

Ratification

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KEY POINTS

- Begin developing your register of members immediately your Deed of Mandate is recognised by Ministers (if you have not already begun registrations)
 - Design the registration form carefully. Ensure it covers all matters that will be required for postal ballots, panui and other on-going communication with members, including compliance with the Privacy Act 1993
 - Set up Freepost facilities and an 0800 number so members can easily contact the mandated body – if you have a website provide for on-line registrations
- Establish a realistic ratification work plan
- Discuss the ratification process with Crown officials and ensure they endorse the plan (there is no point having a ratification the Crown will not recognise)
- Have a ratification ballot for the Deed of Settlement and post-settlement governance entity at the same time – it saves time, labour and money (have two distinct voting papers)
- Prepare a Ratification Booklet summarising the proposed settlement and/or post-settlement governance entity so members make informed decisions -discuss this with Crown officials
- Hold a series of hui both in and outside the rohe to (1) explain the Deed of Settlement and governance entity, and (2) give members a chance to ask questions and give feedback
- Use an independent returning officer to conduct the ballot and count the votes

REMEMBER...

- Crown observers at hui protect the mandated body from unjust accusations the mandated body did not use a fair process (Crown observers keep the mandated body honest too)
- A high 'yes' vote from the claimant group is more likely if the mandated body has had effective and open communications with members from the start (no surprises)
- Don't take short cuts on the ratification process – they may take you straight to the High Court or Waitangi Tribunal

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INTRODUCTION

Before settlement can be completed the claimant group must ratify the initialled Deed of Settlement and the proposed governance entity that will receive and manage the settlement assets. This section discusses the ratification process including:

- establishing a register of claimant group members
- the type of information presented to the claimant group and ratification hui
- conducting a postal ballot, and
- the advantages of running a single ratification process for both the Deed of Settlement and post-settlement governance entity.

BACKGROUND

During ratification the claimant group as a whole, approve:

- the Deed of Settlement, and
- the post-settlement governance entity.

These two stages used to be ratified at different times but recently some mandated bodies have completed them at the same time.

Note: Although ratification may be conducted through the same postal ballot, claimants cast two distinct votes: one for the Deed of Settlement, the other for the post-governance settlement entity.

The purpose of ratification is to enable eligible claimant group members to make an informed decision on whether or not they wish to accept the Deed of Settlement, and governance entity. It is a critical step in the settlement process.

Key aspects are prescribed by the Crown. It requires the sign-off on the mandated body's proposed ratification process before the ratification itself to ensure the mandated body follows adequate process.

The Crown will not sign the Deed of Settlement if they:

- find the processes inadequate, or
- find the level of support for settlement insufficient.

RATIFICATION WORK PLAN, PROCESS TIME

As with all key settlement stages the mandated body should prepare a ratification work plan, ensuring that sufficient time is set aside for the process. The plan should start six to nine months before the estimated Deed of Settlement signing date so the plan will be confirmed and ready to go well in advance of the actual voting.

The Crown must review and agree to the proposed ratification work plan. If the plan does not have Crown approval, there is no point in the mandated body implementing it, because even if it is 'successful', that is, the claimant group votes to accept the proposal(s), the Crown is unlikely to recognise that or sign the Deed of Settlement.

COMMUNICATING WITH CLAIMANTS

It is vital for the mandated body to establish ongoing and meaningful communication with the claimant group and maintain it throughout the entire settlement process – its conduct and performance will have a significant bearing on the outcome of the vote on the Deed of Settlement. Ratification typically occurs over six to eight weeks but might more accurately be described as starting when advertising for ratification hui begins.

Once the mandated body and Office of Treaty Settlements have agreed on the ratification work plan, the mandated body must follow the process to the letter. While it may be tempting to take shortcuts or cut across certain agreed processes – don't do it. If a variation to the ratification work plan is necessary, then seek the Crown's agreement to the specific change.

Claimants must be on a claimant group register to be eligible to vote. The mandated body should design and initiate the register as soon as the Crown has recognised its Deed of Mandate. This is discussed below.

CLAIMANT GROUP REGISTER

A key requirement of the Crown is that all eligible claimant group members must be able to exercise a postal vote on whether or not to accept the proposed Deed of Settlement and post-settlement governance entity.

Establishing the claimant group register

The Deed of Mandate chapter of the guide states that to conduct a postal vote the mandated body must have an accurate and robust register that forms the basis of the 'voting population' for ratification purposes. The usual voting age is 18 years.

Too often, little attention is paid to setting up and maintaining the claimant group register at the early stage of negotiations. As a consequence there is a rush of activity in the final weeks of the ratification work plans to boost numbers on the voting register.

Low voter participation

Select committees are frequently concerned about low voter participation for ratification. This is covered in the Settlement Legislation chapter.

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Managing the claimant group register

There are three components to voter participation:

- the percentage of known claimant group members registered to vote
- the percentage of the registered who vote, and
- the registered voters as a percentage of the iwi/overall claimant group.

1 The percentage of claimant group members registered to vote

If an iwi has a population of six thousand adults identified in the latest census but only nine hundred are registered, that is clearly inadequate. If all nine hundred voted in favour of the proposal, that represents only fifteen percent of the iwi population.

Although the mandated body cannot make eligible members register if they do not want to, it must aim at a register well in excess of fifty percent of the census figure. Apparent low participation rates appear due in part, to issues related to the way the register is managed, that is, claimant group members are not enrolled early enough. As discussed elsewhere in the Guide the importance of maintaining a claimant register throughout settlement negotiations cannot be stressed enough.

2 Percentage of registered claimants who vote

As the percentage of registered members who vote is important, the mandated body must be able to demonstrate that:

- members' addresses are up-to-date, and
- voting papers were sent to all registered members.

The vote return rate is likely to reflect the level of involvement registered members feel with the mandated body.

If the mandated body has an effective communications strategy and members are kept informed during negotiations they are more likely to vote and to vote 'yes'. On the other hand, if members who have not been kept informed of the claim's progress receive a voting paper out of the blue it will mean little to them and they are likely to ignore it.

3 Percentage of claimant group members registered to vote

The Crown does not have a fixed percentage of claimants who must be registered to vote. As a general rule, the proportion decreases with the size of the iwi, thus a 2000 member iwi would need a higher percentage of voters than a 50,000 member iwi. The mandated body is urged to discuss acceptable voter thresholds with Office of

Treaty Settlements when preparing the ratification work plan.

Percentage of votes cast that support the 'yes' vote

The third component is the actual percentage of votes cast that support the 'yes' vote. This needs to be high. There is no set percentage but given that the 'yes' vote has been well above eighty percent for recent settlements – regardless of the participation rate – the Crown would have good reason to be concerned with a 'yes' vote below eighty percent. It would suggest something was awry, especially if there was a low number of ballot papers retrieved.

Remember: those who oppose the mandated body are often also reluctant to register to vote. They influence results by voluntarily removing their right to vote on ratification of the Deed of Settlement and/or governance entity.

REGISTER APPLICATION FORM

A vital part of the register is the application form. It should, either directly or by cross-reference, contain all the terms and conditions upon which the eligible member will (if accepted) be registered,

The mandated body should approach a number of established governance entities for examples of application forms and register recording systems. Such forms are often accessible on websites.

Matters relevant to both the forms and/or rules of the mandated body/governance entity are set out below, eg eligibility, authority, privacy, etc.

ELIGIBILITY TO REGISTER

Only members of the claimant group are eligible to have their names on the register – it is their claims that are being settled by the Deed of Settlement, and their settlement redress which will be owned and managed by the governance entity. Eligibility is of fundamental importance to the robustness and accuracy of a register for registration purposes.

If the register holds the names of ineligible claimant group members, the validity of any postal vote can be called into question. A flawed register will also effect future entitlements for members of the claimant group.

DEFINING WHO IS ELIGIBLE TO REGISTER

The mandated body defines the core 'set' of those eligible to register in the Deed of Settlement. For register purposes they are divided into the 'base set' and 'subsets'.

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For example the core ‘set’ in the Deed of Settlement claimant definition may be ‘Iwi A’, and the register entitlement may be ‘subset hapū 1’, ‘subset hapū 2’, ‘subset hapū 3’ and so on.

Whatever ‘subset’ categories are used, the core ‘set’ must be fully covered so all potential eligible members can register.

PRIVACY ISSUES AND INFORMATION SCOPE

The Privacy Act 1993 applies to the collection and storage of personal information held in registers and contact databases. Therefore, a ‘Privacy Act’ clause must be included in the application form. Specific examples of governance entity register forms are on various websites.

The application form should state the intended scope or use of the information obtained. In this case the mandated body collects and holds personal information for stated purposes, initially general contact then specific Deed of Settlement/claimant group ratification/postal vote purposes.

After ratification the governance entity will own and manage the claimant group register. To ensure it does not have to replicate the registration process the mandated body conducted (and face the same costs), the register application form must include a clause which specifically allows the applicant’s personal information to be transferred to the governance entity once the role of the mandated body concludes.

Applicant must sign completed form

The applicant must sign the completed register application form to:

- confirm all the information they provide, and
- agree to the terms and conditions set out in the form (this clause can be extended as widely as required).

APPROVING / REJECTING APPLICATIONS

It is important that the voter registration process includes a system for receiving, considering and approving/rejecting application forms. In the interest of fairness and on the basis of natural law, the mandated body must establish an appeal process for claimant group members who have their application rejected. This may be included in the rules of the mandated body.

KEEPING REGISTER CURRENT

A major problem for all organisations is keeping registers up to date – people tend to change address without advising them. By the time a mandated body proceeds to formal ratification many contact details on

the register may be incorrect and voting papers may not ‘reach the target voter’. This contributes to a lower vote participation rate. To overcome this, the mandated body should continually check, update and amend register details.

When sending voting papers, record and store all ‘return to sender’ envelopes as insurance if an intended recipient challenges the vote on the grounds that they ‘did not get a chance to vote’. Such challenges are a problem for the Crown so it is vital to have a paper trail that clears the mandated body administration of any criticism concerning management of the register.

ISSUES OF USING EXISTING REGISTER

If the mandated body is an existing entity it may already have a register. If so, the mandated body should ensure that all the issues identified (above) have been covered, and the ‘old’ register is compatible with and appropriate to the ‘new’ register.

ADVERTISING / COMMUNICATING WITH MEMBERS

To apply to have their names on the register, eligible members need to know there is a register. As part of the overall ongoing ratification work plan the mandated body should consider and implement ways to ensure eligible members are aware of:

- the existence and purpose of the register
- their eligibility to apply to register, and
- how to apply to get on the register.

RATIFICATION BOOKLET

Part of the ratification information process includes sending eligible registered members a ratification pack containing a ratification booklet and postal voting form. The booklet summarises the proposed settlement (and/or governance entity) so eligible claimant group members make informed decisions when they vote.

The ratification booklet should not be too detailed or peppered with lengthy Deed of Settlement specific terms. It is not intended to replicate the Deed of Settlement or post-settlement governance entity Trust Deed. On the other hand it needs enough detail to inform eligible claimant group members. Approach other mandated body representatives for an idea of what is required.

It is a matter of balance, judgement is required in terms of what to include or omit. More rather than less detail is better and may reduce potential for criticism in the select committee. As the booklet is a summary of the Deed of Settlement and/or governance entity it is important that it clearly states that fact and explains that the full

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documents are available if required. Some mandated bodies have made the full Deed of Settlement available at the desk of the local Te Puni Kōkiri office, a strategy the mandated body may wish to consider.

Office of Treaty Settlements and Te Puni Kōkiri officials will want to view, comment on and sign off the ratification booklet before it is sent to eligible claimant group members. This is to ensure it accurately reflects the intent and content of key elements of the Deed of Settlement. A mandated body that does not consult and tries to 'go it alone' at this stage risks wasting a lot of time and money if the Crown does not accept the voting outcome because of inaccurate information in the ratification booklet.

A final important task is coordinating, printing and distributing the papers giving the dates of pre-agreed events in the ratification process. This requires considerable planning, a function of the project manager.

RATIFICATION HUI

The purpose of ratification hui is to explain the Deed of Settlement/post-settlement governance entity. It is important that the mandated body hold hui both inside and outside the traditional rohe. As a general rule, hui outside the rohe should be in areas where 'significant numbers' of claimant group members live.

Hui are usually held mid-way through the ratification process after claimant group members have had time to receive and consider the ratification booklet.

Typically hui presenters from the mandated body 'walk through' the content of the booklet, encouraging questions from members and giving feedback. Registered voters who wish to, may submit their postal vote at the hui.

CROWN OBSERVERS

As with the Deed of Mandate, the Crown will want observers (usually from Te Puni Kōkiri) at the ratification hui. They are particularly interested in numbers attending, issues raised and the discussion. While claimants may criticise this requirement, it is in the best interests of the mandated body to have neutral observers attending. Among other things, the observers provide independent reports to Ministers on what actually happened. This is important – it is not uncommon for officials and Ministers to receive correspondence from members who attended the hui, containing conflicting views of what transpired. Keep in mind that Ministers will be reluctant to move forward if different factions claim different voting figures from the hui.

STICK TO THE SCRIPT

The Deed of Mandate chapter notes that when hui are held for specific purposes it is important to not deviate from the stated (and advertised) purposes. This is no different for ratification hui.

An important feature of ratification is the requirement for a postal vote. Accordingly, no resolution should be made or vote taken at the actual hui. While it is not uncommon for resolutions to come from the floor (both for and against) these must not be accepted; those attending must be reminded of the requirement for postal voting. Mandated bodies must not change the wording of a resolution part way through consultation as this could invalidate the result.

POSTAL BALLOT AND INDEPENDENT RETURNING OFFICER

The Crown's basic principle in relation to ratification is that all adult members of the claimant group must have an opportunity to consider the issues and have their say. The Crown considers:

- a postal ballot the most effective way of reaching the maximum number of members and recording their will, and
- such a vote should be taken and counted by an independent returning officer.

An independent returning officer will typically be an individual or organisation with the relevant skills and experience but not associated with the mandated body. There are a number of such individuals and organisations. While the onus is on the mandated body to pick its own independent returning officer, Office of Treaty Settlements officials should be consulted as part of the overall approved ratification plan.

Some mandated bodies may think ratification decisions should be in the traditional way, ie, members at the hui make their preference known in that forum. However, the Crown requires a postal vote. If the register is robust and accurate and appropriate processes are in place, there is less uncertainty and risk in a postal ballot conducted by an independent returning officer, compared with a show of hands at hui.

CONTEMPORANEOUS DEED OF SETTLEMENT / GOVERNANCE ENTITY RATIFICATIONS

Ratification for a Deed of Settlement and governance entity used to commonly occur separately, with similar processes followed but at different times, the governance entity ratification usually many months after the Deed of Settlement was ratified. This was inefficient:

- the mandated body spent considerably more time and

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money on repeat ratification processes

- settlement took longer than it might have
- claimants were prone to ‘settlement fatigue’ as they had to attend additional hui (possibly translating to lower voter participation).

Some mandated bodies have recently undertaken the two processes by conducting two separate and distinct ratification votes, one for the Deed of Settlement and one for the governance entity, at the same time as part of the same process.

The Crown supports this approach. The mandated body should therefore consider ratifying the Deed of Settlement and governance entity at the same time. This increases the mandated body’s workload for a short time but benefits include cost saving, minimising claimant group fatigue and settling earlier. Such benefits significantly outweigh the extra workload. Mandated bodies and the Crown should agree to this process when agreeing the Terms of Negotiations.

CROWN APPROVAL OF RATIFICATION

Office of Treaty Settlements and Te Puni Kōkiri officials monitor and observe both the hui and ratification processes the mandated body conduct. If the processes are inadequate or there is insufficient support for settlement, the Crown will not sign the Deed of Settlement.

Once ratification is complete, the independent returning officer provides the results to the mandated body which reports them to the Crown. Officials from the Office of Treaty Settlements and Te Puni Kōkiri each write a report and make a recommendation to their respective Minister about the adequacy of the ratification process and whether the results show a sufficient level of support for the Deed of Settlement and post-settlement governance entity within the claimant group.

Officials do not advise the mandated body what a ‘sufficient level of support’ will be, in advance of ratification. The Crown always maintains discretion to accept an outcome or not. However, levels of support for ratification for past settlements are on the public record. The Office of Treaty Settlements may provide these results to the claimant group in advance of ratification so they get a sense of what the likely threshold of acceptable result will be. The four key indicators are:

- size of the census population
- percentage of census population on the register
- percentage of the registered population participating in the vote
- percentage of voters voting in favour.

NUMBERS ON CLAIMANT GROUP REGISTER

The mandated body must check with the Office of Treaty Settlements that the register has sufficient names on the roll before sending out voting papers. The Crown must be satisfied enough names are registered to justify a vote being taken – there is sometimes a significant variation between census and register figures. As discussed, if the census indicates the claimant group population is around 50,000 but the register has only 2,000 on it the Crown will be very unlikely to want to proceed to a vote.

PARTICIPATION RATE

The participation rate is expressed as a percentage of those who cast a vote relative to the number of ratification packs mailed to members. Mandated bodies will be able to obtain rates of participation figures for earlier Settlements from the Crown. In general rates range from forty to sixty percent, which are not too dissimilar to local body rates.

Return rates from postal ballots are often disappointing. There is little the mandated body can do about voter apathy except ensure the ratification plan and communication strategy contain measures to maximise voter input and participation.

VOTES FOR/AGAINST

Past ratification results show that claimant group members who vote, overwhelmingly accept the Deeds of Settlement and post-settlement governance entities. While a number of observations may be made from this, it does highlight the importance of the mandated body ensuring both registration and participation rates are as high as possible.

