

**Hon Kelvin Davis**

Minister for Māori Crown Relations: Te Arawhiti

**Proactive release – Enhancing Oversight of Treaty Settlement Commitments**

The documents in the table below are due to be proactively released in accordance with Cabinet Office Circular CO (18) 4. Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	<p><b>Enhancing oversight of Treaty settlement commitments</b></p> <p><i>Cabinet Paper</i></p> <p>The Office for Māori Crown Relations – Te Arawhiti</p> <p>16 December 2022</p>	<p>This paper is to be released in its entirety.</p>
2.	<p><b>Report of the Cabinet Māori Crown Relations: Te Arawhiti Committee:</b></p> <p><b>Cabinet minute CAB-22-MIN-0597</b></p> <p>Cabinet Office</p> <p>16 December 2022</p>	<p>Some information has been withheld in accordance with:</p> <ul style="list-style-type: none"> <li>- Section 9(2)(f)(v) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.</li> </ul>

**Recommendation**

It is recommended that you:

1. **Agree** to proactively release the Cabinet paper – *Enhancing oversight of Treaty settlement commitments* and associated Cabinet minute with the specified redactions.

**Yes / No**



Hon Kelvin Davis

**Minister for Māori Crown Relations: Te Arawhiti**

## In Confidence

Office of the Minister for Māori Crown Relations: Te Arawhiti

Cabinet Māori Crown Relations: Te Arawhiti Committee

## Enhancing oversight of Treaty settlement commitments

### Proposal

- 1 This paper seeks approval of He Korowai Whakamana, as a framework for achieving oversight and enhancing accountability for the Crown's Treaty settlement commitments (refer **Appendix One**). To implement this framework, I seek a strengthened mandate for the Office for Māori Crown Relations – Te Arawhiti (**Te Arawhiti**).

### Relation to government priorities

- 2 This proposal relates to the Government's manifesto commitment of continuing the partnership path with Māori and realising the promise of Te Tiriti o Waitangi/the Treaty of Waitangi.

### Executive Summary

- 3 For over 25 years, the Crown has worked to settle the historical Treaty of Waitangi claims (**settlements**) of iwi. To sustain relationships, both the Crown and iwi need confidence that all settlements have been upheld. Under current settings we do not have that confidence.
- 4 I therefore propose that Cabinet approve He Korowai Whakamana as a framework for achieving oversight of settlement commitments and a consistent approach for addressing and resolving settlement issues.
- 5 My proposals for He Korowai Whakamana will strengthen the mandate of Te Arawhiti as system lead for upholding the durability of settlements. This will enable Te Arawhiti to establish expectations for core Crown settlement commitment holders, agreed pathways for resolving significant settlement issues as they arise, and achieve oversight of the delivery of core Crown settlement commitments. This will also give iwi visibility and assurance that their settlement commitments have been upheld.
- 6 He Korowai Whakamana proposes core Crown agencies review the status of their settlement commitments. This paper uses 'core Crown' to refer to public service departments and departmental agencies, New Zealand Defence Force (**NZDF**) and New Zealand Police (**Police**). These agencies would enter that status information on to Te Haeata – the Settlement Portal (**Te Haeata**), and present a summary through each agency's annual report. This step will demonstrate to iwi that the core Crown is keeping its promises.
- 7 I consider He Korowai Whakamana will provide the system oversight we need to assure Ministers and iwi that commitments have been met and any post-

settlement issues have or are being resolved. This will help realise the renewed relationships that settlements promise and demonstrate the Crown's willingness to hold itself to account.

- 8 Feedback was provided by 26 core Crown agencies, NZDF and Police. Their feedback was supportive of the intent of this paper and He Korowai Whakamana.

## Background

### *Intergenerational effort to settle historical Treaty claims and renew relationships*

- 9 Iwi groupings and the Crown have been engaged in an intergenerational effort to achieve settlements throughout Aotearoa.<sup>1</sup>
- 10 Settlements renew relationships between iwi and the Crown by including:
- 10.1 reconciliation redress including historical account, acknowledgements and apology for the Crown's past breaches of Te Tiriti o Waitangi/the Treaty of Waitangi;
  - 10.2 financial and commercial redress to enable iwi to realise future aspirations; and
  - 10.3 cultural redress that recognises iwi relationships with their rohe.
- 11 In making the difficult decision to agree to settle, iwi relinquished their right to pursue historical Treaty claims in the courts. In exchange, iwi have accepted limited redress as the foundation for realising their future, and a renewed Treaty partnership. To sustain settlements' durability, both iwi and the Crown need confidence all settlement commitments are upheld. It is therefore of constitutional importance for the Crown to honour these contractual and legal obligations.

### *The volume of settlement commitments continues to increase*

- 12 During the engagement I undertook in 2018 when establishing the Māori Crown Relations portfolio, I heard that agencies were struggling to meet their settlement commitments and we were in danger of undermining a number of the settlements that have been negotiated over the last 25 years because of inaction or lack of knowledge/capability or capacity [CAB-18-MIN-0456].
- 13 The Crown has entered into settlement arrangements with over 70 groups, and there are more settlements to come. The settlements completed to date comprise over 10,000 commitments to iwi where a party is required to carry out a task (refer to **Appendix Two** for a breakdown by portfolio and agency).
- 14 Currently the delivery of settlement commitments rests with each individual commitment holding agency. There is no unified Crown system requiring all those organisations to monitor or report on the progress of their commitments.

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<sup>1</sup> Large natural groupings of tribal interests, variously with iwi or hapū groupings as the case may be.

The Crown lacks assurance that settlements are being honoured. The Crown is also unable to provide that assurance to iwi. This is a significant risk to Māori Crown relationships. When settlement commitments are not honoured, this undermines the confidence of iwi in the Crown and can involve a slow and expensive process to resolution.

### **The Crown needs systems to ensure delivery of settlement commitments**

- 15 I think we need to put systems in place to enhance oversight of settlements and ensure delivery of settlement commitments. This step would:
- 15.1 restore and sustain iwi trust in the Crown through enhanced assurance measures such as annual reporting;
  - 15.2 build collective accountability through a set of expectations for core Crown commitment holders and use of a shared data system for commitment tracking; and
  - 15.3 give visibility of the issue resolution process with guidance for the core Crown and post-settlement governance entities (**PSGEs**) on how to navigate post-settlement issues.
- 16 Assurance to Ministers and PSGEs that commitments are being met will benefit Māori Crown relationships. These measures will support the Crown to build its capability in our journey towards true Treaty partnership. There are benefits to the Crown as a whole also. Treaty settlement commitments are woven into our broader legislative and policy fabric, affecting almost all our portfolios. Policy development should be founded on a good understanding of the Treaty and informed by settlement commitments.
- 17 It is not unusual for the Crown to institute greater measures of transparency as He Korowai Whakamana proposes. Such a step was taken by Te Kawa Mataaho Public Service Commission in publishing performance measures of departments in responding to requests under the Official Information Act 1982. He Korowai Whakamana proposes greater transparency of delivery of settlement commitments.

### *A strengthened mandate for Te Arawhiti will help uphold settlement durability*

- 18 Te Arawhiti has a broad mandate to ensure Treaty settlement commitments are met. This mandate does not extend to a system lead role for oversight of settlements. Currently Te Arawhiti:
- 18.1 monitors settlement delivery by exception, becoming involved reactively when a settlement issue is raised by a PSGE or Crown agency, and working alongside parties to resolve the issue; and
  - 18.2 works proactively by issuing guidance, developing tools and providing advice to ensure settlements are operating as they should.
- 19 I think Te Arawhiti needs a strengthened mandate to lead the system to provide oversight of Crown settlement commitments. This would provide

assurance to PSGEs and Ministers that the core Crown is meeting its commitments. It would also set resolution pathways to resolve issues when they arise. A specific team within Te Arawhiti will lead this work.

### **He Korowai Whakamana – framework for oversight of settlement commitments**

- 20 My proposed framework for achieving oversight is He Korowai Whakamana, attached for Cabinet agreement as **Appendix One**. This framework:
- 20.1 provides guidance and tools to support settlement delivery, including a set of expectations for Crown settlement commitments holders (refer **Appendix Three**);
  - 20.2 requires agencies to track the status of their commitments using a shared data system, Te Haeata;
  - 20.3 requires agencies to report annually on their commitments;
  - 20.4 requires Te Arawhiti to collate a system-wide report on settlement delivery; and
  - 20.5 establishes an issue resolution process for PSGEs and Crown agencies (refer **Appendix Four**).
- 21 He Korowai Whakamana applies to core Crown agencies, including NZDF and Police because they are responsible for settlement commitments.
- 22 Te Arawhiti will provide guidance to the core Crown to support the implementation of He Korowai Whakamana and use of Te Haeata. This is to support the building of capability across the core Crown.
- 23 Other Crown entities and local government are out of scope for now as my focus is on first giving Cabinet assurance that core Crown commitments are being upheld. Following implementation of He Korowai Whakamana by the core Crown, there is an opportunity to consider whether He Korowai Whakamana could be extended to local government and other Crown entities.

#### *Crown expectations for Crown Treaty settlement commitment holders*

- 24 A set of shared expectations and practical action steps for core Crown agencies responsible for settlements will support a culture of consistent delivery across the Crown.
- 25 I propose that all core Crown agencies use the expectations as a foundation to strengthen their capability to uphold settlements.
- 26 These expectations will be issued and maintained by Te Arawhiti as the system lead for upholding the durability of settlements.

*A shared data system for tracking the status of settlement commitments*

- 27 A shared data system tracking the status of settlement commitments, accessible by both the Crown and PSGEs, will enhance accountability and trust. Central to this, I propose that the core Crown is directed to use Te Haeata to track the status of their settlement commitments.
- 28 Te Haeata is an online, searchable database of commitments from legislated settlements and related arrangements. The purpose of Te Haeata is to raise the visibility of settlement commitments and help organisations keep oversight of their commitments.
- 29 The ability for organisations to use Te Haeata to track the status of their commitments was launched in October 2020. A small number of core Crown commitment holders have made use of this function to date.
- 30 I propose that the core Crown is required to complete a review of the status of their settlement commitments and enter those onto Te Haeata:
- 30.1 by 30 June 2023 for agencies with less than 1,000 settlement commitments (refer Appendix Two); and
- 30.2 by 22 December 2023 for agencies with more than 1,000 settlement commitments (refer Appendix Two).
- 31 My officials have engaged with their counterparts at the Department of Conservation (**DOC**) and Land Information New Zealand (**LINZ**) who together with Te Arawhiti hold the majority of Crown commitments. These agencies with the highest volumes of commitments have indicated they can achieve these timeframes.
- 32 The Ministry of Education (**MoE**) has developed an internal database and system for tracking and managing its settlement commitments. It proposes to maintain and strengthen this database and system.
- 33 Te Arawhiti will work with MoE to reduce any potential duplication of effort in tracking these commitments, while ensuring Te Haeata maintains the whole-of-core Crown view.
- 34 Currently, the status of an organisation's commitments on Te Haeata is only visible to that organisation. To enhance accountability and trust, I propose that this data is made available to the relevant PSGE from June 2024. These timeframes give core Crown agencies time to agree a pathway to resolution for any post-settlement issues identified during their review of settlement commitments.

*Achieving accountability through agency reporting on the status of commitments*

- 35 To enhance Crown accountability for settlement commitments, I propose that core Crown agencies begin reporting on the status of their Treaty settlement commitments in their departmental annual reports from the 2023/24 financial year. Reporting is an important function that enables agencies to track

progress and, more importantly, take ownership of their settlement commitments. Agency annual reports are publicly available and accessible to iwi.

*Providing assurance with a whole of system report on Treaty settlement delivery*

- 36 Establishing Te Haeata as the shared data system for the core Crown and PSGEs will enable Te Arawhiti to collate an annual whole of system report on the status of settlement delivery.
- 37 Initially, the whole of system report will be provided to me as Minister for Māori Crown Relations: Te Arawhiti. Having considered the first report, I will consider whether it might have a wider use and audience and may return to Cabinet with further proposals. These options might include the report being considered by Cabinet, or potentially select committee with a debate in the House of Representatives. I note the Minister for Māori Development’s annual report on Crown progress implementing Waitangi Tribunal recommendations follows the latter approach.

*A transparent pathway to resolve issues arising in settlements*

- 38 He Korowai Whakamana provides assurance to iwi and the core Crown through a transparent pathway which sets out the triggers and escalation points for resolving post-settlement issues.
- 39 The Crown post-settlement issue resolution pathway is attached for Cabinet endorsement as **Appendix Four**. This includes processes to involve Chief Executives and Ministers where significant settlement issues arise. He Korowai Whakamana also sets out expectations for core Crown agencies to support a culture of consistent delivery across the Crown (**Appendix Three**).
- 40 This guidance will be issued and maintained by Te Arawhiti as system lead for upholding the durability of settlements.

*What are the risks of this proposal?*

Risk	Comment
<p>In providing oversight of settlements, the Crown may identify settlement breaches. This may increase the risk of litigation against the Crown.</p>	<p>If such breaches do exist, the longer they go un-identified the greater the impact on the Crown’s honour and any remedies we may need in response. Identifying these issues earlier means the Crown can address them before they escalate and demonstrate our commitment to being a good Treaty partner.</p> <p>While the short-term risk of litigation against the Crown may increase, I consider that the long-term risk of litigation would be greater if settlement breaches are identified at a later stage.</p>

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<b>Risk</b>	<b>Comment</b>
<p>A significant number of post-settlement issues may be identified, placing pressure on the capacity of relevant agencies to respond and Te Arawhiti to provide relevant support.</p>	<p>If a significant number of post-settlement issues are identified, Te Arawhiti would consider whether additional capacity is required to address these issues.</p> <p>The first date of 30 June 2023 for entering the status of commitments on Te Haeata provides a useful point to reassess whether capacity needs are identified. If so, there would be scope to seek support through relevant budget bids for Budget 2024-25.</p>
<p>Some iwi might not consider He Korowai Whakamana goes far enough.</p>	<p>I consider that establishing a system to hold ourselves to account rather than leaving it to iwi is an important step. Over time we will be able to evolve our system as it becomes embedded.</p>
<p>There may be different perspectives between iwi and the Crown as to the quality of the delivery of commitments.</p>	<p>While a commitment may be on track, the relationship between individual departments and iwi may still need work. These relationship dynamics already exist and are the subject of ongoing conversations between parties.</p>
<p>By focusing attention on specific settlement commitments there could be a risk of agencies focusing their effort on transactions and compliance over building healthy relationships.</p>	<p>Requires a continued acknowledgement and recognition that, while meeting settlement commitments is fundamental, focusing on the overall health of relationships remains the goal.</p> <p>This is supported by the <i>Crown expectations for Crown Treaty settlement commitment holders</i>.</p>
<p>Commitments are lost sight of due to changing agency responsibilities.</p>	<p>At the point Te Haeata was established, care was taken to accurately assign commitments and agencies were consulted. Since then, Te Arawhiti has taken responsibility for ensuring commitments are reassigned as required and remains committed to this work.</p>
<p>Limitations of what is recorded in Te Haeata, for example, the substantive content of relationship redress.</p>	<p>Te Haeata records commitments from deeds of settlement and settlement legislation.</p> <p>Te Haeata does not list individual commercial properties for transfer, but instead records the process steps required to deliver the redress. The option of including specific property lists is being explored to enable tracking at this level.</p> <p>Te Haeata does not record commitments found in other settlement documents, such as relationship agreements (which are documents open to ongoing review).</p> <p>Te Arawhiti is considering whether Te Haeata may be further developed to track the delivery of relationship redress. Importantly, if this step is taken, agencies would remain responsible for updating any changes to the commitments they enter into.</p> <p>I note Te Haeata is a quantitative system recording legal obligations. It is not an appropriate tool for qualitative</p>



Risk	Comment
	measures of the health of a relationship between Treaty partners.

## Implementation

- 41 The below table sets out the implementation milestones for He Korowai Whakamana:

Milestone	Timeframe
He Korowai Whakamana approved by Cabinet and communicated to agencies	December 2022
Agencies with less than 1,000 commitments enter the status of their commitments onto Te Haeata	By 30 June 2023
Agencies with more than 1,000 commitments enter the status of their commitments onto Te Haeata	By 22 December 2023
Status of commitment data on Te Haeata available to PSGEs	June 2024
Agencies begin reporting on the status of their settlement commitments in their departmental 2023/24 annual reports	June 2024
First whole of system report prepared by Te Arawhiti for the Minister for Māori Crown Relations: Te Arawhiti	October 2024

## Financial Implications

- 42 Delivery of settlement commitments and relationships with PSGEs is part of the Crown’s business as usual. Te Arawhiti has developed Te Haeata to support oversight of settlements. It is proposed that core Crown agencies fund this work from existing departmental baselines.

## Legislative Implications

- 43 These proposals have no legislative implications.

## Impact Analysis

### Regulatory Impact Statement

- 44 There are no regulatory proposals in this paper, and therefore Cabinet’s impact analysis requirements do not apply.

### Climate Implications of Policy Assessment

- 45 There are no climate impacts.

## Population Implications

46 There are no population implications.

## Human Rights

47 The proposal outlined in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The proposal aligns with New Zealand's support of the United Nations Declaration on the Rights of Indigenous Peoples. That support noted the importance of the relationship between Māori and the Crown under Te Tiriti o Waitangi/the Treaty of Waitangi.

## Consultation

### *Engagement with PSGEs*

48 Since its establishment, Te Arawhiti has engaged with PSGEs on the resolution of post-settlement issues. In 2019, Te Arawhiti also engaged with PSGE representatives as it developed its direction to provide post-settlement support.<sup>2</sup>

49 When developing He Korowai Whakamana, Te Arawhiti specifically engaged with five PSGEs who have experienced a range of post-settlement issues.<sup>3</sup> All of the PSGEs supported the proposals as work the Crown should already be doing. These PSGEs expect that Te Arawhiti has an oversight role monitoring the status of all Crown settlement commitments. PSGEs support public reporting for accountability and visibility of Crown performance.

50 One iwi leader said, "Iwi are having to go to Court. We are just asking for what you committed to." My goal is that He Korowai Whakamana gives a transparent view of how issues are resolved. Through notifications to the responsible Minister, relevant Chief Executive and Public Service Commissioner, the intent is that issues are resolved without litigation.

### *Engagement with core Crown agencies*

51 In preparing this paper, Te Arawhiti has consulted with the 36 core Crown agencies, as well as NZDF and Police. From this, we received feedback from 26 core Crown agencies, NZDF and Police, including those with substantial volumes of commitments.

52 Feedback was supportive of the intent of this paper and He Korowai Whakamana. A range of points were made to help ensure successful implementation, which have helped shape the proposals in this paper, and further conversations between my officials and agencies.

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<sup>2</sup> PSGE representatives from Ngāti Manuhiri, Ngāi Tāmanuhiri, Ngā Tāngata Tiaki o Whanganui, Raukawa, Te Rarawa, Ngāti Whātua o Kaipara, Rongowhakaata, Ngāti Tama ki Te Tau Ihu, Ngāi Tai ki Tāmaki and Rangitāne o Manawatū.

<sup>3</sup> Te Kawerau Iwi Settlement Trust, Ngāi Tai ki Tāmaki Trust, Hineuru Iwi Trust, Te Rūnanga o Ngāi Tahu and Ngāti Pāhauwera Development Trust.

- 53 MoE raised concerns that entering data on Te Haeata may duplicate efforts with internal agency systems, and the annual reporting requirement could place a significant compliance burden on resources.
- 54 Te Arawhiti will work with the largest commitment holding agencies (LINZ, DOC and MoE) to ensure continuous improvements are made and, where able, consistency across internal systems, while ensuring Te Haeata maintains the whole-of-core Crown view.

**Communications**

- 55 Following Cabinet approval, He Korowai Whakamana will be communicated to the Chief Executives of core Crown agencies, NZDF and Police by the Tumu Whakarae, Te Arawhiti in December 2022 or as soon as possible.
- 56 I intend to announce the proposals to iwi in early-2023 to demonstrate the Crown's commitment to upholding the promises made through settlements. I am considering when and how it will be best to do so, including potentially as part of Waitangi Day events in February 2023.

**Proactive Release**

- 57 I intend to proactively release this paper in whole, making any necessary redactions, within 30 business days of final decisions being taken by Cabinet.

## Recommendations

58 I recommend that the Committee:

- 58.1 **note** that there is a lack of centralised data on the status of the Crown's Treaty settlement commitments and therefore lack of assurance for iwi that these are being met. This poses a risk to the Māori Crown relationship.
- 58.2 **approve** He Korowai Whakamana as a framework for achieving oversight of and enhancing accountability for the Crown's Treaty settlement commitments.
- 58.3 **note** that He Korowai Whakamana applies to public service departments and departmental agencies, New Zealand Defence Force and New Zealand Police (referred to below as 'core Crown').
- 58.4 **note** He Korowai Whakamana does not currently apply to non-core Crown agencies and local government authorities.
- 58.5 **approve** a strengthened mandate for the Office for Māori Crown Relations – Te Arawhiti to lead the system to achieve oversight of delivery of core Crown Treaty settlement commitments.
- 58.6 **endorse** the 'Crown expectations for Crown Treaty settlement commitment holders' (**Appendix Three**) for core Crown agencies to use as a foundation to strengthen their capability to uphold Treaty settlements.
- 58.7 **endorse** the 'Crown post-settlement issue resolution pathway' (**Appendix Four**) which sets out the triggers and escalation points for post-settlement issues.
- 58.8 **note** that, to enhance accountability and trust in the Crown, I propose that Te Haeta – the Settlement Portal become a shared data system for the status of Treaty settlement commitments.
- 58.9 **direct** core Crown agencies to enter the status of commitments on Te Haeta:
  - 58.9.1 by 30 June 2023 for agencies with less than 1,000 settlement commitments (as per **Appendix Two**); and
  - 58.9.2 by 22 December 2023 for agencies more than 1,000 settlement commitments (as per **Appendix Two**).
- 58.10 **direct** core Crown agencies to begin reporting in their annual reports on the status of their commitments from financial year 2023/24.
- 58.11 **note** that Te Arawhiti will collate a whole of system report on the status of core Crown Treaty settlement commitments from financial year

**IN CONFIDENCE**

2023/24 to be provided initially to me as Minister for Māori Crown Relations: Te Arawhiti.

58.12 **note** that, having considered the first whole of system report on the status of core Crown Treaty settlement commitments, I will consider whether it might have a wider use and audience; if so, I will return to Cabinet with further proposals.

Authorised for lodgement

Hon Kelvin Davis

Minister for Māori Crown Relations: Te Arawhiti

**Appendices**

Appendix One – He Korowai Whakamana

Appendix Two – List of Crown commitments by portfolio

Appendix Three – Crown expectations for Crown Treaty settlement commitment holders

Appendix Four – Crown post-settlement issue resolution pathway

# He Korowai Whakamana – enhancing oversight of Treaty settlement commitments

## Enhancing collective Crown accountability

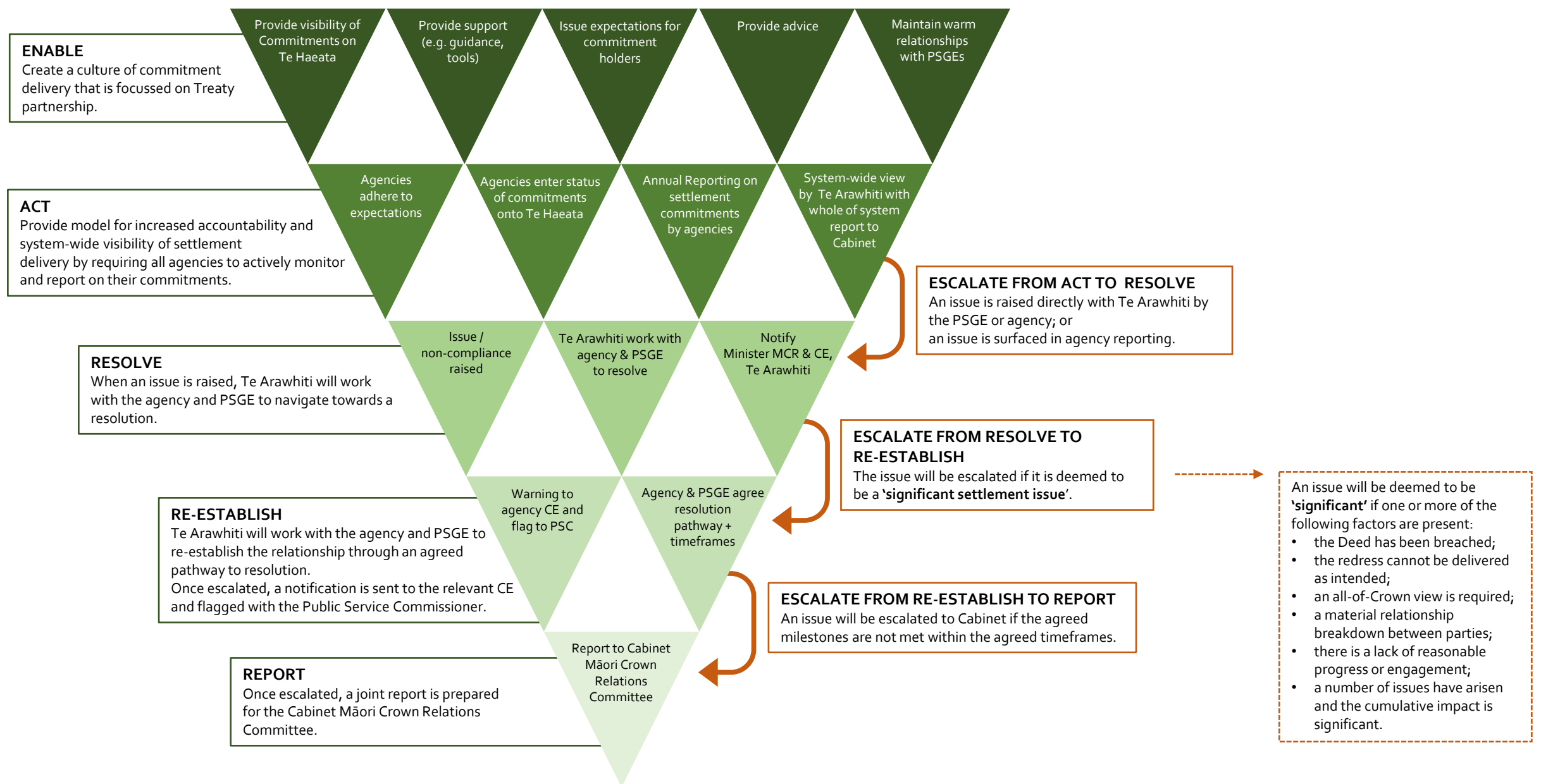
When establishing the Māori Crown Relations portfolio, Hon Kelvin Davis noted that "Agencies are struggling to meet their basic settlement commitments and we are already in danger of undermining a number of the settlements that have been negotiated over the last 25 years because of inaction or lack of knowledge/capability or capacity" [CAB-18-MIN-0456].

He Korowai Whakamana is a framework that wraps around the post-settlement system with guidance and tools, accountability and oversight mechanisms, and an issue resolution process to support the delivery and durability of Treaty settlements.

Te Arawhiti has a strengthened mandate to maintain system-wide oversight of the delivery of core Crown Treaty settlement commitments.

## Proposed levers

- **Expectations for settlement commitment holders** - a set of expectations to support good Treaty settlement delivery;
- **Reporting on the status of Treaty settlement commitments** – a requirement from Cabinet to core-Crown agencies to report on the status of their commitments. This includes a requirement to enter the status of their Treaty settlement commitments on Te Haeata and to report on their commitments status' in their annual departmental report; and
- **Issue resolution pathway** – the process set out below will be formalised, with supporting guidance for raising and resolving issues with Treaty settlement delivery.



## Appendix Two: List of Crown commitments by portfolio

(recorded on Te Haeata – the Settlement Portal as at 25 August 2022)

Minister	Portfolio	Agency	Commitments on Te Haeata
Rt Hon Jacinda Ardern	Prime Minister	Department of the Prime Minister and Cabinet	28
Hon Grant Robertson	Finance	The Treasury	364
Hon Kelvin Davis	Māori Crown Relations: Te Arawhiti	Te Arawhiti	2072
	Children	Oranga Tamariki	55
	Corrections	Department of Corrections	410
	Education	Ministry of Education	1198
Hon Dr Megan Woods	Housing	Ministry of Housing and Urban Development	19
		Kāinga Ora	151
	Energy and Resources	Ministry of Business, Innovation, and Employment	223
Hon Chris Hipkins	Education	Ministry of Education	1198
	Police	New Zealand Police	687
Hon Carmel Sepuloni	Social Development and Employment	Ministry of Social Development	134
	Arts, Culture and Heritage	Ministry for Culture and Heritage	205
Hon Andrew Little	Health	Ministry of Health	17
	Māori Crown Relations: Te Arawhiti	Te Arawhiti	2072
Hon David Parker	Environment	Ministry for the Environment	203
	Oceans and Fisheries	Ministry for Primary Industries (commitments relate largely to fisheries and agriculture)	753
	Revenue	Inland Revenue Department	16
Hon Nanaia Mahuta	Local Government	Department of Internal Affairs	57
Hon Poto Williams	Conservation	Department of Conservation	3107
Hon Damien O'Connor	Agriculture Biosecurity	Ministry for Primary Industries (commitments relate largely to fisheries and agriculture)	753
	Land Information	Land Information New Zealand	2586
Hon Stuart Nash	Economic and Regional Development	Ministry of Business, Innovation, and Employment	223
	Forestry	Ministry for Primary Industries (commitments relate largely to fisheries and agriculture)	753
Hon Peeni Henare	Defence	New Zealand Defence Force	483
Hon Willie Jackson	Māori Development	Ministry of Māori Development— Te Puni Kōkiri	145
Hon Jan Tinetti	Internal Affairs	Department of Internal Affairs (commitments relate largely to archives, relationships, and property redress)	57
Hon Michael Wood	Transport	Ministry of Transport	3
		New Zealand Transport Agency	185
Hon Kiritapu Allan	Justice	Ministry of Justice	707
Hon Dr David Clark	State Owned Enterprises	The Treasury	4
	Statistics	Statistics New Zealand	11

Te Haeata records the ‘commitment’ statements from deeds of settlement (including schedules and deeds to amend) and settlement legislation – instances when a party is required to carry out a task. These are generally provisions that contain keywords such as “must”, “will” or “shall”. Some commitments on Te Haeata are process commitments leading to a substantive outcome e.g., appointing a valuer for a deferred selection property.



# Appendix Three: Crown expectations for Crown Treaty settlement commitment holders

## Introduction

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The purpose of these expectations is to support a culture of delivering on Treaty settlement commitments across the Crown so that settlements are durable and support true Treaty partnership.

The Crown must hold itself to account for delivering on the promises made to iwi through historical Treaty of Waitangi settlements. It is of constitutional importance for the Crown to honour all its Treaty settlement commitments to iwi that have been negotiated over more than 25 years.

Redress committed through a deed of settlement and legislation to enact this redress are contractual and statutory obligations. The Crown must take all necessary steps to fulfil those obligations and avoid a breach of contract or failure to adhere to an Act of Parliament. Doing so is crucial for the renewed relationship the parties have committed to through the settlement, as well as managing Crown legal risk.

Te Arawhiti has developed a framework – He Korowai Whakamana – to enhance accountability for Treaty settlement commitments. These expectations for Crown Treaty settlement commitment holders are one of the foundational components of this framework, and provide practical advice and actions for agencies to implement. These expectations are intended for Crown staff responsible for managing and delivering Treaty settlement commitments.

These expectations are intended to be a minimum standard and a foundation to support commitment holders and strengthen the Crown’s capability to uphold the integrity of Treaty settlements. These expectations seek to support Crown Treaty settlement commitment holders to deliver on redress and settlement commitments going forward. These expectations do not create new legal obligations, but instead guide and support processes and decision-making.

This document is informed by Te Arawhiti experience working with post-settlement governance entities (PSGEs) and Crown agencies, and conversations had with PSGEs about their experiences. While your agency’s experience and practices may vary, these expectations seek to support your agency’s existing processes and provide consistency across the Crown. Te Arawhiti is also available, as able, to share experiences with agencies about delivering Treaty settlement commitments.

Te Arawhiti will review these expectations and may amend them from time to time.

*Each party acknowledges that –*

*the settlement is intended to enhance the ongoing relationship between Ngāti Manuhiri and the Crown (in terms of the Treaty of Waitangi, its principles, and otherwise).*

Clause 4.1.4 of the Ngāti Manuhiri Deed of Settlement

## Expectations

### Treaty partnership is at the heart of everything

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#### Why

Treaty settlements provide a renewed relationship between the Crown and Māori. They are a foundation for an enduring Treaty partnership.

The Crown is committed to developing relationships with Māori that realise the promise of Te Tiriti o Waitangi/Treaty of Waitangi for the benefit of all New Zealanders. Treaty settlements should be understood within the wider Māori Crown relationship and the history of Aotearoa New Zealand.

*"The Crown gets focused on transactions. It talks about those as being the end of it. The promise of the Crown is important. Settlement is one moment in time to get iwi back up on their feet – socially, economically, and culturally. The value of the relationship cannot be overestimated or neglected over time.*

*The Crown can be difficult to join the dots. We shouldn't be relying on the settlement being implemented out of sympathy. It is an obligation and a duty."*

Edward Ashby, Trustee Te Kawerau Iwi Tiaki Trust

Section 14 of the Public Service Act 2020 recognises the role of the public service to support the Crown in its relationships with Māori under Te Tiriti o Waitangi/the Treaty of Waitangi. Chief executives are accountable to their Minister for upholding their responsibilities to support the Crown's relationships with Māori.

#### What

Treaty partnership should be a primary thought, not an afterthought.

While your agency is responsible for individual commitments to iwi, it is important to be mindful of the holistic intention of the settlement rather than solely focusing on implementation of individual commitments.

Deeds of Settlement and settlement legislation set out the commitments your agency is responsible for, but also provide the historical context in which the settlement was negotiated and the stated aspirations of the parties for their relationship into the future. This provides context for your agency's specific commitments which, in turn, will help your agency unlock the potential of both iwi and the Crown to realise these aspirations. You may also want to look at iwi annual reports and strategies, available on the post-settlement governance entity's website.

The Crown is committed to honouring Te Tiriti o Waitangi. Treaty partnership is an element of this. This includes fulfilling redress provided in a Treaty settlement. Work with your Treaty partners to find partnership opportunities beyond specified redress to enhance the Māori Crown relationship and achieve mutual objectives.

*The partnership between Ngāti Toa, Kāinga Ora – Homes and Communities, and the Ministry of Housing and Urban Development enables public housing outcomes in Porirua.*

*This opportunity originated from a right of first refusal (RFR) included in Ngāti Toa's Treaty settlement. In light of the RFR over public housing land in Porirua, Ngāti Toa, negotiated a housing partnership with agencies in 2019.*

*The partnership enabled Ngāti Toa to become an established community housing provider, delivering public housing services within western Porirua, and enabled Kāinga Ora to invest in the development of eastern Porirua.*

*This unique agreement recognised the historical and current importance of Ngāti Toa within Porirua, and established a partnership between the parties.*

Example of partnership between Ngāti Toa, Kāinga Ora and Ministry of Housing and Urban Development

#### Action steps

- Know which settled groups your agency has commitments to and partnerships with. Check to see if the redress has been implemented.
- Understand the partnership aspirations of the settled groups your agency has commitments to and partnerships with. Consider whether these aspirations have changed since settlement.
- Understand how your agency can support these aspirations when delivering Treaty settlement redress.
- Know who the relevant PSGEs are, the PSGE leadership and how to contact the PSGE.
- Engage at the right level e.g. PSGE Chairpersons may prefer to engage at a governance level (e.g. Minister), with Chief Executives engaging at the same or appropriate relationship level.
- Understand the relationship value of engaging kanohi ki te kanohi/face to face (where able).
- Understand how your agency's Treaty settlement commitments fit within the wider Māori Crown relationship e.g. how an individual commercial redress commitment sits within the wider context of supporting iwi economic development.
- Understand that PSGEs may need your help with the redress, or support to navigate the many facets of the Crown – to connect with other agencies or the opportunities that may be available within them.
- Keep informed of current issues or topical subjects within the Māori Crown relationship (e.g. legislative reform); contemplate how these matters may impact your Treaty partnership (e.g. impact on the capacity of iwi to engage).

## Understand your agency's Treaty settlement commitments

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### Why

It is necessary to understand the settlement commitments your agency is responsible for as this will assist your agency in upholding the integrity of Treaty settlements and supporting Treaty partnership.

### What

You should know what Treaty settlement commitments your agency is responsible for, who the commitments have been made to, and understand how these commitments operate in practice. This is particularly important before embarking on legislative reform or policy work.

For example, if your agency has a relationship agreement with an iwi, consider how this commitment has been given effect in practice. You should be familiar with the contents of the agreement and deliver on it, for example proactively arranging an annual hui.

### Action steps

- Know what commitments and types of settlement redress your agency is responsible for.
- Know who the commitments have been made to.
- Understand the touch points between your agency's settlement commitments and your organisation's priorities.

## Utilise effective systems to manage your agency's commitments

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### Why

As the volume, complexity and spread of settlement commitments the Crown has made increases, so does the chance of breaching a settlement through failure to deliver a commitment.

Settlement commitments must be effectively managed and implemented to support durable Treaty settlements. Where there is little or no visibility of the status of Crown commitments, there is a risk that your commitments will not be upheld. This will undermine the integrity of Treaty settlements and erode trust and confidence.

*"Iwi are having to go to Court. We are just asking for what you committed to."*

James Brown, Chair Ngāi Tai ki Tāmaki

### What

Your agency must have a system in place to manage its settlement commitments.

It is acknowledged that the nature of commitments varies across agencies, and each agency knows best how to manage their own commitments.

However, it is also important the Crown can look across a settlement as a whole to gauge the status of Treaty settlement commitments. Te Arawhiti has found some settled groups have considered their settlements undermined by an accumulation of issues, mostly small in and of themselves, but taken together severely eroding trust in the Crown to deliver on its commitments.

Te Haeata – the Settlement Portal is a tool for raising the visibility of Treaty settlement commitments. The status of core Crown agency commitments must be entered on Te Haeata to help provide a fuller picture across settlements. The intention is that at the end of 2024 each core Crown agency will report on this data. This transparency will enhance accountability and trust between Treaty partners.

#### *Action steps*

- Have an internal system in place for managing your agency's settlement commitments on a day-to-day basis.
- Know the status of your agency's settlement commitments.
- Update the status of your core Crown agency's settlement commitments on Te Haeata.
- Capture institutional knowledge for settlement delivery (e.g. evidence of completion).

### **Strengthen PSGE relationships**

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#### *Why*

Agencies were often at the table when settlements were negotiated and signed; this relationship continues and builds when a settlement is reached. Proactive relationship management with PSGEs supports settlement delivery and Treaty partnership.

#### *What*

It is expected your agency appropriately resource and manage relationships with PSGEs and/or settlements, for example appointing PSGE relationship managers. This allows PSGEs to easily engage with commitment holders and reduces confusion about how to contact agencies and finding the appropriate contact person. Relationship managers also assist your agency in knowing who the appropriate contact for a PSGE is.

The 'changing face of the Crown' can pose challenges for relationship management. Your agency must ensure that effective handover processes are in place so that institutional knowledge is not lost, and the responsibility to manage relationships is not solely placed on PSGEs.

*"PSGEs are having to induct public servants.  
It's not our job and not where the resource is at."*

Robyn Rauna, CE Hineuru Iwi Trust

To be effective in managing relationships, it is important to:

- be well-versed in your agency's commitments;
- have a working understanding of PSGEs and their interests, priorities and settlement;
- proactively maintain a warm relationship with PSGEs; and
- understand the other contact points within your agency and, where possible, the Crown.

Those managing PSGE relationships should also be aware of others managing PSGE relationships across the Crown, particularly of those working with the same PSGEs. Effective communication between those managing PSGE relationships reduces siloes between commitment holders and contributes to cohesive engagement with PSGEs.

#### *Action steps*

- Have people in place to manage PSGE relationships.
- Ensure that PSGEs know who these contact points are and when these change.
- Have easy access points for PSGEs to ask your agency questions about their settlement commitments.
- Have handover processes in place when staff change roles e.g. ensure PSGEs are informed when staff change, hold introductory hui to establish connection between PSGEs and relevant new staff.
- Know when your agency is meeting with PSGEs.
- Have dedicated systems and processes in place to ensure institutional knowledge about the relationship e.g. records of meetings, records of undertakings etc. is maintained overtime and unaffected by staff turnover.

## Useful resources

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[Te Haeata – the Settlement Portal](#)

[Guidelines for engagement with Māori](#)

[Māori Crown Relations capability framework](#)

[Building closer partnerships with Māori - principles](#)

[Cabinet Office circular CO \(19\) 5: Te Tiriti o Waitangi / Treaty of Waitangi Guidance](#)

[The Red Book - 'Ka tika ā muri, ka tika ā mua Healing the past, building a future'](#)

Iwi annual reports and strategies

Agency statements of intent

# Appendix Four: Crown post-settlement issue resolution pathway

## Introduction

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This guidance explains the Crown's process for resolving post-settlement issues, as set out in He Korowai Whakamana (Appendix One) – the Crown's framework for enhancing oversight of and accountability for settlements of historical Treaty of Waitangi claims.

*A post-settlement issue is where a Treaty settlement commitment (as provided in a settlement deed or legislation) has not been or cannot be delivered as intended.*

*Issues can arise for a number of reasons, for example failure to complete a task within the specified timeframe, an error in a deed, or an unintended consequence etc.*

This approach to issue resolution is based on the Crown's experience in resolving long-standing, complex post-settlement issues. It incorporates feedback from post-settlement governance entities (PSGEs), who encouraged the Crown to focus on maintaining relationships with PSGEs throughout the issue resolution process.

## Purpose

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The purpose of this guidance is to provide a transparent process for resolving post-settlement issues between PSGEs and Crown commitment holders so that the durability of Treaty settlements is upheld.

## Scope

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This process is set out for use by all public service departments, Te Arawhiti, New Zealand Defence Force and New Zealand Police, when working with PSGEs to resolve post-settlement issues. These entities are collectively referred to as 'agencies' in this document.

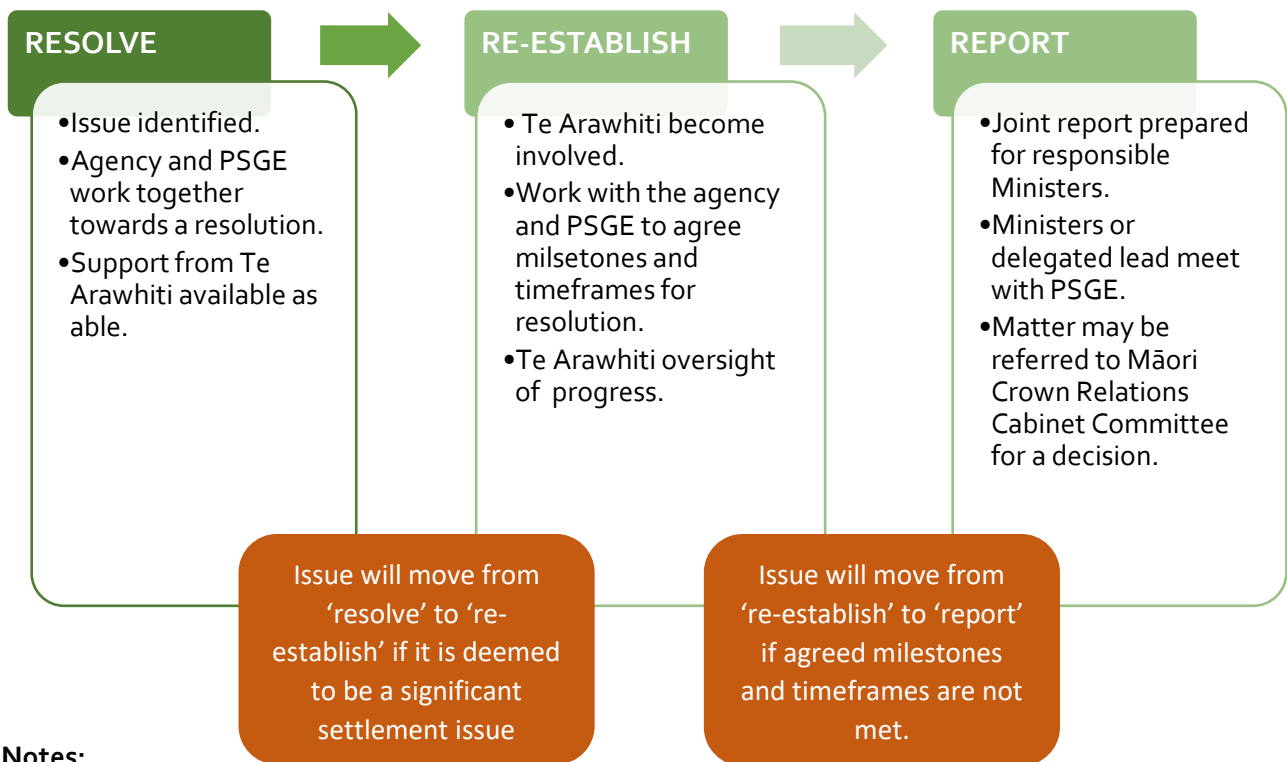
Other Crown entities and local government are out of scope but may find this issue resolution process useful.

## Process

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The post-settlement issue resolution pathway provided for in He Korowai Whakamana is:





**Notes:**

- Issues may de-escalate at any time when they are resolved and relationships restored.
- The pathway to issue resolution is not always linear; an issue may move between phases as partners work towards resolution.
- This process is focused on resolution pathways within the Executive branch of the Crown. It does not replace or remove any options available to PSGEs e.g. through the Courts.

**Phase 1: Resolve**

<b>Trigger</b>	A post-settlement issue is identified and raised either by a PSGE or agency (refer page 1 for definition of a post-settlement issue).
<b>Actions</b>	<ul style="list-style-type: none"> <li>○ PSGE notifies responsible agency of the issue OR responsible agency notifies PSGE of the issue (having notified relevant parties within the Crown).</li> <li>○ The responsible agency notifies Te Arawhiti and updates the settlement commitment delivery status in Te Haeata – the Settlement Portal that there is a 'delivery issue'.</li> <li>○ Partners work together in good faith to resolve the issue as soon as practicable.</li> <li>○ Advice and support are available from Te Arawhiti as able.</li> <li>○ Once the issue is resolved, Te Arawhiti and Te Haeata should be updated again.</li> </ul>

<b>Escalation points</b>	<p>Te Arawhiti will notify the Minister for Māori Crown Relations: Te Arawhiti and Tumu Whakarae, Te Arawhiti.</p> <p>PSGE may choose to write to the responsible Minister or senior Crown official.</p>
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## Phase 2: Re-establish

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If parties agree that a settlement issue has become 'significant', it will move from the resolve phase to the re-establish phase.

This phase is focussed on partners re-establishing the relationship through coming together and identifying a pathway towards resolution.

A settlement issue will be agreed to be '**significant**' if one or more of the following factors are present:

- the Deed or Legislation has been breached;
- the redress cannot be delivered as intended;
- an all-of-Crown view is required;
- there is a material relationship breakdown between parties;
- there is a lack of reasonable progress or engagement; or
- a number of issues have arisen, and the cumulative impact is significant.

Accountability and oversight are enhanced through a notification to relevant senior Crown officials:

- Relevant Crown agency Chief Executive is notified to enhance Crown accountability;
- PSGE may wish to notify their Chief Executive and Chair (if not already aware) and
- Public Service Commissioner is notified, as lead of the public service, to give oversight of post-settlement delivery issues and the health of the Māori Crown relationship.

<b>Trigger</b>	<p>The issue will be escalated to the re-establish phase if parties agree it has become a '<b>significant settlement issue</b>' (refer criteria above).</p> <p>Either the PSGE or agency can choose to escalate an issue with Te Arawhiti at this stage, if they believe it meets the criteria.</p>
<b>Actions</b>	<ul style="list-style-type: none"> <li>○ PSGE or Crown organisation notifies Te Arawhiti.</li> </ul>

	<ul style="list-style-type: none"> <li>○ Te Arawhiti works with the organisation and PSGE to agree a pathway to resolution, including milestones and timeframes.</li> <li>○ Partners work together in good faith to achieve the agreed milestones within the agreed timeframes.</li> <li>○ If milestones and timeframes become unachievable, partners should explore adjusting them if mutually agreeable.</li> </ul>
<b>Escalation points</b>	<p>Once deemed a significant settlement issue, Te Arawhiti will send a notification to the relevant Chief Executive and notify the Public Service Commissioner.</p> <p>The PSGE may wish to notify their trustees (if not already aware of the issue).</p>

### Phase 3: Report

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If partners are unable to achieve the agreed pathway to resolve the issue and reach an impasse, intervention is sought by bringing together PSGE leaders and Ministers, Rangatira to Rangatira, to discuss the issue.

Relevant Ministers may take a joint report to Cabinet for decision making if needed.

It is expected that these escalation points will be used only after all other avenues for making progress have been explored in the resolve and re-establish phases.

<b>Trigger</b>	A significant settlement issue can be escalated to the report phase if the agreed pathway to resolution has not been met and partners cannot agree on adjustments to timeframes.
<b>Actions</b>	<ul style="list-style-type: none"> <li>○ A joint report is prepared by Te Arawhiti and the responsible Crown organisation to responsible Ministers, with excerpts contributed from the PSGE if they so desire.</li> <li>○ The PSGE may wish to approach Ministers directly to support their involvement in the process.</li> <li>○ The relevant agencies will discuss the proposed approach to the draft report with the PSGE in an open and transparent way.</li> <li>○ Ministers provide direction on the issues and next steps.</li> <li>○ Rangatira to Rangatira hui with PSGE and Ministers or delegated lead to discuss resolution of the issue and next steps.</li> </ul> <p>At this point the issue may go back to the agency and PSGE to action resolution, with Te Arawhiti and relevant Ministers to maintain oversight.</p>

	<p>If the issue remains unresolved:</p> <ul style="list-style-type: none"> <li>○ A report to relevant Ministers and PSGE is prepared, detailing rationale for non-resolution and seeking agreement to a new or amended way forward to resolve the issue.</li> <li>○ The relevant portfolio Minister may seek direction to resolve the issue from the Māori Crown Relations Cabinet Committee, with the support of the Minister of Māori Crown Relations: Te Arawhiti, in consultation with the PSGE.</li> <li>○ Māori Crown Relations Cabinet Committee provides direction on the issue.</li> <li>○ Direction taken to Cabinet for approval.</li> <li>○ Action undertaken as directed by Cabinet, in conjunction with the PSGE.</li> <li>○ Report back to relevant Ministers, PSGE trustees and Public Service Commissioner on action undertaken.</li> </ul>
<b>Escalation points</b>	<p>Responsible Ministers</p> <p>Māori Crown Relations Cabinet Committee (if required)</p> <p>Cabinet (if required).</p>

Note: Reports to Ministers and Cabinet decisions can be sought at any stage of the issue resolution process if appropriate. It is not limited to the 'report' phase.



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Report of the Cabinet Māori Crown Relations: Te Arawhiti Committee: Period Ended 16 December 2022

s9(2)(f)(v)  
confidentiality  
of advice by  
Ministers and  
officials

On 19 December 2022, Cabinet made the following decisions on the work of the Cabinet Māori Crown Relations: Te Arawhiti Committee for the period ended 16 December 2022:

[REDACTED]	[REDACTED]	[REDACTED]
MCR-22-MIN-0023	<b>He Korowai Whakamana - Enhancing Oversight of Treaty Settlement Commitments</b> Portfolio: Māori Crown Relations Te Arawhiti	CONFIRMED
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Rachel Hayward  
Secretary of the Cabinet