

Aratohu Mō Ngā Rōpū Kaitono

Guide For Claimants Negotiating Treaty Settlements

Crown Forestry Rental Trust

Disclaimer

Crown Forestry Rental Trust (the Trust) commissioned a team of experts in the Treaty sector to compile this Guide for claimants.

Every endeavour has been made through rigorous peer review to ensure that the content of the Guide is accurate and that the views expressed by the various authors are reasonably well held by others in the Treaty sector at the time of publication. While the material is believed to be correct, no liability can be accepted for any incorrect statement, omission or changes to policies or processes outlined in the Guide.

Readers should note that Government's frequently change policies relating to Treaty Settlement negotiations processes. Consequently, any evolving Crown Treaty policy may ultimately differ from the content of this hard copy of the Guide, which inevitably will become out of date to some degree.

With that matter in mind the Guide is also available on the Trust's website and any significant changes from matters set out in this hard copy of the Guide will be regularly updated in the website. Readers are accordingly advised to check the website if they think that change may have occurred in any subject area before embarking on the settlement process.

Claimants should seek advice from Treaty Sector specialists if they have any queries in relation to aspects of the Crown's Treaty Settlement process.

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You can view this Guide and other information about Crown Forestry Rental Trust on our website

References

Crown Forestry Rental Trust. 2006. *Claimant Assistance and Research Services*.

Crown Forestry Rental Trust. 2003. *Māori Experiences of the Direct Negotiation Process*.

The New Zealand Business Council for Sustainable Development and Westpac New Zealand. 2005. *Let's Settle This – Through Settlement to Sustainable Māori Enterprise*.

Office of Treaty Settlements. 2002. *Ka tika ā muri, ka tika ā mua - Healing the past, building a future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*.

Waitangi Tribunal. 2005. *The New Approach Revisited: A Discussion Paper on the Waitangi Tribunal's Current and Developing Practices*.

Waitangi Tribunal Chairperson's Statement. December 2005. *The Waitangi Tribunal and the Settlement of Historic Treaty Claims*.

Useful web links

- Crown Forestry Rental Trust www.cfrt.org.nz
- Office of Treaty Settlements www.ots.govt.nz
- Te Puni Kōkiri www.tpk.govt.nz
- Governance Good Practice www.governance.tpk.govt.nz
- Waitangi Tribunal www.waitangi-tribunal.govt.nz
- Legal Services Agency www.lsa.govt.nz
- Te Kāhui Māngai Directory of Iwi & Māori Organisations www.tkm.govt.nz

Acknowledgements

Crown Forestry Rental Trust commissioned Treaty sector experts to contribute to *Aratohu mō ngā Rōpū Kaitono – Guide for Claimants Negotiating Treaty Settlements*.

- **David Tapsell** (Te Arawa, Tainui): is a commercial lawyer with 16 years experience and has sat on a number of public and private company boards. David was lead counsel for Māori for eight settlements and lead negotiator in the successful Te Arawa Lakes Treaty Settlement. David contributed extensively on legal aspects of the settlement process.
- **Tony Sole** (Ngāti Ruanui, Ngaruahine): has worked almost exclusively on Treaty-related issues for government agencies, Te Ohu Kai Moana, and with iwi. Tony was extensively involved in the early research, preparation and mandating stages of the Ngāti Ruanui claim and has presented to the Waitangi Tribunal. Tony contributed significantly on settlement policy and processes between Deed of Mandate and Deed of Settlement.
- **David Armstrong**: has been involved with historical aspects of Treaty of Waitangi breaches since 1989, first as Crown Law Office historian and during the 1990s as Research Director for the Crown Forestry Rental Trust. David has written and presented a number of research reports to the Tribunal for various claimant groups. David contributed to research requirements to support settlement negotiations.
- **Wayne Mulligan** (Te Atiawa Nui Tonu, Ngāti Ruanui, Taranaki Tuturu and Ngāti Maniapoto): holds private and tribal trusteeships, directorships and business advisory positions. He has assisted a number of iwi claimants through mandate requirements, negotiation preparation and implementation. He is currently assisting his iwi with Wellington settlement negotiations.
- **Kim Skelton** (Te Atiawa ki Taranaki, Ngāti Raukawa ki Otaki, and Te Atiawa ki Te Whanganui-a-Tara): has worked extensively in the Treaty sector at both the Waitangi Tribunal and Office of Treaty Settlements. She is currently responsible for technical and legal advice for Taranaki Whānui iwi settlement negotiations in Wellington. Kim advises iwi on mandate, representation and negotiation issues.

Kim and Wayne Mulligan contributed to claimant preparation for settlement negotiations.

- **Wayne Bettjeman**: has extensive experience leading large, complex projects where central government agencies work with industry representatives, iwi and senior local and central government advisors associated with regional development initiatives. Wayne, a Trust employee, provided project oversight and contributed to the introductory and early preparation sections.

Peer review

The Guide has been subjected to extensive peer review from those involved in various capacities in the Treaty sector.

- Professor David Williams commented extensively on the mandating process, terms of negotiation, historical account and cultural redress, negotiating strategy and select committee processes.
- Deborah Edmunds and the Māori Legal Team at Kensington Swan reviewed all aspects of the Guide.
- John Hutton and Aroha Harris focussed on research, parts of the redress section, and negotiating a settlement.
- Paul Quinn commented on negotiating a settlement and redress issues.
- Richard Meade reviewed commercial and financial redress and post settlement governance entities.
- Finally, the Trust received valuable comments and suggestions from officials from Office of Treaty Settlements, Waitangi Tribunal and Te Puni Kōkiri.

Comments from all the reviewers have been considered and incorporated in the Guide where appropriate. The final product is more accurate and the richer for the feedback from the reviewers.

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Tiheī mauriora – ki te whaiao, ki te ao mārama.

E mihi kau ana ki a koutou katoa e kaha nei te tiaki i ō tātou taonga tuku iho, arā, ngā maunga, ngā awa, te moana, ngā ika kei roto, ngā rākau a te Wao-nui-a-Tāne, me ngā manu e rere ana i runga. Kei whea ake te oranga mō Ngāi Tāua? Nā, e whawhai haere nei te iwi, hapū rānei kia whakahokia mai te whenua me ōna hua, me maumahara ki a rātou kua ngaro atu. Engari ko te whenua, ka mau tonu.

Kia taea rā anō te whakarite kātahi ka kiia kua wātea te huarahi mō ngā uri whakatipu, ko rātou hoki te oranga mō āpōpō.

Crown Forestry Rental Trust (the Trust) was set up to assist Māori with Treaty claims and consequently claimants frequently look to us for advice on the settlement process as well as assistance with funding.

We have seen both the positive and negative aspects of settlement outcomes. There have been significant settlements, but at times considerable money and effort have been spent on wasteful duplication, and from time to time, poor or erroneous advice. This Guide aims to minimise those negative outcomes.

The Guide makes some frank observations and raises issues that claimants must seriously consider, such as the wider claimant group's expectations of the outcomes from a Treaty settlement, and the constraints that the Crown (and its agents) is under in terms of what is possible in an agreed settlement. The Guide does not advocate a new Treaty settlement process, but provides

advice and insights on how to work effectively within the constraints of the current process.

The Office of Treaty Settlements has long recognised the need for information explaining the policy and practice in negotiating and settling Treaty claims. In 2003 it published the 'Red Book' *Ka tika ā muri, ka tika ā mua – Healing the past, building a future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, a practical guide to negotiating and settling historical grievances under the Treaty of Waitangi.

This *Guide for Claimants* does not duplicate the *Red Book*. Instead it walks claimant leaders and negotiators through the administrative and legal aspects of settlement negotiations from the claimants' perspective. It compares and analyses past claimant milestones from the initial requirements under the Deed of Mandate through to the Deed of Settlement and establishment of the post-settlement governance entity. A key aim of this Guide is to enable claimant group leaders to develop an integrated strategy for the whole settlement process rather than treating each phase on an ad hoc basis.

The Guide was written by professionals in the Treaty sector and claimants with settlement negotiation experience. The Trust feels privileged to have their collective experiences.

While the Guide is claimant-focussed, the Trust hopes that it will become required reading for all professionals involved in the Treaty sector, particularly those who are, or propose to be, engaged with the Crown in settlement negotiations.

Ben Dalton
Chief Executive

