialist advisers such as lawyers.

Claimant group negotiating team

Mandated representatives represent the claimant group in negotiations. They may appoint a group of negotiators or be the negotiators themselves. Negotiating teams are accountable to mandated representatives and these representatives are accountable back to the claimant group (see page 11).

- Negotiating team – the size and make-up of this team is a matter for the claimant group – although experience has shown that a core team of about three to five is a practical size. Whether to have a “Chief Negotiator” is a matter for the claimant group.
- Specialist advisers – how to include specialist advisers on the negotiating team is a matter for the claimant group. Sometimes they are part of the core team. In other cases they are not on the team but provide advice on particular issues when required. OTS can provide information on the types of specialist assistance that might be required at different stages of the negotiations process.

Third parties in settlement negotiations

Negotiations are between the Crown and the claimant group concerned. Other parties such as local authorities, private individuals, or special interest groups may have a strong interest in the outcomes of the negotiations, but this does not give them a “seat at the table”. However, communicating with other parties appropriately during the negotiations can both improve the redress available, and improve acceptance and understanding of the eventual settlement.

The Crown represents the interests of the wider public in negotiations. The government is aware that there is widespread public interest in the Treaty claims settlement process. It is generally not practical or appropriate to discuss settlement options publicly until there is a broad measure of agreement between the Crown and mandated representatives. However, as a negotiated settlement develops, there are situations where a certain level of public communication is not only helpful, but vital for wider acceptance of the settlement. Such communication enables both the Crown and claimant group to make decisions about the settlement redress from a good understanding of the potential impact on the wider community.



Crown and Te Uri o Hau working group.

Ngā whiriwhiringa e taketake ana i ngā pānga

Te tohu ki ngā pānga

Kua tohua, ki te whākina e ngā taha e rua, he aha ā rāua pānga ka hiahia rāua ki te tiaki, ki te whakatairanga, ka tere ake te haerenga whakamua o ngā whiriwhiringa. He pai ake tēnei i te whakatakoto a ngā taha e rua i ngā tikanga hapanga i te tīmatanga.

Hei ētahi wā, he hua i roto i te ruku hōhonu ki ngā take i puakina ai tētahi kōrero i te tīmatanga o ngā whiriwhiringa. Ko te rerekē o te whāki i āu pānga, i te whāki i tōu tū, ka whāiti te whākitanga tū ki tētahi whāinga – hei tauira, te hiahia kia whakahokia tētahi whenua ki tētahi rōpū kaikerēme. He mea nui te whāki i āu pānga - kāpā te tū – i ngā wā e rapua ana te whakatika hapa e pā ana ki ngā tikanga tuku iho. He whīwhiwhi ake te kōkiri i ngā whakatika hapa taha tikanga tuku iho, ki ngā whakatika hapa ōhanga, ka mutu he nui ake ngā whiringa whakatika hapa tikanga tuku iho. Ki te kore e taea te whakatika hapa i hiahiatia, he māmā ake te whakatū i ngā whiringa maha mā tēnei huarahi, e ea ai te pānga.

Hei tauira, i tā rātou kōrero tuatahi mō tētahi wāhi he nui ngā kōrero tuku iho mōna, tērā ka tonu tētahi rōpū kaikerēme mō te whenua; ko te Karauna kāore i te whakaae ki te tuku i te taitara. Whai muri i ngā kōrerorero i waenganui i a rātou, ka mārāma, ko te tino hiahia o te rōpū kaikerēme, kia tiakina ngā tūāhu kei taua wāhi, ka mutu, ko te hiahia o te Karauna, kia noho wātea tonu taua wāhi ki ngā tāngata katoa mō ngā mahi a rēhia. Ina tohua pēneitia ngā pānga a tēnā, a tēnā, ka māmā ake te tohu ki ngā whakatika hapa tērā ka tareka. I te mutunga, tērā pea kāore e whakawhitia te taitara o te wāhi, engari ka ea tonu ngā pānga a tēnā, a tēnā. Ka taea mā tēnei huarahi te whiriwhiri i runga i te wairua whakamārie, te wairua kimi huarahi pai.

Hei whakarāpopotonga, e tareka ai te tohu ki ngā pānga, me tuwhera ngā taha e rua ki te patapatai, ki te rapu he aha ngā take e tū pērā ai tētahi taha i te tīmatanga o ngā whiriwhiringa; i tua atu me mātaki, whakarongo hoki rātou ki te tirohanga me ngā māharahara mai i tētahi taha ki tētahi taha.

I roto i ngā whiriwhiringa, ko te kupu ‘pānga’, he kupu kihi mō te koronga, ngā māharahara, ngā uara e manako nuitia ana e ngā taha kei roto i ngā whiriwhiringa.

Hei tauira, mō tētahi wāhi tapu, tērā pea ko ngā pānga a tētahi rōpū kaikerēme ko ēnei ka whai iho nei:

- te rāhui ki waho ngā mahi kāore i te tika kia mahia ki taua wāhi
- te pupuri i ngā āhuatanga hītori nui o te wāhi
- kia pūmau te tiaki i taua wāhi i raro i ngā tikanga

Ki te whāia ko te “whākitanga tū” i roto i ngā whiriwhiringa, tērā pea kotahi anake te whāinga ka arumia, ina, ko te whakahoki mai i te wāhi tapu rā.

Tērā pea ki tā te Karauna titiro, e kore e taea te whakawhiti i te taitara o taua wāhi tapu i te mea – hei tauira, kei te herea ki raro i te Ture Mahi Tūmatanui 1981. Hāunga, tērā pea he pānga anō ā te Karauna ki taua whenua rite ki ā te rōpū kaikerēme, pērā i te tiaki i te taiao o taua wāhi.

Nā reira, ahakoa kei te tawhiti ā rāua tūranga, tētahi i tētahi i tēnei wā, ki te tika te whakamārāma a ngā rōpū he aha ā rātou pānga, ka māmā ake te arotahi ki ngā wāhi e rite ana ngā pānga, ka taea hoki te whakaae ki ngā tikanga hapanga e tutuki ai ngā pānga a te nuinga, a te katoa rānei.

Interests-based negotiations

Identifying interests

Experience in settlement negotiations so far indicates that faster and more effective progress can be made if the parties clearly communicate the interests they wish to protect and promote, rather than stating redress positions right at the outset.

Often, identifying interests means looking for the reasons that lie behind an initial statement of a negotiating position. In contrast to a statement of interests, a statement of position will focus on a specific goal – for instance, a desire to have a specific property returned to the claimant group. Stressing interests rather than positions is particularly important for cultural redress. Interests in cultural redress are often more complex than in economic redress, and the range of redress options is also greater. It also makes it easier to provide redress alternatives to meet the interest, if the redress initially sought cannot be provided.

For instance, in their first approach to a particular site with strong cultural associations, claimant groups may be seeking ownership while the Crown is reluctant to transfer ownership. After discussions about their respective interests in the site, it might become clear that the claimant group's main concern is to protect tūāhu (place(s) of worship) on part of the site, while the Crown wants to maintain public access for recreation on the rest of the site. Once the interests have been identified in this way, it becomes much easier to identify possible redress options. These might not involve any change of ownership, but they still enable each party's interests to be met. This approach also helps to make negotiations more conciliatory and constructive.

To sum up, in order to identify interests, both parties need to be willing to ask questions to explore the reasoning behind the positions initially put forward, and to listen to each other's point of view and concerns.

In negotiations, “interests” is a shorthand way of referring to the desires, concerns, and values that are important to each negotiating party.

For example, in relation to a wāhi tapu site a claimant group may have interests such as:

- preventing inappropriate access to the site
- preserving historical features of the site, or
- ensuring the site is managed according to tikanga (custom).

A negotiating “position”, on the other hand, might simply be the aim of having ownership of the wāhi tapu returned.

The Crown's position may be that a change of ownership will not be offered for some reason such as Public Works Act 1981 requirements. However the Crown may have similar interests in the site as the claimant group, such as preservation of ecological values.

Although the opening positions are opposite, if the parties' interests are communicated effectively, it is much easier for them to focus on areas of commonality and agree on redress that meets most or all of those interests.

Whakaaetanga Mātāpono

I te wā ka whakaaetia te whakamāramatanga whānui i waenganui i tētahi rōpū kaikerēme me te Karauna, ka hainatia te Whakaaetanga Mātāpono, e whakamārama whānui ana i te whakataunga. Ko te Whakaaetanga Mātāpono he ‘whakatoihara kore’, kāore ōna herengatūre e mau ai te Karauna, ngā rōpū kaikerēme rānei. Ko te hiahia kia pānuitia whānuitia te tuhinga nei e te rōpū kaikerēme puta noa. Kāore he here ā-ture ki runga i ngā taha kei roto i te whakataunga, kia hainatia rā anōtia te Whakaaetanga Whakataunga.

Ki te manaakitia te whakataunga whakamutunga, he mea waiwai kia mōhiohia whānuitia rawatia te Whakaaetanga Mātāpono e te tokomaha o te rōpū kaikerēme. Hei tautoko i tēnei kaupapa, tērā pea ka whakatūria e te Minita Nōna te Mana Whakarite Take e pā ana ki te Tiriti o Waitangi tētahi hui nui, ka tū i roto i ngā wiki kei mua i tōna hainatanga, ki te whakatakoto i te Whakaaetanga Mātāpono ki mua i te aroaro o ngā māngai whai mana kōkiri rātou ko ngā kaumātua o te rōpū kaikerēme. Tērā pea ka tono te Karauna ki ngā māngai whai mana kōkiri i ngā whakamārama mō te āhua o te pānui haere o te Whakaaetanga Mātāpono.

Whai muri i te tūtohutanga ki te Whakaaetanga Mātāpono, ka mahi haere tonu te Karauna rātou ko ngā māngai whai mana kōkiri ki te whakahiato me te whakaae ki ngā wāhi katoa ka whakaurua ki te Whakaaetanga Whakataunga. Ko ētahi o ēnei, ko ngā kupu o te whakapāha, ngā whakamārama ā-ture mō ngā whenua, ngā wāhi rānei kei reira ngā puni.

Ka whakaputahia te Whakaaetanga Mātāpono ki te katoa. Mā tēnei e āhei ai te whānuitanga o te rōpū kaikerēme rātou ko ētahi atu rōpū he pānga ā rātou, ki te mātaki me te whai māramatanga mō ngā mea kei roto i te pokapū whakataunga.

Whakaaetanga Whakataunga

Ko te Whakaaetanga Whakataunga te whakaritenga whānui, pūmau i waenganui i te Karauna rātou ko te rōpū kaikerēme. Ko tā te Whakaaetanga Whakataunga, he āta whakatakoto i te tikanga hapanga ki te whakaaetanga, te whakapāha, he utunga moni, he whakawhitinga whenua ka tukuna e te Karauna ki te rōpū kaikerēme e tau ai ā rātou kerēme. Tērā ka uru ki te tikanga hapanga i roto i te rohe kerēme, he huarahi e arotia ai ētahi atu o ngā pānga nui a te kaikerēme. He mea nui kia kuhu ko:

- ētahi whakaaetanga e tohu ana ki ngā mea kei te whakatauhia – ngā kerēme katoa o mua (ngā kerēme e pā ana ki ngā mahi, ngā kore mahi rānei a te Karauna i mua i te 21 o Hepetema / Mahuru 1992) a te rōpū kaikerēme
- tētahi kōrero mai i te rōpū kaikerēme e whakaae ana ki te whakataunga, he mea tika, he mea whakaoti, he mea whānui, ā,
- he whakaaetanga ki te mea, inā whakatauhia ngā kerēme, kua unuhia te mana o ngā kōti, Te Rōpū Whakamana i te Tiriti o Waitangi ki runga i ngā kerēme; ka tangohia ngā here *memorial* kei runga i ngā whenua SOE tawhito, ka katia ngā ritenga pēke whenua (landbank) me te rōpū kaikerēme.



Te hainatanga i te Whakaaetanga Ūpoko o Ngāti Ruanui.

Agreement in Principle

Once the broad outline of a settlement is agreed between a claimant group and the Crown, the parties mark this milestone by signing an Agreement in Principle noting the outline of a settlement. The goal of an Agreement in Principle is to record – in a manner which is open and transparent – the basic outline of a proposed settlement between the Crown and a claimant group, which will settle all of that group’s historical claims against the Crown.

An Agreement in Principle is “without prejudice” and does not legally bind the claimant group or the Crown. It is also intended to be widely distributed among the members of a claimant group. Neither party is legally bound until both parties have ratified (that is, approved) and signed the final Deed of Settlement.

If the final settlement is to be acceptable, it is vital that the contents of an Agreement in Principle be made widely known throughout the claimant group. To help with this, the Minister in Charge of Treaty of Waitangi Negotiations may make a formal presentation of the Agreement in Principle to the mandated representatives and kaumātua of the claimant group several weeks before it is signed. The Crown may also ask the mandated representatives to report on how they are publicising the Agreement in Principle.

After accepting an Agreement in Principle, the Crown and mandated representatives continue to work together to develop and agree on all the details that must be included in the final Deed of Settlement. This can include matters such as the details of the acknowledgements and apology, legal descriptions and valuations of properties, or the precise location of camping entitlements.

An Agreement in Principle becomes a public document. This allows both the wider members of a claimant group and any other parties that may have an interest to view and understand the broad content of a settlement package.

Deed of Settlement

A Deed of Settlement is the comprehensive and final agreement reached between the Crown and a claimant group. A Deed of Settlement sets out in detail the redress that the Crown will give to the claimant group in order to settle their claims. The redress may include the Crown’s acknowledgements and apology, payment of cash, the transfer of lands within the claim area, and mechanisms for recognising other important interests that the claimants might have. It is essential that the Deed include:

- mutual acknowledgements about what is being settled – all historical claims (claims regarding actions or omissions of the Crown prior to 21 September 1992) of the claimant group
- a statement by the claimant group that the settlement is accepted as fair, final, and comprehensive, and
- an acknowledgement that once the claims are settled, the jurisdiction of the courts and the Waitangi Tribunal over the claims is removed, any memorials on former SOE properties are removed, and any landbank arrangements in relation to the claimant group are wound up.



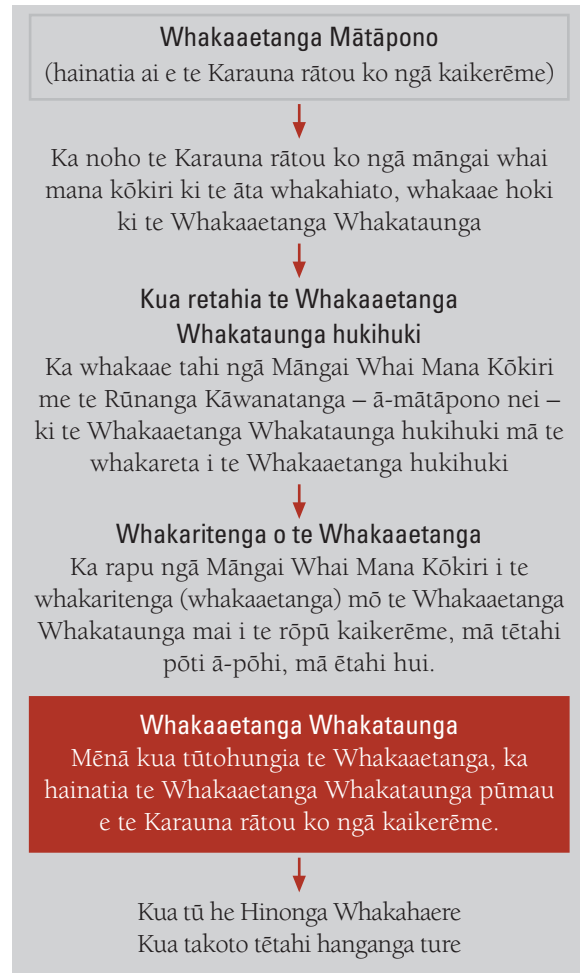
*Signing of Ngāti Ruanui Heads of Agreement
(a more formal alternative to an Agreement in Principle).*

I tua atu, ka taea ēnei te whakakuhu ki tētahi Whakaaetanga:

- ngā whakamārama mō ngā whiriwhiringa, tae rawa ki te hītori o ngā kerēme, ētahi atu rangahau o mua tērā i whakahaerehia, ngā kēhi i mua i Te Rōpū Whakamana i te Tiriti o Waitangi (mēnā kua tū he kēhi), te roanga atu o ngā whakataunga a ngā kōti e hāngai ana
- ngā whakamārama mō ngā whiriwhiringa, ngā whakaritenga, tatū ai ki te whakataunga kua tū, tae rawa ki te Whakaaetanga Mātāpono me ētahi atu kaupapa i waenganui i te Karauna rātou ko te rōpū kaikerēme
- tā rātou titiro ki te hononga Tiriti kei waenganui i te Karauna rātou ko te rōpū kaikerēme ā ngā rā kei te tū, ā,
- he kōrero e mea ana, ahakoa kua whakataungia ngā kerēme katoa o mua o taua rōpū kaikerēme, kāore he pānga o taua whakataunga ki te tika o te rōpū kaikerēme ki te whai kerēme ki te Karauna mō ana mahi, kore mahi rānei i mua i te 21 o Hepetema / Mahuru 1992, tae noa ki ngā kerēme tika taketake, tika tuku iho rānei. Ka puritia e te Karauna ki a ia anō, te tika ki te ātete ki aua momo kerēme.

Mā te Rūnanga Kāwanatanga rā anō e whakamana ngā mea kei roto i te Whakaaetanga Whakataunga, i mua i te tāpiritanga a ngā māngai whai mana kōkiri i ā rātou reta (*initials*) ki runga i te whakaaetanga, hei whakaritenga mā te rōpū kaikerēme katoa. Ko te tikanga whānui, whai muri i tēnei, me takoto he ture, e whai herenga ai te Whakaaetanga. Hei mua i te whakakuhunga o te hanganga ture, kua oti kē tana whakarite te rōpū kaikerēme, kua oti hoki tana whakatū i tōna hinonga hei whakahaere i ngā rawa whakataunga. Mō ētahi o ngā kerēme pakupaku nei, hei aha te hanganga ture; kīia ai, kei te Whakaaetanga ōna herenga e here ana i te Karauna rātou ko ngā māngai whai mana kōkiri o ngā rōpū kaikerēme.

Hei whakarāpopotonga, he pēnei te tikanga, mai i te Whakaaetanga Mātāpono, tatū noa ki te Whakaaetanga Whakataunga:



Āhua 6: te tikanga, mai i te Whakaaetanga mātāpono, tatū noa ki te Whakaaetanga Whakataunga.

The Deed can also include:

- the background to the negotiations, including a history of the claims, any previous investigations, hearings before the Waitangi Tribunal (if there have been any), and any relevant court decisions
- an outline of the negotiations and agreements leading to the current settlement, including an Agreement in Principle or any other undertakings entered into between the Crown and the claimant group
- the parties' intentions regarding the ongoing Treaty relationship between the Crown and the claimant group, and
- a statement that the settlement of all historical claims of that claimant group does not affect that claimant group's right to pursue claims against the Crown for acts or omissions after 21 September 1992, including any claims based on aboriginal or customary rights, and that the Crown also retains the right to dispute such claims.

Cabinet must approve the content of a Deed of Settlement before it can be initialled by mandated representatives prior to ratification by the wider claimant group. Usually, legislation is then required for the Deed to become unconditional. Prior to the introduction of legislation the claimant group will have ratified and established a governance entity to hold and manage the settlement assets. For some small claims, settlement legislation is not required and the Deed will state that it is a binding agreement on signing by the Crown and claimant group representatives.

In summary, the process from Agreement in Principle to final Deed of Settlement usually works like this:

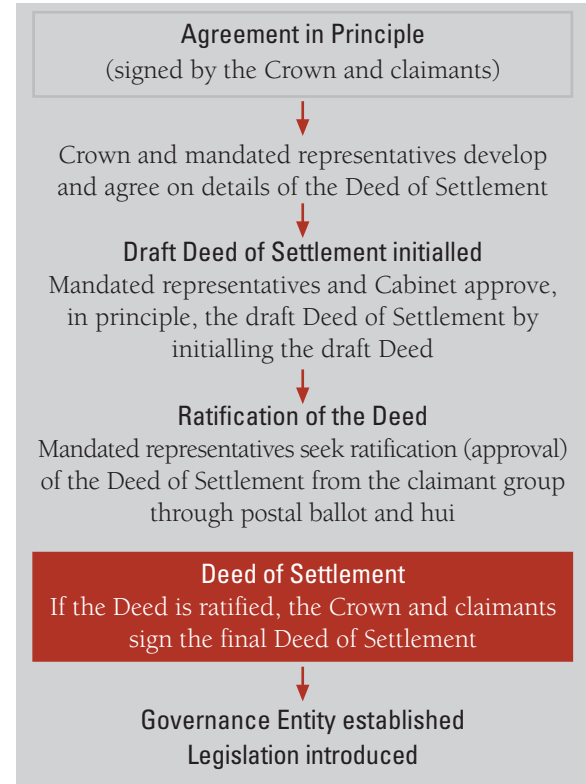


Figure 6: the process from Agreement in Principle to Deed of Settlement.

Whakataunga

Whakataunga tikanga hapanga – whakarāpopotonga



Ko tā tēnei wāhanga, he whakatakoto i ngā tikanga hapanga nui e toru e wātea ana hei wāhi ki tētahi whakataunga. Mō te ronga atu o ngā kōrero, tirohia te puka nui o *Ka tika ā muri, ka tika ā mua*; kei muri i taua puka ngā tauira ake o ngā whakataunga tūturu.

Ko te tikanga, ka whai wāhi ki tētahi whakataunga:

- ka whakaae te Karauna ki ngā hē i mahia e ia – ka tutuki tēnei mā ngā hītori ka whakatakotoria, te whakaaetanga a te karauna me tana whakapāha
- ka tukua e te Karauna te tikanga hapanga taha pūtea, taha ōhanga, hei tohu ki ngā takahitanga a te Karauna i te Tiriti o Waitangi me ōna mātāpono; mā ēnei tikanga hapanga taketake mai ai he kaupapa ōhanga mā te rōpū kaikerēme, ā
- ka tuku tikanga hapanga te Karauna, e tohu ana ki ngā hononga wairua, tikanga, tuku iho a te rōpū kaikerēme ki te taiao, ngā wāhi, ngā whenua e pā ana ki a rātou – kīia ai, ko te whakatika hapa, taha tikanga.

Hui katoa ai ēnei rohenga tikanga hapanga kia tū he pokapū whakataunga pai, tērā pea ka whakaaetia e te rōpū kaikerēme hei whakataunga mutunga o ā rātou kerēme o mua.

He whakatakotoranga hītori, ngā Whakaaetanga a te Karauna mō ana Takahitanga, tana Whakapāha

Ko ngā kōrero tuatahi, nui rawa atu o tētahi Whakaaetanga Whakataunga, ko ngā kōrero o mua, ngā whakaaetanga a te Karauna, tae noa ki tana whakapāha, kīia ai, ko te Whakapāha a te Karauna, kia tirohia ēnei, anō ko te ahunga tuatahi ki te whakaae me te whakapai i te hononga i waenganui i te Karauna rātou ko te rōpū kaikerēme.

Ko te kaupapa o te whakanoho i ngā kōrero o mua i konei, kia noho rātou hei pūtake mō ngā whakaaetanga a te Karauna me tana whakapāha. Ka whakarāpopoto ia i ngā meka nui e pā ana ki te hononga i waenganui i te rōpū kaikerēme rātou ko te Karauna, me te take i takahia ai te Tiriti o Waitangi me ōna mātāpono. Ka whakaae, ka whakapāha te Karauna; ka tohu hoki ki ngā takahitanga, ngā rironga, te riri, te pōuri ka pā ki te rōpū kaikerēme. Waihoki, ko te tūmanako a te Karauna, mā roto i tana āwhitu me tana whakapāha, ka whakatakoto i tētahi pūtake mō te whakatau i ngā kerēme o mua o te rōpū kaikerēme.

Tērā ka wherawherahia te whakatakotoranga hītori rātou ko te whakaaetanga me te whakapāha a te Karauna ki te Whakaaetanga Whakataunga i roto i te reo Pākehā me te reo Māori. Tērā pea ka hiahia he rōpū kaikerēme kia kuhuna he karakia, he waiata whakatuwhera.

Settlement

Settlement Redress – Summary



This section briefly summarises the three main types of redress available as part of a settlement. More detailed information is available in the full edition of *Healing the past, building a future*, and examples of real settlements are enclosed in the back of the book.

Usually, as part of a settlement:

- the Crown recognises the wrongs done – it does this through the historical account, Crown acknowledgements, and apology
- the Crown provides financial and commercial redress, in recognition of breaches by the Crown of the Treaty of Waitangi and its principles, which can be used to build an economic base for the claimant group, and
- the Crown provides redress recognising the claimant group's spiritual, cultural, historical, or traditional associations with the natural environment, sites, and areas within their area of interest – often called cultural redress.

Together these three areas of redress make up a balanced settlement package that the claimant group may accept in final settlement of their historical grievances.

Historical account, Crown acknowledgements of breach, and apology

Among the first and most important items in a Deed of Settlement are the historical account, Crown acknowledgements, and apology, collectively known as the Crown Apology. They may be seen as the first step in reconciling and healing the relationship between the Crown and the claimant group.

The historical account provides a basis for the Crown acknowledgements and apology. It summarises the key facts about the relationship between the claimant group and the Crown that gave rise to a breach or breaches of the Treaty of Waitangi and its principles, as agreed between the Crown and the claimant group. The Crown acknowledgements and apology go on to recognise these breaches and the losses, resentment, and grief suffered by the claimant group. In turn, the Crown, by expressing its regret and unreserved apology, lays a foundation for settling the historical claims of the claimant group.

The Deed of Settlement may set out the historical account, Crown acknowledgements, and apology in Māori and in English. Claimant groups may also wish to include opening karakia and waiata.

Te whakapāha ki a Ngaa Rauru Kiitahi

- Ka tuku whakapāha te Karauna ki a Ngaa Rauru Kiitahi, ki ō rātou tūpuna, ki ō rātou uri whakaheke, ki Ngaa Uki o Ngaa Rauru Kiitahi.
- Ka tino āwhitu te Karauna ki a Ngaa Rauru Kiitahi mō āna mahi i te wā o ngā riri ki Taranaki, te orotā, me te patu wairua o ā rātou mahi ki runga i a Ngaa Rauru Kiitahi, me ngā tāngata i mate i te wā o ngā riri.
- Ka tino āwhitu te Karauna, ka tino whakapāha ia ki a Ngaa Rauru Kiitahi mō te murunga o ngā whenua o Ngaa Rauru Kiitahi, he mahi mōrikarika.
- Ka tino āwhitu te Karauna, ka tino whakapāha ia ki a Ngaa Rauru Kiitahi mō ngā pānga o āna mahi, kore mahi rānei, he mea takahi tēnei i te Ngaa Raurutanga.
- Tino kino te whiu o ēnei ki runga i tō rātou ōhanga, whanaketanga, anga hapori, ko te otinga kua tata iwi whenua kore a Ngaa Rauru Kiitahi. Kei te rongohia tonuhia ngā whiunga mai anō i ngā whakatupuranga o mua, tatū noa ki tēnei rā.
- Ka tino āwhitu te Karauna i tana kore whakaae ki te mana me te Ngaa Raurutanga o Ngaa Rauru Kiitahi.
- Ka tino āwhitu, ka tino whakapāha te Karauna ki a Ngaa Rauru Kiitahi mō ngā takahitanga o te Tiriti o Waitangi me ōna mātāpono – e takoto ana kei runga ake.
- Nā reira, ka rapu te Karauna ki te whakatika i ana hē, ki te rapu i tētahi hononga kaha ake me Ngaa Rauru Kiitahi, i runga i te Tiriti o Waitangi me ōna mātāpono.

Whakatika hapa taha pūtea, taha umanga

Ko te tikanga o te whakatika hapa, taha pūtea, taha umanga, ko tērā wāhanga o te whakataunga e arotahi ana ki te taha ōhanga me te taha arumoni, e taea ai hoki te uta uara moni ki runga i a ia. Kīia ai tēnei uara, ko te *redress quantum*. Ko te whakatika hapa taha pūtea ka hāngai ki te wāhanga o te whakataunga ka whiwhia te rōpū kaikerēme ki ētahi moni; ko te whakatika hapa taha umanga ka hāngai ki ngā rawa a te Karauna pēnei i te whenua ka taea te whakakuhu ki te *redress quantum*.

He aha ngā āhuatanga ka arohia e te Karauna i a ia ka whakahiato i tana tāpaenga quantum?

I a ia ka whiriwhiri kia hia tana tāpaetanga, ka titiro te Karauna ki te rahi o te whenua i ngaro i te rōpū kaikerēme i ngā takahitanga a te Karauna i te Tiriti o Waitangi me ōna mātāpono, te nui o te takahitanga (ko te raupatu me te whakamate tangata te mea taumaha rawa atu), he aha hoki ngā rawa kua tukua e te Karauna i roto i ngā whakataunga mō ngā mea e ōrite ana ki ngā kerēme e kōrerotia ai. Tuarua, ka tirohia te rahi o te rōpū kaikerēme i ēnei rā, mēnā he kerēme ā ētahi atu kei te inaki, tae noa ki ētahi āhuatanga ka pā ki te kerēme.

Mā te āta whiriwhiri i ēnei āhuatanga katoa mō ia kerēme, ka taea te whakatika, te whakaōrite i ngā tāpaetanga *quantum* ka tukua ki ngā rōpū kaikerēme. I mua i tana whakatau i tana tāpaetanga *quantum*, ka whakaratoa e te Karauna ana pārongo ki ngā māngai whai mana kōkiri mō ngā momo whenua me te rahi o te whenua i riro, tae noa ki te rahi o te taupori. Mā tēnei taea ai e ngā māngai whai mana kōkiri te whakatika i ngā hapa, i ngā meka, te whakatakoto rānei i ētahi atu pārongo mai i ētahi atu wāhi.

Ka āhei ngā rōpū kaikerēme kia whiriwhiri i te tāpaetanga quantum?

Inā oti ana tā tāpae a te Karauna i tana tāpaetanga *quantum*, tērā he wā ka tū hei whiriwhiri i te rahi ka tāpaea. Tērā ka hiahia ngā māngai whai mana kōkiri te āta tohu i te Karauna ki ētahi āhuatanga hei āta titiro mā ngā Minita. Ki te whakaae ngā Minita, tērā ka takoto he tāpaetanga hōu. Me tuku te tāpaetanga hei mātaki mā te katoa o te whakataunga, ka whakaaro mō te whakaaetanga me te whakapāha a te Karauna, mēnā kua tāpaea te whakatika hapa mō ngā tikanga tuku iho.

Ngaa Rauru Kiitahi Apology

- The Crown apologises to Ngaa Rauru Kiitahi, to their ancestors, to their descendants, to Ngaa Uki o Ngaa Rauru Kiitahi.
- The Crown profoundly regrets, and unreservedly apologises to Ngaa Rauru Kiitahi for its actions during the Taranaki wars, the destructive and demoralising effects of these actions on Ngaa Rauru Kiitahi, and loss of life during the wars.
- The Crown profoundly regrets, and unreservedly apologises for, the confiscation of Ngaa Rauru Kiitahi land, which was unconscionable.
- The Crown profoundly regrets, and unreservedly apologises to Ngaa Rauru Kiitahi for the cumulative effects of its actions and omissions, which have undermined Ngaa Raurutanga.
- These effects have also had a devastating impact on their economy, development and social structure, and have resulted in the virtual landlessness of Ngaa Rauru Kiitahi. The suffering and hardship caused to Ngaa Rauru Kiitahi over the generations has continued to the present day.
- The Crown profoundly regrets its failure to acknowledge the mana and Ngaa Raurutanga of Ngaa Rauru Kiitahi.
- The Crown profoundly regrets and apologises to Ngaa Rauru Kiitahi for the breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles as acknowledged above.
- Accordingly, the Crown seeks to atone for these wrongs and build a stronger relationship with Ngaa Rauru Kiitahi based on Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Financial and commercial redress

Financial and commercial redress means the part of the settlement that is primarily economic or commercial in nature, and which is given a monetary value. This value is called the redress quantum. Financial redress refers to the portion of the total settlement the claimant group receives in cash, and commercial redress refers to any Crown assets, such as property, that contribute to the total redress quantum.

Factors the Crown takes into account in developing its quantum offer

In deciding how much to offer, the Crown mainly takes into account the amount of land lost to the claimant group through the Crown's breaches of the Treaty and its principles, the relative seriousness of the breaches involved (raupatu with loss of life is regarded as the most serious), and what the Crown has given in existing settlements for similar grievances. Secondary factors are the size of the claimant group today, whether there are any overlapping claims, and any other special factors affecting the claim.

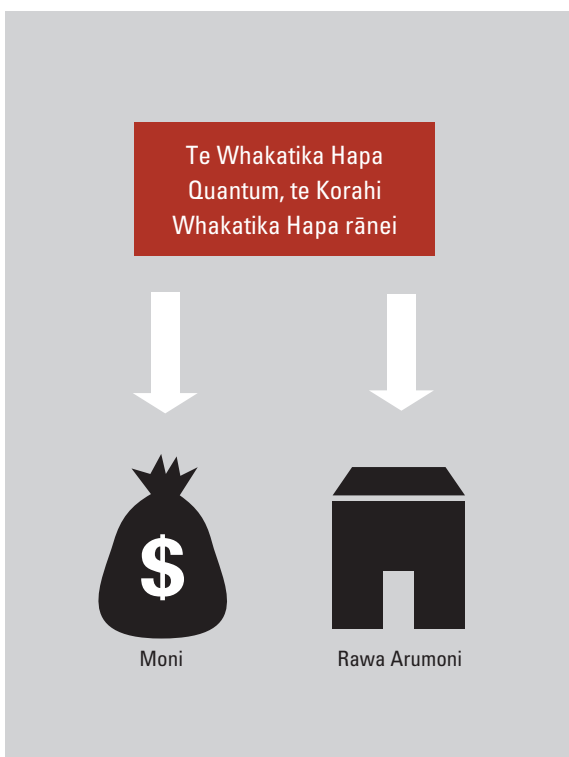
By considering all these factors for each claim, the Crown aims to ensure fairness and consistency in the quantum offers made to claimant groups. Before determining its quantum offer, the Crown gives mandated representatives the information it has available on the types and amounts of land loss, and on population size. This allows the mandated representatives an opportunity to correct any errors of fact, or present information from other sources.

What scope is there for claimant groups to negotiate on the quantum offer?

After the Crown has presented its quantum offer, there will usually be a period of negotiation on the amount to be offered. The mandated representatives may wish to draw various factors affecting their claims to the closer attention of Ministers. A revised offer may be made if Ministers think this is appropriate. The quantum offered should be considered in the context of the settlement as a whole, taking into account the Crown's acknowledgements and apology and any cultural redress being offered.

Ina whakaae tahi ai ngā māngai whai mana kōkiri rātou ko te Karauna mō te korahi o te tikanga hapanga *quantum*, tērā ka āta noho ngā taha ki te whakawhitiwhiti kōrero mō te rahi o te moni, e ea ai te rahi kua whakaaetia.

Ka āhei ngā rōpū kaikerēme te tango i te katoa, tētahi wāhanga rānei o te tikanga hapanga mā roto i ngā whenua o te Karauna kei roto i te rohe kerēme; ka whakawhitia ngā rawa mai i te Karauna ki ngā rōpū kaikerēme i te uara mohoa, me kī, he whakapau tikanga hapanga tēnei. He pūnaha pēke whenua tō OTS puta noa i te motu hei pupuri i ngā whenua o te Karauna e wātea ana mō ngā whakataunga. Tono ai ngā rōpū kaikerēme kia rāhuitia aua whenua ki ngā pēke whenua ā-rohe, i te wā i karangahia ai aua whenua, he kore take e ngā tari kāwanatanga.



Āhua 7: ētahi wahanga o te whakatikanga hapanga taha pūtea, taha arumoni.

Whakatika hapa tikanga tuku iho

Ko te titiro ki ngā whakatika hapa tikanga tuku iho, hei ea i ngā pānga tikanga tuku iho a te rōpū kaikerēme, kāpā āna pānga ōhanga. I roto i ngā whiriwhiringa a Te Rōpū Whakamana i te Tiriti o Waitangi tatū noa ki tēnei rā, he rite tonu te whakaara a ngā rōpū kaikerēme i ngā māharahara e whai iho nei, he wāhi o ā rātou whakamau o mua ki te Karauna:

- te ngaronga o te mana me te kaitiakitanga ki ngā wāhi nui ki te wairua me ngā tikanga
- te ngaronga o te āheinga ki ngā kai me ngā rawa o mua (nā te rironga pea o ngā whenua, nā te rerekē rānei o te taiao), ā,
- te aukatinga i ngā taumata whakatau i ngā take e pā ana ki te taiao, ki ngā rawa, ki ngā wāhi nui ki ngā kaikerēme.

He whānui ētahi o ngā whiriwhiringa mō te whakatika hapa tikanga tuku iho, tae rawa ki ngā take pēnei i ngā ingoa o ngā wāhi, te whakahaere i ngā mahinga ika tuku iho, te tiaki i ngā wāhi tapu. Ko te rārangi e whai iho nei ka whakaatu he aha ngā momo rawa nui te kitea i ngā whakataunga, tatū noa ki tēnei rā, ngā:

- wāhi tapu me ētahi atu wāhi whakahirahira, pēnei i ngā maunga
- awa, ngā roto
- repo, ngā hāpua, ngā ngahere tūturu, ngā mania
- wāhi tata ki te moana pēnei i te takutai me ngā moutere
- rawa hao ika o te wai Māori, o te wai tai
- rawa waiariki, ngā manawa whenua
- momo tipu, kararehe
- taonga ka taea te neke, ā
- ingoa tūturu o ngā wāhi

Ka whai iho nei ko ētahi o ngā pānga o ētahi rōpū kaikerēme kua ea:

- aro nui ki ngā hononga tikanga tuku iho, wairua, hītori ki tētahi wāhi, ki tētahi rawa taiao rānei
- tiaki i ngā wāhi tapu
- aro ki te tūranga o te Māori hei kaitiaki o te taiao, ā
- āheinga ki ngā rawa ka nui ki te rōpū kaikerēme.

Once the Crown and mandated representatives have agreed on the overall quantum or redress amount, there will usually be detailed discussions on the mixture of cash and assets that will make up the agreed amount.

Claimants can take all or part of the redress quantum in the form of available Crown properties located in the claim area. In this process assets are transferred from the Crown to the claimant group at market valuation, in effect “spending” the redress quantum. OTS has a system of landbanks covering the whole country that hold a wide range of Crown properties available for use in settlements. These properties have usually been placed in the regional landbanks at the request of claimant groups after they have been declared surplus to requirements by government departments.

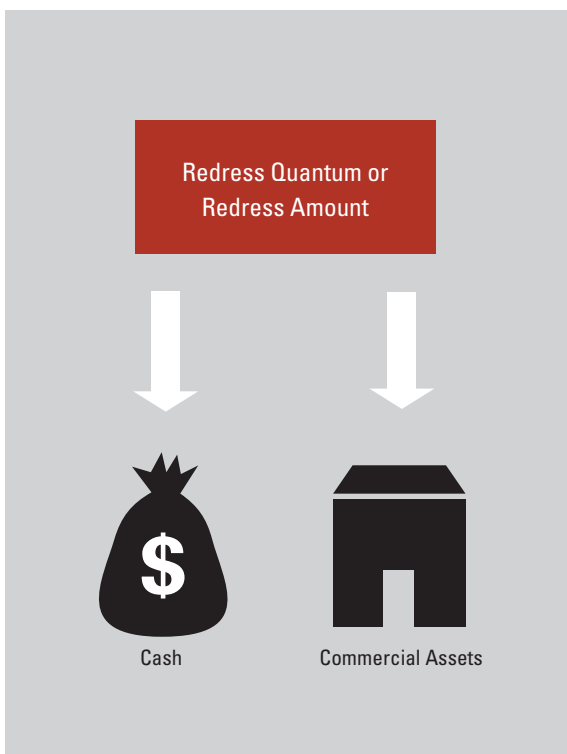


Figure 7: elements of financial and commercial redress.

After settlement, investment decisions are a matter for the governance entity to make according to its rules.

Cultural redress

Redress involving “cultural recognition” is intended to meet the cultural rather than economic interests of the claimant group. In negotiations and Waitangi Tribunal hearings to date, claimant groups have often raised the following concerns as part of their historical grievances against the Crown:

- loss of ownership or guardianship of sites of spiritual and cultural significance
- loss of access to traditional foods or resources (this may be the result of loss of ownership of land or environmental changes), and
- exclusion from decision-making on the environment or resources with cultural significance.

Negotiations on cultural redress can be very wide-ranging, and include matters as diverse as place names, customary fisheries management and protection of wāhi tapu. The following list covers the main types of resources dealt with in negotiations to date:

- wāhi tapu and other sites of significance (wāhi whakahirahira) including mountains
- rivers and lakes (waterways)
- wetlands, lagoons, indigenous forests, and tussock lands
- coastal areas including the foreshore and islands
- customary freshwater and marine fisheries
- geothermal and mineral resources
- plant and animal species
- moveable taonga (artefacts), and
- traditional place names.

Claimant group interests that have been addressed in a variety of ways include:

- recognition of cultural, spiritual, historical, and traditional associations with areas or natural resources
- protection of wāhi tapu
- recognition of the role of Māori as kaitiaki (guardians or caretakers) of the natural environment, and
- access to resources of cultural significance.

He pārongo anō mō te whakatika hapa tikanga tuku iho

Ko tā tēnei whārangi he whakatakoto i ngā mea whakatika hapa kua whai wāhi ki ngā whakataunga o mua. Mō te roanga atu o ngā whakamārama me ngā tauira mō te tohu me te whakamahi tika i ngā rawa, tēnā koa titiro ki te puka ake o *Ka tika ā muri, ka tika ā mua*, ngā whakarāpopotonga o ngā whakataunga rānei kei te whārangi o muri.



Moutohorā me Kāpūterangi, he wāhi tapu nō Ngāti Awa.

Tuku ā-ture i te pānga angiangi

He whakawātea i te mana (taitara). Tērā pea ka rerekē ngā tika me te mana whakahaere, i runga i te rerekē o ia wāhi.

Tuku ā-ture me te koha i ngā wāhi whakahirahira

Ka whakanōhia te mana o te wāhi whakahirahira (hei tauira, ko Aorangi) ki te rōpū kaikerēme; whai muri iho (i tētahi wā ka tohua), ka whakahokia here koretia ki te Karauna mō ngā tāngata katoa o Aotearoa.

Tuku ā-ture i ngā takere o ngā awa, o ngā roto

Tērā ka wātea mō ngā takere o ngā awa, o ngā roto he wāhi nui ō rātou ki ngā rōpū kaikerēme i te awa, i te roto rānei - hei ngā wāhi e taea ana i raro i te ture. Ka tuku i te papa anake o te awa, o te roto rānei, kāpā ko te wai, ka mutu ka tiakina ko ngā tika ki te whenua, ki te whakamahi i te whenua me te haere i taua whenua.

Tuku ā-ture hei whenua rāhui

Ka tukua te wāhi ki te rōpū kaikerēme hei wāhi rāhui i raro i te s26 o te Ture Wāhi Rāhui 1977. Ka puritia, ka whakahaerehia te wāhi e te rōpū kaikerēme i raro i te Ture Wāhi Rāhui.

Ngā tāpaetanga ki ngā whakarōpūtanga (Tōpuni, Taki Poipoia, Kirihipi rānei)

Ka pā ki ngā wāhi nui whakahirahira i ngā whenua kei raro i ngā whakahaere o Te Papa Atawhai (DOC): ka whakaae ki ngā kōrero mō ngā here a tētahi rōpū kaikerēme ki taua wāhi, ka whakatakoto i ngā uara, ngā mātāpono, ka tohu hoki ki ngā mahi e kore ai e pā he kino ki ēnei wāhi.

Ngā whakaaetanga ā-ture

Ka pā ki ngā wāhi whakahirahira (pēnei i ngā awa, roto, maunga, repo, takutai) kei reira he whenua nō te Karauna: ka whakaae ki tētahi kōrero mō ngā herenga o te rōpū kaikerēme ki taua wāhi; ka whakanui hoki i te āheinga o te rōpū kaikerēme ki te kuhu ki ngā tikanga o te *Resource Management Act 1991* ka āta tohua.

Te hunga eke ki ngā Komiti Whakamaherehere

Ka tuwhera wāhi e tuku whakamaherehere ai tētahi rōpū kaikerēme ki te Minita mō ētahi take e hāngai ana – hei tauira, ngā whakamaherehere ki te Minita mō Te Tautiaki i ngā tini a Tangaroa mō ngā momo ika he taonga nei rātou.

Whakaaetanga Whakamahi

Tērā ka whai i te Tūtohunga Ture (SA). Ka whakaae te Minita kei a ia te kawenga mō ngā whenua kei raro i te SA, ki te kōrero a te rōpū kaikerēme mō ana herenga, ka whakaae hoki ki te whitiwhiti kōrero, ki te aro ki ngā tirohanga a te rōpū kaikerēme mō ētahi take ka tohua.

Kawa

Ka pānuitia e tētahi Minita (hei tauira, e te Minita mō Te Papa Atawhai). Ka whakatakoto te tari kāwanatanga e hāngai ana, i te āhua o ana mahi, tōna mana, ōna kawenga, i roto i ngā take ka tohua, e pā ana ki ngā wāhi nui ki te rōpū kaikerēme; ka whakawhitiwhiti kōrero anō te tari ki te rōpū kaikerēme, ka whakawātea puarenga, e whai wāhi atu ai te rōpū kaikerēme ki ngā tikanga whakatau.

Ngā nohoanga, ngā ūkaipō

Te āheinga kia noho ki ngā puni kei ngā whenua o te Karauna mō tētahi wā, ki te kōhi i ngā kai tūturu e whakaaetia ana i raro i te ture, me ētahi atu rawa.

Te whakarerekē i ngā ingoa wahi

Rite ai te huri ki ngā ingoa e rua arā, Māori/Pākehā.

Komiti Whakamaherehere, Komiti Whakahaere rānei

Taea ai te whakatū i raro i te s9 o te Ture Wāhi Rāhui 1977, i te s56 rānei o te Ture Tiaki Taiao (*Conservation Act*) 1987, ki te tuku whakamaherehere, ki te whakahaere rānei i tētahi wāhi nui whakahirahira ki te rōpū kaikerēme me te Karauna. Kuhuna ai ngā māngai o te rōpū kaikerēme (ngā rōpū kaikerēme rānei, mēnā he wāhi nui taua wāhi ki te maha o ngā rōpū kaikerēme) rātou ko ngā māngai o DOC.

Further information on cultural redress

This page outlines cultural redress instruments that have been used in previous settlements. For more detail, and examples of how these instruments might be used in context, please see the full edition of *Healing the past, building a future* or the settlement summaries enclosed in the back cover.



Moutohorā Island and Kāpūterangi, wāhi tapu of Ngāti Awa.

Statutory vesting of fee simple estate

Provides ownership (title). Rights to use and manage may vary according to type of site.

Statutory vesting and gifting back of sites of outstanding significance

Ownership of site of outstanding significance (e.g. Aoraki/Mount Cook) is vested in the claimant group who then (after a specified interval) return it unconditionally to the Crown for all New Zealanders.

Statutory vesting of riverbed or lakebed

May be available for beds of rivers or lakes of great significance to the riverbed or lakebed claimant group – where it is also legally possible. Vests the riverbed or lakebed only, not water, and involves protection of existing property, use, and access rights.

Statutory vesting as reserve

Site is vested in the claimant group as a reserve under s26 of the Reserves Act 1977, and the claimant group holds and administers the site subject to the Reserves Act.

Overlay classifications (Tōpuni, Taki Poipoia, or Kirihipi)

Applies to highly significant sites on land administered by the Department of Conservation (DOC): recognises a statement of the claimant group's associations, describes their values and principles, and identifies actions to avoid harm to these.

Statutory Acknowledgements

Applies to sites of significance (including rivers, lakes, mountains, wetlands, and coastal areas) where land is owned by the Crown: acknowledges a statement of the claimant group's associations, and enhances the claimant group's ability to participate in specified Resource Management Act 1991 processes.

Advisory Committee appointments

Provides for the claimant group to advise a Minister directly on specified matters – for instance, advice to the Minister of Fisheries in relation to a taonga fish species.

Deeds of Recognition

May follow from Statutory Acknowledgement (SA). The Minister responsible for managing the land subject to SA acknowledges a statement of the claimant group's associations, and agrees to consult and have regard to the claimant group's views on specified matters.

Protocols

Issued by a Minister (e.g. Minister of Conservation). Sets out how the relevant department will exercise its functions, powers, and duties in relation to specified matters in the claimant group's area of interest, interact with the claimant group, and provide for its input into decision-making.

Camping entitlements (Nohoanga or Ukaipo)

Entitlement to camp temporarily on specified Crown-owned land, for the purpose of lawful gathering of traditional foods and other natural resources.

Place-name changes

Usually to a dual Māori/English name. Provides visible recognition for the claimant group.

Joint Advisory or Management Committee

Can be established under s9 of the Reserves Act 1977 or s56 of the Conservation Act 1987 to advise on or manage a site or area of importance to both the claimant group and the Crown. Such committees will usually be made up of representatives of both a claimant group (or groups – if the site or area is important to more than one claimant group) and DOC.

Wāhanga Tuawha

Whakatūturutanga me te whakakaupapatanga



Āhua 8: wāhanga IV – whakatūturutanga me te whakakaupapatanga.

Ko te wāhanga whakamutunga o te tikanga whiriwhiringa, ko te whakaaetanga mō te whakataunga me te whakawhitinga o te whakatika hapa kua whakaaetia, ki te rōpū kaikerēme. Me ki ka whai wāhi ēnei:

- whakaritenga o te Whakaaetanga Whakataunga
- whakarite me te whakatū i tētahi hinonga whakahaere hei pupuri, hei whakahaere i ngā rawa whakataunga
- hanganga ture whakataunga
- whakakaupapatanga

Whakaritenga

Kia mārama tonu te kitea, e whakaaetia ana e te rōpū kaikerēme whānui, te Whakaaetanga Whakataunga i whakaretahia e te Karauna rātou ko te rōpū kaikerēme i mua o tana ita. Ko tēnei tikanga ko te whakaritenga.

Ko te wāhanga nui o te whakaritenga ko te pōti ā-pōhi, e āhei ai ngā tāngata katoa o te rōpū kaikerēme kei ngā tau 18 neke atu te pakeke, te pōti. Nā te mea he tini ngā tāngata o ngā rōpū kaikerēme kei wāhi atu i ō rātou rohe e noho ana, koirā e waiwai ai te pōti ā-pōhi; ehara i te mea ka taea te whakahipa i tēnei wāhanga o te tikanga whakaritenga.

Nā tēnei, tatū ana ki tēnei wā, he mea waiwai kia oti i te rōpū kaikerēme tētahi rārangi o ana tāngata. He taonga nui tēnei e whai wāhi atu ai ngā mema ki te tikanga whakaritenga mā roto i ngā hui ka whakatūria, te whiwhi kōrero e pā ana ki te tāpaetanga whakataunga, te pōti ā-pōhi hoki.

E whakaae ai ngā tāngata, me whakawhitiwhiti kōrero ngā māngai ki ngā mema o te hapū, o te whānau rānei, mō ngā kōrero o te whakataunga kua takoto. Ka whai tēnei whitiwhitinga kōrero i ērā i waenganui i ngā māngai whai mana kōkiri me te rōpū kaikerēme puta noa. Kia pakari tonu ngā ara whakawhitiwhiti kōrero, e tareka ai e ngā tāngata katoa o te rōpū kaikerēme, tae rawa ki ērā e noho ana ki waho o te rohe, te whai wāhi ki ngā whitinga kōrero i tēnei wā whakatau. Pānuitia ai te Whakaaetanga Whakataunga e ngā māngai whai mana kōkiri, ka tohaina whānuitia rawatia. Ko tā tēnei tuinga he tautoko i ngā hui whakamōhio i whakatūria e ngā māngai whai mana kōkiri. Nā te nui whakaharahara o te tikanga whakaritenga, he mea waiwai kia tukua te wā tika ki ngā tāngata o te rōpū kaikerēme ki te āta wānanga mō te Whakaaetanga Whakataunga kua tāpaea. Kua kitea i roto i te wā, mēnā i tuwhera ā rātou māngai whai mana kōkiri kia kōrerorero ki ā rātou tāngata i te wā e haere ana te tikanga whiriwhiri, kua pai ā rātou whakawhitiwhitinga kōrero i te wā o te haerenga o te tikanga whakaritenga.

Ka whakamōhio ngā māngai whai mana kōkiri i te Minita Nōna te Mana Whakarite Take e pā ana ki te Tiriti o Waitangi, he aha ngā hua o te tikanga whakaritenga. Mēnā i whakaritea te Whakaaetanga Whakataunga, ka mutu kei te whakaae te Karauna kei te nui te hunga tautoko i te Whakaaetanga, ka hainatia te whakaaetanga e te Karauna rātou ko te tangata / ngā tāngata i whakamanatia e ngā kaikerēme.

Step Four

Ratification and Implementation

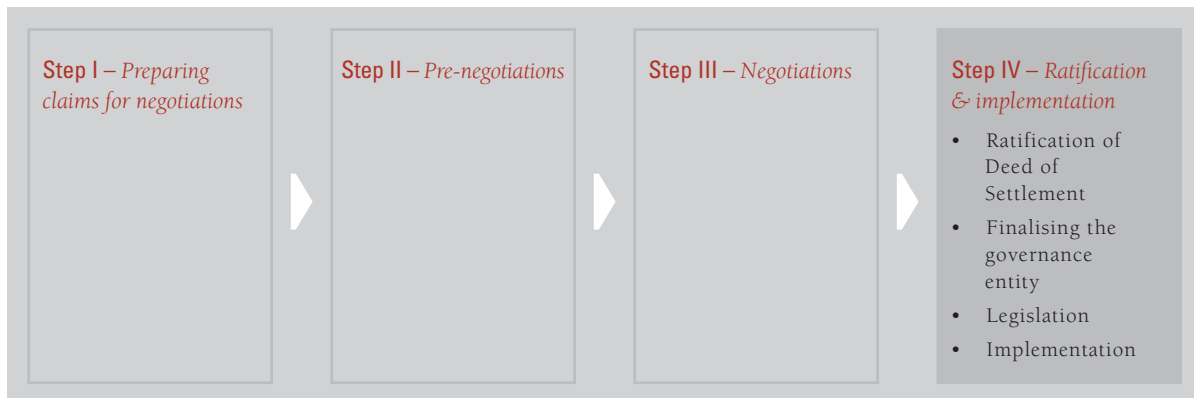


Figure 8: step IV – ratification and implementation.

The last step of the negotiations process involves getting final approval for the settlement, and transferring the agreed redress to the claimant group. In particular this involves:

- ratification of the Deed of Settlement
- ratifying and establishing a governance entity for holding and managing settlement assets
- settlement legislation, and
- implementation.

Ratification

The Deed of Settlement initialled between the Crown and the mandated representatives must be clearly approved by the wider claimant group before it becomes binding. This approval process is called ratification.

The key part of the ratification process is a postal ballot in which all members of the claimant group over the age of 18 are eligible to vote. Because many members of the claimant group will live outside their rohe, a postal ballot is an essential and not an optional part of the ratification process.

For this reason, it is essential that a claimant group has developed a register of its members by this stage in the settlement process. The register is a critical tool for providing members with the opportunity to take part in the ratification process through hui, receiving material explaining the settlement offer, and the postal ballot.

To gain approval, the claimant representatives must communicate with their hapū or iwi members about the details of the proposed settlement. This communication will build on earlier consultation between mandated representatives and the wider claimant group. Communication must also be open enough to make sure that all members of the claimant group, including those who live outside their rohe, can take a full part in the discussion that is part of this final decision-making stage. The mandated representatives usually publish a written summary of the Deed of Settlement, which is distributed as widely as possible. This publication complements the communication meetings organised by the mandated representatives. Because of the importance of the ratification process, it is essential to allow claimant group members enough time to consider the proposed Deed of Settlement. Experience has shown that communication with claimant group members during the ratification process is considerably enhanced if they have had regular opportunities throughout the negotiations process to discuss progress with mandated representatives.

The mandated representatives then let the Minister in Charge of Treaty of Waitangi Negotiations know the results of the ratification process. If the Deed of Settlement has been ratified and the Crown considers that there is enough support for the Deed, the Crown and the person or persons authorised by the claimant community through the ratification process sign it.

Te haina i te Whakaaetanga Whakataunga

He whakahaerenga nui tēnei mō te rōpū kaikerēme rātou ko te Karauna, nā te mea koinei te mutunga o ngā whiriwhiringa me te tīmatanga o te hononga hōu i whakamāramatia ki te Whakaaetanga. Ko te hiahia o te nuinga o ngā rōpū kaikerēme, kia tū tēnei hui ki tētahi o ō rātou marae, e whai wāhi atu ai te tini rawa atu o te tangata. Tae atu ai te Minita nōna te Mana Whakarite Take e Pā ana ki te Tiriti o Waitangi me ētahi atu Minita i roto i ngā whiriwhiringa. Tērā ka hiahia te rōpū kaikerēme kia karanga ki ētahi atu MP, iwi, rangatira hoki nō te rohe.

Hinonga whakahaere – ngā mātāpono a te Karauna

Kia tae ki tēnei wā, ko te tikanga kua pakari kē ngā whakaaro o ngā māngai whai mana kōkiri mō te momo hinonga whakahaere pai rawa, e tutuki ai ngā hiahia o te rōpū kaikerēme ā muri i te whakataunga. Ko tēnei rerenga kōrero - hinonga whakahaere – ka hāngai ki te whakahaere ā-ture ka whakamahia e te rōpū kaikerēme ki te pupuri me te whakahaere i te tikanga hapanga i whakawhitia e te Karauna i raro i te Whakaaetanga Whakataunga. Ehara ko ngā whakatika hapa arumoni, pūtea ka whakawhitia, engari ko te whakatika hapa tikanga tuku iho. Ko ētahi o ēnei, ko ngā Tūtohunga Ture (SA), ngā Whakaaetanga Whakamihi, ngā āheinga ki ngā puni, ngā Kawa me ngā tari kāwanatanga, ngā pokapū, me ētahi atu whakatika hapa.

Mā te rōpū kaikerēme e tohu ki te momo hinonga whakahaere e pai ana mō ā rātou kaupapa. Hāunga, e tutuki ai ōna kawenga ki te hunga utu tāke me ngā tāngata katoa o te rōpū kaikerēme, kua whakahiatotia e te Karauna ētahi mātāpono e taea ai te aromatawai te hinonga kua tohungia. Ki te hāngai te hinonga whakahaere ki ēnei mātāpono – kuhuna ai ēnei ki te Whakaaetanga Whakataunga – ka āhei te Karauna te whakawhiti rawa whakataunga ki te rōpū kaikerēme, ina whakamanatia ngā hanganga ture.

Ko ngā mātāpono a te Karauna mō te hinonga whakahaere i ngā rawa whakataunga, arā:

- e tū ana ia mō ngā tāngata katoa o te rōpū kaikerēme
- e āta kitea ana āna tikanga whakatau take me ana tikanga whakatau tautohetohenga
- he kawenga ō te hinonga whakahaere ki te rōpū kaikerēme puta noa

- māna e mahi, e titiro, ko te hunga whai pānga i te whakataunga, ko rātou tonu taua hunga i te wā i whakawhitia ngā rawa whakataunga mai i te Karauna ki te rōpū kaikerēme, ā,
- kua whakaritea e ngā kaikerēme

Kei te tutuki i te Karauna tōna kawenga ki ngā tāngata katoa o Aotearoa, arā kia tika te whakahaere i ngā rawa whakataunga mō te hunga e tika ana ka whai hua i tēnei whakataunga, mā te titiro, kei te ekea e te hinonga whakahaere ngā mātāpono a te Karauna. Ko ēnei tonu hoki ngā māharahara a ngā tāngata o te rōpū kaikerēme, e hiahia ana kia tika te whakahaere o ā rātou rawa whakataunga.

E kore e taea e te Karauna te whakawhiti rawa whakataunga ki tētahi rōpū kaikerēme, kia tū rā anō tētahi hinonga whakahaere kua wānangatia, kua whakaritea e ngā mema o te rōpū kaikerēme. Koinei te take e whakahau ana te Karauna kia oti i ngā rōpū kaikerēme te whakaritenga me te whakatūnga o tō rātou hinonga whakahaere, ki mua i te whakatakotoranga o te hanganga ture hei whakakaupapa i te whakataunga ki Paremata.

Te arotake me te whakarite i te hinonga whakahaere

Ahakoia ko ngā māngai whai mana kōkiri te hunga ka arataki i te rapu me te whakahiato i tētahi hinonga whakahaere, me whakatuwhera rātou i te wāhi ki ngā tāngata katoa o te rōpū kaikerēme hei arotake, hei whakarite i te hinonga kei te whakaarohia.

Ka taea te whakahaere ngātahi te tikanga whakaritenga mō tētahi hinonga whakahaere ā muri i te whakataunga, i te wā o ngā whiriwhiri a te rōpū kaikerēme mō te whakarite i te Whakaaetanga Whakataunga, ka taea rānei te whakahaere i te whakaritenga hinonga whakahaere ā tētahi atu wā. Ahakoia he aha te whiringa, me whakarite ngā tāngata o te rōpū kaikerēme i te hinonga whakahaere mō muri i te whakataunga, kātahi ka whakatū i raro i te ture, i mua i te whakatakoto a te Karauna i te hanganga ture me te whakawhiti o te whakatika hapa kei te whakataunga ki te rōpū kaikerēme. Kia whai wāhi anō te Karauna ki te aromatawai i te hinonga whakahaere tērā ka tū mā te whakataurite ki ana mātāpono, i mua i te tono ki te rōpū kaikerēme whānui kia whakaaetia taua hinonga. Ka whai wāhi ki te aromatawai a te Karauna i taua hinonga i runga i āna mātāpono, ngā hinonga pakupaku hoki o taua hinonga. Ka rite te tikanga whakaritenga mō te hinonga whakahaere ki tērā i mahia mō te Whakaaetanga Whakataunga, ā, ka pērā anō te rite o te tikanga whakaritenga.

Signing the Deed of Settlement

This is a very important ceremony for both the claimant group and the Crown, since it is both the end of negotiations and the start of the new relationship set out in the Deed. Most claimant groups prefer to host the ceremony at one of their marae so that as many people as possible can take part. The Crown is usually represented by the Minister in Charge of Treaty of Waitangi Negotiations, as well as other Ministers and officials involved in the negotiations. The claimant group may also wish to invite MPs, members of other iwi, and local dignitaries.

Governance entities – Crown principles

By this time, mandated representatives should have developed their ideas about the type of governance entity that will best serve the needs of their claimant group after the settlement is completed. The term governance entity simply refers to the legal entity the claimant group will use to represent them and to hold and manage the settlement redress to be transferred by the Crown under the Deed of Settlement. This includes not just the commercial and financial assets to be transferred, but also the cultural redress. The latter includes Statutory Acknowledgements, Deeds of Recognition, camping entitlements, Protocols with government departments and agencies, and other cultural redress.

It is a matter for the claimant group to choose a governance entity that will serve their needs and reflect their tikanga. However, to fulfil its responsibilities to taxpayers and all members of a claimant group, the Crown has developed a set of principles against which proposed governance entities are assessed. If the proposed governance entity is consistent with these principles – which are normally included in the Deed of Settlement – the Crown is able to transfer settlement assets to the claimant group, once any settlement legislation is enacted.

The Crown's principles for post-settlement governance entities are that the entity has a structure that:

- adequately represents all members of the claimant group
- has transparent decision-making and dispute resolution procedures
- is fully accountable to the whole claimant group

- ensures the beneficiaries of the settlement and the beneficiaries of the governance entity are identical when the settlement assets are transferred from the Crown to the claimant group, and
- has been ratified by the claimant community.

Ensuring that the governance entity is consistent with these principles means that the Crown is meeting its responsibility to all New Zealanders to ensure that settlement assets are managed by and for those who will rightfully benefit from the settlement. These concerns are, of course, equally important to members of the claimant group who will want to see good management of their settlement assets.

The Crown cannot transfer the settlement redress to a claimant group until they have a governance entity that has been considered and ratified by the members of a claimant group. For this reason, the Crown requires claimant groups to have ratified and established their governance entity by the time the legislation implementing a settlement is introduced to Parliament.

Reviewing and ratifying a governance entity

While a claimant group's mandated representatives will have the leading role in exploring and developing options for a governance entity, they must also give all members of the claimant group the chance to review and ratify their proposed entity.

The ratification process for a post-settlement governance entity may be carried out at the same time as the members of a claimant group consider whether or not to ratify a Deed of Settlement, or it can occur as a separate process. Whichever is the case, the proposed post-settlement governance entity must be ratified by the members of the claimant group and established as a legal entity before the Crown can introduce settlement legislation and transfer the redress provided in the settlement to the claimant group. The Crown must also have had the opportunity to assess the proposed governance entity against its principles before the wider claimant group membership is asked to ratify that entity. The Crown's review of the entity against the principles will take in any subsidiaries of that entity as well.

Hanganga ture mō te whakataunga

Mā te hanganga ture e mana ai te tata ki te katoa o ngā Whakaaetanga Whakataunga. Nā reira, kia mana rā anō te Ture ki roto i te Pāremata kātahi anō ka mana te whakataunga. Ka hiahiatia te hanganga ture:

- kia tūturu ai te whakataunga, mā te unu i te āheinga o ngā kōti me Te Rōpū Whakamana i te Tiriti ki te whakatuwhera anō i ngā kerēme o mua, i te Whakaaetanga Whakataunga rānei.
- te puare wāhi e taea ai te whakanoho i ngā hanganga o te ture, pēnei i ngā Tūtohunga Ture me ngā Tāpaetanga Whakarōpū (*Overlay Classifications*)
- te unu i ngā *memorial* ā-ture kei ngā taitara whenua kei roto i te rohe kerēme, ā,
- mēnā kāore i te tika ngā tikanga whakawhiti whenua noa, ka waiho he whenua ki te hinonga whakahaere, mō te rōpū kaikerēme.

Te tuhi hanganga ture whakataunga

Ko te *Parliamentary Counsel Office* te kaituhi hanganga ture hukihuki mā te Pāremata. Ka whiwhi ngā māngai whai mana kōkiri i ētahi tārua o te pire hukihuki, e kite ai rātou kei te puritia tonu te kaha o te Whakaaetanga Whakataunga. Kei te Whakaaetanga ētahi kōrero e mea ana e whakaae ana te rōpū kaikerēme ki te tautoko i te hanganga ture i tana whakatakotoranga ki roto i te Pāremata.



Te Pānui Tuatoru i te Ture mō Ngāi Tahu.

Whakakaupapatanga – te whakatinana i te whakataunga

Kia tae ki te wā ka tīmata te Whakakaupapatanga o te whakataunga, kua whakatūria ketia e te rōpū kaikerēme tā rātou hinonga whakahaere hei pupuri, hei whakahaere i ngā rawa whakataunga. Kei te hinonga whakahaere te kawenga mō te whakahaere i te whakatinanatanga o te whakataunga.

Mā OTS e whakahaere te whakatinanatanga o te whakataunga mā te Karauna. Whitiwhiti kōrero ai a OTS me ētahi atu tari kāwanatanga, rōpū hoki (hei tauira, ngā kāwanatanga ā-rohe) kei roto i te whakataunga, e tutuki ai ngā whakawhitinga rawa ki te hinonga whakahere i te wā e tika ana.

He kawenga nui ō ētahi atu tari kāwanatanga i te wā o te whakakaupapatanga. Hei ngā wā ka tū he hononga ki waenganui i tētahi tari kāwanatanga me te hinonga whakahaere nā runga i te whakatika hapa, kei te tari kāwanatanga te kawenga mō te whakahaere i taua hononga. Hei tauira, mō te taha ki te Rohenga Whenua Rāhui, ko te tari e hāngai ana, ko Te Papa Atawhai.

Te hanga ao

Ka tohu te ingoa o te aratohu, ko te whāinga o ngā whakataunga o ngā kerēme o mua, ki te whakaora i ngā mamae o mua, ki te hanga ao mō āpōpō. Ahakoa te mea e kore e ea i te moni, i te rawa ngā hiahia me ngā tūmanako katoa o tētahi rōpū kaikerēme, ka āwhinatia ia e te Karauna kia takoto he pūtake mō ngā rā kei te tū. Inā mutu ana te tīmatanga o te wāhanga whakakaupapa, kei te rōpū kaikerēme te tikanga mō āpōpō. Kei tō rātou hinonga whakahaere te kawenga mō te whakahaere me te whakapakari i ngā rawa whakataunga. Mā tēnei mahi, ka noho ōna kawenga ki te rōpū kaikerēme whānui mā roto i ngā tikanga whakatau me ngā tikanga pūrongo ka whakaaetia e te rōpū kaikerēme.

The ratification process for a governance entity will be similar to that used to ratify a Deed of Settlement and the Crown's review of the ratification process will also take a similar form.

Settlement legislation

Nearly all Deeds of Settlement require settlement legislation to be passed. This means that the settlement does not take effect until Parliament has passed an Act for this purpose. Settlement legislation is needed to:

- ensure the finality of the settlement by removing the ability of the courts and Waitangi Tribunal to re-open the historical claims or the Deed of Settlement
- provide for statutory instruments such as Statutory Acknowledgements or Overlay Classifications to be applied
- remove statutory memorials from land titles in the claim area, and
- vest land in the governance entity on behalf of the claimant group if normal administrative land transfer processes would not be appropriate.

Drafting settlement legislation

The Parliamentary Counsel Office drafts bills for introduction to Parliament. The mandated representatives receive copies of the draft bill, so they can be sure that it gives full effect to the Deed of Settlement. Deeds include a provision that the claimant group agrees to support the legislation once it is introduced.

Implementation – making the settlement happen

By the time the implementation phase of a settlement begins, the claimant group will have established a governance entity to hold and manage the settlement assets. The governance entity will also have responsibility for managing the implementation of the settlement.

OTS oversees the implementation of settlements on behalf of the Crown. OTS liaises with other government agencies or third parties (e.g. local authorities) involved in the settlement to ensure that all agreed deadlines for handing over settlement assets to the governance entity are met. OTS also monitors whether the Crown meets all other requirements of the settlement.

Other Crown departments and agencies have significant responsibilities during the implementation phase. Where redress involves an ongoing relationship between a department or agency and the governance entity, managing that redress is the responsibility of the department or agency concerned. In the case of a Conservation Area, for example, that is the Department of Conservation.

Building a future

As the title to this Guide suggests, settlements of historical claims are intended both to heal the past and build a future. While the cash or assets provided as settlement redress may not meet all the needs and aspirations of a claimant group, the Crown does contribute through settlements to a platform for future development. Once the initial phase of implementation outlined above is over, the future is largely in the hands of the claimant group. Their governance entity picks up the responsibility for managing and developing settlement assets. In doing so, it remains accountable to the wider claimant group through the decision-making and reporting processes approved by the claimant group.



Ngāi Tahu Third Reading.

Tuhi Tīpoka

Notes

