

# Settlement Implementation



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## **Settlement Implementation**

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## Settlement Implementation

### INTRODUCTION

Settlement implementation is very important. It requires the mandated body to set out a detailed plan on what they need to do leading up to and immediately following settlement.

The nature and scope of what is required will vary depending on the specific settlement negotiated and recorded in the Deed of Settlement and/or settlement legislation. Accordingly the Guide does not comment in detail on any specific implementation matters but provides a general outline of what the governance entity will need to do in the period after settlement has been enacted.

Settlement legislation is not introduced to Parliament until the governance entity has been established so there is plenty of time before settlement to draft a settlement implementation plan. It is likely that there will be an interim or establishment period where representatives of the mandated body ensure the settlement is implemented in a seamless manner. For this reason, it makes sense to have representative continuity during the 'implementation' period.

It is vital that the interim representatives who hold office to implement the settlement, restrict their actions to just that. They must not act in a further capacity unless the ratification process for the governance entity has specifically authorised that further action.

Settlement implementation can be categorised in two parts:

- those matters that relate purely to 'actions to complete settlement', and
- those matters that relate to 'ongoing compliance of the Deed of Settlement'.

### ACTIONS TO COMPLETE SETTLEMENT

As opposed to the more adversarial negotiations process, settlement implementation is about putting in place what has already been agreed. The Crown has completed many settlements; it does work very hard to assist the governance entity to achieve settlement implementation on time and within specification. It makes sense for the governance entity to work with the Crown on what is to be done, where, when, how and by whom.

#### Office of Treaty Settlements

Office of Treaty Settlements assists with settlement implementation. The monitoring role includes providing all relevant government agencies and the governance entity with a Crown implementation plan. The plan:

- details all the tasks required to satisfy the obligations falling out of the Deed of Settlement and settlement legislation, and
- includes for example, contact names, addresses and phone numbers, identifies tasks, the responsible party and any third parties and the timing or date of task completion.

Officials from Office of Treaty Settlements will discuss the plan with Crown and mandated body negotiators before the settlement legislation is enacted.

As part of the overall settlement implementation plan the governance entity should ensure it has a 'final sign off' process in place to enable it to satisfy itself that all specific matters agreed in the Deed of Settlement and/or settlement legislation are delivered by the Crown. This may require the governance entity to obtain specialist advice and/or sign off. In most respects the delivery on settlement redress should be fairly straightforward.

#### Planning

Do not underestimate the importance of planning. The governance entity should methodically 'tick' off every delivery as it occurs.

In some cases it will be important for the governance entity to put an additional internal process in place so it can confirm the status of any 'conditional' transfers within stipulated deadlines. As this will usually require little, if any Crown assistance, the governance entity must rely on its own resources and advice.

#### Deferred selection process

As an example, where a Deed of Settlement provides a mechanism such as the Deferred Selection Process (DSP) (this gives the governance entity the ability to exercise a right to purchase Crown assets within six months or so after the settlement date) the governance entity will need to consider a range of issues before that period expires, such as valuation and funding options.

In reality however, the governance entity will need to do the groundwork on such issues before or just after settlement, to ensure they do not run out of time.

The important point is that a governance entity should ensure they have a detailed implementation plan and appropriate processes in place to adequately deal with such matters within agreed deadlines.

#### ONGOING DEED OF SETTLEMENT COMPLIANCE

Once ratified and signed the Deed of Settlement is

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binding between the Crown and the governance entity on behalf of the claimant group. On the settlement date components of settlement redress will transfer from the Crown to the governance entity; that is, cash, certain commercial properties and probably certain cultural properties. Once those transfers occur the Crown will have discharged its obligation to the governance entity in respect of those components.

The Deed of Settlement also contains components of settlement redress which establish an ongoing direct or indirect relationship between the Crown and the governance entity. As discussed earlier, they may include (direct) protocols and (indirect) statutory acknowledgements.

Leading into and following settlement, the governance entity needs internal plans, policies and personnel in place to deal with the ongoing relationship.

The Deed of Settlement was the result of an intensive, time consuming and costly negotiations process. It is incumbent on the governance entity to ensure the settlement redress maintains its mana in the future.