Chapter 13

Settlement Legislation

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INTRODUCTION

All settlements are implemented, either wholly or in part, by settlement legislation. This section:

- discusses the process of drafting settlement legislation
- comments on the mechanisms and issues to be aware of in transferring redress from a Deed of Settlement to a Bill in Parliament
- outlines the Select Committee process (a key stage in enacting settlement legislation), and
- explains how the claimant group can best engage in the process.

SETTLEMENT LEGISLATION

To complete settlement, legislation must be drafted, introduced and passed by Parliament. In a typical Deed of Settlement, the Crown undertakes to introduce settlement legislation into Parliament within a certain period once:

- the Crown is satisfied the mandated body has established a governance entity
- the claimant group has ratified the Deed of Settlement and governance entity, and
- the governance entity has signed a Deed of Covenant undertaking to comply with the terms of the Deed of Settlement.

The Deed of Settlement will provide that the settlement legislation must include:

> *'...all matters required by this Deed to be included in the Settlement Legislation...'*

Settlement legislation is typically required to:

- ensure finality by removing the jurisdiction of the Courts and the Waitangi Tribunal to re-open the settled claims and/or Deed of Settlement
- provide acknowledgments such as statutory acknowledgments and overlay classifications
- 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.

It is important that all matters to be implemented by settlement legislation are included in the Deed of Settlement. If there is no appropriate cross-reference in the Deed of Settlement the governance entity will find it difficult to have such a clause included in the settlement legislation. A common phrase in the Deed of Settlement is: *'The Settlement Legislation will provide that...'*

Note: This clause does not explicitly prohibit matters that are not in the Deed of Settlement from being in the settlement legislation.

Crown flexibility on settlement legislation

There are examples of settlement legislation clauses that are in the interests of the claimant group which did not originate from the Deed of Settlement.

For example, the Te Arawa Lakes Settlement Act 2006 provides for a tax neutral asset transition from the old Arawa Māori Trust Board to the new Te Arawa Lakes Trust (the governance entity), yet it is not mentioned in the Deed of Settlement. However, this is the exception rather than the rule. The mandated body should not expect provisions in the settlement legislation without a corresponding Deed of Settlement reference.

The point is, the Crown is willing, in limited circumstances, to agree to settlement legislation wider than the Deed of Settlement if it will assist the claimant group overall. This is a positive initiative. Nevertheless, the mandated body will need to seek such provisions if it wants them in the Settlement Bill.

Participation in drafting the Settlement Bill

The Deed of Settlement will give a date by which settlement legislation must be drafted and introduced into Parliament, typically six to nine months. The mandated body must be involved in drafting, agreeing to and signing off the settlement legislation before it is introduced into Parliament.

Experience shows there is a risk of gains and benefits agreed to in the Deed of Settlement being diluted or even changed during legislative drafting. Accordingly the mandated body should ensure that the Deed of Settlement ensures they can be closely involved in the drafting process.

For example, section 4.2 of the Affiliate Te Arawa Deed of Settlement provides that settlement legislation proposed by the Crown for introduction must be in a form that:

> *'...the Governance Entity has notified the Crown is satisfactory to the Governance Entity...'*

The mandated body and the Crown should agree a timeframe for passing the settlement legislation.

SELECT COMMITTEE PROCESS

One of the most gruelling and demanding processes for the mandated body towards the end of the settlement is the Parliamentary Select Committee. Once the settlement legislation (Settlement Bill) has been introduced and passed its first reading it is referred to the relevant select committee, for a Settlement Bill this is the Māori Affairs

Select Committee. The select committee formally calls for and receives submissions on the Settlement Bill and reports back to Parliament.

The Deed of Settlement includes a provision that the claimant group must support the settlement legislation once it is introduced to Parliament.

In practice this means that the governance entity and/or mandated body and the Crown, through Office of Treaty Settlements, work closely together during the entire select committee process. This is very important; in many ways the select committee is the last opportunity for those opposed to the settlement to express their views.

BINDING DEED OF SETTLEMENT VERSUS SELECT COMMITTEE POWERS

The Settlement Bill must reflect the agreement reached in the Deed of Settlement between the Crown and the claimant group (signed by the mandated body or the post-settlement governance entity). This limits the degree to which the select committee can change the effect of the Settlement Bill if such changes impact on the effect of the Deed of Settlement.

The following extract from the Māori Affairs Select Committee report on the Ngāti Mutunga Claims Settlement Bill, describes the limitations the select committee is under:

> *'In considering this bill we have been mindful of the constraints placed on us by the rules relating to the consideration of legislation to confirm agreements, such as settlements of Treaty grievances and international agreements. These mean that neither a select committee nor the committee of the whole House can substantively amend such bills in a way that is not acceptable to the parties to the deed or treaty being implemented. We are also constrained by the scope rule as prescribed by Standing Order 288(2). Bills that implement international treaties or deeds of settlement of claims under the Treaty of Waitangi have a particularly narrow scope. Any amendments recommended must be consistent with the treaty or the deed concerned.'*

COMMON SELECT COMMITTEE THEMES

A review of Māori Affairs Select Committee Reports back to Parliament on the last six Settlement Bills reveals common themes and a number of settlement-specific issues.

It is useful for mandated bodies to recognise the common themes from the outset (ie, at the start of settlement processes) so they can put measures in place to accommodate and mitigate any such issues in their settlement process. Themes common to many settlements are shown in Table 1 below.

Settlement	Overlapping interests	Mandate	Definition	Ratification	Quantum/ Financial redress
Ngāti Mutunga	×		×		×
Te Arawa Lakes		×			×
Ngā Raurū	×	×	×		
Ngāti Tuwharetoa (Bay of Plenty)			×		
Ngāti Awa	×			×	
Ngāti Tama	×	×		×	

Table 13.1: Common themes in six settlements

The extract below from Select Committee Reports on the Settlement Bills shows issues arise during the committee process. The mandated body should take cognisance of them.

Ngāti Mutunga Settlement Bill

The select committee received five submissions and heard submissions in New Plymouth. They reported back on the following issues:

- assessment of quantum and the lack of transparency
- costs of transferring assets from existing governance entities to the post-settlement governance entity
- definition of Ngāti Mutunga, which included historical hapū – the concern being this presented a risk to Ngāti Mutunga unity
- the Adoption Act 1955 – briefly, those legally adopted, but without whakapapa to Ngāti Mutunga, could not be excluded as beneficiaries
- opposition to the vesting of recreational reserves in Ngāti Mutunga – these submissions were presented by the New Plymouth District Council, and
- overlapping claims – submissions were filed in opposition to the offer of redress within an area of overlap with other hapū/iwi.

Te Arawa Lakes Settlement Bill
The select committee received 20 submissions and heard 17 in Rotorua. They reported back on the following issues:
- mandate – submissions opposing the recognition of mandate were made in the name of Ngāti Whaoa, Ngāti Makino and Ngāti Rangitihi
- submissions in the name of Ngāti Whaoa opposed the inclusion of Lake Opōuri/Ngāpouri in the settlement on the basis that this lake should be returned to Ngāti Whaoa solely
- the process of establishment and the structure of the post-settlement governance entity
- adequacy of the annuity and financial redress
- the degraded environmental state of the lakes
- separation of the lakebeds and waters etc – the Crown stratum, and
- jurisdiction of Environment Waikato.

Ngā Raurū Settlement Bill
The select committee received five submissions and heard submissions in Whanganui. They reported back on the following issues:
- overlapping interests – particularly the lack of acknowledgement of Whanganui interests between Kai Iwi and Whanganui Rivers and concerns with elements of exclusive redress
- the Adoption Act 1955 – briefly, those legally adopted, but without whakapapa to Ngā Raurū, could not be excluded as beneficiaries
- mandate – select committee noted the 92.3% ratification for Deed of Settlement and 94.2% ratification of governance entity
- Wai 772 – a group had purported/sought to withdraw mandate in order to take part in separate negotiations but the Crown declined to negotiate with that group
- te Reo – Ngā Raurū-specific dialect was preferred
- translation – concern with the quality of the translation, and
- New Zealand First/National view – topuni (overlay classification) values should not be included in legislation.

Tūwharetoa (Bay of Plenty) Settlement Bill
The select committee received five submissions and heard submissions in Kawerau. They reported back on the following issues:
- definition – 'Ngāti Tuwharetoa (Bay of Plenty)' preferred
- definition of 'whāngai Ngāti Tuwharetoa', and
- Geothermal Statutory Acknowledgement.

The Ngāti Awa Settlement Bill
The select committee received eight submissions and heard six submissions in Whakatāne. They reported back on the following issues:
- ratification of the Deed of Settlement – claims: that voting should have been done by hapū representatives; and, that the negotiators failed to get best settlement offer
- overlapping claims – particularly to the Matahina Crown Forest License lands
- Ohineterakau nohoanga, and
- ratification of the governance entity – claims: two hapū did not support ratification; level of support too low; postal ballot removed hapū role.

The Ngāti Tama Settlement Bill
The select committee received ten submissions and heard approximately three and a half hours of submissions in New Plymouth. They reported back on the following issues:
- mandate – particularly in relation to the Ngāti Tama/Ngāti Maniapoto overlap, the select committee accepted that the mandating process was inadequate
- overlapping claims – Ngāti Maniapoto
- ratification of Deed of Settlement and post-settlement governance entity – particularly the low participation in ratification of governance entity, and
- National Party view – concern with provision of preferential rights to coastal space.

Report back and second reading of the Bill
After the select committee reports back to Parliament, Parliament conducts a second reading of the Settlement Bill. The reading is the main debate on the aims and objective of the Settlement Bill. A vote is taken and if the Bill is supported by a majority of Parliament it moves to the next stage.

The next stage consists of clause by clause consideration of the Settlement Bill by the Committee of the Whole House – a committee all the Members of Parliament. The Bill is debated in detail.

Third and final reading of the Bill
The final Parliamentary stage is the third reading of the Bill in its final form. It is at this stage that Parliament votes whether to pass or reject the Settlement Bill.

Once Parliament votes to pass a Settlement Bill there is one final step before it becomes law, the Royal Assent.

The Royal Assent is given when the Sovereign or the Sovereign's representative in New Zealand, the Governor-General, signs the Settlement Bill. The Bill then becomes law; enactment is usually 28 days following Royal Assent.

The 28 days allows the Crown and the post-settlement governance entity time to arrange the transfer of assets and other actions required to put the Settlement Act into effect.

LEGISLATION – DEED OF SETTLEMENT TO SETTLEMENT ACT

Both the time from signing the Deed of Settlement to the third reading of the Settlement Bill and each the stage between, can vary significantly, as shown in Table 13.2 below.

Settlement	Deed ratified and signed	Legislation introduced	Time (months)	Legislation passed	Time (months)
Ngāti Mutunga	31 Jul 2005	20 Jul 2006	12	21 Nov 2006	4
Te Arawa Lakes	18 Dec 2004	6 Apr 2006	16	25 Sep 2006	5
Ngā Raurū	27 Nov 2003	21 Dec 2004	13	27 Jun 2005	6
Ngāti Tūwharetoa (Bay of Plenty)	6 Jun 2003	12 Oct 2004	16	23 May 2005	7
Ngāti Awa	27 Mar 2003	31 Aug 2004	17	24 Mar 2005	7
Ngāti Tama	20 Dec 2001	15 Apr 2003	16	25 Nov 2003	7

Table 13.2: Time taken, Deed of Settlement to Settlement Act

FURTHER REFERENCE

How Parliament Works. www.parliament.nz