TE MANUTUKUTUKU

Te Roopu Whakamana i te Tiriti o Waitangi Te Tari Ture

Waitangi Tribunal Division Department of Justice Newsletter

Tuatahi Hepetema 1989

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KUPU WHAKATUWHERA

Ka tukuna tenei 'Te Manutukutuku' tuatahi kia koutou – ki nga roopu maha – i raro i te tuku aroha, whakaiti hoki. Me te wawata ano, ma nga korero e whai ake nei, hei whakaatu, hei whakamarama ake i nga kaupapa, me nga take kua oti, kei te mahia ranei e Te Roopu Whakamana i te Tiriti, ki tenei wa.

Otira, hei kupu whakamutunga, me whakamoemiti ki te Atua, me tangi atu hoki kia ratou ma, te hunga kua mene ki te po, a kia tatou hoki nga kanohi ora, e hiki nei i nga tikanga, me nga take whanui e whai nei e te iwi.

Na te Roopu

FOREWORD

In forwarding this first 'Te Manutukutuku' ('The Kite') to you – and the many organisations – we send our love and humble wishes in the hope that the information and facts in this publication will both inform and enlighten you all about the matters and topics that have been completed or are being dealt with in the Waitangi Tribunal.

And as a final message, we pay respects to our Lord, to those who have passed on, and to us the descendants, the bearers of our customs and all matters pertaining to our people.

The Waitangi Tribunal Division

DIRECTOR'S COLUMN

The need to inform the public at large about crucial social issues such as those represented in the Treaty of Waitangi and the roles and responsibilities of the Waitangi Tribunal lies at the heart of this publication.

It is intended that this newsletter be circulated to about 1,500 addressees including iwi authorities such as tribal trust boards and runanga and other Maori authorities like the New Zealand Maori Council and the Maori Women's Welfare League; to politicians; to central and local government agencies; to the legal fraternity and to other key sector groups who have an interest in Treaty matters.

As the media have a key educative role in the whole process of race relations, it is our intention that a copy of this newsletter be distributed to them as well.

'What's in a name?' Unlike Shakespeare's Juliet, I believe that the choice of name or standard bearer for any document that will be produced on a regular basis is important because it projects the sort of image that the document wishes to convey.

We wish to be informative. We wish to be educative and above all we wish to project a professional image with a human face that is indicative of the work of the Waitangi Tribunal.

For these reasons we have chosen the humble kite as the standard bearer for our newsletter. Te Manutukutuku is symbolic of a number of key ideas. In modern times we largely fly kites for entertainment. Politicians also tend to fly 'kites' of a different sort – when they want to test public attitudes for an idea that they might have.

We prefer that Te Manutukutuku represents 'the messenger' as a means of telling people what is happening.

It is intended that we produce the newsletter on a bi-monthly basis and that we produce three editions in 1989 to test the idea and to determine its viability as a means of communication.

I should add that while it is expected that the first editions will contain material produced principally by Waitangi Tribunal staff and members it is hoped that, in future, readers will also be able to contribute articles and comments.

Contributors need to be constrained only by the usual requirements of propriety.

In formally launching this project we hope that it acts as a bridge across cultural gaps and helps to reduce anxiety in the community about the Treaty and about the work of the Waitangi Tribunal.

Wira Gardiner

Director

THE CLAIMS PROCESS

For most claimants, the decision to lodge an enquiry with the Waitangi Tribunal is the first step in bringing their claim to a formal hearing.

Staff of the Waitangi Tribunal then check that the enquiry meets the provisions of the Treaty of Waitangi Act 1975; principally section 6 which allows only Maori to bring a claim against the Crown.

Part of the process of the Tribunal checking the enquiry may also involve helping claimants redraft their enquiry into an appropriate format so that the particulars of the claim are clearly set out.

Once all the checking has been completed and it looks as if the enquiry meets all of the Tribunal's requirements, the Chairman of the Tribunal directs that the enquiry become a claim and it is allocated a 'Wai' number and placed on a Claims Register ready for the next stage in the process.

Before any claim is heard, the Tribunal requires that thorough research must be carried out. In some cases, claimants have undertaken comprehensive research of their own. In most other cases, an extensive research programme has to be undertaken.

Research on small or medium-size claims may take up to six months; larger and more complex claims up to 12 months. The decision to commit research funds may occur once the claim is scheduled for hearing. Presently, the Tribunal operates on a three-year schedule.

The Hearings Schedule is currently fully committed up until June 1990. Claims currently being heard include Ngai Tahu (South Island); Pouakani (Tokoroa); Maunganui (Dargaville); Waitomo (King Country). We propose also to begin hearings on Te Ngae (Rotorua); Muriwhenua (Northern Land Claims).

It is likely that the 1990/91 period will be heavily taken up with hearings on the Raupatu group of claims involving Taranaki; Waikato; Tauranga; Ngati Awa; Tuhoe and Whakatohea. Other smaller and medium-sized claims will also be heard. It is hoped too that a number of claims will be dealt with through mediation.

It is important to appreciate that the priority accorded a claim is not entirely dependent on Murphy's law of 'first up best dressed'. In determining the claims schedule, the Tribunal is conscious of the need to acknowledge geographical and tribal spread and the need to consider the grouping of like claims together.

The aim of the Waitangi Tribunal is to reduce the backlog of claims. By adopting commonsense organisational methods and ensuring close liaison with interested parties, we will be able to meet these objectives.

Mediation to Be Tried as an Alternative to Tribunal Hearings

On 7-8 September 1989 the process of mediation will be used for the first time as the means to resolving a group of claims which have been registered with the Waitangi Tribunal.

The claims have been lodged by Josephine Anderson and the hapu of Ruapuha and the land under dispute is Hauturu East 1A Block, which includes parts of the Waitomo Caves.

The mediator for these claims will be Peter Trapski CBE, retired Chief District Court Judge, who became a member of the Waitangi Tribunal in July this year.

The mediation, which will commence at the claimants' marae, will be an informal and private affair, not open to the public or the press and nothing except the results will be recorded. Further sessions regarding this group of claims will be held in Wellington.

Because several government agencies are involved in this grievance, Peter Trapski has stressed the importance of the Crown speaking with one voice at the mediation.

The government agencies (which will have their interests coordinated by the Crown Law Office) are: The Treaty of Waitangi Policy Unit, Department of Justice; the Department of Conservation; the Department of Education; Tourist Hotel Corporation (SOE); and New Zealand Post.

The involvement of the Waitomo District Council is also seen as an important element in the mediation.

The land will be viewed by the parties and the mediator so that the claimants will have the opportunity to point out the places and landmarks involved.

Mr Christopher Toogood, counsel for the claimants, has expressed the view that although it will not be necessary for the Crown to respond in detail to the claim at the Waitomo session, it will be helpful if the Crown gives some indication as to whether the claim does or does not have merit as soon as possible. If the Crown is substantially opposed to the claim, there is little point in taking the mediation process further. A full Tribunal hearing would have to be scheduled for a later date.

It is important that the process of private mediation does not end up excluding groups of people who may rightfully be claimants from being heard. It may therefore be necessary for the Tribunal to advertise any proposed findings and recommendations arising out of private hearings. This would be the time to raise the question about whether there were any other people who might be eligible to benefit from the hearing in session.

The process of mediation may prove to be the most appropriate method of resolving certain types of smaller claims lodged with the Tribunal. This being the case, large savings may be made in time, money, pain and effort.

New Approach to Cross Examination Developed for the Ngai Tahu Claim

There is probably no other tribunal or court in New Zealand, or even the Commonwealth, quite like the Waitangi Tribunal. This means that the Tribunal has to adopt its own rules and procedures and try new techniques to cope with the often unusual demands placed on it.

This need for an innovative approach is particularly true in relation to the evidence the Tribunal hears. Much of it is in oral form, but there is also a vast amount of written evidence from historical documents and archives: sketchbooks; journals; letters of settlers, chiefs, governors; land deeds; official minutes; archaeological and historical papers and much more.

In the Ngai Tahu claim, these papers now cover over 12 metres of shelf space and they deal, in the main, with issues over 140 years old for which the main witnesses are long since dead.

Faced with this mountain of evidence and the need for meticulous examination of it, the Tribunal has adopted an unusual method for cross examination in the Ngai Tahu claim.

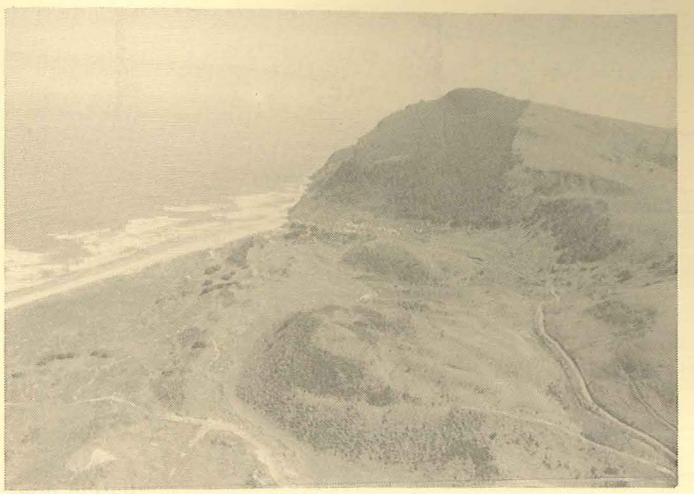
The system works like this. When an historian or archaeologist or other specialist presents their evidence orally, questions of clarification only are asked. More extensive examination and analysis of the evidence, however, is provided through written commentaries prepared by other parties questioning particular points.

The specialists concerned then answer these commentaries by memorandum.

We are people coming together, recognising the merits and good of both people

Ned Nathan, Oct 1985

THE MAUNGANUI-WAIPOUA CLAIM



Maunganui Bluff – a place of great significance to Maori of this part of New Zealand

Waipoua State Forest – Tribunal on a site visit with claimant and Crown representatives

Privately-owned land is not under threat from the Waitangi Tribunal.

There is no law which provides for land to be claimed by Maori from private owners.

A part of the Maunganui-Waipoua claim which has aroused much media attention is Te Roroa's claim to an area of private land. The land is of importance to Te Roroa: it includes urupa, and this land was understood by them to have been excluded from the original land sale. However, if the Tribunal recommended that privately-owned land should rightfully be returned to Maori claimants, the Crown may negotiate to buy the land back – but there is no obligation for owners to sell.

Indeed, the Tribunal's establishment in 1975 soon saw full community interests represented by its members. For example, the 'Gumboot Philosopher', as Tribunal member John Kneebone is affectionately referred to by Tribunal Director, Wira Gardiner, was recent Past President of Federated Farmers and has 30 years' experience in tribunals and land issues from the landowners' points of view.

On the other hand, in November 1986 late Tribunal member, Ned Nathan, brought a claim for his people to the Tribunal but sadly died mid-1987, too soon to see the claim heard.

This claim is now continued in part by Ned Nathan's sons, making up one of three separate notices of claims from the same hapu – Te Roroa. Together, these comprise the Maunganui-Waipoua Claim (Wai 38).

Because of opposition, due to local people's concern about lack of protection of ancestral sites, the Government agreed in March 1989 to withdraw Waipoua forests from the asset sale programme until the Waitangi Tribunal has made its deliberations, or until 1991 if the Tribunal has not by then considered the issue.

Main issues emerging under this claim date back to Crown purchase of land in the 1870s and can be summarised as follows:

Alleged failure by the Crown:

- to set aside land designated as reserves;
- to protect urupa sites and other wahi tapu, some of which are under threat by commercial concerns;
- to enforce provisions of the Historic Places Act 1980 to protect archaeological and traditional sites and to prevent removal of taonga under the Antiquities Act 1975;
- to ensure sufficient lands remain for the needs of the Te Roroa hapu in the areas under review;
- to provide Te Roroa hapu of Waipoua with adequate public services and legal access to the Waipoua settlement and sacred places in the block;
- to protect fishing resources in specific lakes and waterways; and
- to ensure that descendants of the original Maori owners were appropriately consulted in the management of the Taharoa public domain.

The first two hearings of this claim were in June and July 1989. A further hearing is planned for 16-20 October and the Crown's response to the three aspects of the claim is scheduled for 13-17 November 1989.

The advantages of this scheme have become obvious. Parties can have time to digest the complex bulk of evidence material, and then prepare careful questions on it for considered response.

Instead of endless cross-examination which might not get to the heart of issues, or which might miss crucial points, or simply exhaust the capacity of the listeners, there is an active involvement by relevant specialists, as well as lawyers, in the cross-examination process and a sharp definition of the issues.

The end result is a cross-examination which is more thorough than would be the case if normal procedures were followed.

The Tribunal experience may well encourage other courts considering detailed technical or historical evidence to experiment with this approach. It already looks as though it may become standard practice for future Tribunal sittings on other claims.

Tribunal Grants Crown Extension of Time to Respond to Ngai Tahu Trust Board Claim

At the latest sitting of the Waitangi Tribunal at Tuahiwi marae, Rangiora, Christchurch on 14 August 1989 in respect of the Ngai Tahu Trust Board Claim, Paul Temm QC, counsel for Ngai Tahu gave his closing address summarising the evidence received and heard by the Tribunal, over the past two years.

This claim is the biggest claim to date presented before the Tribunal as it involves a substantial amount of the South Island.

In his address, Mr Temm gave a summary of Ngai Tahu's grievances to which counsel for the Crown, Shonagh Kenderdine, has requested the Tribunal for more time to respond.

The Tribunal sees these final sittings as being vital to the formulation of its report of findings to the Minister, and has granted the Crown this extension – although it has caused timetabling problems for many.

The Crown's closing address is now scheduled for 11 September 1989 and not 28 August 1989, as previously notified. The date for the claimants' final response to the Crown's closing address will be notified when a date is fixed.

WAITANGI TRIBUNAL MEMBERS

Chairman: Chief Judge of Maori Land Court (Edward Taihakurei Junior Durie)

Deputy Chairman: Judge of the Maori Land Court (A G McHugh)

Members:

The Right Reverend M A Bennett, ONZ, CMG
Mrs M B Boyd
Mr M E Delamere, JP
Dr N K Hopa
Mr T Te Kani, MBE
Professor Sir Hugh Kawharu
Mr J T Kneebone, CMG
Mrs E Manuel, MBE
Ms J R Morris
Professor G S Orr
Dr E R Ryan
Professor M P K Sorrenson
Associate Professor Dr E M Stokes
Sir Desmond Sullivan
Mrs G M Te Heuheu
Mr P J Trapski, CBE
Mr W McL Wilson

HEARING DATES

August-December 1989

Note: These dates are subject to change

WAI 27 NGAI TAHU

Tuesday 1 August-Wednesday 2 August
Databank House, Wellington
Submissions by the Fishing Industry Board and the Fishing Industry Association

Monday 14 August-Friday 18 August
Tuahiwi marae, Rangiora
Final submissions by the claimants

Monday 28 August-Friday 1 September
POSTPONED POSTPONED POSTPONED

Monday 11 September-Friday 15 September
Tuahiwi marae, Rangiora
Final submissions by the Crown
(Date has yet to be finalised for claimants' closing address – Tuahiwi marae, Rangiora)
Ngai Tahu Claim is being heard by: Judge Ashley McHugh, Georgina Te Heuheu, Monita Delamere, Manuhuia Bennett, Hugh Kawharu, Desmond Sullivan, Gordon Orr

WAI 38 MAUNGANUI-WAIPOUA

Monday 16 October-Friday 20 October
Matatina marae, Waipoua
Submissions by the claimants (technical evidence)

Monday 13 November-Friday 17 November
Matatina marae, Waipoua
Response by the Crown
The Maunganui-Waipoua Claim is being heard by: Judge Andrew Spencer, Ngapare Hopa, Turirangi Te Kani, Mary Boyd, John Kneebone

WAI 33 POUAKANI

Monday 21 August-Thursday 24 August
Tokoroa
Submissions by the Crown and other parties

Monday 9 October-Wednesday 11 October
Tokoroa
Final submissions by claimants and the Crown
The Pouakani Claim is being heard by: Judge Ross Russell, Turirangi Te Kani, Emarina Manuel, Evelyn Stokes, Bill Wilson

WAI 45 MURIWHENUA (LAND)

Was scheduled to begin December 1989
Now postponed until early 1990

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Wellington/Whanganui-a-Tara

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