Chapter 8

Historical Account, Crown Acknowledgements and Apology

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Contents

KEY POINTS

- Negotiators should consider what their people want to see in the historical account, Crown acknowledgements and apology so that it is meaningful for them.
- Ensure negotiators have a comprehensive body of evidence before beginning talks with the Crown
- Seek independent advice if unsure about any aspect of your planned programme
- Negotiators should keep the initiative by writing the first draft of the historical account rather than leaving it to the Crown
- In the historical account let the story speak for itself
- Be wary of the Crown wanting to re-litigate historical arguments for Treaty breaches already identified in the Waitangi Tribunal process
- Obtain copies of all Crown acknowledgements and apologies that align with your Treaty grievances and find the type of text that best suits your claimant group
- Consider working on the Crown acknowledgements and apology at the same time as drafting the historical account

INTRODUCTION

The Apology redress originated out of a desire from some groups to have the Crown proffer an apology. It is through the negotiation of the Apology redress that the negotiators and Crown directly discuss the historical grievances of the claimant group. To date, apology redress has usually consisted of an historical account, Crown acknowledgements of Treaty breach and an apology.

The 'historical account' is an important document, it:

- provides claimants with an opportunity to record a description of events and Crown actions leading to their key grievances, and
- sets the parameters for the Crown's acknowledgement and apology and reference to historical grievances.

The final version can take painstaking and detailed negotiation but that is not always the case. Of all areas in the AiP, the historical account is where possible further negotiation and discussion is flagged. For example one AiP notes a '*draft of a substantively agreed historical account… will be subject to further editing and amendment for style, format and tone*'. This may reflect that both parties may want to have another go at editing it later in the negotiations and that overlapping claim consultation may mean the form of the account may change.

Recommended details in Agreement in Principle

There is significant variation in the detail in different AiPs. For instance the Aupouri AiP merely notes topics that '*…have been identified for discussion…*' without providing any substantive text, whereas the Ngati Whatua, Ngā Raurū Kiitahi and Te Arawa AiPs provide 'substantive draft' historical accounts.

Historical accounts tend to be summaries of the events that led to the Treaty grievance and claim. They are usually cast in a factual, neutral manner. The facts are able to speak for themselves.

Comprehensive evidence required

To produce a comprehensive historical account, claimants require an extensive body of evidence produced to a high professional standard – mere unsubstantiated assertion is not sufficient.

For example, if negotiators assert that land was taken for public works without compensation, the Crown will want to see the evidence. This is because if statements in the historical account can later be proved factually wrong, the public can raise questions about the robustness of the process and validity of claims. Office of Treaty Settlements will seek the advice of its own and Crown Law Office historians, who will critique claimant allegations with a great deal of vigour.

Structure of historical account

In terms of structure, the historical account usually begins with a description of the claimant group, their rohe, and their associations with the land. Paragraphs dealing with the key historical issues follow. The account should include comprehensive, accurate and footnoted cross-references to the main body of casebook or claimant research on which it is based. Although there are no footnotes in the Deed of Settlement they are a useful tool in the negotiation process and may be released publicly to assist with any challenges to the veracity of the account.

Research underpinning the claims

Claimants whose research meets casebook standards or who have a Tribunal report will be well equipped to engage with the Crown over the historical account. Claimants who enter negotiations before a Tribunal inquiry or before the casebook is prepared will develop their research programme in conjunction with the Trust and Office of Treaty Settlements. Their historical account will flow from this.

It serves the interest of all parties if the claimants have a comprehensive body of research covering all aspects of their claims, given that finality and comprehensive settlement is the desired outcome. Claimants who are unsure about any aspect of their research programme should seek independent advice.

There are significant resource disparities between the mandated body and the Crown and negotiation of the historical account can illustrate this disparity. Claimants often have the advantage of knowing their history and grievances very well. Consequently the mandated body might not expect to be challenged or questioned on its 'own history' but it does occur. Often it comes down to the point of the Apology redress; the Crown and negotiators may have different views on the history and part of the settlement process is for the parties to explore those views so they develop a better understanding of each others' perspective and ideally reach some level of agreement. This usefully highlights the great importance of negotiation preparedness.

First draft – who writes it?

Office of Treaty Settlements can produce the first draft of the historical account, after agreeing the subject (or

paragraph) headings and terms of reference with the mandated body. Office of Treaty Settlements can thus set the tone and structure of the document.

Negotiators may wish to construct the first draft themselves and invite Office of Treaty Settlements to comment, rather than the other way around. Claimants who produce the first draft are more likely to ensure the structure of their account better reflects their particular concerns and priorities. In short, the claimants themselves are recommended to attempt, as far as possible, to set the terms of reference and determine subject headings.

Keep in mind that at the end of the day both parties need to agree on the text of the historical account. Consequently a collaborative approach to drafting can potentially cut down a lot of time taken playing 'ping pong' with drafts.

In reality the drafting process can take place in a number of ways. Negotiators may want to put in quite a lot of effort to reach agreement on the structure of the account (subject headings and a broad outline of what needs to be covered, including any examples they particularly want to emphasise) before drafting begins as this will give them something to hold the drafter accountable to.

On the other hand negotiators may want to agree an approach where just one section of the account is drafted in the first instance, so both sides can get a sense of the negotiation process. This also prevents one side putting in a huge amount of work only to discover that the other party may not agree with their approach at all; this can waste months of negotiating time and prolong the process. It is also often a way for the parties to get used to working together and get familiar with each other's perspectives and can help focus the negotiations. It often also assists the claimant negotiating team participating in the process because it means they can focus on one area of research at a time.

The Crown's key concern in the historical account process will be getting a sense of what issues are most important to the claimant group, and those are often things that the claimant groups speaks most convincingly on.

Constructing the draft

How do claimants go about constructing their draft historical account? Distilling what may be many hundreds (or thousands) of pages into a concise document of 5,000 words or less is not easy, particularly as the document should be readily understood by a layperson unfamiliar with details of the claim and the history of the claimant group. Negotiators may need the help of a qualified, experienced historian who understands this is no time for obscure academic debate or point scoring. The account must simply set out the essentials of the claim and the nature of the relationship between the claimants and the Crown, in a clear narrative form.

Most claimants to date have not necessarily worked from trying to distil down vast amounts of research (though that might logically be where a professional historian would start), but from working up through what their key issues are. This may involve constructing bullet points of their key grievances, with examples. This generally shapes a narrative that is filled and checked against research on particular issues. This approach generally allows more negotiator control of the process.

The draft will go through several versions before agreement is reached between the parties. Much 'cut and thrust' can take place during negotiation. Negotiators should consider bringing in an historian to attend negotiations during this period. Record in writing all agreements reached during negotiation and ensure the parties confirm matters covered and agreed at the conclusion of each discussion, preferably at the end of each day.

Claimants who already have an historian doing their Tribunal research will be well positioned to prepare an historical account and the historian will be familiar with the evidence. In most negotiations claimants have chosen to drive the historical account drafting from within their own negotiation team, using the skills of a professional historian either behind the scenes or on an 'as needed' basis. Sometimes this has been a deliberate decision on the part of the negotiators. Even if their team does not necessarily have 'historian' skills they have considered it important that they own the process, get to talk directly to the Crown about their grievances without professional assistance, and are able to explain the finally agreed text to their people in their own terms. This has been successful for a number of claimant groups, particularly where they consider they are able to be strong advocates for their own view on history and want to have direct discussions with the Crown.

It is more difficult for claimants who rely on district 'overview' research produced in connection with a 'modular' claim, for example the Central North Island, by an historian met only briefly. In such cases the Trust plays an important role in matching the claimant group with an appropriate historian, and ensuring the relationship is

conducted and maintained in a way that ensures mutual trust and confidence. This is essential.

Producing the draft
The best approach for the initial draft may be producing progressively shorter summaries of claim research for claimants to consider and approve. This will assure claimants that the final short draft was constructed appropriately without serious omission or unnecessary embellishment.

Negotiators should be aware that it is not necessary to have an historian produce the first draft – some claimants have drafted a historical account to a high standard. With this option negotiators might use professional advisors only when necessary.

Crown response to the draft
The historian should anticipate and advise claimants of possible Office of Treaty Settlements responses to the draft, based on other historical accounts prepared for other claimants and expressions of Crown policy on Office of Treaty Settlements' website or in the Red Book.

If the claimants have been involved in a Tribunal hearing, Crown counsel's opening and closing submissions may indicate the Crown's likely position on the range of historical issues. It may be useful for the claimants and the historian at an early stage, to develop a set of 'bottom lines' beyond which they are not prepared to compromise, and fall-back positions on other issues where they can show more flexibility.

Additional research after negotiations begin
Office of Treaty Settlements and/or the negotiators may identify matters requiring further research during the historical account negotiations, usually because of new questions asked of the research. This will rarely occur if claimants have adequate research but if there are gaps, Office of Treaty Settlements may insist on conducting its own research, or on a 'joint commission'. Under these circumstances the Crown does not usually require a financial contribution from claimants. However, it is far better to ensure that research is completed to a high standard *before* entering negotiations.

Crown tries to relitigate historical arguments
If negotiators already have a Waitangi Tribunal report they should be wary and resist attempts by Office of Treaty Settlements or Crown Law to relitigate historical arguments during negotiations. For example, the Crown should have to explain why it refuses to acknowledge any Treaty breach identified by the Tribunal. The negotiators should not have to re-argue what they presented to the Tribunal. Indeed, it could be argued that the Crown is not negotiating in good faith if it brings up historical matters that it did not raise before the Tribunal.

Keep in mind, however, that Tribunal findings are not binding on either party and in some cases the negotiators might not agree with Tribunal findings and want to have further discussions on those issues with the Crown.

Strong arguments have been put forward that the Crown should be prepared to work concurrently on the historical account and the acknowledgements/apology. Why waste time on parts of the historical account if the Crown has no intention of acknowledging them? In that light, negotiators could consider requiring that the draft acknowledgement and apology be written as the historical account progresses. In some cases negotiators may want the historical account to include text for which they have no intention of seeking a Treaty breach acknowledgement from the Crown.

The record of events for each claimant group is unique to them, therefore the Guide does not compare historical accounts agreed to date. What will be of interest is that historical accounts, although unique, do adhere to certain themes. Future claimant groups will find some of these themes relevant to their particular circumstances.

FORM OF THE HISTORICAL ACCOUNT
The historical account usually begins with a statement along the lines of:

> *This section sets out an Historical Account of the events upon which the Crown's acknowledgements and apology are based.*

In some instances 'acknowledgement' is omitted, and 'apology' is omitted in others.

This is normally followed by a description of the claimant group's rohe with variations as follows:

- *Ngāti Tūwharetoa describe their rohe as running from … to…*
- *The area of the Ngā Raurū Kiitahi rohe was approximately 210,000 hectares…*
- *Ngāti Awa claim that prior to 1866 they exercised tino rangatiratanga as tangata whenua from time to time over their rohe including: (named places)…*
- *The Affiliate Te Arawa Iwi/Hapū traditionally exercised customary interests within the approximately 1,150,000-acre area from…. to…*

Some Deeds of Settlement also list '*places of historical and cultural significance*' to the claimant group.

From this point each historical account is specific to the claimant group and it is not feasible to compile a 'template summary'.

As noted, some phrases imply that the Crown is prepared to accept a statement being in the historical account without actively showing that the Crown agrees. Some statements are of iwi traditional knowledge and the Crown may not consider it appropriate for the Crown to endorse them. Other statements are more about the iwi recording their interpretation of historic events; the 'considers' statements.

A range of examples shows these trends:

- *Ngāti Tūwharetoa state that prior to 1840 they were actively engaged in the cultivation [of produce for sale and barter with Europeans].*
- *According to Ngāti Tūwharetoa a number of those killed [by the Crown] were providing customary hospitality to those being pursued by the Crown.*
- *Ngāti Tūwharetoa viewed the awards of these blocks as a tribal endowment.*
- *Ngāti Tūwharetoa state that [loss of lands] has had an ongoing impact on the spiritual and physical relationship of the iwi with the land.*
- *This may have led to some Ngā Raurū to consider selling land to the Crown.*
- *Ngā Raurū tradition records that they suffered significant loss of life in the war that followed.*
- *Ngā Raurū considers that the nineteenth century use of this term to describe the Crown practices tarnishes the meaning of 'takoha' and that the use of takoha to obtain land was improper.*
- *Ngā Raurū considers that its interests have been detrimentally affected by a succession of pieces of legislation (muru).*
- *Ngāti Awa claim that in 1865, they were essentially autonomous, economically prosperous and actively engaged in trade and commerce.*
- *In 1864 according to the traditions of Ngāti Awa, certain hapū … joined a combined force … to lend assistance to the Waikato tribes who were resisting the unjust invasion of their lands by the Crown and colonial forces.*
- *Ngāti Awa considers that this change in the land tenure system was imposed upon them.*
- *Te Arawa regard these provisions as acknowledgement of their ownership of the lakes.*
- *While the evidence is inconclusive, Te Arawa consider that they were not consulted.*
- *Te Arawa state that their mana was deeply affected by the decline in native species.*
- *Te Arawa state that the environmental degradation of the lakes has affected the mana and wairua of the lakes to Te Arawa.*
- *Affiliate Te Arawa Iwi/Hapū consider that, during the periods when monopoly conditions applied it is likely to have decreased land prices.*
- *The Affiliate Te Arawa Iwi/Hapū harbour a strong sense of grievance over this Crown action [Geothermal Energy Act 1953] and consider that the Crown has failed to protect the interests of Affiliate Te Arawa Iwi/Hapū in relation to the geothermal resource.*

In each case above, the underlined text shows the claimant group point of view without that view being explicitly agreed with by the Crown. For example, consider the difference in meaning between the next pairs of statements:

a) *Ngāti Tūwharetoa state that prior to 1840 they were actively engaged in the cultivation [of produce for sale and barter with Europeans].*
b) *Prior to 1840 Ngāti Tūwharetoa were actively engaged in the cultivation [of produce for sale and barter with Europeans].*

Clause (a) above is the Ngāti Tūwharetoa view, whereas Clause (b) is a statement of fact in which there is no hint of Crown disagreement. The example below is similar.

a) *Ngā Raurū tradition records that they suffered significant loss of life in the war that followed.*
b) *Ngā Raurū suffered significant loss of life in the war that followed.*

CROWN ACKNOWLEDGEMENTS

As opposed to the historical account, which is an agreed statement of historical events, the acknowledgements are made only by the Crown. But they do form part of the settlement redress package in any Deed of Settlement and all mandated bodies are encouraged to participate proactively with the Crown to secure the acknowledgements desired by the claimant group.

Claimant group statements

Interestingly, some instances provide that the Crown acknowledges that the *claimant group* holds a certain belief on a particular issue. Such a statement is used as a means of recording the mandated body's views on an issue in a way that the Crown would not; either by itself, or jointly with the claimant group. It is likely that such statements will have followed significant and perhaps

heated discussions with the original request of the mandated body that *the Crown make* that statement itself.

The acknowledgements have varied somewhat between settlements. It is incumbent upon the mandated body to be familiar with these acknowledgements and negotiate suitable acknowledgements for its own claimant group. The Red Book (page 85) defines Crown acknowledgements as:

'*... the Crown accepts its responsibility for breaches of the Treaty of Waitangi and its principles and may go on to recognise:*

- *the pain and suffering caused by the grievances arising as a result of the Crown's breaches of the Treaty and its principles*
- *contributions the claimant group has made to the public benefit, and*
- *the consequences of the breach, including landlessness and social impacts.*'

In the six Deeds of Settlement looked at in this chapter, Crown acknowledgements range from one to three pages.

It is not feasible to summarise them, but at a minimum negotiators should obtain full copies of any acknowledgements which align with their main Treaty grievance; for example negotiators of raupatu/confiscation grievances are advised to familiarise themselves with the acknowledgements in the Ngā Raurū Kiitahi, Ngāti Awa and Ngāti Tūwharetoa (Bay of Plenty) Deeds of Settlement. In fact it would be prudent to have read the full Deed for each, looking for similarities and precedents.

Anecdotal evidence suggests that negotiators tend to prefer 'breaches of the Treaty...' as opposed to 'breaches of the Treaty of Waitangi and its principles'. But the Crown is not likely to move on this issue.

These acknowledgements will, of course, be closely tied to the historical account that lays the platform for this section, which is in two parts:
Acknowledgements for:

1. land wars and confiscations (raupatu)
2. other types of Treaty breach.

ACKNOWLEDGEMENTS FOR LAND WARS AND CONFISCATIONS (RAUPATU)

The introductory paragraph usually sets out the background:

> '*The Crown acknowledges that the people of Ngāti Tūwharetoa have sought acknowledgement of their grievances since the raupatu and that recognition of these grievances is long overdue. The Crown hereby acknowledges the legitimacy of the Ngāti Tūwharetoa historical grievances and makes the following acknowledgements:*

This is usually followed by a number of sections each of which begins 'The Crown acknowledges [that]...' Representative examples from the three Deeds of Settlement have been grouped under sub-headings for ease of use.

Crown purchases

- *Crown purchasing [...] created tensions that contributed to the continuation of the Taranaki wars;*
- *elements of the [Crown] purchase constituted a breach of the Treaty of Waitangi and its principles;*

Land wars

- *Ngāti Awa suffered loss of life and destruction of property [by Crown military action];*
- *Ngā Raurū Kiitahi suffered the destruction of their homes, property, cultivations and taonga at the Crown's hands during the wars and as a result of the Crown's 'scorched earth' policy;*
- *Ngāti Awa were not in rebellion and were unfairly labelled as 'rebels' and 'tangata hara';*
- *the destructive effect of the events on the social structure, mana, and rangatiratanga of the hapū involved [who were rendered landless and leaderless];*
- *the wars constituted an injustice and were in breach of the Treaty of Waitangi and its principles;*

Loss of life and imprisonment

- *the sense of grievance suffered by Ngāti Awa in relation to the arrests, trials, imprisonment and execution of leaders of Ngāti Awa hapū;*
- *remains of men were interred without ceremony in prison;*

Raupatu / confiscation / landlessness

- *Ngā Raurū Kiitahi were forced into exile from their rohe and rendered homeless [...] and remained without permanent homes until they received the reserves to which they were entitled after the West Coast Commissions of Inquiry;*
- *Ngāti Awa were deprived of tribal land and resources [...] and were unable to exercise rangatiratanga over them;*
- *its confiscation of Ngāti Tūwharetoa lands by means of the New Zealand Settlements Act 1863 extinguished Māori customary title to land (and deprived Ngāti Tūwharetoa of tribal land and resources);*

- *confiscation of Ngāti Awa land had a devastating effect on the welfare, economy and development of Ngāti Awa and deprived the iwi of many wāhi tapu, access to natural resources and opportunities for development;*
- *confiscation was unjust, unconscionable, and a breach of the Treaty of Waitangi and its principles;*
- *the cumulative effect of the Crown's actions and omissions [...] left Ngāti Awa virtually landless [...] the Crown's failure to ensure that Ngāti Awa were left with sufficient land for their present and future needs was a breach of the Treaty of Waitangi and its principles;*

Compensation Court

- *prejudice created by the confiscation was compounded by inadequacies in the Compensation Court process;*
- *in many cases the Compensation Court validated prior arrangements made by a Crown official regarding the distribution of land in this area;*
- *the confiscations were indiscriminate in that the Crown failed to return land in full to those it did not consider to have been involved in the actions [considered to be loyal] that prompted the confiscation;*
- *the Compensation Court (and the Native Land Court) awarded land to individuals rather than iwi or hapū; this was not consistent with customary tenure and made those lands more susceptible to partition and alienation; this contributed to further erosion of the traditional tribal structures which were based on collective tribal and hapū custodianship of land;*
- *the compensation process relocated Ngāti Awa hapū from land they had traditionally occupied to those belonging to other Ngāti Awa hapū which further exacerbated traditional tensions between those hapū;*
- *Ngāti Awa land, including wāhi tapu, was awarded to other iwi who then frequently alienated those lands soon after award;*
- *delays in implementation of Compensation Court awards and systematic Crown acquisition of Ngā Raurū Kiitahi interests meant that ultimately Ngā Raurū Kiitahi received only [3/17] of the land granted by the Compensation Court;*
- *following the vesting of title under native land laws Ngāti Awa land holdings [...] were further reduced by the taking of land for payment of survey fees and Crown purchases and other sales;*
- *these actions eroded the traditional social structures, mana and rangatiratanga of Ngāti Tuwharetoa; the Crown failed to adequately protect Ngāti Tuwharetoa from the impact of these actions and this was a breach of the Treaty of Waitangi and its principles;*

West Coast Commissions / reserved lands / public works

- *the West Coast Commissions were inadequate in their scope and did not address the injustices perpetrated by the confiscations;*
- *the reserves formalised by the Commissions were not sufficient for the ongoing needs of Ngā Raurū Kiitahi within the confiscation boundary;*
- *the imposition of Settlement Reserves including the regime of perpetually renewable leases and the sale of land by the Public and Māori Trustees [...] have ultimately deprived Ngā Raurū Kiitahi hapū of the control and ownership of the minimal land set aside for them;*
- *public works legislation allowed for compulsory taking of land if agreement could not be reached;*
- *the Crown has failed to ensure that sufficient land was retained by Ngā Raurū Kiitahi for their present and future needs and this failure was a breach of the Treaty of Waitangi and its principles;*

Contribution to New Zealand

- *ancestral lands alienated from Ngāti Awa have made a significant contribution to the wealth and development of the nation;*
- *other resources (such as geothermal) taken without consent of Ngāti Tūwharetoa have made a significant contribution to the wealth and development of the nation;*
- *the contribution that Ngāti Awa has made to the defence of the nation in New Zealand's war efforts overseas.*

ACKNOWLEDGEMENTS FOR OTHER TYPES OF TREATY BREACH

This section looks at acknowledgements for breaches other than those associated with land wars, raupatu / confiscations. Examples come from Te Arawa Lakes, Te Uri o Hau and the Affiliate Te Arawa Iwi/Hapū. They are included to demonstrate the wide range of acknowledgements negotiators might expect to draw from the Crown. As noted, claimants should familiarise themselves with the full text of settlements which are similar to theirs.

Te Arawa Lakes

- *The Crown recognises that Te Arawa value the Te Arawa Lakes and the lakes' resources as taonga. The Crown acknowledges the spiritual, economic and traditional importance to Te Arawa of the lakes and lakes' resources.*

Other Crown acknowledgements to Te Arawa include:

- *introduction of exotic fish significantly depleted the indigenous species upon which Te Arawa depended for food, hospitality, trade and koha;*
- *Te Arawa petitioned the Crown for several years concerning depletion issues;*
- *some Te Arawa were prosecuted for fishing without a licence;*
- *deliberate Crown delays in providing survey plans and public maps to Te Arawa for the Native Land Court hearings caused a sense of grievance that is still held today;*
- *it failed to review the annuity paid to Te Arawa as part of the 1922 Agreement .. when it lost value as a result of inflation and this was a breach of the Treaty of Waitangi and its principles;*
- *Te Arawa has honoured its obligations and responsibilities under the Treaty of Waitangi, especially but not exclusively its war service overseas;*
- *Te Arawa has demonstrated a record of co-operation with the Crown in relation to the lakes and the benefits that Te Arawa expected to flow [...] were not always realised;*
- *past Crown actions have had a negative impact on Te Arawa's tino rangatiratanga over the lakes and their usage of the resources;*
- *the pollution and degradation of several of the lakes has caused a sense of grievance within Te Arawa;*
- *the significant contribution that the Te Arawa Lakes have made to tourism and the wealth of New Zealand;*
- *the Crown recognises the longstanding grievances of Te Arawa in relation to Crown acts and omissions [...] expressed through petitions to Government... the Crown acknowledges that it has failed to deal with those grievances in an appropriate way and that recognition of Te Arawa's grievances is long overdue.*

Te Uri o Hau

Main points in the Crown acknowledgements are:

- *the Crown recognises that Te Uri o Hau endeavoured to preserve and strengthen their relationship with the Crown. In particular the early land transactions for settlement purposes contributed to the development of New Zealand and affirmed the loyalty of Te Uri o Hau to the Crown;*
- *the benefits that Te Uri o Hau expected to flow from this relationship were not always realised [...] and did not provide the economic opportunities and benefits that Te Uri o Hau expected;*
- *a large amount of Te Uri o Hau land has been alienated since 1840 and that it failed to provide adequate reserves for the people of Te Uri o Hau [...] the failure of the Crown to set aside reserves and protect lands for the future use of Te Uri o Hau was a breach of the Treaty of Waitangi and its principles;*
- *the operation and impact of the native land laws [...] had a prejudicial effect on Te Uri o Hau who wished to retain their land and this was a breach of the Treaty of Waitangi and its principles;*
- *awarding of reserves exclusively to individual Te Uri o Hau made those reserves subject to partition, succession and fragmentation, which had a prejudicial effect on Te Uri o Hau;*
- *this loss of control over land has prejudiced Te Uri o Hau and hindered their economic, social and cultural development; and impeded their ability to exercise control over their taonga and wahi tapu and maintain and foster spiritual connections to their ancestral lands.*

Affiliate Te Arawa Iwi/Hapū

- The Crown acknowledges that it has failed to deal with the longstanding grievances of the Affiliate Te Arawa Iwi/Hapū in an appropriate way and that recognition of the grievances of the Affiliate Te Arawa Iwi/Hapū is long overdue.

Other Crown acknowledgements to Te Arawa include:

- *it did not consult with Affiliate Te Arawa Iwi/Hapū on native land legislation prior to its enactment;*
- *the operation and impact of the native land laws [...] made the lands of Te Arawa more susceptible to partition, fragmentation and alienation; this contributed to the erosion of the traditional tribal structures which were based on collective tribal and hapū custodianship;*
- *it failed to take steps to adequately protect the traditional tribal structures and this had a prejudicial effect and was a breach of the Treaty of Waitangi and its principles;*
- *the combined effect of actions such as the use of payments for land before title was determined by the Native Land Court; aggressive purchase techniques; and the use and implementation of monopoly powers over dealings in the land of Te Arawa meant that the Crown failed to actively protect their interests in the land they wished to retain and that this was a breach of the Treaty of Waitangi and its principles;*
- *a large amount of land has been alienated since 1840;*
- *the combined effect of the Crown's actions and omissions has left some Te Arawa virtually landless;*
- *its failure to ensure sufficient land was left for their present and future needs was a breach of the Treaty of Waitangi and its principles;*
- *lands of particular significance to Te Arawa were taken under pubic works legislation and these*

takings have impeded the ability of Te Arawa to exercise control over their taonga and wahi tapu and maintain and foster spiritual connections with those ancestral lands;
- *the generosity of Te Arawa in gifting land containing scenic sites to the nation;*
- *Te Arawa consider the geothermal resource a taonga and the passing of the Geothermal Energy Act and the loss of lands containing geothermal features for public works purposes have caused a sense of grievance within Te Arawa;*
- *The ongoing Te Arawa expectations of an ongoing and mutually beneficial relationship with the Crown were not always realised;*
- *Twentieth century land development did not always provide the economic opportunities and benefits that Te Arawa expected;*
- *Te Arawa have been loyal to the Crown in honouring their obligations and responsibilities under the Treaty of Waitangi – the Crown pays tribute to the contribution made by Te Arawa to the defence of the nation.*

CROWN APOLOGY

The Crown provides an apology although some negotiators have debated the merits of the Crown making an apology to the claimant group. On the other hand a number of claimant groups have demanded it as their key item of redress. The reality is that the Crown insists on making an apology, even if the negotiators do not want one.

The Red Book (page 85) states that the Crown apology:

> *'... is a clear response by the Crown to the matters set out in the historical account and Crown acknowledgements.'*

It is vital, therefore, that the historical account contains all matters and events that the negotiators consider to be significant, and that the Crown acknowledges them.

The Crown apology is usually brief, no more than ten short paragraphs. The examples below illustrate the main themes in the six Deeds of Settlement reviewed in this chapter. Negotiators are advised to study the full Deed of Settlement for Treaty claims that are similar to theirs.

However, negotiators should bring to the table only what they consider appropriate for their circumstances rather than using a sweeping 'shopping list' approach. Keep in mind that the apology (and acknowledgements) is drafted around issues specific to the claimant group and the evidence the negotiators bring to the table.

Generic apology to iwi / hapū
- *The Crown makes this apology to Te Arawa, to their ancestors, to their descendants and to the people and hapū of Te Arawa.*
- *The Crown recognises the struggles of the ancestors of Ngāti Tūwharetoa in pursuit of their claims for justice against the Crown since the raupatu and hereby makes this apology to Ngāti Tūwharetoa, to their ancestors and to their descendants.*

These are universal.

Treaty breach
- *The Crown profoundly regrets and unreservedly apologises for the breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles acknowledged above.*

This is universal.

Land wars and confiscations (raupatu)
- *The Crown profoundly regrets and unreservedly apologises for its confiscation of Ngāti Tūwharetoa lands and for the cumulative effect of its actions over the generations, which have had a damaging effect on the welfare, economy, environment and development of Ngāti Tūwharetoa.*
- *The Crown profoundly regrets and unreservedly apologises to Ngā Raurū Kiitahi for its actions during the Taranaki wars, the destruction and demoralising effects of these actions on Ngā Raurū Kiitahi, and loss of life during the wars.*
- *The Crown profoundly regrets and unreservedly apologises for the confiscation of Ngāti Awa lands which was unconscionable.*

'Rebels'
- *The Crown regrets that Ngāti Awa as an iwi have borne the century-old stigma of being labelled 'rebels' and 'tangata hara' and that this has damaged the self-esteem of the people.*

Cumulative damaging effects of Crown actions
- *The Crown profoundly regrets and unreservedly apologises to Ngā Raurū Kiitahi for the cumulative effects of its actions and omissions which have undermined Ngā Raurūtanga. These effects [...] have resulted in the virtual landlessness of Ngā Raurū Kiitahi. The suffering and hardship caused to Ngā Raurū Kiitahi over the generations has continued to the present day.*
- *The Crown profoundly regrets and unreservedly apologises for the destructive impact and*

demoralising effects of its actions which have caused significant damage to the welfare, economy and development of Ngāti Awa as an iwi.

- *The Crown unreservedly apologises and profoundly regrets that its actions, in failing to preserve sufficient lands for Te Uri o Hau, have had pervasive and enduring consequences, resulting in Te Uri o Hau losing control over the majority of their lands.*
- *The Crown profoundly regrets and unreservedly apologises for the cumulative effect of its actions over the generations which have undermined the tribal structures and had a damaging impact on the landholdings and development of the Affiliate Te Arawa Iwi/Hapū.*

Mana and rangatiratanga

- *The Crown profoundly regrets its failure to acknowledge the mana and rangatiratanga of Ngāti Tuwharetoa.*
- *The Crown profoundly regrets its failure to acknowledge the mana and Ngā Raurūtanga of Ngā Raurū Kiitahi.*
- *The Crown profoundly regrets that past Crown actions in relation to the lakes have had a negative impact on Te Arawa's rangatiratanga over the lakes and their use of the lake resources, and have caused significant grievance within Te Arawa.*

Seeking closure

- *Accordingly, with this apology, the Crown seeks to atone for these wrongs and to begin the process of healing. The Crown looks forward to building a relationship of mutual trust and co-operation with Ngāti Tūwharetoa.*

Apologies usually finish with this forward-looking paragraph.