Controller and Auditor-General
Tumuaki o te Mana Arotake

B.29[25d]

How public organisations are fulfilling Treaty settlements

Photo acknowledgement:
iStock, Uwe Moser

B.29[25d]

How public organisations are fulfilling Treaty settlements

Presented to the House of Representatives under section 20 of the Public Audit Act 2001.

April 2025

Contents

Auditor-General's overview 3

Our recommendations 8

Part 1 – Why we did this audit 10

- What we looked at 11
- What we did not look at 12

Part 2 – Public sector arrangements for fulfilling settlements 14

- Settlements have a clear purpose 14
- Deeds of settlement and settlement Acts assign responsibilities for individual commitments 16
- Public organisations must consider settlements' overall intent when meeting commitments 18
- The number and complexity of commitments have increased over time 19
- Oversight arrangements were strengthened in December 2022 20
- He Korowai Whakamana is yet to be fully embedded 23

Part 3 – Understanding settlement responsibilities 25

- Guidance and support are available but limited for non-core Crown agencies 25
- Public organisations' understanding is still variable 27
- There is no framework for how to achieve holistic intent 29

Part 4 – Meeting settlement responsibilities 31

- Existing systems might need to be adapted 31
- Public organisations need to monitor their commitments 38
- Public organisations are not consistently meeting their commitments 40
- Settlements need to be adequately prioritised 42
- Public organisations should learn from one another 44

Part 5 – Advice and support for public organisations 46

- There are gaps in the guidance and support available 46
- Support for right of first refusal redress needs to improve 47
- The Public Service Commissioner's role in the resolution pathway needs clarifying 49
- Crown entities, local authorities, and other non-core Crown agencies have little support 51
- Senior public servants need more support to build capability 52

Part 6 – Assurance, transparency, and accountability 54

- There has been little effective accountability 55
- Monitoring information is improving but is still not adequate 58
- Annual reporting does not yet provide adequate assurance or transparency 61
- System-level oversight must be strengthened 65
- There needs to be reporting on progress to achieve each settlement's holistic intention 67

Appendix – Methodology 68

Figures

- 1 – The process from negotiating to ratifying a Treaty settlement 15
- 2 – Components of He Korowai Whakamana 20
- 3 – Status update categories in Te Haeata 58
- 4 – Status update information for responsibilities that core Crown agencies hold, 2023/24 63
- 5 – Recommendations from *Whole of System (Core Crown) Report on Treaty Settlement Delivery* 64

Auditor-General's overview

E ngā mana, e ngā reo, e ngā karangarangatanga maha o te motu, tēnā koutou.

The modern Treaty settlement process was set up to acknowledge and settle the Crown's historical breaches of te Tiriti o Waitangi/the Treaty of Waitangi and provide redress for the injustices that the Crown perpetrated against iwi and hapū.

Redress is set out in deeds of settlement and settlement Acts, which also include the Crown's acknowledgement of the iwi or hapū group's grievances and the Crown's apology. Together, these set out the government's aspirations for the settlement.

Fulfilling settlement commitments is a significant responsibility. The redress that settlements provide is intended to acknowledge the past, and settlements as a whole look ahead to a renewed relationship between the Crown and iwi and hapū.

For a settlement to be durable and the Crown's apology to be meaningful, public organisations need to move beyond transactional ways of working with iwi and hapū. They need to work in the interests of a long-term and enduring relationship.

The number of settlements has effectively doubled each decade between 1989 and 2020, and this has increased the volume and complexity of public organisations' responsibilities.

Today, about 150 public organisations have about 12,000 individual contractual and legal commitments under about 80 settlements with about 70 groups. To date, $2.738 billion of financial and commercial redress has been transferred through settlements.

In December 2022, the then Minister for Māori Crown Relations said that "agencies were struggling to meet their settlement commitments" and that this risked "undermining a number of the settlements that [have] been negotiated".[1]

After this, Cabinet approved the implementation of He Korowai Whakamana, a framework to strengthen the oversight and monitoring arrangements for settlement commitments. At that time, Te Arawhiti was the agency responsible for implementing the framework.

I wanted to know whether the public sector's arrangements effectively support public organisations to fulfil their settlement commitments as intended. I also wanted to provide assurance about whether public organisations are well positioned to meet their legal and contractual commitments and about how well they understood any associated risks.

1 Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", paragraph 12, at whakatau.govt.nz.

What we found

Public sector arrangements do not adequately support public organisations to meet commitments or fulfil settlements' overall intent

Deeds of settlement and settlement Acts explain each settlement's purposes and functions, the commitments that have been agreed to, and which Ministers and public organisations are responsible for meeting them. Despite this, many public organisations still have a mixed understanding of their commitments.

Many public organisations do not properly plan how they will meet their commitments, nor do they prioritise sufficient resources to do so. Many do not have effective processes for monitoring whether they are meeting their commitments. Some public organisations also have limited access to support and advice.

Every one of the public organisations with commitments that we audited had difficulties meeting some of them as the settlements intended.

He Korowai Whakamana prompted core Crown agencies to improve how they monitor their responsibilities.[2] It sets out what is expected of core Crown agencies with settlement commitments and requires them to regularly report the status of their commitments through a centralised database, Te Haeata – the Settlement Portal.

This has improved transparency of how these agencies are performing and helps identify and resolve issues with providing redress. However, although we saw isolated examples of good practice, the public organisations we audited were not yet consistently meeting their commitments or supporting settlements' overall intent.

Post-settlement governance entities told my staff that, in their view, public organisations tend to see settlements as a series of transactions rather than as supporting a broader and more strategic relationship between iwi and hapū and the Crown.[3] However, one of the main intentions of settlements is to forge this new relationship.

Although Te Arawhiti had a monitoring and oversight role, there is no framework that guides public organisations to consider a settlement holistically – for example, by ensuring that they co-ordinate their work on meeting commitments

2 When we say "core Crown agencies" in this report, we mean public service departments and departmental agencies, the New Zealand Defence Force, and the New Zealand Police. When we say "non-core Crown agencies", we mean all other public organisations, including Crown entities, local authorities, State-owned enterprises, and Crown-owned companies.

3 Post-settlement governance entities are private trusts that act on behalf of iwi and hapū who have settlements. They are responsible for holding and managing the settlement redress transferred to the claimant group under the deed of settlement.

with other agencies to understand and manage interdependencies, make it easier for post-settlement governance entities to engage with them, and fulfil settlements' overall intent.

The government does not fully understand the risk to durability of settlements

Failure to provide redress as intended has created a risk of litigation for the public sector and the government. The government has already paid tens of millions of dollars in financial compensation to post-settlement governance entities for significant issues with meeting settlement commitments.

Parliament and the public should rightly be concerned about any failure by the public sector to meet its contractual and legal commitments. Failing to provide redress as intended also means that post-settlement governance entities, iwi, and hapū miss significant economic and social opportunities to benefit from the redress.

The reputational damage from such failures can also make it harder for the public sector to achieve the intent of settlements and improve the Crown's relationship with iwi and hapū.

There is still not enough visibility to Parliament and the public of these kinds of problems.

Although He Korowai Whakamana has led to some improvements, critical gaps remain. Crown entities, local authorities, and other non-core Crown agencies are not included in He Korowai Whakamana's scope, even though they are responsible for about one in five of all settlement commitments.

This means that these organisations have less access to advice or support than core Crown agencies. There is also no central monitoring of the status of their commitments.

The adequacy of core Crown agencies' internal systems for monitoring their commitments affects the quality of the status updates they report through Te Haeata. Core Crown agencies were also required to report on their progress in meeting settlement commitments in their 2023/24 annual reports. However, in my view, these reports did not provide enough detail about what progress had been made.

The lack of adequate monitoring means that there is not enough information for Ministers, Parliament, and the public to fully understand the risks associated with failing to provide redress, whether for an individual settlement or for settlements generally, or its impact on the Māori–Crown relationship.

There has been little effective accountability

The lack of adequate monitoring also means that Ministers, Parliament, and the public do not have enough information to hold public organisations to account for their settlement responsibilities.

Every Government has continued the settlement process since it began more than 30 years ago. Public organisations have often been directly involved in negotiating settlements, and a significant body of knowledge has been developed about individual settlements and the different types of redress that they provide. Historically, settlement legislation has received cross-party support.

Therefore, in my view, it is unacceptable that public organisations have not fully appreciated Treaty settlements' complexity or adequately recognised the importance of meeting their commitments consistently and promptly.

I consider that this reflects a tolerance, over many years, of a lack of accountability and transparency for a system that – aside from the significant public money invested in it – has constitutional importance.

What I recommend

This report focuses on the performance of eight public organisations. Collectively, these public organisations are responsible for about 70% of the total individual commitments recorded in Te Haeata.

However, my staff also spoke with other public organisations. These discussions indicated that the challenges that we identify in this report are common in the wider public sector.

Public organisations need to make a significant shift in the way they manage settlement commitments to realise the potential and purpose that Cabinet and Parliament stipulated in deeds of settlement and settlement Acts.

The public sector needs to understand that settlements are the basis for long-term relationships with iwi and hapū, and that it needs to manage them accordingly. As Te Arawhiti told its Minister in a 2020 briefing:

> *When settlement commitments are not upheld, any trust and confidence in the Crown built through the settlement process is jeopardised, and relationships between partners are undermined. In short, if the Crown does not honour its commitments, settlements risk not being full and final.*

I have made nine recommendations aimed at strengthening the settlement system's leadership and improving its integrity.

This report's findings are based on evidence that my staff gathered from Te Arawhiti during 2024. In late 2024, the Ministers for Treaty of Waitangi Negotiations and Māori Crown Relations decided to transfer responsibility for many of the functions of Te Arawhiti to Te Puni Kōkiri. These changes were implemented on 24 February 2025.

This included responsibility for monitoring and reporting on the Crown's fulfilment of settlement commitments. For this reason, I have directed several of my recommendations to Te Puni Kōkiri.

Te Puni Kōkiri has been given significant responsibilities that are crucial to strengthening the Crown's relationship with iwi and hapū. A critical step will be to build constructive relationships with post-settlement governance entities.

My Office intends to follow up on the progress that public organisations have made on my recommendations in due course.

Acknowledgements

I thank the many public sector staff who spoke to my audit team.

I also acknowledge and thank Te Kawerau Iwi Settlement Trust, Te Uru Taumatua Trust, and Te Rūnanga o Toa Rangatira for agreeing to participate in this work. I greatly appreciate their insights.

Nāku noa, nā

John Ryan
Controller and Auditor-General | Tumuaki o te Mana Arotake

10 April 2025

Our recommendations

We have organised our recommendations into two groups – recommendations directed at all public organisations (or those with governance responsibilities for public organisations with settlement commitments), and recommendations directed at the public organisations we specifically looked at for this work. Recommendations are numbered according to the order they appear in this report.

To improve accountability for fulfilling Treaty settlements, we recommend that:

- all public organisations with settlement commitments review how they plan to meet and monitor their commitments (**Recommendation 2**);
- all public organisations with settlement commitments improve the information that their annual reports provide about their progress in meeting their commitments, including by clearly explaining:
  - the types of commitments that they are responsible for (for example, what proportion are land redress or relational redress);
  - what different status updates mean; and
  - their achievements and any significant settlement issues (**Recommendation 7**);
- responsible Ministers, the Public Service Commission, and the governing bodies of Crown entities, local authorities, and other non-core Crown agencies with settlement commitments strengthen expectations on public organisations about meeting their commitments in performance agreements with chief executives and in other relevant mechanisms (**Recommendation 3**); and
- the Public Service Commission and the governing bodies of Crown entities, local authorities, and other non-core Crown agencies strengthen ongoing development for chief executives so that they can lead their organisations to effectively meet settlement commitments (**Recommendation 5**).

To strengthen system leadership and improve the overall integrity of the Treaty settlement system, we recommend that:

- Te Puni Kōkiri, working with other public organisations as appropriate, develop a framework to guide public organisations to achieve settlements' holistic intent (**Recommendation 1**);
- Land Information New Zealand works to ensure that there is a system in place so that right of first refusal memorials are correctly placed on land titles (**Recommendation 4**);
- Te Puni Kōkiri consider improvements to the quality and accuracy of the information that Te Haeata collects and reports (**Recommendation 6**);
- Te Puni Kōkiri and the Public Service Commission work together, and with others as needed, to consider how to extend He Korowai Whakamana to relevant Crown entities, local authorities, and other non-core Crown agencies, to ensure that:
  - those agencies have adequate advice, guidance, and support to meet their commitments; and
  - Te Puni Kōkiri collects information about the status of those agencies' commitments (**Recommendation 8**); and
- Te Puni Kōkiri regularly assess the public sector's progress with meeting settlement commitments, whether it is achieving each settlement's holistic intention, and any significant risks and achievements, and:
  - regularly report that assessment to the Minister for Māori Crown Relations and other responsible Ministers; and
  - report on those matters annually to the Māori Affairs Select Committee (**Recommendation 9**).

1 Why we did this audit

1.1 Te Tiriti o Waitangi/the Treaty of Waitangi is an agreement that the British Crown and rangatira reached in 1840. It set out terms for establishing British government in New Zealand.

1.2 Since te Tiriti was signed, the Crown has not met its obligations. In modern times, this has led to claims against the Crown through the Waitangi Tribunal. Since 1989, successive Governments have sought to resolve these claims through settlements with iwi and hapū.

1.3 The Treaty of Waitangi Act 1975 (the Act) established a process for Māori to make claims about the Crown's actions and omissions that they allege are inconsistent with the principles of te Tiriti o Waitangi/the Treaty of Waitangi. The Act established the Waitangi Tribunal as a permanent commission of inquiry to hear and decide on these claims.[4]

1.4 A 1985 amendment to the Act enabled Māori to make claims about historical breaches going back to 6 February 1840, when te Tiriti was first signed.[5] Claimants can also approach the Government to settle their historical claims, regardless of whether the Waitangi Tribunal has considered them.

1.5 Claims are settled through a deed of settlement (which is generally enacted through a settlement Act) that provides redress and seeks a renewed relationship between the Crown and iwi and hapū. Redress can take the form of financial payments, one-off commitments (such as transferring public land or restoring a traditional place name), or ongoing commitments (such as co-governance arrangements for a natural feature, like a river or mountain).

1.6 Today, public organisations are responsible for about 12,000 individual commitments to provide redress. Multiple public organisations are responsible for some commitments, leading to an overall number of about 18,000 individual responsibilities. Meeting these contractual and legal obligations is a complex task for public organisations to carry out alongside their other legislative responsibilities.

1.7 Successive Governments have invested significant resources into settling historical claims. The settlement process includes hearing claims, negotiating settlements, and meeting settlement commitments. As of late 2024, $2.738 billion of financial and commercial redress had been transferred through settlements.

1.8 We wanted to provide assurance about whether public organisations were well positioned to meet their legal and contractual commitments and fulfil

4 Sections 4-6 of the Treaty of Waitangi Act 1975.

5 Section 3 of the Treaty of Waitangi Amendment Act 1985.

settlements as intended. We also wanted to provide assurance about how well they understood any risks associated with meeting their commitments.

What we looked at

1.9 We wanted to answer the question "How effective are the public sector arrangements that support the delivery of Treaty settlement commitments?".

1.10 To answer this question, we developed three lines of inquiry:

- How well do the Crown and public organisations understand their Treaty settlement commitments?
- How well do public organisations' internal accountability arrangements, resourcing, policies, systems, and processes enable them to meet Treaty settlement commitments?
- How well do public sector arrangements provide assurance, transparency, and accountability for meeting Treaty settlement commitments?

1.11 We carried out a performance audit of two public organisations with key leadership roles for oversight and support for meeting commitments (Te Arawhiti and Te Kawa Mataaho Public Service Commission) and six public organisations with settlement commitments.

1.12 Together, these organisations are responsible for about 70% of total individual commitments (see paragraphs 2.35-2.36).

1.13 We spoke with three post-settlement governance entities about their settlements and associated commitments.[6] They were:

- Te Kawerau Iwi Settlement Trust, the post-settlement governance entity for Te Kawerau ā Maki;
- Te Uru Taumatua Trust (Te Uru Taumatua), the post-settlement governance entity for Tūhoe; and
- Te Rūnanga o Toa Rangatira, the post-settlement governance entity for Ngāti Toa Rangatira.

1.14 These post-settlement governance entities represent iwi of differing sizes (from about 350 members of Te Kawerau ā Maki to about 51,000 members of Tūhoe), in different geographic areas (Auckland, the north-east North Island, and the lower North Island and top of the South Island). The financial redress in their settlements also ranges in value (for example, the financial redress in Tūhoe's settlement is about $170 million, and Te Kawerau ā Maki's is about $6.5 million).

6 Post-settlement governance entities are private trusts that act on behalf of iwi and hapū who have settlements. They are responsible for holding and managing the settlement redress that is transferred to the claimant group under the deed of settlement.

1.15 We also spoke with another eight public organisations about their experience in meeting their settlement commitments. These organisations are collectively responsible for about 18% of all commitments.

1.16 We looked at information about public organisations' progress in contributing to a range of settlement commitments. We also looked at the oversight and guidance that supports these commitments, their reporting and accountability arrangements, and the effects of delayed or unmet commitments.

What we did not look at

1.17 We did not look at:

- settlement negotiations, agreements, deeds, or legislation;
- applications and awards provided for under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
- the Crown Law Office's role or the advice that it provides to public organisations;
- whether all of the commitments under the settlements that we looked at have been met as intended; or
- whether commitments made under other settlements have been met as intended.

1.18 The Appendix provides more details about the public organisations we looked at and our audit methodology.

1.19 In late 2024, the Ministers for Treaty of Waitangi Negotiations and Māori Crown Relations decided to transfer responsibility for many of Te Arawhiti's functions to Te Puni Kōkiri. This included responsibility for monitoring and reporting on the Crown's fulfilment of commitments.[7]

1.20 These changes were implemented in late February 2025. To reflect its more focused role, Te Arawhiti's name was changed to Te Tari Whakatau – The Office of Treaty Settlements and Takutai Moana. In this report, we use the name Te Arawhiti because this was how it was known during our fieldwork.

1.21 In our report, we make findings based on the evidence we gathered from Te Arawhiti during 2024. At that time, it was the organisation with responsibility for overseeing, monitoring, and supporting other public organisations' fulfilment of their settlement commitments. However, we direct some commentary and recommendations to Te Puni Kōkiri, because it now has responsibility for post-settlement matters.

7 See Te Kawa Mataaho Public Service Commission (2024), "Clarifying agency functions", paragraphs 9-11, recommendations 5-6, at publicservice.govt.nz.

1.22 In our report, we use the following terms:

- When we say "public organisations", we mean all public sector entities. This includes all Ministries, departments, departmental agencies, Crown entities, State-owned enterprises, Crown-owned companies, and local authorities.
- When we say "core Crown agencies", we mean public service departments and departmental agencies, the New Zealand Defence Force, and the New Zealand Police.
- When we say "non-core Crown agencies", we mean all other public organisations, including Crown entities, local authorities, State-owned enterprises, and Crown-owned companies.
- When we say "Crown entities", we mean public organisations that operate in accordance with the Crown Entities Act 2004. This includes Crown agents, autonomous Crown entities, and independent Crown entities.[8]
- When we say "local authorities", we mean councils and other public organisations in local government that are governed by the Local Government Act 2002. This includes unitary, regional, district, and city councils.[9]

8 Section 7 of the Crown Entities Act 2004.

9 Section 5 of the Local Government Act 2002.

2 Public sector arrangements for fulfilling settlements

2.1 After a settlement Act passes, multiple public organisations become responsible for providing redress to the relevant post-settlement governance entity.

2.2 Until February 2025, Te Arawhiti was responsible for overseeing how the Crown met its settlement commitments. A framework, He Korowai Whakamana, set out oversight and monitoring arrangements. These included requirements for core Crown agencies to report their progress in meeting their commitments and a pathway for resolving issues.

2.3 In this Part, we outline these arrangements and discuss how the number of settlements has increased, and how the nature of redress has evolved over time.

Settlements have a clear purpose

2.4 A settlement is intended to acknowledge historical injustices that the Crown perpetrated against iwi and hapū, provide compensation (also called redress), and establish the basis for a renewed relationship. Figure 1 sets out an overview of the settlement process.

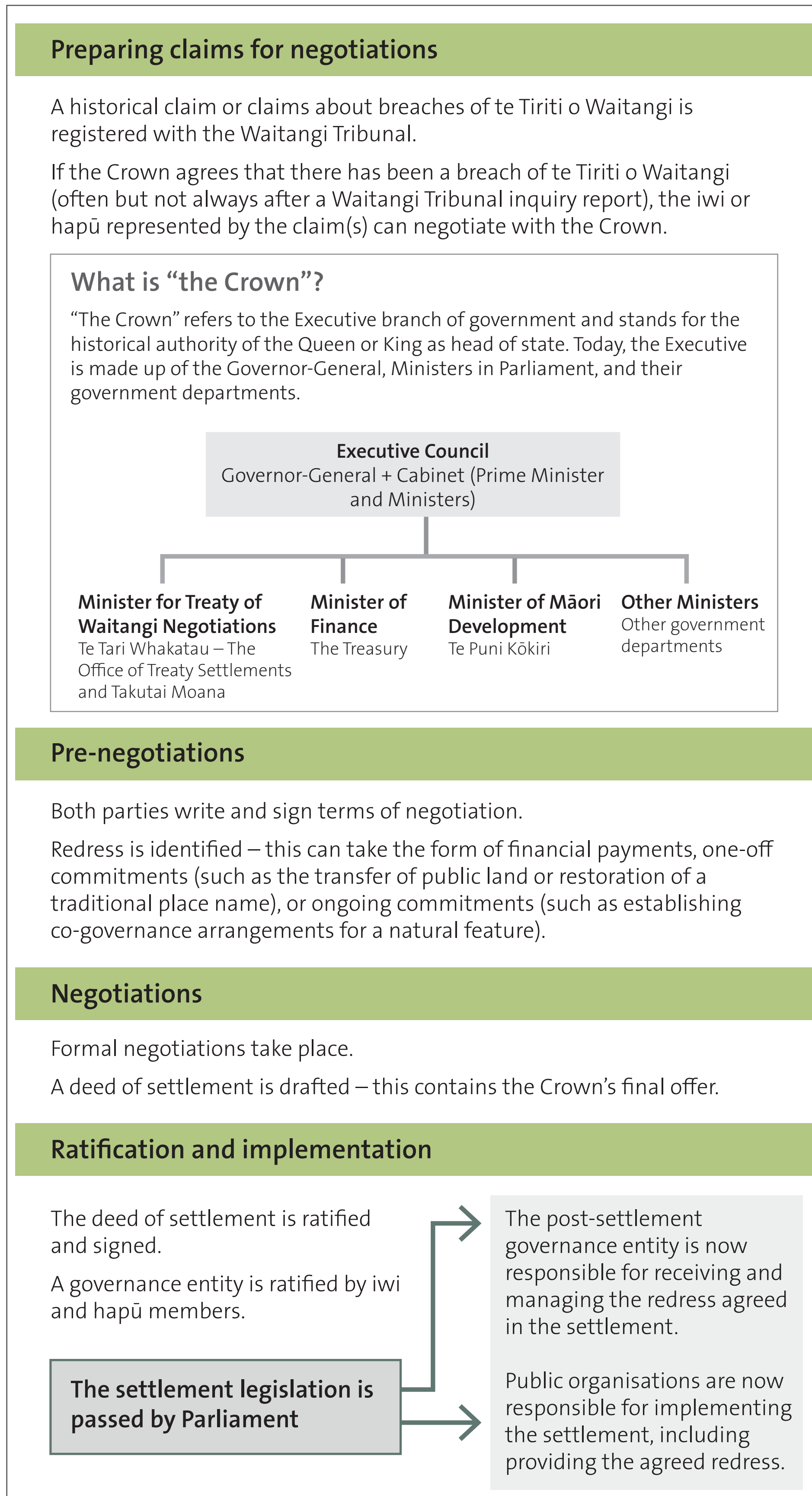
2.5 This purpose is set out in settlement negotiation policy, deeds of settlement, and settlement legislation. For example, the Government's settlement negotiation policy states that settlements are intended to:

- explicitly acknowledge historical injustices experienced by iwi and hapū that were caused by the Crown's actions or omissions;
- settle all iwi and hapū claims arising from the Crown's historical injustices;[10]
- be durable, which means they must be fair, be achievable, and remove the sense of grievance;
- provide financial, commercial, cultural, and other redress that balances fairness to iwi and hapū with the Crown's fiscal and economic constraints; and
- form the basis for strengthening the Crown's relationship with iwi and hapū.[11]

10 The Treaty of Waitangi Act 1975 defines historical claims as claims relating to acts or omissions of the Crown that occurred before 21 September 1992 (see section 2 of the Act).

11 Office of Treaty Settlements (2018), *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* (the Red Book), at whakatau.govt.nz.

Figure 1
The process from negotiating to ratifying a Treaty settlement



Source: Adapted from Office of Treaty Settlements (2018), *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* (the Red Book), at whakatau.govt.nz.

2.6 The text of each deed of settlement and settlement Act includes the Crown's acknowledgement of the iwi or hapū group's grievances and the Crown's apology. Together, these set out the government's aspirations for the settlement. For example, Te Kawerau ā Maki Claims Settlement Act 2015 states:

> *The Crown unreservedly apologises for not having honoured its obligations to Te Kawerau ā Maki under the Treaty of Waitangi. Through this apology and this settlement the Crown seeks to atone for its wrongs and lift the burden of grievance so that the process of healing can begin. By the same means the Crown hopes to form a new relationship with the people of Te Kawerau ā Maki based on mutual trust, co-operation, and respect for the Treaty of Waitangi and its principles.*[12]

2.7 Together, these texts articulate the intent of both Cabinet and Parliament. They provide context for the settlement agreement and the redress contained within it.

2.8 Settlement legislation has historically received cross-party support.

Deeds of settlement and settlement Acts assign responsibilities for individual commitments

2.9 Settlements are given effect through deeds of settlement, which are signed by the iwi or hapū and the Executive, through Cabinet. Generally, deeds of settlement are conditional on being enacted into law by Parliament through settlement Acts.

2.10 As of November 2024, about 100 deeds of settlement have been reached, and 80 of these have been enacted through legislation.[13] About 26 settlements remain to be negotiated, and five are pending enactment through legislation.[14]

2.11 Deeds of settlement and settlement Acts set out the accountabilities for individual commitments. They explain each settlement's purposes and functions, the commitments that have been agreed, and which Ministers and public organisations are responsible for fulfilling them. In doing so, they place contractual and legal obligations on those parties to provide the redress set out in the deed.

2.12 A range of public organisations are responsible for providing settlement redress, including Ministries and departmental agencies, Crown entities, State-owned enterprises, and local authorities. Each public organisation is accountable to its Minister or relevant governing entity for complying with its contractual and legal obligations to fulfil individual settlement commitments.

12 Section 9(3) of Te Kawerau ā Maki Claims Settlement Act 2015.

13 Te Arawhiti (2024), *Whole of system (core Crown) report on Treaty settlement delivery*, page 5, at beehive.govt.nz.

14 Te Arawhiti (2024), *Whole of system (core Crown) report on Treaty settlement delivery*, page 5, at beehive.govt.nz.

2.13 Ministers are accountable to Parliament for the actions and omissions of the public organisation(s) that they are responsible for. Other governing entities, such as elected council members, are accountable to the communities that elected them for the actions and omissions of the public organisation(s) that they are responsible for.

2.14 In some instances, the governing entity is responsible and accountable for individual commitments. For example, Ministers can be formally responsible for sending letters of introduction (see paragraph 2.16).

2.15 Post-settlement governance entities receive and manage redress.

Various types of commitments are included in settlements

2.16 Settlements contain a range of types of commitments. Some are one-off commitments, such as:

- transfers of public land, including through:
  - properties transferred on the settlement date;
  - rights of first refusal, where post-settlement governance entities retain a long-term right to be given the opportunity to buy land a public organisation disposes of; and
  - deferred selection properties, where post-settlement governance entities can choose to buy properties within a set time frame;
- Ministers sending letters of introduction to other public organisations encouraging them to establish relationship agreements with post-settlement governance entities;
- paying financial redress; and
- restoring traditional place names.

2.17 Other redress types involve ongoing commitments, such as:

- relationship agreements, protocols, and forums between post-settlement governance entities and public organisations;
- co-management and/or co-governance arrangements for natural features, such as the Waikato River; and
- ongoing consultation on strategy and planning processes (such as conservation management strategies and plans) or on regulatory matters (such as regional plans or resource consent applications).

Public organisations must consider settlements' overall intent when meeting commitments

2.18 In December 2022, Cabinet endorsed a set of expectations for core Crown agencies about how to meet settlement commitments "so that settlements are durable and support true Treaty partnership".[15] In March 2024, Te Arawhiti issued guidance reinforcing these expectations.[16]

2.19 These expectations confirm what deeds of settlement and settlement Acts already set out:

- Any redress that has been committed to is a contractual and legal obligation that responsible public organisations must fulfil.[17]
- Settlements commit parties to a "renewed relationship"[18] and provide a foundation for an enduring "Treaty partnership".[19]

2.20 These expectations also state that, although agencies are "responsible for individual commitments to iwi, it is important to be mindful of the holistic intention of the settlement rather than solely focusing on implementation of individual commitments".[20] In other words, meeting individual commitments and pursuing a renewed relationship are interdependent.

2.21 This might involve seeking to realise the aspirations of iwi and hapū through "partnership opportunities beyond specified redress".[21] It might also involve understanding the settlement's context, any interdependencies with commitments that other agencies hold, and co-ordinating with other agencies to provide redress (see Part 3).

15 Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", Appendix 3, at whakatau.govt.nz.

16 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, at tpk.govt.nz.

17 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 2, at tpk.govt.nz.

18 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 2, at tpk.govt.nz.

19 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 3, at tpk.govt.nz.

20 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 3, at tpk.govt.nz.

21 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 3, at tpk.govt.nz.

The number and complexity of commitments have increased over time

2.22 Since the first settlement negotiations began in 1989, the number of settlements have effectively doubled each decade until 2020. Eleven deeds of settlement were agreed between 1989 and 2000, 24 between 2001 and 2010, 52 between 2011 and 2020, and at least 13 since 2021. Through the process of achieving settlements between iwi and hapū and the Crown, public organisations have become responsible for increased volumes of settlement redress.

2.23 Today, about 150 public organisations are responsible for about 12,000 individual settlement commitments. In some instances, public organisations are responsible for hundreds of commitments. Four public organisations are each responsible for more than a thousand commitments.

2.24 Settlements have also become more complex over time. Early settlements were about a single claim or issue. However, since 1999, Governments have preferred to seek settlements with what it terms "large natural groupings" – with "groups of tribal interests, rather than with individual hapū or whānau within a tribe".[22]

2.25 As a result, public organisations are responsible for settlements that can involve a wide range of redress, which can sometimes be novel and complex. Settlements can involve public organisations using existing tools and procedures to provide redress (such as financial and property transfers) or including post-settlement governance entities in existing processes (such as consulting with them as part of developing strategies and plans and carrying out regulatory processes).

2.26 Settlements can also require public organisations to set up new processes and sometimes new entities. Co-governance and co-management arrangements often require public organisations to work with iwi and hapū in ways that they have not previously – even if they have had pre-existing relationships with the same groups.

2.27 The nature of negotiations means that, although most or all settlements feature common redress types, some types of redress are tailored to individual settlements. We were told that this is likely to continue to be the case for the settlements that are yet to be negotiated and agreed. We were also told that some complex settlements are yet to be negotiated.

22 Office of Treaty Settlements (2018), *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* (the Red Book), page 39, at whakatau.govt.nz.

Oversight arrangements were strengthened in December 2022

2.28 In December 2022, the then Minister for Māori Crown Relations – Te Arawhiti said:

> *Currently the delivery of settlement commitments rests with each individual commitment holding agency. There is no unified Crown system requiring all those organisations to monitor or report on the progress of their commitments. The Crown lacks assurance that settlements are being honoured. The Crown is also unable to provide that assurance to iwi. This is a significant risk to Māori Crown relationships. When settlement commitments are not honoured, this undermines the confidence of iwi in the Crown and can involve a slow and expensive process to resolution.*[23]

2.29 Cabinet subsequently approved a framework, called He Korowai Whakamana, "for achieving oversight and enhancing accountability" of settlement commitments. Figure 2 sets out the framework's components.

Figure 2
Components of He Korowai Whakamana

He Korowai Whakamana

He Korowai Whakamana is a framework for overseeing settlement commitments.
The framework has:

- a strengthened mandate for Te Arawhiti to lead the system to oversee the fulfilment of core Crown Treaty settlement commitments;
- a set of "Crown expectations for Crown Treaty settlement commitment holders" for core Crown agencies to use as a foundation to strengthen their capability to uphold Treaty settlements;
- a transparent pathway for resolving significant settlement issues, which sets out the triggers and escalation points for post-settlement issues;
- monitoring of core Crown agencies' commitments through Te Haeata – the Settlement Portal, which became a shared data system for the status of Treaty settlement commitments;
- requirements for core Crown agencies to report on their progress in meeting their Treaty settlement commitments in their annual reports for 2023/24; and
- a whole-of-system report on the status of core Crown Treaty settlement commitments for 2023/24 onwards to be provided initially to the Minister for Māori Crown Relations – Te Arawhiti.

Source: Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", at whakatau.govt.nz.

2.30 He Korowai Whakamana applies to "core Crown agencies", which it defines as public service departments and departmental agencies, the New Zealand Defence Force, and the New Zealand Police.

23 Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", paragraph 14, at whakatau.govt.nz.

2.31 The framework excludes all other public organisations with Treaty settlement commitments, including Crown entities and local authorities. The Cabinet paper that proposed He Korowai Whakamana recognised that there was an opportunity to consider extending it to other public organisations after core Crown agencies had implemented it.[24]

Te Arawhiti's mandate was strengthened

2.32 Before He Korowai Whakamana was introduced in December 2022, Te Arawhiti – and its predecessor agencies the Office of Treaty Settlements and the Post Settlement Commitments Unit, which were both part of the Ministry of Justice – already had a mandate to support the fulfilment of Treaty settlement commitments. This included providing proactive guidance and support to core Crown agencies about meeting their commitments and addressing specific issues.[25]

2.33 However, Te Arawhiti told us that, with limited resources, it had prioritised supporting public organisations with significant settlement issues (such as to prevent a settlement breach or where a breach had already occurred).[26] As a result, its involvement in supporting public organisations to meet settlement commitments more generally tended to be reactive.

2.34 Through He Korowai Whakamana, Cabinet approved a strengthened mandate for Te Arawhiti "to lead the system to achieve oversight of delivery of core Crown Treaty settlement commitments".[27] This included:

- providing guidance, advice, and support to core Crown agencies – including discrete advice when requested;[28]

24 Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", paragraph 23, at whakatau.govt.nz.

25 Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", paragraph 18, at whakatau.govt.nz.

26 Te Arawhiti's guidance defines a significant settlement issue as a case where:
... one or more of the following factors are present:
- *the Deed or Legislation has been breached;*
- *the redress cannot be delivered as intended;*
- *an all-of-Crown view is required;*
- *there is a material relationship breakdown between parties;*
- *there is a lack of reasonable progress or engagement;*
- *a number of issues have arisen, and the cumulative impact is significant.*

See Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", page 24, at whakatau.govt.nz.

27 Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", paragraph 58.5, at whakatau.govt.nz.

28 The Crown Law Office also provides legal advice to core Crown agencies when requested.

- maintaining clear expectations for core Crown agencies;[29]
- monitoring core Crown agencies' commitments through Te Haeata – the Settlement Portal;
- administering the resolution pathway when post-settlement issues involving core Crown agencies had been escalated; and
- preparing a whole-of-system report on the status of core Crown agencies' commitments for 2023/24 onwards.

New monitoring and reporting arrangements were introduced

2.35 Te Arawhiti developed Te Haeata from an older list of individual commitments derived from deeds of settlement and settlement Acts.[30] It now contains about 12,000 commitments tagged to the entities responsible for meeting them.

2.36 More than one public organisation is responsible for some commitments, leading to an overall number of about 18,000 responsibilities. Of these responsibilities:

- core Crown agencies are responsible for about 80%; and
- Crown entities, local authorities, and other non-core Crown agencies are responsible for about 20%.

2.37 He Korowai Whakamana requires core Crown agencies to provide quarterly updates in Te Haeata on the status of each commitment they are responsible for. It also requires core Crown agencies to report on their settlement commitments in their annual reports from 2023/24 onwards. The Treasury has issued guidance to assist core Crown agencies with these requirements.[31]

2.38 Although Te Haeata lists the commitments of Crown entities, local authorities, and other non-core Crown agencies, these organisations are not required to provide status updates or information about their commitments in their annual reports.

2.39 Through He Korowai Whakamana, Cabinet also directed Te Arawhiti to produce a report on the status of core Crown Treaty settlement commitments for the Minister for Māori Crown Relations. It released the first report, for 2023/24, in December 2024 (see paragraphs 6.65-6.67).

29 We discuss these expectations in paragraphs 2.18-2.21. Cabinet endorsed the original version of these expectations, and they were released in December 2022. Te Arawhiti reissued these expectations in March 2024: Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, at tpk.govt.nz.

30 The Post Settlement Commitments Unit in the Ministry of Justice, which was set up in 2013, started developing the original list. This unit was absorbed into Te Arawhiti, which became operational in 2019.

31 The Treasury (2024), *Annual reports and other end-of-year performance reporting: Guidance for reporting under the Public Finance Act 1989*, pages 42-44, at treasury.govt.nz.

A resolution pathway was set up

2.40 He Korowai Whakamana formalised a resolution pathway that can be used when a settlement issue arises. In March 2024, Te Arawhiti released guidance reinforcing the resolution pathway process.[32] A settlement issue arises when a commitment has not or cannot be met as intended – for example, within the specified time frame.[33]

2.41 The pathway allows for the following three levels of response to a settlement issue:

- "Resolve" is triggered when a post-settlement governance entity or core Crown agency raises a settlement issue with Te Arawhiti (now with Te Puni Kōkiri). The public organisation involved notifies Te Puni Kōkiri, updates Te Haeata, then works with the post-settlement governance entity to resolve the issue (with advice and support from Te Puni Kōkiri if needed).[34]
- "Re-establish" is triggered for significant settlement issues. At this step, the relevant public organisation's chief executive and the Public Service Commissioner are formally notified.[35]
- "Report" is triggered if the agreed pathway to resolution has not been met and partners cannot agree on adjustments to time frames.[36]

2.42 The final step (Report) includes a series of escalations. This includes a report to the relevant Ministers, who then provide direction on the next steps.[37]

2.43 If the public organisation cannot resolve the issue with the post-settlement governance entity, Ministers may request the Māori Crown Relations Cabinet Committee or Cabinet to provide further direction.[38]

He Korowai Whakamana is yet to be fully embedded

2.44 Implementation of He Korowai Whakamana started in 2023, but aspects of it had not been fully embedded when we carried out our audit. For example, the Public Service Commissioner had yet to be formally notified of any significant settlement issue, in part because the Commissioner's role after being notified had not yet been worked out (see paragraphs 5.27-5.35).

32 Te Arawhiti (2024), *Guidance: Crown post-settlement issues resolution pathway*, at tpk.govt.nz.

33 Te Arawhiti (2024), *Guidance: Crown post-settlement issues resolution pathway*, page 2, at tpk.govt.nz.

34 Te Arawhiti (2024), *Guidance: Crown post-settlement issues resolution pathway*, page 4, at tpk.govt.nz.

35 Te Arawhiti (2024), *Guidance: Crown post-settlement issues resolution pathway*, pages 4-5, at tpk.govt.nz.

36 Te Arawhiti (2024), *Guidance: Crown post-settlement issues resolution pathway*, page 5, at tpk.govt.nz.

37 Te Arawhiti (2024), *Guidance: Crown post-settlement issues resolution pathway*, pages 5-6, at tpk.govt.nz.

38 Te Arawhiti (2024), *Guidance: Crown post-settlement issues resolution pathway*, page 6, at tpk.govt.nz.

2.45 Aspects of Te Arawhiti's strengthened mandate and its processes and procedures for reporting the status of commitments in Te Haeata were also still new. Public organisations were only required to publicly report from 2023/24.

2.46 As mentioned in paragraphs 1.19-1.20, in late 2024, the Ministers of Treaty for Waitangi Negotiations and Māori Crown Relations decided to transfer responsibility for many of Te Arawhiti's functions to Te Puni Kōkiri. This included responsibility for monitoring and reporting on the Crown's fulfilment of commitments. When we published this report, these changes had only recently been implemented.

2.47 We expect that it will take more time for Te Puni Kōkiri to fully embed He Korowai Whakamana alongside its new responsibilities. This report aims, in part, to assist Te Puni Kōkiri in identifying and making improvements to support public organisations to fulfil settlements.

2.48 Te Puni Kōkiri has been given significant responsibilities, which are crucial to strengthening the Crown's relationship with iwi and hapū. A critical step will be to build constructive relationships with post-settlement governance entities.

2.49 We intend to follow up on the progress public organisations have made on our recommendations in due course.

3 Understanding settlement responsibilities

3.1 Deeds of settlement and settlement Acts set out which organisations are responsible for fulfilling a settlement and providing the associated redress. We wanted to assess how well these public organisations understand the settlements and settlement commitments that they are responsible for.

3.2 We expected public organisations to understand their responsibilities and that there would be appropriate support to assist them with this if they needed it.

3.3 We found that deeds of settlement and settlement Acts are clear. We also found that general guidance is available to help core Crown agencies understand settlements and settlement commitments. Public organisations are often involved in negotiating the settlements that they will be responsible for.

3.4 Despite this, we found that many public organisations have a mixed understanding of their responsibilities and that this has contributed to public organisations sometimes failing to provide redress as intended. We discuss in detail in Part 4 how well-positioned public organisations are to meet their commitments.

3.5 Both post-settlement governance entities and public organisations told us that the way public organisations approach their commitments does not consistently reflect an understanding of the importance of each settlement's intent. Public organisations are often unaware of the responsibilities that other public organisations hold, or who they should work with to achieve each settlement's intent.

3.6 In our view, a key factor is the lack of any framework to support or enable public organisations to co-ordinate their work.

Guidance and support are available but limited for non-core Crown agencies

3.7 Te Arawhiti and its predecessor agencies produced guidance and advice designed to assist core Crown agencies with understanding settlements and settlement commitments. This included:

- summaries of each deed of settlement, including summaries of historical accounts and the redress provided; and
- implementation plans for each settlement Act, which were provided to core Crown agencies and outlined those organisations' responsibilities and immediate priorities once legislation had been passed.

3.8 He Korowai Whakamana also provides guidance and tools to support the fulfilment and durability of settlements. Te Arawhiti issued and maintained:

- Cabinet-endorsed expectations applying to core Crown agencies about how to manage and meet settlement commitments (see paragraphs 2.18-2.21);
- guidance explaining the process for resolving settlement issues through the resolution pathway (we discuss the resolution pathway in Part 5); and
- guidance about how to update the status of commitments on Te Haeata (we discuss Te Haeata in Part 6).

3.9 As mentioned in paragraph 2.20, the Cabinet-endorsed expectations emphasise that settlements' "holistic intention" is to form the basis for a renewed relationship between the Crown and iwi and hapū. Therefore, core Crown agencies are expected to meet their individual commitments and to seek wider opportunities to form enduring Treaty partnerships.[39]

3.10 Te Arawhiti also provided targeted advice and support to core Crown agencies about understanding settlements when those agencies requested it. The Crown Law Office provides legal advice to core Crown agencies as needed, including advice about interpreting deeds of settlement and settlement Acts.

3.11 In our view, the guidance that is available and the advice and support that is provided is useful. He Korowai Whakamana's emphasis on building capacity and targeted support reflects the key principles we expect to see in a framework attempting to shift behaviour and encourage compliance.

3.12 The Cabinet-endorsed expectations for core Crown agencies contain information that is likely to be useful for non-core Crown agencies. However, non-core Crown agencies do not have access to targeted advice and support under He Korowai Whakamana to help them understand settlements and settlement commitments when needed.

3.13 The responsibilities of non-core Crown agencies – including Crown entities and local authorities – represent about one in five of the contractual and legal commitments listed in Te Haeata.

3.14 Some Crown entities are substantial landholders that are responsible for significant land redress, including the New Zealand Transport Agency, Health New Zealand, and Kāinga Ora – Homes and Communities.

3.15 Some of the other commitments that these organisations are responsible for are comparable to core Crown agencies' responsibilities, such as relationship agreements. However, other redress is unique, such as obligations to consult about consents in an area of interest of iwi or hapū.

39 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 3, at tpk.govt.nz.

3.16 Lack of access to more targeted support and advice through He Korowai Whakamana means that these organisations, which also have contractual and legal obligations under settlements, cannot routinely access help with understanding their commitments.

Public organisations' understanding is still variable

3.17 The public organisations we spoke with had a variable understanding of their commitments. For example, some public organisations:

- were not aware that they were responsible for commitments, including after Te Haeata began being used as a monitoring tool;
- held conflicting information about the status of commitments; and
- had a poor understanding of their commitments' requirements, resulting in failure to meet them.

3.18 Te Arawhiti acknowledged that it could have improved how it informed public organisations that were not closely involved in negotiations of the likely scope of settlements to better enable them to prepare for their responsibilities. However, it also pointed out that public organisations are often directly involved in settlement negotiations for redress relevant to them.

3.19 We acknowledge that the volume and complexity of redress has increased over time. However, public organisations now have more than 30 years of collective experience in negotiating and fulfilling settlements. Settlement commitments are also set out in deeds of settlement and through legislation, which public organisations should be aware of (as with any legislation).

3.20 Similarly, although some public organisations acknowledged the significance and intent of settlements in their strategic intentions, and many referred to it in internal documentation we saw and in their interviews with us, both post-settlement governance entities and public organisations told us that the way public organisations approach commitments does not consistently reflect this.

3.21 We saw isolated examples of public organisations co-ordinating their work on providing settlement redress. For example, Land Information New Zealand told us about an instance where a post-settlement governance entity would not engage on a particular commitment until another public organisation had transferred a property to it. Land Information New Zealand said it worked with the other public organisation to transfer the property so that it could fulfil its own commitment to the post-settlement governance entity.

3.22 However, we did not see public organisations consistently considering the interdependencies between their own commitments and commitments that others are responsible for. Instead, public organisations typically approach settlements on a commitment-by-commitment basis.

3.23 Post-settlement governance entities told us that they think that public organisations tend to see settlements as a series of transactions rather than as supporting a broader and more strategic relationship between iwi and hapū and the Crown.

3.24 This tendency has sometimes meant that, when there is an issue with meeting one commitment, public organisations do not understand whether other issues have arisen or how the post-settlement governance entity might experience cumulative issues with settlement commitments.

3.25 For example, we were told about a situation where Land Information New Zealand did not transfer title for part of the Riverhead Crown forestry licensed land to Te Kawerau Iwi Settlement Trust in the required time frame.

3.26 When Land Information New Zealand began corresponding with the trust to resolve the issue, it did not acknowledge a significant issue another public organisation also had with providing commercial redress under Te Kawerau ā Maki's settlement.

3.27 In correspondence we saw, Te Kawerau Iwi Settlement Trust pointed out that the cumulative impact of issues with commercial redress included not being able to "provide commercial, cultural, or social benefits for members" because of lost investment opportunity.

3.28 Te Kawerau Iwi Settlement Trust told us that these repeated failures left it with the impression that public organisations did not respect the standards agreed in its deed of settlement.

3.29 Sometimes, post-settlement governance entities have had to inform one part of the public sector what another part of the public sector has failed to do and explain the impact that multiple issues are having on the settlement's overall health.

There is no framework for how to achieve holistic intent

3.30 To provide redress and for each settlement to be durable, public organisations need to understand how to work collectively to give effect to settlements' "holistic intention".[40] However, there is no framework to support public organisations to do this well.

3.31 Post-settlement governance entities we spoke with emphasised that settlements establish a foundation for iwi and hapū to achieve their aspirations. They also form a basis for them to re-engage with the whole public sector on a new footing.

3.32 Te Uru Taumatua told us that settlements should empower iwi "as agents of their own change". Te Uru Taumatua expected that the settlement would change the way that public organisations engaged with it as the representative of Tūhoe. It expected the settlement to encourage more co-operative and co-ordinated relationships. However, in its view, this has not happened.

3.33 Cabinet-endorsed expectations state that a renewed relationship and achieving holistic intent might mean that public organisations need to consider how to work with post-settlement governance entities "beyond specified redress to enhance the Māori Crown relationship and achieve mutual objectives".[41]

3.34 In 2022, Cabinet strengthened Te Arawhiti's oversight role for all settlements. He Korowai Whakamana was intended to support public organisations to fulfil their commitments generally. However, it does not assign Te Arawhiti or any public organisation accountability for overseeing and monitoring whether each settlement's overall intent is being achieved or supporting public organisations to do so.

3.35 In our view, although oversight, monitoring, and escalating and resolving issues are important for meeting individual settlement commitments, more focus is needed on supporting public organisations to work together to fulfil each settlement's intent.

3.36 In our other work, we have said that the public sector often finds it difficult to work collaboratively, even when this is consistent with the intent of a work programme or of legislation.[42] Public organisations told us that they felt that stronger system leadership is needed to support ongoing improvement.

40 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 3, at tpk.govt.nz.

41 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 3, at tpk.govt.nz.

42 For example, see Controller and Auditor-General (2023), *How well public organisations are supporting Whānau Ora and whānau-centred approaches*, paragraphs 4.71-4.78 and Controller and Auditor-General (2021), *Working in new ways to address family violence and sexual violence*, pages 3-4, at oag.parliament.nz.

3.37 We agree. More thought needs to be given to what is individually and collectively expected of public organisations to achieve settlements' overall intent. In our view, this is needed to enable the strategic co-ordination that is critical to the durability of settlements and to realising their opportunities.

3.38 We consider that, to achieve the holistic intent of settlements, public organisations need to:

- understand the settlement's context, the parties involved, and the status of all commitments that make up a settlement;
- understand potential or actual interdependencies between commitments;
- co-ordinate effectively to provide redress, engage with post-settlement governance entities, and share good practice;
- take opportunities to create enduring partnerships with post-settlement governance entities; and
- promptly identify and escalate any issues that might affect a commitment or might conflict with the intent of the settlement.

Recommendation 1

We recommend that Te Puni Kōkiri, working with other public organisations as appropriate, develop a framework to guide public organisations to achieve settlements' holistic intent.

Meeting settlement responsibilities

4

4.1 Over time, public organisations have become responsible for more – and more complex – settlement redress. We wanted to know how well public organisations were set up to fulfil their settlement responsibilities.

4.2 We expected public organisations to give adequate priority and focus to their settlement responsibilities. This includes clearly assigning internal responsibility for planning, identifying any challenges or barriers to meeting their commitments, and making changes to their internal arrangements where needed. We also expected public organisations to have good internal knowledge of their progress in providing redress, through fit-for-purpose monitoring.

4.3 We found that the internal arrangements in many of the public organisations we spoke with did not consistently support them to meet their commitments in a timely and effective way. Although we saw some examples of good practice, all of the public organisations we looked at had difficulties meeting some of their commitments.

4.4 To consistently meet commitments, public organisations need to consider whether their current approaches are suitable.

4.5 Most public organisations we looked at did not have adequate systems to keep track of their progress. This makes it difficult to understand the risks to their ability to meet their commitments or to escalate a risk before it becomes a settlement issue.

4.6 We know that public organisations have a range of other responsibilities, and that providing settlement redress might make up only a small part of their wider work. However, settlement commitments are contractual and legal obligations. Any failure to meet them should be unacceptable.

4.7 When public organisations do not provide redress as intended, post-settlement governance entities, iwi, and hapū miss significant economic and social opportunities to benefit from the redress. The renewed relationship that the settlement seeks to establish is also undermined.

4.8 Issues with providing redress also create financial, reputational, and litigation risks for the public sector. We discuss this further in paragraphs 6.26-6.34.

Existing systems might need to be adapted

4.9 Most public organisations we spoke with integrate their settlement commitments into the responsibilities, work plans, and programmes of existing teams with relevant technical expertise. These teams use existing systems and processes to

manage the organisation's commitments alongside their other priorities. For example:

- A specialised property team might manage commitments involving land redress alongside other commercial property management.
- Teams with other regulatory responsibilities might manage councils' regulatory commitments (such as statutory acknowledgements or arrangements to consult on consenting applications).[43]

4.10 Many public organisations that we spoke with also have centralised Māori outcomes or Māori engagement teams that support technical teams. Their roles include brokering and managing relationships with post-settlement governance entities, resolving settlement issues, and/or monitoring the progress of settlement redress throughout the organisation.

4.11 Although it makes sense to delegate redress responsibilities to existing teams, public organisations must also consider whether they need to adapt their existing systems and processes to fulfil their settlement commitments.

4.12 We saw some examples of organisations doing this. For example, rather than send bulk emails of consent applications to all post-settlement governance entities in the region, Auckland Council has developed an online portal that allows post-settlement governance entities to filter consent applications of relevance to them.

4.13 Other examples of public organisations adapting their usual approaches include public organisations partnering with post-settlement governance entities to provide services, organising secondments between them and post-settlement governance entities, hiring additional dedicated staff to build capability, and setting up specific teams to handle property redress associated with settlements.

4.14 However, public organisations that did not change their standard approaches sometimes had issues meeting commitments.

4.15 For example, two councils that we looked at are parties to an integrated planning protocol as part of the Tūhoe settlement. This protocol sets out a framework for engaging with Te Uru Taumatua about planning matters.

4.16 Bay of Plenty Regional Council took a tailored approach to engaging with Te Uru Taumatua. It set up a working relationship that allowed it to implement the protocol in a way that would work for Te Uru Taumatua.

43 Te Arawhiti defines statutory acknowledgements as an acknowledgement of "areas or sites with which iwi have a special relationship, and will be recognised in any relevant proceedings under the Resource Management Act. These provisions aim to avoid past problems where areas of significance to iwi and hapū, such as burial grounds, were cleared or excavated for public works or similar purposes without permission or consultation with iwi. Statutory Acknowledgements do not convey a property right and are non-exclusive." See Ngāti Toa Rangatira Deed of Settlement documents at whakatau.govt.nz.

4.17 In contrast, Hawke's Bay Regional Council invited Te Uru Taumatua to join an existing committee of eight other post-settlement governance entities from throughout the Hawke's Bay region.

4.18 Te Uru Taumatua chose not to participate in the Hawke's Bay Regional Council's forum because of the time it took to travel to the Hawke's Bay and because the agenda did not focus adequately on issues relevant to Tūhoe.

4.19 When we wrote this report, Hawke's Bay Regional Council had not found an alternative means of engaging with Te Uru Taumatua to implement the protocol. Hawke's Bay Regional Council told us that it intends to renew engagement with Te Uru Taumatua to resolve the issue.

Public organisations do not always recognise the complexity involved in meeting commitments

4.20 We saw instances where public organisations underestimated the complexity of meeting specific commitments or where they did not plan for complexity well.

4.21 For example, Land Information New Zealand is responsible for Crown forestry licensed land redress under several settlements. This involves transferring both Crown forestry licences and the associated rental fees collected from the forester (which usually must happen soon after settlement). It also involves transferring the title to the underlying Crown forestry licensed land (which usually must happen within five years).

4.22 Land Information New Zealand transfers Crown forestry licences and accumulated rentals soon after settlement day. However, since 2020, there have been at least 23 instances, relating to 14 settlements, where Crown forestry licensed land titles were not transferred within the five-year statutory time frame.

4.23 We were told that the statutory time frame was intended to allow Land Information New Zealand time to work through the technical complexities of transferring these titles. This included working through the overlapping interests of different iwi and hapū, making sure any dependent commitments were met, completing any necessary surveys, and preparing legal documentation to give effect to the transfer.

4.24 The statutory time frame was also intended to account for any unforeseen delays outside of Land Information New Zealand's control.

4.25 Land Information New Zealand acknowledged that when it had not transferred title on time, it had started the transfer process too late. It said that it had initially believed that five years was enough time. It later realised that it had underestimated the time needed to establish relationships, sort out easements, and organise all legal documentation.

4.26 Land Information New Zealand had also not anticipated how complex it would be to transfer title to multiple post-settlement governance entities (which sometimes needed surveys to separate ownership between multiple entities) and to transfer easements. Some delays were also outside of its control – for example, because post-settlement governance entities were not ready to receive title.

4.27 Land Information New Zealand has made progress with these outstanding transfers. As of March 2025, nine outstanding Crown forestry licensed land title transfers, relating to 12 settlements, breach the five-year statutory time frame.

4.28 Three of these transfers, for forest land at the top of the South Island, are currently unable to be progressed because of ongoing litigation between the Attorney-General and some of the iwi who have settled in that area. Two others have also been affected by delays caused by more routine court processes – for example, to approve a right-of-way easement.

4.29 Land Information New Zealand told us that it has also changed how it carries out these transfers. It also told us that it has completed transfers for more recent settlements within the five-year time frame.

4.30 Underestimating what is involved in fulfilling complex redress or failing to adequately plan for commitments was a theme repeated in our discussions with public organisations. We saw examples of public organisations:

- not planning for high volumes of time-bound land transfers;
- not advising post-settlement governance entities that land was available for purchase within statutory time frames; and
- not carrying out the due diligence work needed to determine whether land was available for a post-settlement governance entity to purchase.

4.31 In these instances, public organisations were not able to meet these commitments as intended – or at all – when post-settlement governance entities sought to trigger them. As a result, both parties needed to invest considerable time and resources to agree a solution.

4.32 We also saw evidence of public organisations struggling to provide various types of redress – both with mechanisms that have been in use for 30 years and with newer bespoke arrangements. This speaks to public organisations' ability to learn from experience and improve over time, including by adapting their existing approaches to account for the complexity involved in fulfilling settlement commitments.

4.33 In our view, it also highlights the importance of public organisations understanding their performance through adequate monitoring and reporting.

Having effective accountability processes to address poor performance (which we discuss later in this Part and in Part 6) and to share good practice is equally important.

4.34 We also saw evidence that public organisations tend to overestimate post-settlement governance entities' capability and capacity. For example, we were told that newer and/or smaller post-settlement governance entities may not be equipped to engage with complex government processes. We were also told that post-settlement governance entities' personnel and priorities change over time.

4.35 Post-settlement governance entities can be small and have fewer resources than public organisations. This is a key reason why we consider it important for public organisations to take the time needed to build meaningful relationships with post-settlement governance entities. Public organisations also need to co-ordinate with one another effectively to make it easier for post-settlement governance entities to engage with them.

Many public organisations do not understand the costs involved

4.36 In our interviews, we were told that public organisations find it difficult to resource fulfilling commitments from existing baselines.

4.37 Different forms of redress need different funding arrangements. Some redress needs one-off time-bound funding, such as paying financial redress. Other commitments need public organisations to dedicate long-term or ongoing resources (for example, to plan for post-settlement governance entities' longer-term rights to purchase properties, relationship agreements, consultation on strategy and planning processes, or co-governance arrangements).

4.38 One council we spoke to observed that engagement costs are variable and tend to fluctuate with the nature of the relationship over time.

4.39 Greater Wellington Regional Council told us that it had recently shifted its funding approach to better support its partnering with iwi organisations, including post-settlement governance entities.

4.40 The Council told us that it had previously provided funding for fixed or one-off events associated with engaging with iwi, such as meetings. However, this had not been enough to cover the breadth of engagement needed to "truly partner" with post-settlement governance entities.

4.41 It was now shifting to a model that involved partnering with mana whenua on shared projects to achieve specific outcomes (including developing capacity and co-designing and co-planning regulatory matters), which requires significantly more funding to support.

4.42 Most public organisations we spoke with told us that they did not have budgets to support iwi to engage with their processes. They said that they found it difficult to resource redress that has ongoing costs, such as co-governance and co-management arrangements.

4.43 Interviewees from each of the four councils we looked at emphasised that responsibilities generated by settlements are not always accompanied by additional resourcing or other support from central government.

4.44 This issue has been mentioned elsewhere. For example, in 2019, the Productivity Commission reported that some councils were struggling to meet the costs of fulfilling their settlement commitments. The Commission also said that funding issues remaining unresolved could risk some settlement arrangements' durability and effectiveness.

4.45 The Productivity Commission recommended that there be comprehensive, independent, and in-depth analysis of costs associated with fulfilling settlement commitments – both "to councils and to iwi".[44] This recommendation does not appear to have been addressed.[45]

4.46 However, we saw evidence that some public organisations were carrying out analysis to understand the costs of meeting their commitments. For example, Bay of Plenty Regional Council has costed what is required to meet specific commitments for several settlements.

4.47 In our view, work of this kind is crucial. The durability of settlements relies on public organisations with settlement commitments meeting their legal and contractual responsibilities to provide redress. To that end, they must resource and manage responsibilities deriving from settlement legislation in the same way as they do all legislative compliance tasks.

Some public organisations are trying to improve their internal arrangements

4.48 In our audit, we saw evidence of public organisations seeking to improve how they set themselves up to meet their settlement commitments.

4.49 Land Information New Zealand recently carried out a restructure to ensure that its specialised support staff (the Crown Māori Relations Group) and the staff responsible for transferring land redress (in the Crown Property Group) work together on settlements more closely and report to the same Kaihautū/Deputy Secretary.

44 New Zealand Productivity Commission (2019), *Local government funding and financing: Final report*, page 83, at treasury.govt.nz.

45 See Review into the Future for Local Government (2023), *He piki tūranga, he piki kōtuku*, page 76, at dia.govt.nz.

4.50 Land Information New Zealand told us that this new structure has improved the way it engages with post-settlement governance entities. It said it has also improved how it manages and monitors its commitments.

4.51 Greater Wellington Regional Council told us that it had started a priority project to assess its accountability and its reporting, policies, systems, and processes. The project aims to ensure that the Council meets its settlement responsibilities and that it monitors and reports on these efforts.

4.52 The Department of Conservation has recognised that its "current system operates as a series of interdependent functions without any end-to-end oversight".

4.53 To improve this, it was conducting a review to understand the full resourcing implications of providing redress more effectively, identify and/or clarify which teams are accountable for providing redress, and embed processes to allocate appropriate resourcing (both financial and personnel) over time.

4.54 Centralised Māori outcomes or Māori engagement teams that support other teams to provide redress (mentioned in paragraph 4.10) can support the rest of the organisation to meet its commitments by acting as a broker between responsible teams and post-settlement governance entities and by helping the organisation understand its commitments.

4.55 We consider that these specialised teams are most effective when they have:

- clarity of purpose;
- clear roles and responsibilities that other relevant teams understand;
- support from senior leadership; and
- monitoring systems that enable regular progress reports from other responsible teams.

4.56 We found that these teams' usefulness was limited when these conditions were not present. In those instances, teams often got involved in other parts of the organisation's activities only if something went wrong or when they needed information to understand the status of settlement commitments.

4.57 Some public organisations over-relied on key individuals to provide settlement redress or maintain relationships with post-settlement governance entities.

Public organisations need to monitor their commitments

4.58 Public organisations need to monitor their settlement commitments. This is essential for them to identify and escalate risks and issues for resolution as early as possible. It is also important for them to be confident that they are managing or mitigating risks appropriately. Improved monitoring will also enable public organisations to understand and share good practices, and co-ordinate activities with other public organisations.

4.59 Most public organisations we spoke with had not routinely monitored the progress of their settlement commitments.

4.60 After December 2022, core Crown agencies were given six to 12 months to input their progress with their settlement commitments into Te Haeata. This included entering evidence that they had not met a commitment.

4.61 Te Arawhiti told us that, in assisting core Crown agencies to meet these deadlines, it found that some of these organisations had incomplete records of previous commitments. For example:

- Some core Crown agencies (including Te Arawhiti itself) had no records of how and whether they had met some of their commitments.
- Other core Crown agencies had lost information, such as when moving buildings or after earthquakes.

4.62 We also saw examples of some core Crown agencies becoming aware only in 2022/23 that they had not met some of their commitments.

4.63 In 2022, Te Arawhiti carried out a one-off stock-take of the status of the commitments in Te Kawerau ā Maki's settlement. Te Arawhiti identified that many of the letters of introduction that the settlement required public organisations and Ministers to send immediately – which encouraged organisations to enter relationship agreements with Te Kawerau Iwi Settlement Trust – had not been sent eight years after their settlement. This included one letter that Te Arawhiti was responsible for sending.

Some organisations have introduced or enhanced monitoring processes

4.64 Some core Crown agencies have started work on improving their systems for monitoring their commitments because they recognised that their existing systems were not fit for purpose. Others have introduced or were introducing systems because they previously did not have any.

4.65 This is positive. However, overall, most public organisations that we looked at still did not have adequate systems to keep track of their progress when we carried out our audit.

4.66 We identified several features of monitoring that public organisations were working on that we consider useful. These included:

- a comprehensive list of all responsibilities, including those not currently listed in Te Haeata;
- assigning clear internal accountability for responsibilities (for example, to particular managers); and
- requiring responsible managers to regularly report on the status of commitments.

4.67 In our view, these are minimum requirements for effective monitoring processes. These features allow public organisations to provide regular and useful information about the status of their commitments. They also reinforce their internal accountability for settlement responsibilities, making sure responsible people and teams take ownership of legal and contractual requirements under settlements.

4.68 We also saw evidence that indicates that public organisations can implement systems of this kind using tools and resources already available to them.

Public organisations do not have enough information to understand risks or when to escalate

4.69 If public organisations do not have systems and processes to keep track of their responsibilities, they will not have enough information to identify risks to meeting their commitments or to fulfilling settlements' broader intent. Not clearly identifying risks means that public organisations will not be able to escalate them early enough to prevent settlement issues.

4.70 One example we saw of risks being tracked and escalated to relevant Ministers is Land Information New Zealand and Te Arawhiti's joint quarterly reporting to Ministers that began in 2021 (ending in 2023). Land Information New Zealand and Te Arawhiti jointly instigated this quarterly reporting after Land Information New Zealand had missed multiple statutory time frames for transferring Crown forestry licensed land title over several years.

4.71 The reporting focused on the outstanding title transfers, and provided status updates on Land Information New Zealand's broader settlement work programme. Land Information New Zealand told us that it still provides quarterly updates to its Minister on outstanding Crown forestry licenced land title transfers.

4.72 In our view, this kind of reporting is useful because it keeps Ministers informed of ongoing issues, the risks associated with them, and what the public organisation is doing to resolve them.

4.73 However, more broadly we saw little evidence of public organisations consistently informing their Ministers or governing bodies about how they were meeting their commitments and any associated risks.

4.74 Without comprehensive monitoring, public organisations do not understand their progress, which prevents useful reporting on these matters. In our view, this increases the likelihood that problems are escalated – either to Ministers and governing entities or to Te Puni Kōkiri – only after they have become significant settlement issues.

4.75 For the settlement system to function effectively and to support meaningful transparency and accountability, all public organisations need to comprehensively monitor their commitments.

4.76 In turn, this will support the system-level monitoring and reporting that is crucial to supporting assurance, transparency, and accountability for settlements. We discuss this further in paragraphs 6.71-6.87.

Public organisations are not consistently meeting their commitments

4.77 Although we saw evidence of public organisations meeting some commitments as intended, overall, public organisations are not consistently fulfilling their responsibilities in a timely way.

4.78 All of the settlements we looked at are about 10 years old, but public organisations have not provided some of those settlements' redress as intended. Examples include public organisations:

- not sending letters of introduction on time or at all;
- not starting or completing discussions about entering into relationship agreements;
- not carrying out responsibilities in relationship agreements – for example, to hold and/or attend regular meetings; and
- not meeting statutory time frames for transferring commercial redress, including significant commercial redress.

4.79 We know that public organisations have a range of other responsibilities and that meeting settlement commitments might make up only a small part of their wider work. However, settlement commitments are contractual and legal responsibilities. Any failure to meet them should be unacceptable.

4.80 In addition, fulfilling settlement commitments is significant and essential to post-settlement governance entities. Post-settlement governance entities are missing out on opportunities to benefit from the redress, and the renewed relationship that the settlement seeks to establish is undermined.

4.81 All of the post-settlement governance entities we spoke with are experiencing issues with significant relationship and commercial redress in their settlements. We received similar evidence about other settlements.

4.82 Staff of one post-settlement governance entity told us that they had experienced issues with every piece of major commercial redress promised in their settlement. More broadly, they said that their settlement makes it clear that public organisations should "know who we are" and foster a relationship based on "trust and respect". However, from their perspective, this was not happening. They said that they could not name a single agency that they have a good relationship with.

4.83 Staff of another post-settlement governance entity told us they had experienced "nothing but difficulties" and that, from their point of view, public organisations' handling of their settlement had been a "complete failure".

4.84 In another example, we were told about a public organisation that could not transfer a large number of deferred selection properties to a post-settlement governance entity within the standard statutory time frames (see paragraph 2.16). The post-settlement governance entity subsequently agreed a transfer schedule that the public organisation can manage. We were told that the public organisation had completed all but one of the transfers by December 2024. However, the post-settlement governance entity told us that higher interest rates when the transfers were completed meant that it would take up to an additional 10 years to pay off the loans it had secured to fund the purchases.

4.85 Issues with co-governance arrangements can also have significant impacts. For example, Te Urewera Act 2014 and Te Kawa o Te Urewera encapsulate Tūhoe's aspirations for Te Urewera.[46] Staff from the Department of Conservation told us the Department had historically focused on maintaining the natural features and biodiversity of Te Urewera as a place for public use and enjoyment. It had not given sufficient focus to supporting the connection between Tūhoe and Te Urewera, which is a core purpose of the relevant Act. This has affected the relationship between Te Uru Taumatua and the Department of Conservation.

4.86 Those staff from the Department of Conservation also acknowledged that they could do more to support Tūhoe's aspirations. The Department told us it has made recent changes to improve its efforts in this regard, which are still in their early stages.

46 Te Kawa o Te Urewera is a publication from Te Urewera Board setting out Tūhoe's vision for the management of Te Urewera. See ngaituhoe.iwi.nz.

4.87 We heard that the joint funding arrangement for Te Urewera has also been contentious. The Director-General of Conservation and the Chief Executive of Te Uru Taumatua must jointly agree the annual budget for managing Te Urewera, which each organisation must fund equally. However, Te Uru Taumatua considers that, since the Act was passed, the budgets agreed have not been sufficient to manage Te Urewera.

4.88 We did not audit this. However, the Department of Conservation acknowledged that the funding it ring-fences for Te Urewera (which has been around $2 million a year since 2022/23) is insufficient. It has worked to find additional funding where possible, but it has not been able to do this consistently. We saw documents that supported this.

4.89 We understand that the Department is still considering how to resolve this.

4.90 Overall, post-settlement governance entities we spoke with told us that they had spent considerable time and resources negotiating with public organisations about their provision of redress or seeking accountability for redress that public organisations had not provided as intended.

4.91 In our view, this does not align with the intent of settlements to renew relationships with the Crown.

Settlements need to be adequately prioritised

4.92 Staff at public organisations told us that when public organisations do not prioritise settlements they can struggle to meet their commitments in an effective or timely way. Te Arawhiti's staff told us that they had observed a "permissive environment" in some public organisations where officials felt that they could get away with not prioritising work on settlement commitments.

4.93 We note that only six core Crown agencies specifically mention settlement commitments in their strategic intentions documents.

4.94 For public organisations to consistently meet their settlement commitments, they must adequately prioritise and focus on them.

4.95 In our view, all public organisations with commitments should review their internal structures, resourcing, policies, systems, processes, and internal monitoring to meet them. At a minimum, these need to enable the organisation to:

- understand the context each settlement was developed in, the central importance of the renewed relationship that each settlement establishes, and the significance of the commitments that the public organisation is responsible for;
- understand whether it needs to adapt its business-as-usual processes,

and understand the costs involved with providing settlement redress and supporting "partnership beyond specified redress";[47]

- clearly assign internal responsibility and accountability for meeting individual commitments (for example, to particular managers and/or teams);
- have internal monitoring arrangements to enable it to understand and escalate risks and issues for resolution as early as possible and be confident that it is managing or mitigating risks appropriately; and
- require responsible managers and/or teams to regularly update commitment status.

Recommendation 2

We recommend that all public organisations with settlement commitments review how they plan to meet and monitor their commitments.

4.96 We consider that the Public Service Commission could set clearer expectations for the chief executives of core Crown agencies, including through performance expectations and development plans, about the priority they should give to meeting their commitments. This includes the importance of both understanding and meeting individual commitments and establishing and developing the renewed relationships that settlements promise.

4.97 The Public Service Commission told us that, as of February 2025, two of the 41 chief executive's performance expectations contain specific references to settlements or settlement commitments. It said that it would consider whether and how it could "extend these references to strengthen expectations for other chief executives".

4.98 Responsible Ministers can, to varying degrees, influence the priority that Crown entities give to certain matters through the annual Statement of Expectations that Crown entities are required to prepare in accordance with the Crown Entities Act 2004.[48] In practice, Ministers sometimes do this by sending Ministerial Letters of Expectations to Crown entities' governance boards.

47 Te Arawhiti (2024), *Guidance for Crown: Crown expectations for Crown Treaty settlement commitments*, page 3, at tpk.govt.nz.

48 See section 149H of the Crown Entities Act 2004, which provides for Ministers to participate in determining the contents of statements of performance expectations.

4.99 In our view, there are also opportunities for governors of Crown entities and local authorities to strengthen expectations on public organisations about prioritising the fulfilment of settlement commitments in performance agreements with chief executives.

Recommendation 3

We recommend that responsible Ministers, the Public Service Commission, and the governing bodies of Crown entities, local authorities, and other non-core Crown agencies with settlement commitments strengthen expectations on public organisations about meeting their commitments in performance agreements with chief executives and in other relevant mechanisms.

Public organisations should learn from one another

4.100 In Part 3, we highlighted the importance of public organisations working collectively to understand and give effect to settlements' "holistic intention". We also highlighted the importance of them co-ordinating effectively to maximise the opportunities to create enduring partnerships with post-settlement governance entities.

4.101 Public organisations told us that they see the value of co-ordinating their work and sharing best practice with other public organisations. We agree.

4.102 Public organisations told us that some specific settlement arrangements gave them opportunities to learn – for example, multi-agency relationship agreements, Accords, and regional forums.

4.103 These arrangements do not exist for all settlements. They also usually focus on a specific issue or sector, rather than fulfilling an entire settlement. However, we agree that other public organisations could learn from these.

4.104 We identified several characteristics of these arrangements that are likely to support public organisations to co-ordinate effectively. These are:

- an effective lead agency to chair meetings, set priorities, and co-ordinate public organisations;
- adequate secretariat support;
- people with meaningful decision-making authority to carry out the agreed work;
- maintaining what was described to us as "good governance hygiene" – in other words, parties meeting regularly, recording the discussion and action points, and reporting on progress with action points at subsequent meetings; and
- public organisations holding each other to account for meeting obligations and milestones.

4.105 Public organisations and post-settlement governance entities told us of examples where multi-agency co-ordination became ineffective or stopped entirely because one or more of those characteristics was missing.

4.106 We saw some evidence of public organisations sharing practice. This included:

- Bay of Plenty Regional Council sharing its experience of meeting commitments with another district council; and
- Land Information New Zealand providing information to other public organisations to assist them to fulfil their commitments.

4.107 However, we did not see evidence that, overall, public organisations routinely share practice.

4.108 The public sector has significant collective experience and capability that organisations can learn from, which it has developed over 30 years of fulfilling settlements. We encourage the public sector to draw on this. Strengthened system leadership could assist organisations to leverage this experience to improve their overall performance.

5 Advice and support for public organisations

5.1 Over time, including before He Korowai Whakamana was introduced, public organisations have had access to a range of advice and guidance about providing redress (and resolving any associated issues). We wanted to assess how well this advice and guidance supported public organisations to provide redress as intended.

5.2 We expected that public organisations with settlement responsibilities would have support available. We expected this support to include both general advice and guidance, as well as more specific interventions where needed.

5.3 Public organisations that had accessed Te Arawhiti's support told us that it generally helped them to meet their settlement commitments. However, we found that some guidance, including about rights of first refusal, needs to be updated or improved and that the resolution pathway needs to be clarified.

5.4 In addition, support has largely focused on core Crown agencies, and we saw only isolated examples of Te Arawhiti supporting non-core Crown agencies. He Korowai Whakamana formally excludes these agencies, which are responsible for 20% of all commitments. In our view, this creates a risk to meeting those commitments and to settlements' overall success.

There are gaps in the guidance and support available

5.5 When requested, Te Arawhiti was able to provide advice and support to core Crown agencies about how to meet specific settlement commitments. We saw some instances where it provided advice to other public organisations when they were developing policies or processes related to settlements.

5.6 In most instances, Te Arawhiti provided targeted advice and support when a core Crown agency had issues with meeting its commitments. For example, Te Arawhiti worked with the Department of Conservation to resolve an issue with the vesting and gift-back of a culturally significant site and to support its relationship with the relevant post-settlement governance entity.

5.7 Overall, public organisations that had accessed Te Arawhiti's advice and support said that it helped them with their settlement commitments. We heard about Te Arawhiti:

- meeting regularly with core Crown agencies;
- assisting with specific issues with, or questions about, commitments; and
- assisting public organisations to develop their own policies and approaches to commitments.

5.8 However, there are some critical gaps in the support that is available for public organisations that affect their ability to fulfil settlements. These are:

- support to understand and comply with rights of first refusal;
- clarifying the Public Service Commissioner's role in the resolution pathway;
- routine support for non-core Crown agencies; and
- building senior public servants' capability.

Support for right of first refusal redress needs to improve

5.9 Rights of first refusal are a type of redress that gives post-settlement governance entities a long-term right to be given the first opportunity to buy land a core Crown agency or Crown entity decides to dispose of.

5.10 In 2016, the then Post Settlement Commitments Unit set up a joint working group to develop policy and guidance to help public organisations that own land subject to rights of first refusal understand their obligations.[49] Officials had identified that these organisations needed more accessible information to improve their understanding of these rights.[50]

5.11 This work resulted in changes to the Cabinet Manual and Cabinet Guide, and the development of right of first refusal guides. Right of first refusal guides started to be published at the end of 2020, and Te Arawhiti and Land Information New Zealand collaborated to publish and maintain them.

5.12 The guides set out key aspects of rights of first refusal for each settlement, including:

- hyperlinks to, and a summary of, contractual and legal requirements for actioning a right of first refusal;
- whether properties subject to a right of first refusal must have a memorial added to relevant titles (see paragraphs 5.17-5.19); and
- key contacts at the post-settlement governance entity, Land Information New Zealand, and Te Arawhiti.[51]

49 The working group included the Post Settlement Commitments Unit, Land Information New Zealand, the Treasury, and the Office of Treaty Settlements.

50 Rights of first refusal can apply to public land, including land that core Crown agencies and Crown entities own. Deeds of settlement specify the terms and conditions of rights of first refusal, which can be complex. For example, sometimes there are multiple rights of first refusal for a specific property under two or more settlements, called a "future right of first refusal". Sometimes, a settlement includes what are called "area rights of first refusal". These apply rights of first refusal to all core Crown agency and Crown entity properties within a geographic area rather than to a list of specific properties. The post-settlement governance entity is given a set period to respond to a right of first refusal once it has been offered – usually 20 working days (see Toitū Te Whenua, "Right of First Refusal (RFR)", at linz.govt.nz).

51 When we wrote this report, the guides had not yet been updated to include contact information for Te Puni Kōkiri.

5.13 Sixty-four settlements need guides. Currently, there are guides for 54 of them. Of the 10 outstanding guides, eight are on hold because of wider settlement issues.

5.14 Land Information New Zealand told us that it is working on the other two guides, which are for the Ngāi Tahu and Waikato Tainui settlements. It recently introduced a process to begin drafting guides before a settlement Act is passed, to ensure it can publish the guide as soon as possible after enactment.

5.15 We found that the guidance and processes to help core Crown agencies and Crown entities give effect to rights of first refusal are still not consistently complied with, despite clear requirements.

5.16 The implications of not complying with right of first refusal provisions can be significant. For example, in 2022, Te Arawhiti and Land Information New Zealand found that three properties subject to future rights of first refusal under one settlement had been sold on the open market.

5.17 Memorials are entries on the certificate of land title that provide relevant information about the property. This includes, in the case of settlement redress, any rights of first refusal.

5.18 These memorials help core Crown agencies and Crown entities understand where rights of first refusal apply. They cannot be removed from the title until the public organisation has proved that it has executed the requirements of the relevant right of first refusal.

5.19 Typically, Land Information New Zealand is required to place memorials on all current titles as at the settlement date. After the settlement date, the land-owner is responsible for informing Land Information New Zealand that an updated or newly created title requires a right of first refusal memorial.

5.20 Land Information New Zealand is aware that there are mistakes with memorials. Some land titles that should have memorials do not. In some instances, memorials have been placed that refer to the wrong post-settlement governance entity and/or the wrong settlement. In other instances, they have been placed on land titles that are not subject to a right of first refusal.

5.21 Land Information New Zealand and Te Arawhiti's March 2022 joint quarterly report to their Ministers discussed issues with memorials. The report acknowledged that the organisations had previously taken an "ad hoc" approach to fixing these issues. It said that they would now consider "systematic processes to address any risks".

5.22 Land Information New Zealand and Te Arawhiti worked together to try to resolve these issues. In May 2023, Land Information New Zealand reviewed memorials for 10 of 21 existing settlements that Te Arawhiti highlighted as high or medium risk. As a result, it added 195 additional right of first refusal memorials to land titles.

5.23 Land Information New Zealand told us that it completed its review of the memorials for the remaining 11 settlements in 2023.

5.24 It also completed spot checks in two regions with a high concentration of settlements. This revealed further instances where public organisations with land subject to rights of first refusal had created new titles that needed memorials, but they had not informed Land Information New Zealand. This work resulted in Land Information New Zealand creating an additional 872 new titles with right of first refusal memorials.

5.25 It is critical that public organisations understand whether land is subject to right of first refusal provisions and notify Land Information New Zealand when they create new titles – for example, after they subdivide land. Not doing so compromises the effectiveness of the right of first refusal guides and increases the risk that public organisations will not comply with right of first refusal provisions in future land transfers or sales.

5.26 In our view, Land Information New Zealand must urgently complete the outstanding guides, and implement a system to ensure it can place future memorials accurately. We strongly encourage it to take a proactive approach to ensuring that all public organisations understand their obligations under rights of first refusal.

Recommendation 4

We recommend that Land Information New Zealand works to ensure that there is a system in place so that right of first refusal memorials are correctly placed on land titles.

The Public Service Commissioner's role in the resolution pathway needs clarifying

5.27 He Korowai Whakamana set up a pathway for resolving settlement issues (see paragraphs 2.40-2.43). The pathway applies to core Crown agencies' commitments.

5.28 A settlement issue arises when a public organisation has not met or cannot meet a commitment as intended, such as within the specified time frame.

5.29 The pathway has been effective at resolving issues, including without the need for Ministerial or Cabinet decisions. We saw an example where Te Arawhiti was able to assist the Department of Conservation after an issue with cultural redress had affected its relationship with a post-settlement governance entity. As a result, Ministers or Cabinet did not need to intervene.

5.30 The resolution pathway names the Public Service Commissioner as needing to be notified at the "Re-establish" step of the process "to give oversight of post-settlement delivery issues and the health of the Māori Crown relationship".

5.31 This is appropriate given the Commissioner's leadership role for the public service. This role includes overseeing the public service's performance and integrity. It also involves developing and maintaining (along with chief executives) the public service's capability to engage with Māori and to understand Māori perspectives.[52]

5.32 Te Arawhiti said that it envisioned escalating something to the Commissioner if it was unable to get traction with a core Crown agency. In those instances, the Commissioner's powers under the Public Service Act 2020 – for example, to manage the performance of chief executives – could help resolve significant settlement issues.

5.33 However, when we carried out our audit, Te Arawhiti had not yet formally escalated any issue to the Commissioner. Instead, it used other steps in the resolution pathway, such as notifying Ministers or Cabinet. Te Arawhiti told us that this was because it had still been discussing the Commissioner's role with the Public Service Commission.

5.34 We consider that this is a significant gap in He Korowai Whakamana. The opportunity for the Commissioner to use their authority and influence to resolve issues could be a timelier and more appropriate alternative to escalations to Ministers or Cabinet.

5.35 The Public Service Commission told us that it would work with Te Puni Kōkiri to clarify the Commissioner's role.

52 Sections 14 and 43 of the Public Service Act 2020.

Crown entities, local authorities, and other non-core Crown agencies have little support

5.36 As discussed in paragraphs 3.7-3.16, guidance is available to help core Crown agencies understand settlements and the redress associated with them.

5.37 Although we saw examples of Te Arawhiti advising and supporting non-core Crown agencies on particular issues, we saw no established processes for Crown entities, local authorities, and other non-core Crown agencies to access advice and support for meeting settlement commitments.

5.38 This is consistent with the scope of He Korowai Whakamana. It formally excludes non-core Crown agency commitments from its oversight, monitoring, and support arrangements. However, Te Arawhiti was aware that there were active settlement issues involving non-core Crown agencies.

5.39 For example, we heard that the relationship between Hawke's Bay Regional Council and Te Uru Taumatua has been tense for a long time. However, when we carried out our audit, this issue had not been resolved using the pathway even though Te Arawhiti knew about it and it met the criteria for a significant settlement issue. We were told this was because Te Arawhiti lacked capacity and He Korowai Whakamana does not apply to councils.

5.40 In another example, we received evidence about an issue with commercial redress involving a Crown entity that has remained unresolved for several years. The issue is at the centre of a significant grievance for the relevant post-settlement governance entity.

5.41 Te Arawhiti briefed its Minister about the issue in 2022. The briefing highlighted that a barrier to resolving the matter was a lack of mandate to direct Crown entities or otherwise get involved in operational matters.

5.42 Staff advised that they would stay in contact with the Crown entity about the matter but that the Minister had "few levers to directly influence the outcome of these discussions" if they do not resolve in a manner suitable to the post-settlement governance entity.

5.43 In our view, these examples reinforce the need for a clear resolution pathway for non-core Crown agencies.

5.44 Crown entity and local government staff we spoke with were concerned that they did not have the same level of support as core Crown agencies. Staff from Greater Wellington Regional Council emphasised the need for active system stewardship.

5.45 This type of leadership could support them to keep track of the settlements that they contribute to and advise them on what timing and implementation approaches are best suited to each settlement's circumstances.

5.46 We agree. We saw evidence of Crown entities and local government having difficulties meeting commitments. The performance of these agencies matters to post-settlement governance entities, who told us that they do not distinguish between "core Crown" and "non-core Crown" public organisations.

5.47 A lack of support for non-core Crown agencies creates risks for the fulfilment of their commitments, the durability of their relationships with post-settlement governance entities, and the Māori–Crown relationship overall.

5.48 We discuss the limitations of He Korowai Whakamana in more detail in Part 6.

Senior public servants need more support to build capability

5.49 We heard from senior public servants at core Crown agencies, including chief executives, that meeting settlement commitments and managing relationships with post-settlement governance entities was a much more significant aspect of their roles than they had anticipated.

5.50 We heard that investing enough time and attention to improving relationships with post-settlement governance entities is especially challenging, in what are already demanding roles.

5.51 We also heard that senior public servants would like more support to assist them to do this well. For example, senior public servants at two of the organisations we spoke with told us that maintaining productive relationships with post-settlement governance entities needed considerable sensitivity and resilience. This was especially so given the public sector's historical actions and omissions – and those of their organisations in particular.

5.52 One senior public servant told us that they had sought opportunities to upskill and develop to help them manage these responsibilities. This included seeking connections with experienced chief executives and relationships with their counterparts at post-settlement governance entities.

5.53 Brokering, leading, and maintaining enduring relationships with post-settlement governance entities and the people they represent – on behalf of the public organisation, the wider public sector, and the government – is a complex role.

5.54 In our view, senior public servants need to have the right knowledge, skills, and experience to manage these obligations effectively. In our view, the Public

Service Commission should support chief executives with ongoing capability development, including in a way that prepares them to develop the capability of the senior public servants who report to them. This is particularly important for public organisations with large numbers of, or complex, settlement commitments.

5.55 The Public Service Act 2020 requires the Public Service Commissioner to develop and implement a strategy for developing senior leadership and management capability in the public service.[53]

5.56 Public service chief executives also now have legal obligations under the Public Service Act to develop and maintain the capability of the public service to engage with Māori and Māori perspectives. In our view, chief executives will need more support to meet these obligations.

5.57 The Public Service Commission and the governing bodies of Crown entities, local authorities, and other non-core Crown agencies (as the entities that appoint chief executives) should also carefully consider the knowledge, skills, experience, and ongoing development and support that people in these roles need.

5.58 Although complex settlements are not new, public sector leaders need to develop and maintain adequate capability to understand and fulfil them.

Recommendation 5

We recommend that the Public Service Commission and the governing bodies of Crown entities, local authorities, and other non-core Crown agencies strengthen ongoing development for chief executives so that they can lead their organisations to effectively meet settlement commitments.

---

53 The Public Service Act 2020 defines the public service as all departments, departmental agencies, interdepartmental executive boards, and interdepartmental ventures. This excludes the New Zealand Defence Force and the New Zealand Police, which He Korowai Whakamana defines as "core Crown agencies".

6 Assurance, transparency, and accountability

6.1 We wanted to understand how well public sector arrangements provide assurance, transparency, and accountability to Parliament, Ministers, Crown entity governors, councillors, post-settlement governance entities, iwi and hapū, and the public.

6.2 We expected that there would be enough information for these entities and groups to:

- understand and have assurance about public organisations' progress in fulfilling settlements;
- understand any risks posed by public organisations failing to provide redress as intended; and
- hold public organisations accountable for their actions or omissions in fulfilling settlements.

6.3 We found that public sector arrangements are not providing adequate assurance, transparency, or accountability for settlement commitments. Inadequate monitoring and reporting mean that many public organisations do not have the right information to demonstrate accountability to Parliament, Ministers, Crown entity governors, councillors, post-settlement governance entities, iwi and hapū, or the public.

6.4 There has been little accountability for public organisations' performance in meeting individual settlement commitments, and even less about achieving the intent of settlements.

6.5 Te Haeata is starting to provide some transparency about the status of core Crown agencies' individual responsibilities. However, it does not monitor the status of all commitments. It excludes most relational commitments, and although it lists the 20% of all commitments that Crown entities, local authorities, and other non-core Crown agencies are responsible for, those agencies are not required to provide status updates.

6.6 New annual reporting requirements for core Crown agencies from 2023/24 onwards have improved transparency. However, in our view, they will not be sufficient for effective accountability.

6.7 As a result, Parliament, Ministers, Crown entity governors, councillors, post-settlement governance entities, iwi and hapū, and the public cannot be confident that public organisations are identifying, managing, mitigating, and/or escalating risks to meeting commitments where appropriate. This means that the overall risk to the durability of individual settlements is unknown.

There has been little effective accountability

6.8 Although it is clear who is responsible for settlement commitments, the information needed to understand how well public organisations are meeting them is not available.

6.9 Of the many issues with meeting the commitments in the settlements we looked at, we could identify only one issue that a core Crown agency proactively identified and raised directly with the relevant post-settlement governance entity. Post-settlement governance entities told us that they often got traction with a settlement issue only after they threatened litigation.

6.10 This means that post-settlement governance entities are devoting time and resources to pursuing accountability. They cannot use this time and these resources to address their other priorities or to realise the opportunities that should have been available if public organisations had met commitments effectively.

6.11 One council we spoke with acknowledged that post-settlement governance entities should not have to "draw on their settlement which was intended to settle historical grievances to participate in kāwanatanga [government] systems to deliver on the settlement".

6.12 Post-settlement governance entities told us that Te Arawhiti had helped resolve some issues with commitments. However, they said that they would prefer public organisations to proactively identify and resolve issues themselves.

6.13 Reputational damage from failing to meet commitments as intended can make it harder for the public sector to achieve a settlement's overall purpose and intent. It also affects the Crown's relationship with iwi and hapū.

6.14 When responding to questions from the Primary Production Committee in March 2024 about the delayed transfers of some Crown forestry licensed land, the Minister for Land Information acknowledged the broader implications of failing to meet commitments as intended:

> *I mean, in a principled level, justice delayed is justice denied. And even, if we were to extend it further, we could say, "Well, if there's been a breach of the Treaty such that's given rise to this transaction needing to take place in the 21st century, then ongoing delays would represent an exacerbation of that breach."* [54]

6.15 In our view, to fulfil settlements as intended, public organisations need to more proactively identify and escalate issues. This would also mitigate the risk of lengthy and expensive processes for resolving those issues.

54 Primary Production Committee (2024), *Hansard transcript: 2022-23 Annual review of Toitū Te Whenua Land Information New Zealand – Minister for Land Information*, page 6, at parliament.nz.

There is inadequate transparency for post-settlement governance entities

6.16 Post-settlement governance entities also need enough information to understand public organisations' progress in fulfilling their settlements and have assurance that they will provide redress. One aspect of realising settlements' holistic intention is providing post-settlement governance entities with transparency about the status of commitments.

6.17 We saw evidence of public organisations informing post-settlement governance entities about the progress of individual commitments (such as property transfers). This included when there had been historical issues with redress.

6.18 We were also told that regular engagements through relationship agreements can be effective ways for public organisations to be transparent about their progress with commitments.

6.19 For example, Bay of Plenty Regional Council told us that it often reports significant matters to relevant co-governance bodies. Te Uru Taumatua staff told us that they value the relationship that they have with the Ministry of Social Development, which leads a relationship agreement set up through Tūhoe's settlement.

6.20 However, post-settlement governance entities mostly get piecemeal information about the progress that public organisations are making with their settlement commitments. Public organisations usually provide information on a commitment-by-commitment basis.

6.21 In addition, post-settlement governance entities mostly receive information from individual public organisations rather than co-ordinated or combined information from multiple public organisations about their settlements.

6.22 This means that post-settlement governance entities do not have assurance that the settlement system is working well overall. They told us they do not have confidence that public organisations are meeting individual commitments or honouring their settlement's overall intent.

6.23 Staff of one post-settlement governance entity told us that, because of multiple issues with commercial redress, they were concerned that there might be issues with other commitments in their settlement that they do not know about.

6.24 In June 2024, post-settlement governance entities gained access to the status information that core Crown agencies report in Te Haeata. This is a positive step that could improve transparency to post-settlement governance entities about some settlements.

6.25 Post-settlement governance entities' engagement with Te Haeata will also likely improve the monitoring of settlement commitments by Te Puni Kōkiri and its awareness of issues. However, as we discuss in paragraphs 6.43-6.53, Te Haeata does not provide an adequate picture of all commitments.

Risks to the durability of settlements cannot be quantified

6.26 Significant settlement issues (see paragraph 2.33) have sometimes led to compensation. We understand that tens of millions of dollars have already been paid as financial compensation for significant settlement issues.

6.27 However, there is currently no way to quantify the potential financial impact of public organisations not providing redress as intended. This is partly because there is no comprehensive view of the status of all commitments, including how many might have issues with providing redress or might have litigation risk.

6.28 Te Arawhiti told us that it was concerned that financial compensation to some post-settlement governance entities to address significant settlement issues could outstrip the value of financial and commercial redress contained in their settlements.

6.29 As more issues are escalated over time, further resources will be needed to resolve them. In its 2023/24 annual report, Te Arawhiti said that the number of settlement issues has increased since 2019 "and is trending to continue to increase".[55]

6.30 Failing to meet settlement commitments also carries significant reputational risk for public organisations, which can remain even after an issue has been resolved or settled. This reputational risk does not just affect the individual public organisation involved. It also affects the credibility of all public organisations with settlement commitments.

6.31 Post-settlement governance entities told us that they do not distinguish between local government, Crown entities, and core Crown agencies – they view all public organisations as the Crown. Therefore, they see the failure of one public organisation as a failure of the Crown.

6.32 In other words, the Crown needs assurance that all public organisations are performing well not just because this is relevant to settlements' holistic intention but also because the Crown ultimately carries the overall risk to the Crown's relationship with iwi and hapū. This includes risks arising from non-core Crown agencies' actions or omissions.

55 Te Arawhiti (2024), *Te Pūrongo ā-Tau o Te Arawhiti: Our Annual Report 2023/24*, page 20, at whakatau.govt.nz.

6.33 Te Arawhiti advised its Minister and Cabinet that significant issues with providing settlement redress put the Government's reputation at risk. It warned of wider reputational damage if a significant settlement issue were to go before the courts or Waitangi Tribunal. It also warned that significant settlement issues affect existing settlements' durability and the Government's credibility when negotiating future settlements.

6.34 For example, in a briefing to its Minister, Te Arawhiti said that:

> *When settlement commitments are not upheld, any trust and confidence in the Crown built through the settlement process is jeopardised, and relationships between partners are undermined. In short, if the Crown does not honour its commitments, settlements risk not being full and final.*

Monitoring information is improving but is still not adequate

6.35 As mentioned in paragraph 2.37, He Korowai Whakamana now requires core Crown agencies to provide quarterly updates on the status of each commitment that they are responsible for through Te Haeata.

6.36 Te Haeata sets out four possible categories that core Crown agencies can use to provide updates about their progress in meeting individual settlement commitments. Figure 3 describes these categories.

Figure 3
Status update categories in Te Haeata

Te Haeata describes progress in the following ways:

- **Complete** – "The responsible entity has done all the actions required and the commitment has been delivered in accordance with the terms of the settlement."
- **On Track** – "The responsible entity has systems in place, or has started the actions required, to deliver the commitment in accordance with the terms of the settlement. The responsible entity does not consider it likely that issues will arise to prevent the commitment from being completed as planned. This is the appropriate status for ongoing commitments that are not experiencing delivery issues."
- **Delivery issues** – "Complicating factors, mistakes and possibly failures to do certain things have meant that the commitment is unlikely to be delivered as intended."
- **Yet to be triggered** – "The commitment is not yet due to be delivered. This may be because the commitment is conditional on another action that is yet to be triggered."

Source: Te Arawhiti (May 2023), *Guidance for Crown: Updating status of commitments on Te Haeata – the Settlement Portal*, page 8, at tpk.govt.nz.

6.37 Te Arawhiti told us that, before it set up the monitoring system, it relied on the institutional knowledge of staff with long experience of working on settlements to manage and resolve settlement issues.

6.38 After Te Arawhiti staff identified settlement issues, they developed an "Issue Overview" to monitor it. These overviews recorded useful information about the issue, including a history of decisions and actions about it, its status, and key contact people.

6.39 These overviews also supported staff in managing a settlement issue while it was unresolved. After an issue had been resolved, the overviews recorded historical information about the issue and how it had been worked through.

6.40 Developing Te Haeata and associated monitoring requirements was a significant step. Information gathered through Te Haeata improved Te Arawhiti's understanding of the progress of core Crown agencies' individual commitments and their ability to proactively identify settlement issues, as well as progress on commitments across a whole settlement by multiple core Crown agencies.

6.41 For example, having a list of commitments allowed Te Arawhiti to carry out its 2022 review of whether the "key [or] distinctive" commitments that make up the Te Kawerau ā Maki settlement had been met.

6.42 Te Haeata also means that potential or active significant settlement issues are better able to be monitored and core Crown agencies' progress in resolving them tracked.

The information in Te Haeata has limitations

6.43 Although Te Haeata has improved understanding about core Crown agencies' performance, there are limitations to the information that Te Haeata collects. These include the following:

- Te Haeata records status updates as a list of equivalent entries, regardless of each commitment's importance or complexity. For example, individual process steps for transferring commercial redress – such as appointing a valuer – are treated as equivalent to entering into a relationship agreement.
- Te Haeata is unable to tag a commitment that involves multiple post-settlement governance entities to each of those entities. This means that it cannot provide insights on the progress of commitments or settlements that apply to more than one post-settlement governance entity (such as the Central North Island collective settlement).

6.44 The information that Te Haeata collects is reported by core Crown agencies, and there is no process to verify the accuracy of all information provided. Te Arawhiti told us that, because it did not have the capacity to check all commitments,

it prioritised verifying the status update entries from the largest core Crown agencies with settlement commitments.

6.45 When we carried out our audit, Te Arawhiti was aware of limitations to the data collected and presented through Te Haeata. It had made some changes to Te Haeata (such as adding functionality to retain historical information) that improved its usefulness.

Te Haeata does not include information about all commitments

6.46 Te Haeata now provides better information about the status of core Crown agencies' commitments. However, Te Haeata does not provide a comprehensive view of settlements because it does not collect information about all commitments.

6.47 Specifically, Te Haeata:

- does not collect status information about the 20% of responsibilities that Crown entities, local authorities, or other non-core Crown agencies hold;
- collects limited information about the status of some relationship agreements, protocols, and Accords – for example, in some instances, it records only whether relationship redress has been entered into, not its status or progress against its agreed objectives; and
- includes only statements from deeds of settlement that explicitly require a public organisation with a settlement commitment to do something (generally where it "must", "will", or "shall" carry out a task). In practice, this means that Te Haeata does not list some parts of deeds of settlement.[56]

6.48 Te Arawhiti told us that, in its view, it needed to limit He Korowai Whakamana's initial scope to core Crown agencies because it was not resourced to carry out wider monitoring of all organisations with commitments.

6.49 The current scope of monitoring through Te Haeata is a significant weakness. In our view, Te Puni Kōkiri will need more comprehensive monitoring information to improve its understanding of the risks associated with public organisations not meeting their commitments.

6.50 We acknowledge that some commitments will be more difficult to monitor than others – in particular, ongoing commitments such as relationship agreements. However, Te Puni Kōkiri still needs to know whether there are issues with these commitments.

56 For example, the deed of settlement with Te Kawerau ā Maki refers to an agreement that Housing New Zealand Corporation (now Kāinga Ora – Homes and Communities) and the iwi were developing about a culturally significant site. The deed states that the agreement would establish regular meetings, participation in governance, and a process for disposing of surplus land. However, Te Haeata does not include this as a commitment (see clause 6.17 of Te Kawerau ā Maki Deed of Settlement, at whakatau.govt.nz).

6.51 In our view, it is feasible for monitoring to capture, for example, whether the terms of the relationship have been amended or whether parties agree that the ongoing commitment is achieving its stated goals or that the relationship is productive.

6.52 Regardless of its limitations, Te Haeata provides some of the information that Ministers need to understand how well public organisations are fulfilling settlements. We think it is important, now that responsibility for Te Haeata has been transferred to Te Puni Kōkiri, that these monitoring arrangements continue to be improved.

6.53 We consider that Te Puni Kōkiri should seek feedback from public organisations about how it can continuously improve Te Haeata to collect the right information and improve its quality and accuracy.

Recommendation 6

We recommend that Te Puni Kōkiri consider improvements to the quality and accuracy of the information that Te Haeata collects and reports.

Annual reporting does not yet provide adequate assurance or transparency

6.54 Historically, there has been little public reporting about settlement commitments. For example, we reviewed 30 annual reports from public organisations for 2022/23, including those that were the focus of this audit. Nearly half did not mention settlement commitments. Of the 16 that did, all but four acknowledged some responsibilities without providing information about their status.

6.55 Land Information New Zealand was the only core Crown agency that we looked at for this audit that included detailed information about the status of some of its individual commitments in its annual reports for 2021/22 and 2022/23.

6.56 For example, in its annual report for 2021/22, Land Information New Zealand reported on delays to Crown forestry licensed land transfers. It said that transfers are normally required within five years of the enactment of settlement legislation, and acknowledged that, for 11 settlements, "our processes were too slow to meet the required timeframes". It said that it was making "positive progress" with the relevant transfers.[57] Unlike most of the other annual reports that we looked at, Land Information New Zealand provided contextual information to assist the reader to understand the performance issue and what it was doing about it.

6.57 However, although Land Information New Zealand's 2022/23 annual report referred to the transfer of three Crown forestry licences, it did not explain whether

57 Toitū Te Whenua (2022), *Pūrongo ā-Tau – Annual Report 2021/22*, page 34, at linz.govt.nz.

these transfers also included forest titles that previously been delayed.[58] This makes it difficult to track progress over time, and illustrates why a consistent approach to reporting on progress in meeting commitments is valuable.

New requirements are positive, but improvements are needed to enable effective scrutiny

6.58 Under He Korowai Whakamana, Cabinet directed core Crown agencies to start reporting in their 2023/24 annual reports on their progress in meeting their individual commitments (see paragraph 2.37 and Figure 2). The Treasury advised agencies to provide:

- an explanation of settlement commitments, the number of commitments the agency has, and the different commitment types that the agency has;
- a graph showing the status of the agency's commitments, derived from information in Te Haeata;
- an explanation of what each status means; and
- an explanation of the information shown in the graph.[59]

6.59 We reviewed all core Crown agencies' 2023/24 annual reports. Most followed the Treasury's guidance about reporting on the status of their commitments. This included the core Crown agencies we looked at that have commitments listed in Te Haeata: Te Arawhiti, Land Information New Zealand, and the Department of Conservation.

6.60 This reporting has improved transparency, but we do not consider that it provides adequate information for the purposes of scrutiny by Parliament or the public. In particular, the performance reporting did not adequately explain the importance of individual commitment or settlement issues.

6.61 For example, although Land Information New Zealand's issues with transferring Crown forestry licensed land titles amounted to just 2% of all its commitments, Crown forestry licensed land can be the largest piece of financial and commercial redress in a settlement.

6.62 As discussed in paragraph 4.22, post-settlement governance entities receive the forestry license, along with accumulated rentals and ongoing rental payments, soon after settlement. However, they do not receive the asset's full value until the titles are transferred.[60]

58 Toitū Te Whenua (2023), *Pūrongo ā-tau – Annual report 2022/23*, page 51, at linz.govt.nz.

59 The Treasury (2024), *Annual* Reports *and other End-of-Year Performance Reporting: Guidance for reporting under the Public Finance Act 1989*, at treasury.govt.nz

60 As discussed in paragraphs 4.27-4.29, Land Information New Zealand has made progress with outstanding transfers. As at March 2025, nine outstanding Crown forestry licensed land title transfers, relating to 12 settlements, breach the five-year statutory time frame.

6.63 The performance reporting we looked at did not give a sense of the relative importance of different agencies' settlement issues in the context of the overall settlement system. For example, our analysis showed that four core Crown agencies' delivery issues collectively make up about 70% of all core Crown agencies' delivery issues.

6.64 The new reporting requirements also apply only to core Crown agencies. This means that other public organisations can choose whether to report on their commitments in their annual reports (or other suitable reports). The annual reports of councils and Crown entities that we looked at included little to no information about the status of the work they were doing to fulfil their commitments.

6.65 Te Arawhiti used annual reporting by core Crown agencies in 2023/24 to produce its first report to its Minister collating status information about settlement commitments, which it released in December 2024.

6.66 Te Arawhiti considered that this report provided a baseline to assess core Crown agencies' future performance against. The report collated status updates from 26 core Crown agencies with status updates from 74 settlements (see Figure 4).

Figure 4
Status update information for responsibilities that core Crown agencies hold, 2023/24

Progress status	Core Crown agencies' responsibilities	Percentage of responsibilities
Complete	6411	44
Delivery issues	715	5
On track	4819	33
Yet to be triggered	2649	18
Total	**14,594**	**100**

Source: Te Arawhiti (2024), *Whole of System (Core Crown) Report on Treaty Settlement Delivery*, page 9, at beehive.govt.nz.

6.67 This collated reporting is a positive step. However, its usefulness is limited by the lack of comprehensiveness, status updates being largely self-reported, and the inadequate explanations of performance that core Crown agencies provided. The report makes several recommendations about how to improve future reporting (see Figure 5). These are consistent with the recommendations we make in this report.

Figure 5
Recommendations from *Whole of System (Core Crown) Report on Treaty Settlement Delivery*

Te Arawhiti recommend that:

- Consideration be given to including key performance indicators for Treaty settlement delivery in Chief Executive performance expectations;
- All future annual Whole of System (Core Crown) Reports on Treaty Settlement Delivery include [post-settlement governance entity] views on settlement delivery;
- Action be taken by responsible agencies to actively resolve "delivery issues", with the expectation that the number of delivery issues will reduce over time;
- Oversight of Treaty settlement commitments be extended to enhance data quality and consistency; and
- Agencies consider how to utilise this report, and future reports, as an input to assessing the health of their relationship with post-settlement governance entities.

Source: Te Arawhiti (2024), *Whole of System (Core Crown) Report on Treaty Settlement Delivery*, page 12, at beehive.govt.nz.

6.68 In our view, all public organisations with settlement responsibilities should report on them – including Crown entities, local authorities, and other non-core Crown agencies.

6.69 Annual reporting on settlement responsibilities should include:

- an explanation of the types of commitments that public organisations are responsible for (for example, what proportion are land redress or relational redress);
- an explanation of what different status updates mean and, in particular, information about any significant settlement issues – for example, the magnitude of the issues and any risks to commitments that are "on track" or "yet to be triggered"; and
- achievements and any significant settlement issues (which we suggest that public organisations agree with post-settlement governance entities).

Recommendation 7

We recommend that all public organisations with settlement commitments improve the information that their annual reports provide about their progress in meeting their commitments, including by clearly explaining:

- the types of commitments that they are responsible for (for example, what proportion are land redress or relational redress); and
- what different status updates mean; and
- their achievements and any significant settlement issues.

6.70 Public organisations should also look for ways to make public reporting easier for the public to find and understand. It is important that their public communications clearly and concisely convey an accurate picture of how well they have used resources.

System-level oversight must be strengthened

6.71 The durability of settlements relies on public organisations with settlement commitments meeting their contractual and legal obligations and fulfilling the settlement's intent – including a renewed and developing relationship with iwi and hapū.

6.72 Public organisations with settlement commitments need to demonstrate that they take settlements seriously and are proactive about honouring them in good faith. When this does not happen, iwi and hapū who have settled (and those who have not yet settled but who intend to participate in the settlement system) need assurance that public organisations are held to account, and that corrective action is taken.

6.73 Overall, a strong theme of our interviews with public organisations and post-settlement governance entities was the lack of active strategic oversight or stewardship to proactively guide and support the public sector's fulfilment of settlement commitments.

6.74 In our view, this is especially relevant to non-core Crown agencies, which are currently excluded from He Korowai Whakamana's oversight, monitoring, and support arrangements.

6.75 Te Arawhiti told us that, as a Cabinet-endorsed framework, He Korowai Whakamana "establishes a starting point for increased Crown transparency and visibility around core Crown progress in implementing settlement commitments".

6.76 Te Arawhiti also told us that, because non-core Crown agencies and local authorities are at arm's length to central government, a different path would be needed to apply He Korowai Whakamana to them.

6.77 The Cabinet paper establishing He Korowai Whakamana acknowledges that extending it beyond core Crown agencies could be possible:

> *Following implementation of He Korowai Whakamana by the core Crown, there is an opportunity to consider whether He Korowai Whakamana could be extended to local government and other Crown entities.*[61]

6.78 We acknowledge that applying He Korowai Whakamana to non-core Crown agencies might not be straightforward. For example, local authorities have their own democratic mandate, and Ministers cannot direct them or hold them to account except in certain circumstances.

6.79 As mentioned in paragraph 6.32, the Crown needs assurance that all public organisations are performing well not just because this is relevant to settlements' holistic intention but also because the Crown ultimately carries the overall risk – including risks arising from non-core Crown agencies' actions or omissions.

6.80 In our view, changes are needed to require all public organisations to be transparent and accountable for meeting their settlement commitments and fulfilling settlements' overall intent and ensuring their durability.

6.81 Ensuring that Ministers and Parliament have access to more comprehensive information about settlement commitments is critical to improved accountability. This includes access to information about the status of commitments that Crown entities, local authorities, and other non-core Crown agencies are responsible for.

6.82 In our view, Te Puni Kōkiri and the Public Service Commission should work with relevant public organisations – in particular, Crown entities, local authorities, and other non-core Crown agencies – to consider how to extend He Korowai Whakamana.

6.83 As discussed in paragraphs 5.37-5.47, this should include providing Crown entities, local authorities, and other non-core Crown agencies with advice, guidance, and support.

61 Te Arawhiti (2023), "Proactive release – He Korowai Whakamana – Enhancing oversight of Treaty settlement commitments", paragraph 23, at whakatau.govt.nz.

Recommendation 8

We recommend that Te Puni Kōkiri and the Public Service Commission work together, and with others as needed, to consider how to extend He Korowai Whakamana to relevant Crown entities, local authorities, and other non-core Crown agencies, to ensure that:

- those agencies have adequate advice, guidance, and support to meet their commitments; and
- Te Puni Kōkiri collects information about the status of those agencies' commitments.

There needs to be reporting on progress to achieve each settlement's holistic intention

6.84 Given how crucial the intent of each settlement is to its fulfilment, we think that public organisations should monitor and report about the extent that they are achieving each settlement's overall purpose and intent.

6.85 They should share this information with Te Puni Kōkiri, with their governors (relevant Ministers, councillors, or boards), and directly with post-settlement governance entities as appropriate.

6.86 In our view, Te Puni Kōkiri should work with public organisations (and their governors, as necessary) and post-settlement governance entities on the form and content of these reports.

6.87 We consider that, to increase transparency and promote accountability, Te Puni Kōkiri should regularly assess public organisations' overall progress and whether they are achieving each settlement's holistic intention. Te Puni Kōkiri should regularly report that assessment to the Minister for Māori Crown Relations and other responsible Ministers. It should also report on those matters annually to the Māori Affairs Select Committee.

Recommendation 9

We recommend that Te Puni Kōkiri regularly assess the public sector's progress with meeting settlement commitments, whether it is achieving each settlement's holistic intention, and any significant risks and achievements, and:

- regularly report that assessment to the Minister for Māori Crown Relations and other responsible Ministers; and
- report on those matters annually to the Māori Affairs Select Committee.

Appendix
Methodology

Our main audit question for this work was: "How effective are the public sector arrangements that support the delivery of Treaty settlement commitments?"

To answer this question, we developed three lines of inquiry:

- How well do the Crown and public organisations understand their Treaty settlement commitments?
- How well do public organisations' internal accountability and reporting arrangements, resourcing, policies, systems, and processes enable them to meet Treaty settlement commitments?
- How well do public sector arrangements provide assurance, transparency, and accountability for meeting Treaty settlement commitments?

We wanted to provide insights to assist with:

- strengthening the way that individual public organisations are set up to meet their settlement commitments, including through their internal accountability and reporting arrangements, resourcing, policies, systems, and processes; and
- strengthening system-level oversight, monitoring, and reporting arrangements for settlement commitments.

What we did

To answer our audit question, we spoke with three post-settlement governance entities:

- Te Kawerau Iwi Settlement Trust, the post-settlement governance entity for Te Kawerau ā Maki;
- Te Uru Taumatua, the post-settlement governance entity for Tūhoe; and
- Te Rūnanga o Toa Rangatira, the post-settlement governance entity for Ngāti Toa Rangatira.

We spoke with and collected information from two public organisations that had key leadership roles for settlements, which we explain further in Part 2. These were:

- Te Arawhiti (which had the third-largest number of commitments – more than 2100),[62] as the government agency with roles and responsibilities for overseeing and supporting other public organisations' fulfilment of settlements; and
- Te Kawa Mataaho Public Service Commission because of its role supporting the Public Service Commissioner, who is named in the pathway for resolving issues with providing redress (see paragraph 2.41).

62 The actual number of commitments held by each core Crown agency is likely to be higher as Te Arawhiti's list is not exhaustive, as we explain in Part 6.

We spoke with and collected information from six further public organisations that are responsible for commitments to the post-settlement governance entities we spoke with, and for commitments more generally. They were:

- the Department of Conservation, which has the largest number of commitments – about 3400 – that encompass both one-off and ongoing commitments of all types, including cultural and relationship, financial and commercial, regulatory, and custom redress;
- Land Information New Zealand, which has the second-largest number of commitments – about 2900 – and is largely responsible for transferring significant land redress, including Crown forestry licenced land and properties from the Treaty Settlement Landbank;
- Auckland Council (a local authority with commitments to Te Kawerau Iwi Settlement Trust);
- Bay of Plenty Regional Council (a local authority with commitments to Te Uru Taumatua);
- Hawke's Bay Regional Council (a local authority with commitments to Te Uru Taumatua); and
- Greater Wellington Regional Council (a local authority with commitments to Te Rūnanga o Toa Rangatira).

The table below shows the number of commitments that the public organisations we looked at are responsible for, as recorded in Te Haeata.

Number of commitments that the public organisations we looked at hold

Responsible entity	Number of commitments
Auckland Council	37
Bay of Plenty Regional Council	34
Department of Conservation	3380
Greater Wellington Regional Council	49
Hawke's Bay Regional Council	23
Land Information New Zealand	2895
Office for Māori Crown Relations – Te Arawhiti	2123

We also spoke with and collected information from eight other public organisations (six core Crown agencies and two Crown entities) to provide a broader picture of how the public sector manages, monitors, and meets settlement commitments. We did not audit these organisations' performance specifically.

We interviewed a range of staff from post-settlement governance entities and public organisations. We also reviewed documentary evidence that post-settlement governance entities and public organisations provided to us, and publicly available information about settlements and meeting settlement commitments.

We looked at information about public organisations' progress in meeting a range of settlement commitments, including both transactional and relational commitments. We also looked at the tools, oversight, and guidance that supports these commitments, their reporting and accountability arrangements, and the effects of delayed or unmet commitments.

About our publications

All available on our website

The Auditor-General's reports are available in HTML and PDF format, and often as an epub, on our website – oag.parliament.nz. We also group reports (for example, by sector, by topic, and by year) to make it easier for you to find content of interest to you.

Our staff are also blogging about our work – see oag.parliament.nz/blog.

Notification of new reports

We offer facilities on our website for people to be notified when new reports and public statements are added to the website. The home page has links to our social media accounts and email subscribers service.

Sustainable publishing

The Office of the Auditor-General has a policy of sustainable publishing practices. This report is printed on environmentally responsible paper stocks manufactured under the environmental management system standard AS/NZS ISO 14001:2004 using Elemental Chlorine Free (ECF) pulp sourced from sustainable well-managed forests.

Processes for manufacture include use of vegetable-based inks and water-based sealants, with disposal and/or recycling of waste materials according to best business practices.

Office of the Auditor-General
PO Box 3928, Wellington 6140

Telephone: (04) 917 1500

Email: reports@oag.parliament.nz
Website: www.oag.parliament.nz