

TE MANUTUKUTUKU

*Te Roopu Whakamana i te
Tiriti o Waitangi
Panui*



*Waitangi Tribunal Division
Department of Justice
Newsletter*

ISSN 0114-717X

Rua tekau Pepuere 1993

Number 20 February 1993

Appointments to the Treaty of Waitangi Fisheries Commission

The purpose of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 is to give effect to the Sealord deal contained in the 1992 Deed of Settlement.

The Act provides for a new body called the Treaty of Waitangi Fisheries Commission to oversee and distribute assets to Maori. This new commission replaces the old Maori Fisheries Commission which was created by the Maori Fisheries Act 1989 for the purpose of encouraging Maori into the business of fishing and distributing quota and cash from the Crown.

A claim was received on 11 December from Hariata Gordon for herself and Ngati Paoa concerning the method of appointment of members to the new commission. Under the 1992 Act, the members of the commission are appointed on the advice of the Minister of Maori Affairs after he or she has consulted with the Maori fisheries negotiators for the Sealord deal and other persons who are, in the Minister's opinion, representatives of Maori who are or may be beneficiaries of the commission's assets.

The claimants felt that the Minister's letter to 73 Maori organisations on 16 October seeking nominations by 30 October gave Maori insufficient time to respond. They also claimed that wider consultation should be sought throughout Maoridom by means of a national hui. These views were expressed to the Minister on 23 October and 7 December.

The claim was heard at the Waitangi Tribunal, Wellington, on 15 December 1992. The Chairperson, Chief Judge Edward Durie, with members, Bishop Manuhua Bennett and Mary Boyd, after hearing supporting and opposing evidence, recommended that a hui be called. The Tribunal urged that the first objective of the hui should be to decide on the criteria for appointment of the commissioners and only then should it move on to the selection of possible candidates.

The Tribunal did not make a formal recommendation on the role of the Maori negotiators in the selection of commission members. However, it urged the minister to use the negotiators for advice on criteria for appointment, but, because the Maori negotiators were appointed by the Crown without formal provision for consultation with Maori, they should not be in a position to nominate commissioners. The Tribunal's report says, 'It would be contrary to the Treaty in our view were the right of iwi to make their own nominations usurped.'

In support of the claim, the Tribunal said that:

- ▲ *the expectation of the Treaty of Waitangi is that issues of national importance require consultation to be carried out not only between the Crown and individuals but also between the Crown and Maori collectively, that is, with all iwi coming together at one time to make the decision – any procedure which falls short of this is not consultation but manipulation*
- ▲ *the rangatiratanga of iwi requires that the Minister give effect to a collective decision of the tribes as a whole and not what is envisaged in the Bill where the Minister gives consideration to the joint decision of the Maori negotiators but is not required to consult with iwi/Maori collectively*
- ▲ *it is a natural democratic right that issues of this nature and significance should be dealt with in a process which is transparent and visible and any suggestion of internal selectivity should be ruled out*
- ▲ *it is our understanding of the Fisheries Deed that the new Fisheries Commission would be expanded and made more accountable to Maori. Inherent in this objective must be a consultation process which properly and adequately reflects Maori needs not only in terms of the Treaty but also in terms of modern reality. It is our submission that this clause must be amended so that the Minister is required to call a hui so that iwi/Maori have the opportunity to come together collectively.*

Although for practical reasons the Treaty was mainly executed on an iwi or regional basis, it appears to us the need for some collective opinion was foreseen:

'Her Majesty the Queen asks you to sign this Treaty,' said Lt Governor Hobson in opening the discussion before the multitude at Waitangi, 'I ask you for this publicly: I don't go from one chief to another.' (Colenso's manuscript account of proceedings at Waitangi 5-6 February 1840)

Acting on the Tribunal's recommendation the Government called a hui at parliament on Tuesday 16 February 1993 to consult Maori on the appointment of commissioners.

The 14-page report is available on request from the Tribunal's office.

Excerpts from the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

Following are excerpts from the new Fisheries Act which change the Treaty of Waitangi Act 1975 and affect the claims the Tribunal can inquire into.

Note: The 'Settlement' refers to the agreement that the Crown will pay \$150 million to assist Maori in a joint-venture purchase of Sealord Products Limited, give Maori 20 percent of new species quota, provide for management of Maori fisheries through a restructuring of the Maori Fisheries Commission (see *Te Manutukutuku* November 1992).

39 Sections to be read with the Treaty of Waitangi Act 1975 – This section and the next section shall be read together with and deemed part of the Treaty of Waitangi Act 1975 (in that section referred to as the principal Act)

40 Jurisdiction of Tribunal to consider claims -Section 6 of the principal Act is hereby amended by adding the following subsection:

“(7) Notwithstanding anything in this Act or any other Act or rule of law, on and from the commencement of this subsection the Tribunal, shall not have jurisdiction to inquire or further inquire into, or to make any finding or recommendation in respect of –

“(a) Commercial fishing or commercial fisheries (within the meaning of the Fisheries Act 1983): or

“(b) The Deed of Settlement between the Crown and Maori dated 23 day of September 1992; or

“(c) Any enactment, to the extent that it relates to such commercial fishing or commercial fisheries.”

9 Effect of settlement on Commercial Maori fishing rights and interests – It is hereby declared that –

(a) All claims (current and future) by Maori in respect of commercial fishing-

(i) Whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi statute, or otherwise; and

(ii) Whether in respect of sea, coastal or inland fisheries, including any commercial aspect of traditional fishing; and

(iii) Whether of not such claims have been the subject of adjudication by the courts or any other recommendation from the Waitangi Tribunal, – having been acknowledged, and having been satisfied by the benefits provided to Maori by the Crown under the Maori Fisheries Act 1989, this Act, and the Deed of Settlement referred to in the Preamble to this Act, are hereby finally settled; and accordingly

(b) The obligations of the Crown to Maori in respect of commercial fishing are hereby fulfilled, satisfied, and discharged; and no court or tribunal shall have jurisdiction to inquire into the validity of such claims, the existence of rights and interests of Maori in commercial fishing, or the quantification thereof, the validity of the Deed of Settlement referred to in the preamble of this Act, of the adequacy of the benefits to Maori referred to in paragraph (a) of this section; and

(c) All claims (current and future) in respect of, or directly or indirectly based on, rights and interest of Maori in commercial fishing are hereby fully and finally settled, satisfied, and discharged.

10 Effect of Settlement on non-commercial Maori fishing rights and interests – It is hereby declared that claims by Maori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983 –

(a) Shall, in accordance with the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations on the Crown; and in pursuance hereto

(b) The Minister, acting in accordance with the principles of the Treaty of Waitangi, shall –

(i) Consult with tangata whenua about; and

(ii) Develop policies to help recognise – use and management practices of Maori in the exercise of non-commercial fishing rights; and

(c) The Minister shall recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade; but

(d) The rights or interests of Maori in non-commercial fishing giving rise to such claims, whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi statute or otherwise, shall henceforth have no legal effect, and accordingly -

(i) Are not enforceable in civil proceedings; and

(ii) Shall not provide a defence to any criminal regulatory or other proceeding, -

except to the extent that such rights or interests are provided for in regulations made under section 89 of the Fisheries Act 1983.

CLAIMANT QUESTIONNAIRE

Thanks to all claimants who filled out the claimant questionnaire that was sent out with the December 1992 issue of *Te Manutukutuku*.

If you did not get around to returning the questionnaire, it is not too late to return it now.

The Waitangi Tribunal Division has taken note of all your comments. Where shortcomings have been pointed out, we are working to make the improvements that are within our power to change.

WAITANGI TRIBUNAL CURRENT HEARING PROGRAMME

Date	Name	Place
Mar 8-10	212 Ikawhenua	Rotorua
Mar 15-19	45 Muriwhenua	Taipa
April 5	38 Te Roroa	Waimamaku or Auckland
May 17-21	45 Muriwhenua	
May 31-June 4	143 Taranaki	Taranaki
June 21-25	45 Muriwhenua	
July 19-22	45 Muriwhenua	

New Claims Registered

WAI 320

Claimants: M T Popata on behalf of the trustees of Kenana Marae
Concerning: Kohumaru Station
Region: Kaitaia
Received: 15 October 1992

WAI 321

Claimants: Hariata Gordon for Ngati Paoa
Concerning: Treaty of Waitangi (Fisheries claims) Act
Region: Aotearoa
Received: 11 December 1992

WAI 322

Claimants: T T Tainui and S T H Lee for descendants of Tuhuru
Concerning: Tuhuru status
Region: Te Tai Poutini (West Coast, South Island)
Received: 15 December 1992

WAI 323

Claimants: Jo Pere for Wi Pere whanau and others
Concerning: Waitawaki Block
Region: East Coast, North Island
Received: 10 November 1992

WAI 324

Claimants: Otene Kuku George Karaitiana and other descendants of Henare Korako Karetai and Mere Te Kaehe Karetai
Concerning: Otakou Native Reserve
Region: Otago
Received: 9 December 1992

WAI 325

Claimants: Clem Wynyard Tapsell on behalf of the descendants of Rewi Tapsell
Concerning: Maketu A Sec 127, Bledisloe Park
Region: Maketu, Bay of Plenty
Received: 3 November 1992

WAI 326

Claimants: William Alexander Ngawati
Concerning: Cathedral Cove/Mercury Bay Marine Reserve
Region: Coromandel Peninsula
Received: 17 December 1992

WAI 327

Claimants: N Baker for Ngati Kopaki/Ngati Te Ara Whanau Trust
Concerning: Tuhipa, Motatau No 4 Block
Region: Whangarei
Received: 28 January 1993

WAI 328

Claimants: Wiremu Te Henare Solomon and the Ngai Tahu Maori Trust Board
Concerning: Whale watching activity
Region: Kaikoura
Received: 15 December 1992

WAI 329

Claimants: Reverend Robert Percival Emery MBE and others
Concerning: Rohe Potae lands
Region: Maniapoto
Received: 5 November 1992

CLAIMS TO THE WAITANGI TRIBUNAL

Te Roroa

School Resource Kit Three

Following the success of the **Kaituna** and **Motunui-Waitara** kits, comes this attractive full-colour and durable resource on the Te Roroa claim. This resource provides a timely insight into the controversial Northland land claim involving private land. It describes the significance of *wahi tapu* (sacred sites), how the land changed hands, and the present day consequences of those transactions. It includes maps, photographs and a pertinent Tom Scott cartoon, plus teachers' notes and a range of activities and exercises. Main themes are:

- ▲ Maori and European World Views
- ▲ Alienation
- ▲ Justice/Injustice
- ▲ Land Ownership and Use
- ▲ Traditional and contemporary economic bases.

Designed for 3rd, 4th and 5th form levels in social studies, geography, history, legal studies and Maori studies, this resource was produced with the help of a group of teachers and was trialed in the classroom.

Other Resource Kits available

- ▲ **Kaituna Resource Kit** prepared for 3rd and 4th form levels
- ▲ **Motunui-Waitara Resource Kit** prepared for use with the senior geography syllabus

Name: _____

Address: _____

_____ Telephone: _____

Please send me:

_____ copies of **Te Roroa Resource Kit**, at \$37.50 each

_____ copies of **Motunui-Waitara Resource Kit**, at \$35.00 each

_____ copies of **Kaituna Resource Kit**, at \$35.00 each all prices incl. GST

I enclose a cheque for \$_____ made out to the Waitangi Tribunal OR

Please send an account to this address:

Post orders to: Information Manager, Waitangi Tribunal Division, PO Box 5022, Wellington

NEW REFERENCE WORKS AVAILABLE

Available from March 1993

Native Land Acts

The Waitangi Tribunal Division has hired Tarah Nikora of Ngati Maniapoto to compile a comprehensive list of all Native Land Acts from 1862-1908. The first Land Act was enacted in 1862 and there was a major revision of land law in 1909.

The list will be of most use to lawyers, law students and others with a working knowledge of the New Zealand statutory process.

The finished document will list for each year all enacted dates, commencement dates, amendments, repeals and Act repeals.



Tarah Nikora who is in her third year at Victoria University studying for an LLB/BA, Maori

Maori Material from Appendices

All material authored by Maori in the *Appendices to the Journals of the House of Representatives 1860-1869* can now be found in a single volume.

Jane Falloon and Evan Morgan, the two university graduates who compiled the material (see *Te Manutukutuku* June 1992), completed the task last year and the Waitangi Tribunal Division is publishing the work.

The material consists mainly of addresses, letters and petitions to the government from individual Maori and groups of Maori. Most of the entries are in Maori and are followed by a translation into English.

The finished document, about 585 pages, can be ordered from the Tribunal's office.

NATIVE LANDS LEGISLATION 1862-1908: a reference list of the Acts, amendments and repeals

Please supply _____ copies at \$10 each *incl. GST*

Name: _____

Address: _____

I enclose a cheque for payment _____

Please send me an invoice (address for invoice if different from above)

Post orders to: Information Manager, Waitangi Tribunal
Division, PO Box 5022, Wellington

MATERIAL BY MAORI FROM THE APPENDICES TO THE JOURNALS OF THE HOUSE OF REPRESENTATIVES 1860-1869

Please supply _____ copies at \$30 each *incl. GST*

Name: _____

Address: _____

I enclose a cheque for payment _____

Please send me an invoice (address for invoice if different from above)

Post orders to: Information Manager, Waitangi Tribunal
Division, PO Box 5022, Wellington

If you want to receive your own copy of *Te Manutukutuku*, please fill in this form.
Your name will be added to the mailing list.

Name _____ Address _____

Return this form to the Information Manager,
Waitangi Tribunal, PO Box 5022, DX 8101
Wellington/Te Whanganui-a-Tara

Please advise the Waitangi Tribunal Division of any changes of address.