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[Treaty Settlements]

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Iwi power: \$2.4b from 30 years of Treaty of Waitangi settlements



By [Michael Neilson](#)

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Thousands gathered on the grounds of Parliament after a hīkoi to protest proposed Seabed and Foreshore Legislation.

Iwi settlements

The process of settling Crown breaches of the Treaty of Waitangi was initially fraught with controversy, but has now become an accepted and at times celebrated part of our identity. Nearly 30 years since the first settlement, many Māori groups

have seen spectacular commercial success, but many questions remain. Michael Neilson reports.

If there is one thing Andrew Little says he has learned as Treaty Negotiations Minister, it is that we - especially Pākehā - "need to learn our history".

"It is shocking. There are stories that, when you read them, you cannot be anything other than quite upset."

Little is talking about instances like Parihaka, where in 1881 Crown troops invaded the non-violent community, forcibly dispersed the 1500 inhabitants, imprisoned men and boys without trial and sent many as far away as Dunedin. Taranaki women recounted being raped and molested by Crown troops during this time.

These forced displacements came just 16 years after the Crown confiscated 1.2m acres of Taranaki land.

The Crown acknowledged in the 2015 Taranaki deed of settlement its treatment of Taranaki Iwi people at Parihaka, and land confiscations, were "unconscionable and unjust".

"Now, we understand the impacts instances like that had on Māori, who were driven from their tribal land to urban areas with no connections, and links with their people and whenua disintegrated," Little said.

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These stories of breaches of the Crown's responsibilities under the Treaty of Waitangi are recorded as agreed historical accounts in the many deeds of settlement.

"Those accounts have been one of the greatest benefits, for European New Zealanders, of the settlement process," Little said.

"These are meticulously researched, reviewed, and tell incredible, heart-wrenching stories. We need to know that history, everyone in New Zealand needs to know that

history."

The Treaty of Waitangi was signed on February 6, 1840, between representatives of the Crown and rangatira, chiefs of New Zealand.

Its three articles gave sovereignty to the British Crown, but allowed Māori rangatiratanga, or chieftainship, over resources. It also gave the Crown first rights to any land being sold, and guaranteed Māori the rights and privileges of British citizens.

However there were two versions, one in te reo Māori and one in English, and interpretations of key words differed.

Nevertheless it didn't take long for breaches to begin, and as early as 1849 Ngāi Tahu was petitioning the Crown to uphold its end of land purchases that had promised the iwi reserves, but never delivered.

It took seven generations for them to see any form of justice.

The settlement process

The process of settling historical breaches of the Treaty began in 1975 with the Waitangi Tribunal, empowered 10 years later to hear claims from Māori groups.

Following hearings the tribunal would issue reports, to be considered by the claimant group and the Crown before entering into negotiations, if required.

The first settlement in 1990 was in respect of Waitomo Caves, and involved the transfer of land and a loan. In 1992 came the pan-iwi Fisheries Settlement, worth \$170m.

Two of the earliest and largest settlements, with Waikato-Tainui in 1995 and Ngāi Tahu in 1998, both worth about \$170m, included relativity clauses. This meant the Crown was liable to make payments to maintain the proportion of the Waikato-Tainui and Ngāi Tahu settlements at, respectively, 17 and 16.1 per cent of all Treaty settlements.

As of 2018, Waikato-Tainui had received \$289.3m and Ngāi Tahu \$297.4m.

The settlement process started slowly but ramped up under the previous National government.

There had been 27 settlements in the 18 years since the first in 1990, but in his nine years, then Minister for Treaty of Waitangi Negotiations Chris Finlayson oversaw 58 settlements.

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To date the Crown has negotiated 88 settlements, and is working through another 44. Some groups are yet to begin the process, while some are looking to conclude this year.

The Government was unable to provide a figure for total costs of the process, but in terms of redress the figure was currently at about \$2.4 billion.

In isolation that figure might appear grand, but in terms of annual government expenditure, and even spread over a 30-year period, it represents a tiny proportion of the over \$100b spent annually.

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For another perspective, in 2010 the Government bailed-out investors to the tune of \$1.775b after South Canterbury Finance collapsed.

"The cost of redress, when you think of the value of the land confiscated plus the unlawful treatment of the people, is a drop in the ocean," Little said.

In the Waikato-Tainui deed of settlement alone, the Crown conceded the 1.2m acres confiscated was worth at a minimum \$12b in 1995 (\$20b in 2019).

For Ngāi Tahu the value of the land in its original state was put at \$13b. Added altogether Māori have received much less than a cent on the dollar in terms of redress.

"When dealing with such long-standing grievances, breaches of the Treaty so egregious, no process of providing redress can be perfect, or able to provide a sense of absolute

and total closure, but we do the best we can," Little said.

"That said, when I meet with iwi that have concluded settlements, re-established tino rangatiratanga and mana, it is quite a different experience to those that are yet to start."

Little had set a target of June 2020 to have outstanding historical claims settled, but conceded this wouldn't be met.

"But it won't be much beyond. I am signaling to iwi the pressure is going on."

Little said it was the Crown's responsibility to settle claims as quickly as possible so groups did not fall behind.

"Iwi that settled 20 to 25 years ago are really seeing the benefits, and are able to now provide real returns to their people. Iwi with claims still unresolved are being left behind."

"We can see the end of the tunnel, but there is still a wee way to go."

"The sky has not fallen in"

The early years of the settlement process were met with howls of opposition, mostly from Pākehā who were concerned about perceived costs and losing access to public land.

University of Canterbury's Dr Martin Fisher, a lecturer at the Ngāi Tahu Research Centre, said for the National government negotiating those first settlements, even providing \$1 in redress was politically tough.

The reality though had been iwi and hapū received less than 1 per cent of the value of lands improperly acquired.

"Nobody thought they were going to get 100 per cent, but the criticisms of what was being paid was a bit of a joke," Fisher said.

"When you look at what the Government spends each year it is a tiny fraction, and especially given most of the settlements are reinvested back into the New Zealand economy."

There had been a maturing since then however, as the country became used to the process.

"Pākehā New Zealanders have now realised the sky has not fallen in, and the multimillion-dollar settlements that continue today have become far more accepted."

Those settlements for the most part have been impressively transformed into hefty economic bases, both helping restore the mana of iwi and hapū involved and allowing them to regain a stake in the country's economy, but also to make social, cultural and environmental investments in their communities.

Ngāi Tahu at the top of the bunch has assets of \$1.8b, and Waikato-Tainui \$1.3b. Both had savings, health and education schemes as part of redistributing their profits.

In those early settlements the public, and groups like Forest & Bird and the Fish and Game Council, lobbied hard against returning some areas of conservation land to iwi, and largely succeeded, Fisher said.

But those fears were completely unjust and had also been allayed, Fisher said.

"If anything the main barriers to accessing public conservation land continue to be private landowners, and mainly farmers."

In Auckland, Takaparawhau, or Bastion Point, is co-managed between hapū Ngāti Whātua Ōrākei and Auckland Council, and is one of the city's most-visited sites.

Another example was with Tūhoe, which negotiated co-management arrangement over Te Urewera.

"The reality has been again the sky truly has not fallen in, and there has never been a case following a Treaty settlement of trying to cut off access to anything," Fisher said.

A Crown-led process

Victoria University senior law lecturer Dr Carwyn Jones, born in Wairoa and of Ngāti Kahungunu and Te Aitanga-a-Māhaki descent, said the process was difficult for iwi and hapū.

"It is very much a Crown-led process. That process was set early on and has been difficult for many groups to follow."

Jones was a negotiator for Wairoa leading to their \$100m settlement in 2016.

He said processes like identifying a central leadership group to represent iwi across the country, from at times dozens even hundreds, of hapū (sub-tribes) that had been fractured through colonisation, were particularly painful.

"I think that is what has made it so tough for Ngāpuhi. Administratively it is easier for the Crown to deal with bigger groups, but some of the smaller groups can have claims they see as distinct for themselves."

There was also enormous pressure to settle, buoyed on by political pressure.

"You know there is going to be a finite amount of resources. The Crown goes through this process again and again, becomes familiar, while Māori only go through it once, so it is very asymmetrical." ○

The objectives of the parties also differed.

"Māori are looking for ways to achieve justice, re-establish a relationship and build a platform for their community, whereas the Crown seems more focused on efficiency and meeting timeframes.

"I am not saying Māori don't want to settle these quickly, but not at the expense of good process and community buy-in.

"Almost all settlements have been flawed, in that sense." ○

Missed opportunities

One of the big concerns with the process was that it mainly addressed land loss through commercial redress, but not larger, more difficult constitutional issues related to kāwanatanga (governorship) and rangatiratanga (chieftainship), Jones said.

"For me that has been a missed opportunity. We have seen glimpses of it in the Whanganui River settlement, and Tūhoe through Te Urewera, but I think we are just scratching the surface of what could be done."

Jones said given the chance and resources, many other iwi and hapū would likely have wanted to see similar arrangements for their sacred spaces.

Ngāpuhi lawyer Moana Tuwhare said for many hapū involved in their negotiations process, true partnerships and being involved in decision-making were more important than financial redress.

"People in Ngāpuhi are over the situation where they are passive participants in processes that directly affect our futures.

"A significant result would be one that puts us back on equal footing with the Crown.

"But none of the settlements have done that so far. We are after true partnership, and that requires constitutional change, to allow us to be independent and govern ourselves, and be at the decision-making table for all decisions that affect Ngāpuhi."

Te Arawhiti - The Bridge

With the end of the historical Treaty settlement process in sight, the Government has launched a new ministry, Māori Crown Relations: Te Arawhiti, to take the relationship from settling grievances to true partnerships, as envisaged by the Treaty.

"Te Arawhiti literally translates to the bridge," Minister Kelvin Davis said.

"It is a bridge between Māori and the Crown, and the past and future."

The ministry was established to guide other government ministries and agencies in entering into true partnership with Māori, and to uphold the more than 7000 commitments made through the settlement process.

The Government was also developing a web portal to display those commitments and to hold them to account.

Davis travelled across the country last year, hosting dozens of hui to develop the ministry.

"We wanted to make sure it was not just a box-ticking exercise.

"Māori have often crossed over into the Pākehā world, but far less have gone the other way. Through Te Arawhiti we want to help ministers and agencies cross over into that world and take the onus off Māori having to justify and explain their perspectives."

In practice, that meant sitting down with Māori and co-designing solutions, Davis said.

"The Crown, ministries and agencies need to become better, more engaged partners with Māori. The difference now is we have an agency to provide a road map to enhance the relationship."

The series

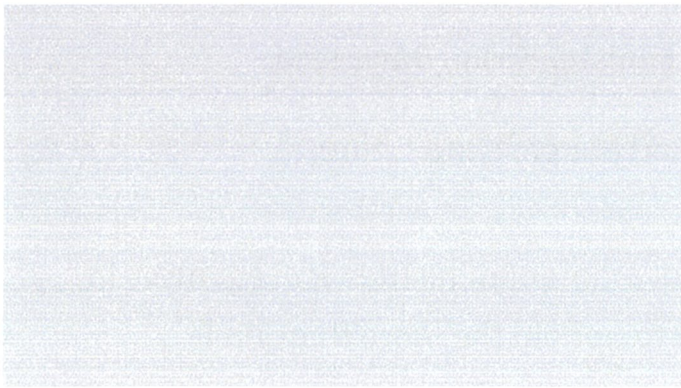
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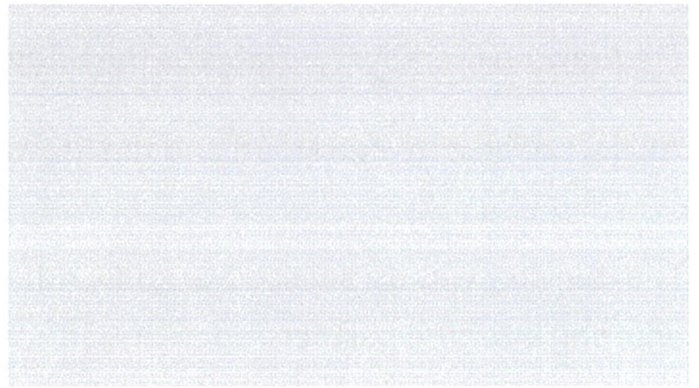
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