



GUIDANCE: CROWN POST-SETTLEMENT ISSUE RESOLUTION PATHWAY

March 2024



Introduction

This guidance explains the Crown's process for resolving post-settlement issues, as set out in He Korowai Whakamana – 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.

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

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.

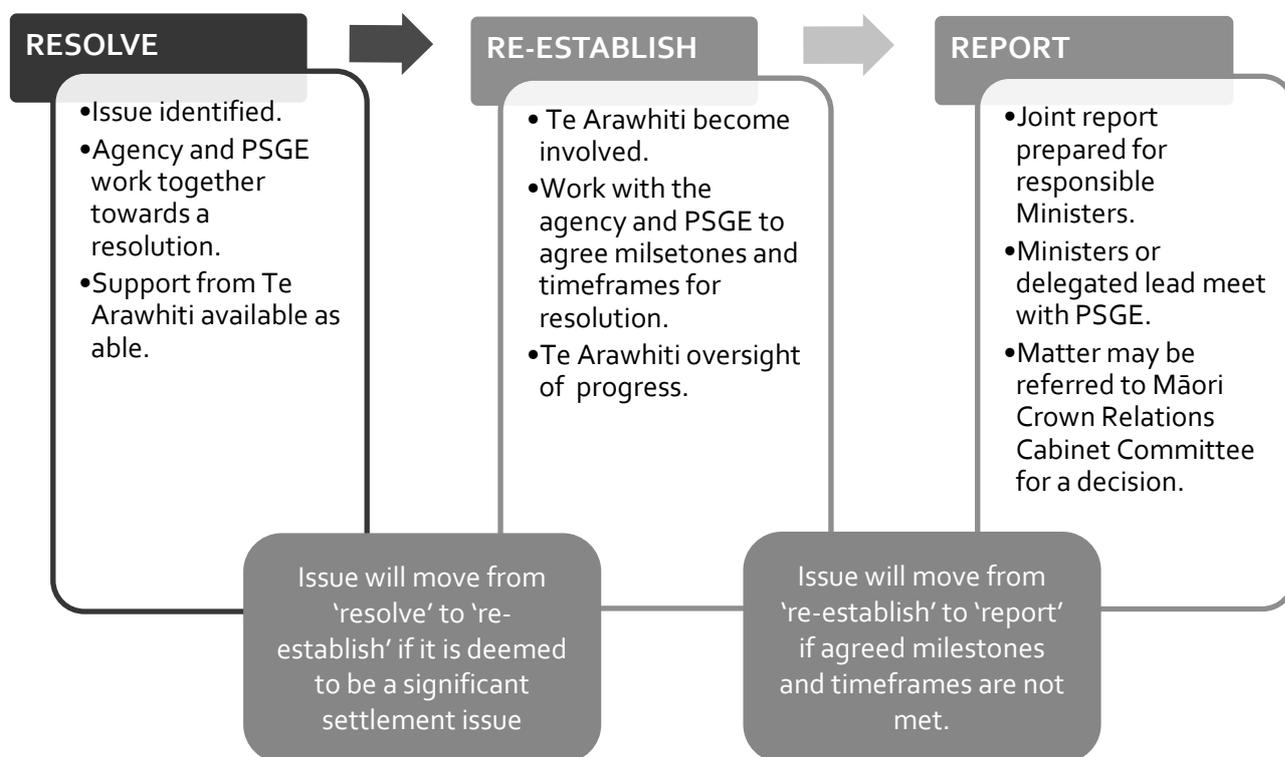
Scope

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

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



Comments:

- 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, for example, through the Courts.

Phase 1: Resolve

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

Phase 2: Re-establish

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.

Trigger	<p>The issue will be escalated to the re-establish phase if parties agree it has become a 'significant settlement issue' (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>
Actions	<ul style="list-style-type: none"> ○ PSGE or Crown organisation notifies Te Arawhiti. ○ Te Arawhiti works with the organisation and PSGE to agree a pathway to resolution, including milestones and timeframes. ○ Partners work together in good faith to achieve the agreed milestones within the agreed timeframes. ○ If milestones and timeframes become unachievable, partners should explore adjusting them if mutually agreeable.
Escalation points	<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

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.

Trigger	<p>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.</p>
Actions	<ul style="list-style-type: none"> ○ 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.

	<ul style="list-style-type: none"> ○ The PSGE may wish to approach Ministers directly to support their involvement in the process. ○ The relevant agencies will discuss the proposed approach to the draft report with the PSGE in an open and transparent way. ○ Ministers provide direction on the issues and next steps. ○ Rangatira to Rangatira hui with PSGE and Ministers or delegated lead to discuss resolution of the issue and next steps. <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"> ○ 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. ○ 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. ○ Māori Crown Relations Cabinet Committee provides direction on the issue. ○ Direction taken to Cabinet for approval. ○ Action undertaken as directed by Cabinet, in conjunction with the PSGE. ○ Report back to relevant Ministers, PSGE trustees and Public Service Commissioner on action undertaken.
Escalation points	<p>Responsible Ministers</p> <p>Māori Crown Relations Cabinet Committee (if required)</p> <p>Cabinet (if required).</p>

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.