

Resolving historical Treaty of Waitangi claims

What are historical Treaty of Waitangi claims?

Historical Treaty of Waitangi claims are those arising out of Crown acts (the things the Crown did) or omissions (the things the Crown failed to do) before 21 September 1992. Any Māori person could register a historical claim with the Waitangi Tribunal. The basic criteria to make a claim were:

- The claimant(s) must be Māori and should specify whom they represent (such as their group, hapū, iwi);
- claim that an ordinance, Act or regulation, order, proclamation, notice or other statutory instrument, or policy or practice, or an act or omission of the Crown; has prejudicially affected the claimant(s); and
- the law, or the action, omission, practice or policy is inconsistent with the principles of the Treaty of Waitangi.

No mandate was required to register a claim with the Waitangi Tribunal.

1975: The Waitangi Tribunal was established to hear claims by Māori against the Crown. It is a standing commission of inquiry. The main functions of the Tribunal at that time were to:

- hear claims by Māori against the Crown concerning breaches of the Treaty of Waitangi and its principles;
- determine the validity of such claims; and
- make non-binding recommendations.

At that stage the Tribunal could only hear claims about grievances arising from Crown acts or omissions from 10 October 1975 onwards (i.e. the date the Waitangi Tribunal was established).

1985: The law was changed to allow the Tribunal to hear claims arising from Crown acts or omissions from 6 February 1840.

September 1992: So that redress would be consistent between all groups, Cabinet defined historical claims as those arising out of Crown acts or omissions before 21 September 1992.

September 2008: Since 1 September 2008 no new historical claims can be filed in the Tribunal.

Waitangi Tribunal historical inquiries

The Tribunal hears claims from particular areas together in district inquiries. There are two options for the inquiry process, the standard approach and the modular approach. Both approaches generally take the following approach:

- An initial phase identifies the issues.
- Evidence is gathered to assist the Tribunal to understand the claim issues and determine whether the claims are well founded.

- Research is carried out by both the Crown and the Claimant Group, funded by the Tribunal, Crown Forestry Rental Trust and the Crown.
- Claims are presented at Tribunal hearings, the research is scrutinised and the Crown responds and provides its evidence.
- Throughout the inquiry process, the Crown has opportunities to acknowledge breaches of the Treaty.
- Once hearings are complete, the Tribunal issues a report with its findings and recommendations.
- The Tribunal's recommendations may assist claimants and the Crown in negotiating a settlement.

Negotiating the settlement of historical Treaty of Waitangi claims

A claim must be registered with the Waitangi Tribunal before the Crown can begin negotiating with a claimant group. However, the Crown does not require the Tribunal to make Treaty breach findings before it will enter Treaty settlement negotiations. The Crown is ready to negotiate historical claims provided clear evidence of harm to the claimant group exists. However, in this situation the claimant group must stop pursuing their claim in the Tribunal. They also can't pursue other avenues of redress, such as action in the High Court, or remedies through the Tribunal.

What are treaty settlement negotiations?

Treaty settlement negotiations are negotiations between a claimant group and the Crown in which historical Treaty of Waitangi claims are settled in exchange for the provision of a redress package.

Treaty settlement negotiations often begin after the Waitangi Tribunal completes its inquiry into the claims. However, there is no requirement that the inquiry is completed first, and some groups may choose to begin negotiations earlier.

What happens to my Wai claim after Treaty settlement?

A Treaty settlement will settle all historical Treaty of Waitangi claims associated with a claimant group. This means that the courts, Waitangi Tribunal, or any other judicial body or Tribunal. This does not impact your ability to lodge claims for contemporary inquiries.

You can find more information about the Waitangi Tribunal on their website, <https://www.waitangitribunal.govt.nz/en>

Diagram: Stages of the Waitangi Tribunal and Negotiation Processes

