

TE MANUTUKUTUKU

*Te Roopu Whakamana i te
Tiriti o Waitangi
Panui*



*Waitangi Tribunal Division
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Newsletter*

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Sealords Inquiry – Report of the Waitangi Tribunal

The Tribunal inquired into several claims concerning the controversial Crown-Maori settlement on fisheries, September 1992.

The Settlement

Briefly, according to the Deed, the Crown will pay \$150 million to assist Maori in a joint venture purchase of Sealords Products Ltd, give Maori 20 percent of new species quota and provide for management of Maori fisheries through a restructuring of the Maori Fisheries Commission.

In return, Maori agree to discontinue all court actions and claims to the Waitangi Tribunal concerning commercial fisheries and to extinguish all Maori commercial fishing rights. The Deed also covers changes to the legal status of non-commercial fishing rights.

The Claim and the Report

The Waitangi Tribunal said in its report released 6 November 1992 that the Sealords fishing agreement between the Crown and Maori negotiators was contrary to the Treaty in some aspects but that these could be rectified in the anticipated legislation.

After the settlement Deed was signed, a number of Maori groups claims that it extinguished rather than fulfilled the Treaty's obligations and that the recognition of their rangatiratanga over their fisheries was being taken from them before their claims had been heard. Many claimants feared a central Maori or State bureaucracy would keep power and assets from the people. Chatham Island and other claimants sought separate settlements.

The Tribunal was of the view that 'the settlement should proceed despite the inevitable compromise to the independent rangatiratanga of the dissentients'.

Given the national basis of the Quota Management System the Tribunal considered that a settlement could be dealt with at a pan-iwi level where the 'actual consent of each iwi is not a prerequisite and a general consensus can be relied upon'.

While it was recognised that there were substantial difficulties in assessing the level of iwi support for the settlement, the report said, the Maori negotiators held numerous hui and the full record was contained in a 260-page report which 'conveyed to us the impression that there was indeed a mandate for the settlement, provided the Treaty was not compromised'.



*Sealords claim hearing in Wellington.
Left to right: Sir Hugh Kawharu, Bishop Manuhua Bennett,
Chief Judge Edward Durie and Joanne Morris.*

To ensure Treaty rights were protected, the Tribunal recommended:

- ▲ that the legislation make no provision for the extinguishment of Treaty fishing interests, and that the legislation in fact provided for these
- ▲ that the fish regulations and policies be reviewable in the courts against the Treaty's principles and fish management laws.

It also considered it would be reasonable for the Crown to impose a 25-year moratorium on such claims and that it was appropriate to legislate to terminate current actions.

On the question of allocation, the report concluded that the Crown had a duty to all tribes and had 'therefore some delicate balancing to do'. The Tribunal recommended that any allocation should not be based on Treaty principles alone but on what was tika, or fair.

The Tribunal said it is not the extinguishment of rights that is essential but the affirmation of them.

'Perhaps as a consequence of the inevitable haste, the Deed was not packaged well for Maori. What might have been a noble compact presents like a warranty to protect the manufacturer,' the Tribunal said.

Sealords Report

The Fisheries Settlement Report is available from:
Brooker & Friend Ltd,
PO Box 43, DX 8043, Wellington.
Tel: 0-4-385 6683 Fax: 0-4-385 7300
Price: \$11.50 (incl. GST, postage and handling)

Commercial Implications of the Treaty of Waitangi – Conference

Speakers at the Institute for International Research Conference, held at the Plaza International Hotel 28–29 September, covered theories, observations and strategies for Maori economic development. Drawing on local, national and international law and emerging trends, they presented a variety of possibilities for achieving success and, conversely, barriers to commercial attainment.

We summarise some of the opinions presented.

Dr Frederick Harhof, Legal Counsel for the Government of Greenland, suggested that if New Zealand placed equal emphasis on the 1835 Declaration of Independence as it does on the Treaty of Waitangi (that is, mention the two in tandem in legislation), the case for greater recognition and consideration of tino rangatira-tanga would be bolstered.

Wira Gardiner, Chief Executive of Te Puni Kokiri, observed a growing Maori interest in intellectual property rights, for example, the use of iwi names by others. Other aboriginal peoples have put considerable effort into this area and Ngati Awa is holding a conference on the issue in 1993.

Tipene O'Reagan, Chairman of the Ngai Tahu Maori Trust Board, spoke on effective commercial and legal structures for development, attacking the restrictive provisions of trust boards legislation and the dependency mentality it has created.

Joe Williams, Partner, Kensington Swan Law Firm. Dealing with Maori interests in assets for transfer, suggested that Maori claims are successful depending on the strength of the claim (for example, a major historical wrong), the ability of tribal leadership to lobby Government, and the Waitangi Tribunal and the present tenure of the land. In resource management, ownership issues should be determined first, before rights are allocated.

Alan Haronga, Partner, Deloitte Ross Tohmatsu (chartered accountants and business consultants), said factors needed for Maori success in business include negotiation with the finance sector, instruments to deal with multiple ownership of land, and a succession strategy so that good leadership and management are maintained.

John Marshall, Partner, Buddle Findlay, discussed the implications of the recent Australian High Court decision, Mabo, confirming aboriginal title to the people of Torres Strait. Implications of the decision include: do Australian Aborigines own mineral rights, or can they control access to lands with mineral deposits? Can they claim common law fishing rights and a right to development of the fish resource?

Gordon Orr, Member of the Waitangi Tribunal, considered legal procedures and their implications in relation to the Waitangi Tribunal, the Courts and the United Nations. (A copy of Gordon Orr's paper is available on request from the Waitangi Tribunal.)

New Claims Registered

WAI 302

Claimants: R Te Ripi Wihongi for the Wihongi whanau and other whanau

Concerning: Kohewhata block

Region: Kaikohe

Received: 3 August 1992

WAI 303

Claimants: Haahi Walker and Thompson Parore for Te Runanga o Ngati Whatua

Concerning: Ngati Whatua claims

Region: Auckland to Dargaville

Received: 28 July 1992

WAI 304

Claimants: Tamehana Tamehana for Ngati Hine Hapu and others

Concerning: Ngawha geothermal resource

Region: Near Kaikohe, Northland

Received: 8 September 1992

WAI 305

Claimants: Maui Te Ruahuanui Kaihere Weepu for the Rangatira Tuhuru and Poutini Ngai Tahu

Concerning: Fishing rights and the Sealords deal

Region: Westport

Received: 17 September 1992

WAI 306

Claimants: Garth Banks for Ngati Haua

Concerning: Ngati Haua lands

Region: Waikato

Received: 10 September 1992

WAI 307

Claimants: Compilation of all Sealords deal claims

Concerning: Proposed settlement of all Maori commercial fisheries claims

WAI 308

Claimants: Gary A Solomon for the Moriori T'chakat Henu Association

Concerning: Rekohu lands and fisheries and the Sealords deal

Region: Chatham Islands

Received: 17 September 1992

WAI 309

Claimants: W Ngamoki for Te Whanau a Nuku Hapu of Whanau a Apanui

Concerning: Sealords deal and Te Whanau a Apanui fisheries

Region: Opotiki

Received: 29 September 1992

Waitangi Tribunal Christmas Closing Dates

The office of the Waitangi Tribunal will close for Christmas noon Tuesday 22 December 1992 and will open Tuesday 5 January 1993.

Ngawha Geothermal Hearing

An urgent hearing of the Ngawha geothermal claim was held at Kotahitanga marae, Kaikohe, 12-15 October 1992.

Urgency arose because resource consents have been sought under the Resource Management Act 1991 for a power station development proposal.

The claimants (the trustees of Parahirahi C1 Maori Reservation on behalf of the whanau and hapu), who object to the proposal, have an interest in the Ngawha geothermal resource.

The claimants hold that from 1873 to 1948 the Crown progressively acquired, in a manner contrary to the Treaty of Waitangi, most of the Parahirahi Block upon which a substantial proportion of the Ngawha geothermal resource is located.

The claimants now possess one acre of the original 5097-acre Parahirahi Block which contains a portion of the Ngawha geothermal springs. They claim that the Crown did not acquire ownership of the geothermal resource in its acquisition of the land.



Tribunal, Crown and claimants at Ngawha Springs

No consideration of the resource consents for the development proposal should proceed, state the claimants, until the claim is heard by the Waitangi Tribunal and any rights found to subsist in Nga Hapu o Ngawha have been duly adjudicated upon.

The claim is being heard by Professor Gordon Orr, Joanne Morris, Sir Hugh Kawharu and William (Mac) Taylor. Kaumatua evidence about the history of the springs and their curative properties, history of the Parahirahi block and mining of mercury and early European views of the springs were presented.

Scientific evidence on the effects of development, generally, on the surface features of a field like Ngawha was also heard.

The Tribunal will return to Kaikohe on 15 December to hear further evidence about the land history, the Crown response and possibly some anthropological evidence on the traditional ownership of the geothermal resource.



Ngawha site visit: Well 9 on Carter Holt property

Taranaki Hearing

The ninth hearing of the Taranaki land claims (Wai 143) was held recently at Parihaka. To date, the Tribunal has heard evidence regarding pre-confiscation purchases, the wars and the Pekapeka (Waitara) purchase which sparked the first war. Evidence from each of the iwi of Taranaki whanui has included more contemporary issues, for example, river claims.

The latest hearing (20-22 October 1992) was held specifically to receive evidence leading up to the government attack on Parihaka in 1881, and its history since then. Among those who addressed the Tribunal were Lindsay MacLeod, Milton Hohaia, Ailsa Smith, Hazel Riseborough and Peter Adds on behalf of Jane Reeves. The Tribunal heard evidence of the establishment and maintenance of the community at Parihaka, the teachings of Te Whiti and Tohu, the survey of the Waimate Plains and resistance to it, ploughing and fencing, imprisonment of Maori and their detention without trial. The Tribunal also heard how the 'Parihaka Reserves', which were confiscated lands returned to Maori, have since been alienated from Maori ownership over time through subsequent legislation.

Much of the last day of the hearing was spent visiting numerous sites in the Taranaki rohe, including battle sites, pa sites, redoubts and stockades, tauranga ika and tauranga waka. The highlight of the site visits was going

to Pawaiti Pawanui (or Puketoretore) a pa site incorporating major stoneworks and mauri kohatu.

The final part of the hearing included a re-enactment of an interaction between Te Whiti and Riemschneider, a Lutheran from the North German Mission Society. Apparently, Te Whiti presented Riemschneider with a live plucked rooster to demonstrate that government and settler encroachment on the land was leaving the people naked.

Na reira, tena ra koutou e Taranaki i runga i te kaupapa o te ra nei me nga ahuatanga o te wa. He mihi nui atu ki a koutou mo o koutou tohu aroha i homai ki a matou, nga mema me nga kaimahi o Te Ropu Whakamana i te Tiriti o Waitangi.

Waitangi Tribunal Current Programme

These dates are subject to change

Date	Claim no/name	Place
Nov 9-13	Muriwhenua (Wai 45)	Te Rarawa Marae, Pukepoto, Kaitaia
Nov 16-20	Te Whanganui a Orotu (Wai 55)	Napier
Nov 30-Dec 4	Muriwhenua (Wai 45)	As above
Dec 14-18	Ngawha Geothermal (Wai 304)	Kaikohe

Waitangi Tribunal Staff Research Projects

Currently the research staff are working on the following projects.

- ▲ A timeline is being compiled showing confiscation legislation, public works legislation, Native Land Acts and West Coast Settlement legislation. Each Act is listed with a brief analysis of the important provisions.
- ▲ Taranaki post-confiscation purchases report is near completion.
- ▲ A report on the Waitotara Purchase (Taranaki) is in process.
- ▲ Manaia 1C (Wai 148) – Exploratory report almost completed. This claim concerns land gifted in 1897 by Maori to the Crown and the claimants' alienation from that land because since 1963 it has not been used for a school – the purpose for which the land was originally given.
- ▲ Matakana Island claims (Wai 228 and 226) – Exploratory report in process.
- ▲ Manaia 1A & 2A (Wai 285) – Exploratory report in progress. This report concerns the Native Land Acts 1865 and 1867, and the alienation of Manaia 1A & 2A.
- ▲ Whangaroa claim (Wai 258) – Exploratory report in progress.
- ▲ Muriwhenua land claim (Wai 45) – Collecting petitions pertaining to the claim.
- ▲ Hawkes Bay and Wairarapa – Survey of the evidence of Maori population in this region 1820-1992.
- ▲ An investigation into rating issues is in process.
- ▲ Wellington Tenths claim (Wai 145) – Report on customary tenure in the Wellington region (defined as the area of the New Zealand Company's purchase) 1750-1850.
- ▲ Hough claim (Wai 238) – Site visit made. Land at Waikanae involving Public Works Acts 1928, 1981 and Noxious Weeds Act 1970. Exploratory report in process.
- ▲ Waiohau C26 (Wai 247) and Trustee's block (Wai 248) – Preliminary exploratory report completed on the lands involved in the Waiohau Consolidation Scheme that were taken for the Matahina Dam.
- ▲ Tasman Pulp and Paper Mill pollution claim (Wai 21) – Research concerning the impact that Tasman's effluent treatment system has had on Te Wai U o Tuwharetoa spring. Site visit carried out with report to follow shortly.
- ▲ Te Whaiti Blocks, Urewera/Tuhoe (Wai 66) – A critical analysis of the Urewera Native Reserve Act 1896 and the impact that the General Committee (who investigated the blocks and their respective owners in the Urewera) had on the region and its owners. Completed as a preliminary background report.
- ▲ Kairakau claim (Wai 270) – Investigation into payment of compensation for a taking under the Public Works Act 1928. Claim being negotiated.
- ▲ Te Kaha claims: Maraehako land (Wai 224) and Maungaroa land (Wai 281) – The sites have been visited, a preliminary report for Maraehako is almost complete; research still in process for Maungaroa. Maps of the area are being prepared.
- ▲ Te Horo Development Scheme (Wai 149) – Report almost complete. Research into the return of Crown shares to the original owners.
- ▲ Te Raupo lands, Bay of Islands (Wai 111) – Research under way on land taken for the Kawakawa-Opua railway late last century.
- ▲ Te Rarawa ki Hokianga claim (Wai 128) – Exploratory report completed but may require amendments.
- ▲ Mottatau 1B5BG (Wai 68) – Report near completion on Maori Affairs legislation.
- ▲ Turangi lands (Wai 84) – Exploratory report completed and released to parties. This report considers the Ministry of Works' acquisition of particular blocks of land for industrial development at Turangi during the 1960s.
- ▲ Ngati Motai lands (Wai 254) – Exploratory report completed and released to parties. The report examines the history of Whaiti Kuranui 6C2C West A, a block of land with an area of some four acres located at Te Poi in South Waikato.

Raupatu Document Bank

The 142-volume Raupatu Document Bank will be available for use in the following public libraries by mid-November:

<i>Whakatane</i>	<i>Rotorua</i>	<i>Opotiki</i>
<i>Hamilton</i>	<i>Te Awamutu</i>	<i>Thames</i>
<i>Gisborne</i>	<i>Tokoroa</i>	<i>Tauranga</i>
<i>Pukekohe</i>		

The bank contains copies of official publications – statutes, gazettes and AJHRs for the period 1860-1885 – relevant to the confiscations. It also contains copies of archives, mostly from National Archives, relevant to the confiscations from 1860-1970. These include petitions, correspondence and relevant parts of policy files.

The raupatu claims to the Waitangi Tribunal cover large areas in Taranaki, Auckland/Waikato, Tauranga, eastern Bay of Plenty and parts of the East Coast of the North Island.

The Bank is already held in several other public and university libraries, National Archives, the Alexander Turnbull Library, the Maori Land Information Office (Head Office, Department of Justice, Wellington) and the Waitangi Tribunal.

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