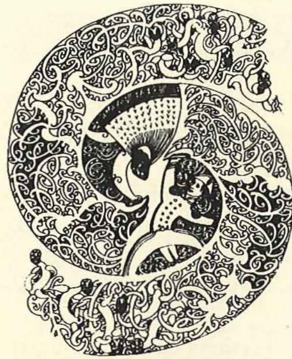

Te Roopu Whakamana i te Tiriti o Waitangi Panui
Waitangi Tribunal Division Department of Justice Newsletter

TE MANUTUKUTUKU

Toru tekau Whiringa a Rangi 1994 **Number 30 November 1994** **ISSN 0114-717X**

Court confirms Tribunal finding

A High Court decision on the Maori Option exercise has largely confirmed a Waitangi Tribunal finding that more funding should have been made available to inform Maori about their electoral choices

THE HIGH COURT decision said that Maori were "significantly disadvantaged" by the way the Maori Option exercise was carried out.

But, because the Government handling of the option was not "substantially unfair", the Court did not uphold an appeal by the Maori Congress, Maori Women's Welfare League and others that the exercise was unlawful.

The court did say, though, that the Crown should feel "some concern" at what had occurred, and that an "extensive effort" should be considered when the option is next run in 1997.

Had it succeeded, the Government would have been forced to rerun the exercise. This would have meant delays in putting the new MMP system in place -

Continued on page 4

The Waitangi Tribunal Division Office will be closed from December 22, 1994 till it reopens on January 4, 1994.

Kuia takes claim to Tribunal

SALLY TAGG

Centenarian Mrs Zister with a portrait of her grandfather Anaru—seeking compensation for land confiscated after the Land Wars of the 1860s.

RACHAEL NGEUNGEU Te Irirangi Zister, who has just celebrated her 101st birthday, is appearing before the Waitangi Tribunal to claim compensation for land confiscated after the Land Wars of the 1860s.

Mrs Zister is a distinguished kuia, and a cousin and close friend of Princess Te Puea. In her youth, Mrs Zister worked as a secretary for Princess Te Puea.

She is making the claim on behalf of herself and Ngatai tribe. The claim relates to two pieces of land—the Wairoa and Otau blocks—which cover a large area in Clevedon-Hunua, south of Auckland, where Mrs Zister lives.

The claim asks the Tribunal to recommend that the validity of the claim of unjust confiscation be recognised and that suitable compensation be paid to the tribe and its descendants.

The first hearing was held at Maraetai, Auckland, in October.

(Hearing continuing)

BY NOW MANY people will be aware of the major restructuring of the Justice Department, the first stage of which has just been announced.

The Waitangi Tribunal Division is unlikely to face major changes as a result of the revamp—at least in the immediate future.

The first stage in the restructuring is the creation of a new Department of Courts to take over the Courts and Tribunals Division of the Justice Department, which includes the Maori Land Court and the Waitangi Tribunal.

This is in line with recommendations from a Review Committee set up to look at the Courts and Tribunals operations, and takes effect from 1 July next year.

The Waitangi Tribunal Division, along with all courts and tribunals, will become part of the new department which will be headed by an as-yet-to-be-appointed chief executive.

While this obviously changes the Division's lines of accountability, life continues pretty much as before and no Waitangi Tribunal Division staff redundancies are expected.

The second stage—for which implementation and timetable details have yet to be worked out—will probably see the Justice Department become a Ministry.

The new Justice Ministry will focus on policy and will no longer have responsibility for running correctional facilities and public registries.

The Government has decided that the registries will be set up as a Crown entity but no decisions have yet been taken on how, and by whom, prisons will be run. A new Secretary for Justice will also be appointed.

These second stage decisions have received approval in principle from the Cabinet and work will now begin to determine how and when they can be put into practice.

Once these decisions have been implemented, the Department of Justice in its current form, will no longer exist. Justice Minister Doug Graham has promised that staff in all areas of the justice system will be kept informed of progress in the restructuring.

Meanwhile, while change is in the air, we at the Waitangi Tribunal Division believe that it is more important than ever to provide the best possible service to our clients. ❖

POROPOROAKI

Makarini (Mack) Temara QSM

Farewell to respected Tribunal member

Tribunal member the late Makarini Temara.

A KA RONGO ahau i tetahi reo e mea mai ana tuhituhia ka hari te hunga mate, e mate ana i roto i te Ariki.

Haere mai e te hunga whakapai a toku matua, nohoia te rangatiratanga kua rite noa ake mo koutou, no te orokohanganga ra ano o te ao.

Makarini, kei te pononga a te Ariki, kei te pou o te Haahi, kei te Rangatira, tenei matau, o hoa i roto i Te Roopu Whakamana i te Tiriti, te tangi atu nei mo to wehenga atu i a matau.

Ka nui te mamae, ka nui te aroha ki a koe, ara ki a koutou ko Monita ko Turi, no reira haere koutou i runga i te rangimarie, te maungarongo me te whakapono ki te Matua nui i te Rangi, Nana koutou i hanga Nana koutou, homai Nana ano koutou i tango atu. Kororia ki tona Ingoa.

Haere ki tawhiti nui, ki tawhiti roa ki tawhiti pamamao te hononga wairua.

Tribunal member Makarini Temara died on October 21, aged 75. At the time of his death, Mr Temara was sitting on the Chatham Islands Tribunal. He also sat on the Tribunal which heard the Whanganui River and Te Maunga Railways claims that are now completed.

"Makarini brought to our membership a wairua which only a kaumatua of his standing and mana could give," Tribunal Chairman Chief Judge Durie said. "We will also remember him for the special insights and the deeper understanding of things Maori which he shared with us all".

He was known as a good listener who enjoyed good humour, yet shared the sorrows of many families at tangihanga.

As well as being a Tribunal member, Mr Temara was well-known as the chairman of the Tuhoe-Waikaremoana Maori Trust Board, a position he had held since 1985. He also chaired the Maungapohatu Incorporation, the Ruatahuna Farm Trust, the Tuhoe-Tuawhenau Trust and he was a former member of the Te Urewera National Park Board. He headed the Tuhoe Festivals Committee and led Tuhoe cultural participation at other festivals. In 1985, he was presented with a Queens Service Medal (QSM).

Here is his favourite tau-parapara:

Ka hua hau ki te koha e huaki nei mo wai? Kaore koa ko te maunutanga o te taniwha i te rua koa; ki Matakuhia ko te Ao, ko te Muri, ko Horopapera ki Whakapunake; ki Panekire ko Te Umuariki ko Tukahara ko Tapuae; ki Huiarau ko te hekenga o te Kuru o te marama; Kohineana ki Ruatahuna, i tangohia. I te tihi o Manawaru i a Marata, i a Penehio. Haere hau kore atu ra koutou e tama ma ki te mate. Tera Tikitu o Toihau na na wharangi koe. I whakamakariri atu ki Pohaturoa. E hara i muri nei; kua whakataukitia ko te uri o Tuhoe moumou tangata ki te po e!

TE MANUTUKUTUKU

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Address all correspondence to:
The Waitangi Tribunal Division,
Seabridge House,
110 Featherston Street,
PO Box 5022, DX8101,
Wellington.
Tel: (04) 499 3666
Fax: (04) 499 3676

Edited by JULIET ASHTON

Produced by
MANA PRODUCTIONS LTD

Art direction & sub-editing by
GRAY CLAPHAM
MEDIA PROJECTS
DESIGNCOM—TAURANGA

Feedback sought on Volcanic Plateau region

THE TRIBUNAL IS keen to receive feedback on a draft working paper on the Volcanic Plateau Region.

The overview paper, by Brian Bargh, is the first in a series prepared for the Tribunal which examine the way in which land and other resources were alienated from original Maori ownership, throughout the country.

Copies of the paper, which forms part of the Rangahaua Whanui research project, will be sent to claimant groups in the region by the end of the year.

Maori living in the Volcanic Plateau could today have a controlling interest in major farming, forestry, tourism and hydro-power industries. Instead they have had to watch others—government and company officials and industries—enjoy the benefits of development based on resources they once controlled.

That is the conclusion of a draft working paper which examines how land in the region was alienated from 1830s on. Under the Treaty of Waitangi Maori were entitled to be left with enough land and resources after sale or alienation to sustain themselves and future generations. But, says the paper, that principle seems to have been ignored, whether deliberately or through ignorance.

In the era of alienations that occurred in the Volcanic Plateau there is little evidence that Maori rights under the Treaty were considered by the Crown before or during land purchases. The prevailing ethos seems to have been to obtain as much land as cheaply as possible. Pakeha valued the land differently from Maori and in the clash of values, Maori were left virtually landless in this district by 1900.

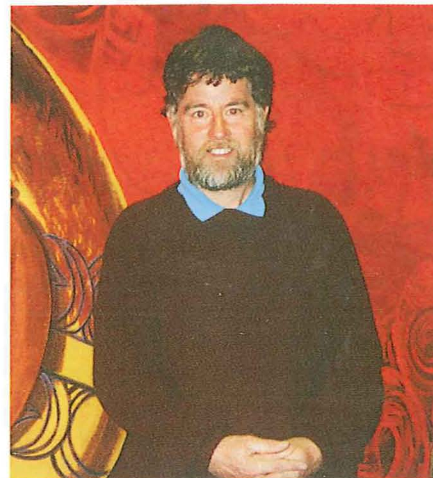
The report says many chiefs in the region initially refused to sign the Treaty although a few signed later. Of those who signed, some were to later use the fact of their signing as a means of protection from the "rampant loss of land that occurred from 1870 to 1890."

But the Treaty did not give them the protection they expected and in that 20 year period they lost many resources—not just land, but lake and river beds, geothermal areas and volcanoes.

"As New Zealand grew and developed, the demand for renewable resources also grew. The government found that pine trees grew well on the lands of the district and large areas were planted during and after the 1940s," the report says.

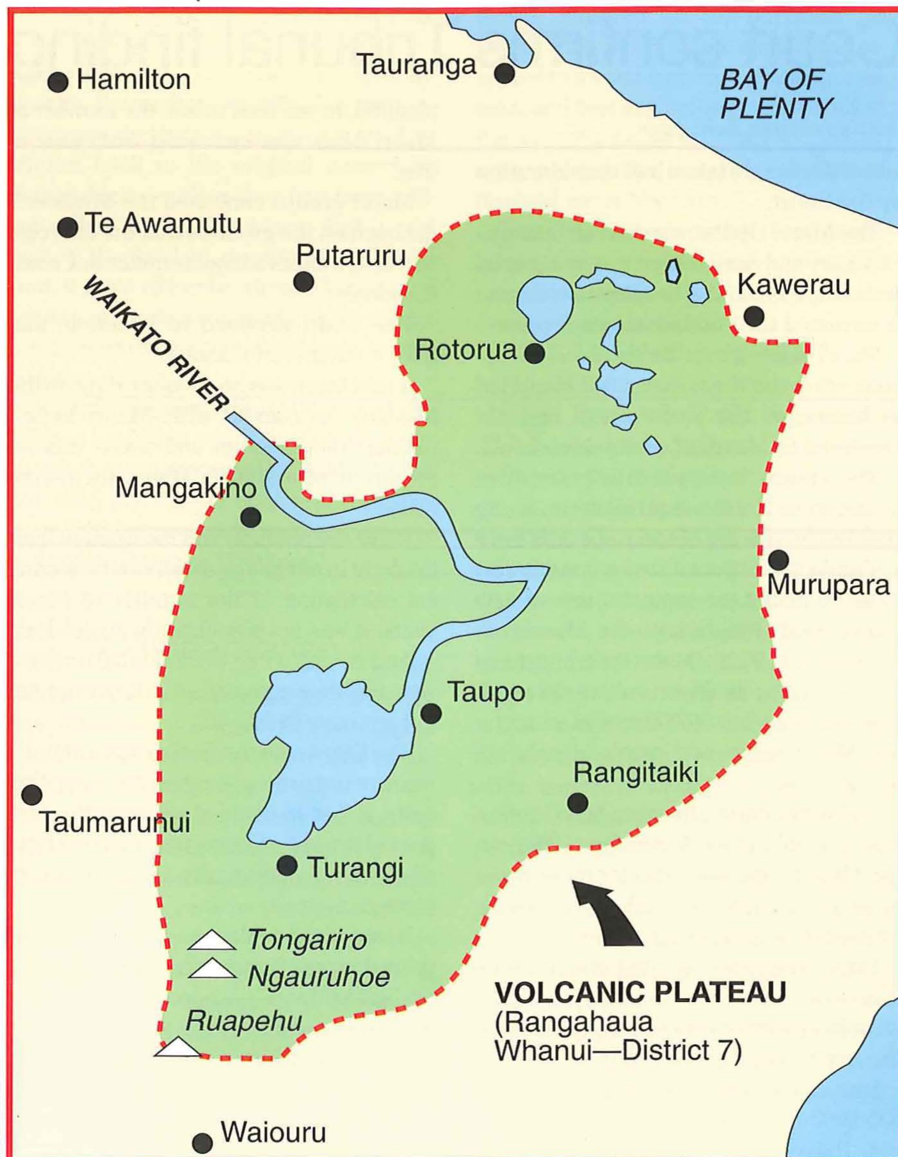
"The district was also found to be valuable as a source of hydro-power and so the government expropriated the necessary rivers and lakes of the region to provide for power generation. Tourism was always a valuable industry in the district because of the unusual geographical features and this industry has grown ever since its beginnings in the 1840s."

The report says that initially iwi of the Rotorua and Taupo district were in complete control and "significant benefits accrued." But over time they lost control of more and more resources. Efforts to put grievances before the Crown met with little success. As a result, there are today more than 30 claims before the Waitangi Tribunal in this area. The Volcanic Plateau paper ends by examining in detail the history behind some of these claims, and what has happened up to the present day.



Author Brian Bargh—consultant historian and policy analyst.

The paper includes maps of each area and a summary of claims before the Waitangi Tribunal. Author Brian Bargh is a consultant historian and policy analyst who has done extensive work on issues relating to the Treaty and the settlement of Maori claims and on the management of natural resources. ❖



Restructure will not affect claimant relationships

THE SETTING up of an Office of Treaty Settlements in place of the old Treaty of Waitangi Policy Unit (TOWPU) will not affect the organisation's relationship with Maori claimants, the Government says.

Treaty Negotiations Minister Doug Graham says the change in status of the unit to a distinct entity is part of the wider review of the Department of Justice.

"If anything, the restructuring should enhance the ability of the office to deal with the Treaty settlement process," he says.

Under the new structure, the Director of the Office of Treaty Settlements, Belinda Clark, will be accountable directly to the Treaty Negotiations Minister on matters regarding Treaty policy, negotiations and implementation.

The Office will be funded under a separate vote but the Department of Justice will provide support services. The Secretary for Justice will be accountable to the Minister of Justice (again Mr Graham) for the financial management, performance and reporting of the Office.

TOWPU was established in 1988 as a unit within the Department of Justice to advise the Crown on Treaty of Waitangi issues. Its role has been to give strategic policy advice on the Government's overall approach to settling Treaty claims as well as advice on individual claims.

Court confirms Tribunal finding

Continued from front page

one of the factors taken into consideration by the Court.

The Maori Option, carried out between February and April this year, was a crucial and complex exercise because its outcome determined the number of Maori seats.

Maori were given three electoral options - to be on the General roll identified as Maori, on the General roll and not identified as Maori, or on the Maori roll.

The choice was particularly sensitive for Maori on the General roll because any shift by them to the Maori roll would have a significant impact on seat numbers - more so than if the same number of new voters went straight onto the Maori roll. For instance, 50,000 Maori switching from the General to the Maori roll would result in seven seats but 50,000 new electors on the Maori roll would result in only six Maori seats.

Written material about the Maori option was available from September 1993, but the Minister did not consider there was a need for an extensive publicity campaign or television advertising.

Many Maori felt that not enough time was allowed and resources weren't sufficient to ensure that all Maori understood the implications of the option.

But a proposal to spend an additional $250,000 on publicity was rejected by Cabinet, the option went ahead as initially planned. In the final result, the number of Maori seats was increased from four to five.

Maori groups contested the Minister's decision on the grounds that the exercise was held without adequate notice or Crown resources.

The Court declined to intervene and gave a number of reasons.

It said there was no absolute duty on the Minister to consult with Maori before making the decision and there was no requirement to inform Maori not yet enrolled.

While the publicity was incomplete (particularly in not giving details of the technical calculation of the number of Maori seats) it was not significantly misleading.

And it said, while the Tribunal's advice was highly respected, the Government did not have to take it.

The Court said the final ground of "substantive unfairness" caused the most difficulty. It had to decided whether the conduct of the option unfairly deprived Maori of a proper opportunity to make an informed choice.

It said all the evidence suggested a "worrying degree of ignorance within a portion of eligible Maori" not cured by mailouts or written material.

But this did not constitute "substantive unfairness."

An appeal filed with the Court of Appeal is being heard this month. ❖

Tertiary fees claim put on hold

A CLAIM TO the Waitangi Tribunal that proposals to increase student fees are prejudicial to Maori has been put on hold until the Government makes final decisions on its tertiary funding policy.

Claimants Wiremu Kaa and Peter Adds - both lecturers at Victoria University - say that proposals in the Todd Report would result in fewer Maori students going to universities or other tertiary training institutions.

Another part of their claim states that Maori were not given adequate opportunity to present alternative policy options when the Todd consultative group was set up.

The Todd report, issued in May, suggested two options for Government funding of tertiary education. The first was to make students pay 25 per cent of their fees by the year 2000. The second, since rejected by the Government, was for students to pay 50 per cent by 2000.

The claimants say student fees have already increased, on average from around $200 a year in the mid-1980s, to nearly $2000 a year in 1994. They say further increases would discourage Maori from enroling in tertiary institutions, and force some existing students to leave.

The Tribunal turned down the claimants request for an urgent hearing on the ground that it can't look at the Todd report until it becomes Government policy.

It says a policy announcement is expected by the end of the year. Claimants may then reintroduce the matter before the Tribunal.

"It may be that further measures will be proposed for poorer students," it says. Fee increases must be seen in the context of other financial assistance through loans and allowances.

If no policy announcement has been made by 1995, the Tribunal says it may hear the claim anyway, on the basis that the Government has not acted quickly enough.

A CASE IN QUESTION

Te Maunga Report focuses on public works acquisitions

Back in 1955, the Maori owners of a block of land taken under the Public Works Act were paid $860 compensation. Thirty years later, when Railways didn't need the block any longer, the owners were told that, if they wanted their land back, they would have to pay $70,000. The Waitangi Tribunal says that isn't fair, and that there should be changes to public works legislation and offer-back procedures.

MANY CLAIMS to the Waitangi Tribunal are over land taken compulsorily under public works legislation.

Some are over the manner in which the land was taken, some over compensation paid or difficulties in so-called "offer-back" procedures for getting the land returned when it is no longer required for public works.

In its recently released *Te Maunga Report*, the Tribunal backgrounds public works legislation and identifies areas of concern.

It says a large part of the problem is that the legislation has never acknowledged that, in taking land for public works, the Crown has responsibilities to Maori under the Treaty of Waitangi.

Yet, says the Tribunal, the powers given to the Crown to take land compulsorily cut across the guarantee of rangatiratanga in Article Two of the Treaty—that is, that Maori would remain in possession of lands and resources "unless and until Maori decided to dispose of them for an agreed price."

History of the Public Works Act

THE POWERS of the Crown to take land for public purposes were derived from British law and interpreted in a series of New Zealand statutes since 1863. Public works takings in the twentieth century have been mainly under Public Works Acts 1908 and 1928 which gave authorities—national and local—sweeping powers to take land for a wide-ranging list of public works including railways, roads, quarries, harbours, hospitals, schools, universities, even Ministerial residences.

The legislation was amended constantly over the following 40 years but the first major revamp came in 1981. The new 1981 Act restricted the criteria for which land might be compulsorily acquired to "essential works". There remained, however, a provision that the Governor-General could declare any work to be "essential".

Although the concept of "essential work" was repealed in the Public Works Amendment Act 1987 and replaced by "fair, sound and reasonably necessary", the Planning Tribunal was given greater powers to review any proposed taking and issue a report that was binding on the Crown.

The 1981 Act made another important change. It said that, when the land was no longer needed for a public work, it must be offered back to the original owners or descendants—unless they had been willing sellers in the first place. And it said that, if the land in question was Maori land, it must either be offered back to the owners or application made to the Maori Land Court to revest the land in its former owners.

According to the Tribunal the most significant omission was "the failure to acknowledge in any way in the Public Works Act 1981 the Crown obligations and responsibilities toward Maori as a partner under the Treaty of Waitangi."

Compensation

WHEN LAND was taken for public works, compensation was paid to the owners based on the current market value of the land in its existing state.

The calculation completely ignored the fact that the sellers did not want to sell. It also ignored the value of any potential future developments on the land—either by the owners or the Crown. And it ignored intangible spiritual values which are of particular importance to Maori.

"In the Maori world there are also values attributed to land and identity, ancestry and occupation over many generations, which can never be translated into monetary terms."

"That is why Maori land, compulsorily acquired, is not seen by Maori as paid for, or adequately compensated, by a mere sum of money."

The Tribunal says Maori see the compulsory acquisition of their land for public purposes as another form of raupatu or confiscation.

"They argue that such lands, when no longer required for the purposes for which they were taken should be returned to former owners or their successors, and that any compensation paid at the time of taking should be regarded as a payment by the Crown for the use of the land for public work."

The Tribunal argues that there needs to be a review of "basic assumptions for concepts of land value" used in determining compensation.

The Tribunal is also critical of "offer-back" procedures. It says that, in the Te Maunga case, in line with legislation, the land was offered back to the owners.

"But the stumbling block was the condition imposed by the Minister of Railways that the owners pay $70,000 plus GST to get the land back". The Tribunal disputes the Crown view that because the owners were paid some compensation when the land was taken from them, they should have to pay to get it back.

It asks why the Crown should get all the benefits of the increased market value of the land via "offer-back" payment from owners. And it says that land taken compulsorily should be offered back on terms "sufficiently reasonable that former Maori owners are not prevented from resuming their rangatiratanga of lands compulsorily taken from them."

For further information see the *Te Maunga Report*, published by the Waitangi Tribunal in October 1994. Copies can be purchased from Brookers—0800 732 766. ❖

Waipareira claim has second hearing

THE CLAIM BY Te Whanau o Waipareira, which challenges Government policy over funding of social services, has had its second hearing in Auckland.

The claimants completed their submissions at the second hearing. The Crown will give its response at the next hearing, from 31 January to 3 February next year at Hoani Waititi Marae, Henderson. (A hearing scheduled for November this year has been postponed.)

The Waipareira claim is an unusual one. Te Whanau O Waipareira is a large pan-tribal Maori trust providing business and social services in West Auckland.

It has always received a large chunk of its social service funding through Department of Social Welfare structures. Latterly funding has come from the Community Funding Agency (CFA)—the arm of the Department of Social Welfare which contracts with providers to provide social services for people in their area.

However, the trust states that, over the last three years its funding has been substantially reduced.

The trust argues that, as a pan-tribal organisation like the Maori Women's Welfare League and Maori Wardens Association, it is a Treaty partner and thus attracts Treaty rights.

It claims that, in reducing funding to the Trust, the Crown has failed to recognise that status. It is this issue of status, as much as the questions of funding, which are of primary importance in the claim.

(Hearing continuing)

Mayor of Waitakere City Council, Bob Harvey, at the powhiri for the Waitangi Tribunal's first hearing of the Waipareira claim at Hoani Waititi Marae.

Tribunal hears Moriori claims for the Chathams

CLAIMS BY BOTH Moriori and Ngati Mutunga are being heard by the Waitangi Tribunal as part of the Chatham Island Claim (Wai 64/308 and Wai 417—Moriori; Wai 65 and Wai 181—Ngati Mutunga).

The Moriori claims are being heard first and focus on three key issues:

• Whether the Crown should have freed Moriori from slavery by Maori

• Whether the Native Land Court acted correctly when it awarded 97 per cent of land in the Chathams to Maori and three per cent to Moriori. (The court did so on the basis of the "1840 rule"—that is, that those in possession in 1840 were considered owners of the land).

• Conservation issues, for instance whether customary harvesting of protected species like titi and albatross should be allowed, and if so, what constitutes a "sustainable" take of these species.

The first hearing of the claim was in May this year. Moriori claimants have now completed their case and the Crown has responded on the slavery and conservation issues. It will give its response on the Native Land Court questions at the next hearing in January next year.

The claim is being heard by Chief Judge Edward Durie, Professor Gordon Orr and John Kneebone. The fourth member was the late Makarini Temara.

A tribute to Mr Temara appears on page two of this issue.

The late Makarini Temara (left) sits with John Kneebone, Chief Judge Durie and Professor Gordon Orr while hearing the Chathams claim in Wellington last month.

WAITANGI TRIBUNAL CURRENT PROGRAMME

These dates are subject to change

21-25 NOVEMBER
Wai 46
Ngati Awa
Whakatane

7-9 DECEMBER
Wai 145
Wellington Tenths

CHRISTMAS BREAK
1994-1995
22 December to 4 January

24-27 JANUARY
Wai 64
Chatham Islands
Wellington

31 JAN—3 FEB
Wai 414
Te Whanau o Waipareira
Auckland

Former Health Minister takes seat on Waitangi Tribunal

NEW TRIBUNAL member Dr Michael Bassett has had a colourful and chequered career spanning academia, politics and the private sector.

An historian who has written several highly-acclaimed biographies, Dr Bassett is perhaps best-remembered as a high profile Health Minister in the Lange Labour Government of the mid-1980s.

Health Ministers always get a hard time of it from the medical profession but Dr Bassett quickly showed he could give as good as he got.

He was never short of a pungent phrase. On one occasion he labelled certain doctors "a handful of hoons" for their opposition to his plans to put a lid on fees for child patients.

During his time as Health Minister, Dr Bassett (who is a Doctor of Philosophy, not a medical doctor) introduced many important changes to the health system aimed at giving people more choice in where and how they got their health services. He gave the go-ahead to union health clinics and independent nurse practices.

Other changes impacted directly on Maori, for instance the introduction of a national Hepatitis B vaccination programme for children.

He was also responsible for instigating a review of the structure and funding of public hospitals, which became a forerunner to the restructuring of the health system in the 1990s.

Throughout his ministerial career, Dr Bassett was Minister of Local Government and oversaw the first major restructuring of local government since the 1870s. He was also Minister of Internal Affairs, Civil Defence and Arts and Culture.

After retiring from Parliament in 1990, he worked as a consultant with Expo '92, and returned to writing biographies of Sir Joseph Ward and Gordon Coates. He has regular teaching appointments at the University of Western Ontario.

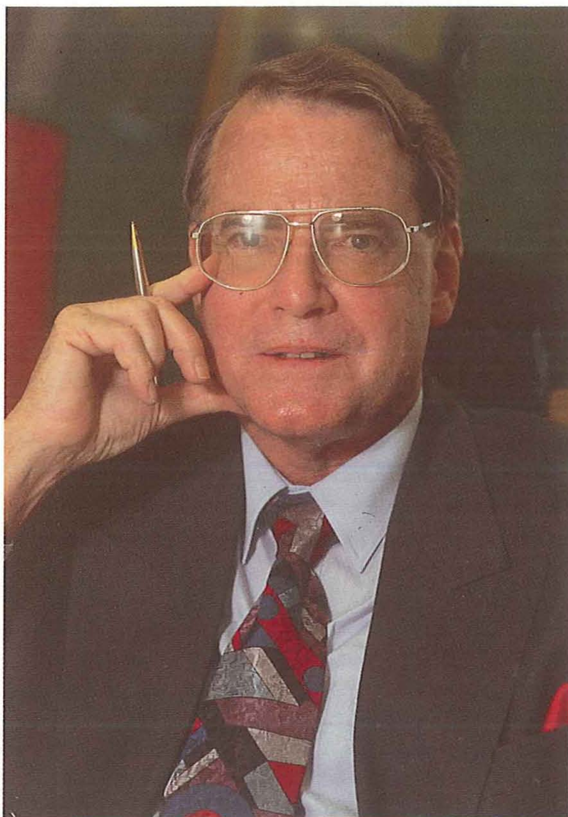
At present he is writing a history of the Department of Internal Affairs which he says fits neatly with his new role as a Tribunal member.

"The Department of Internal Affairs was formed about six weeks before the Treaty was signed and the first officials of the Department were essentially at Governor Hobson's right hand. They were responsible for negotiations over the Treaty and for setting the scene at Waitangi. They continued to be involved very much in the first two decades of activity over the Treaty, and they were very much involved in the Land Wars of the 1860s.

"So in a way, in writing the history of the Department, I've been going over similar material to that which the Tribunal considers, but from a slightly different viewpoint."

That said, he doesn't claim any particular expertise on Treaty issues.

But he has always had an interest in Treaty issues and served as chairman of the 1990 Commission in charge of Treaty commemorations.


WREYFORD HANN

New Tribunal member Dr Michael Bassett.

"I feel my interest had been close enough to have some appreciation of the issues involved, without having been so close that I could be said to have been "programmed" by any interest group on any particular issue that might be in front of the Tribunal."

> *"The politicians have to explain better to the public how the airing and settlement of grievances will advance the welfare of all New Zealanders."*

And, as a member of the Government which first set up the Tribunal, he feels he has a stake in its success.

"I was a caucus member in the 1975 Labour Government which set up the Tribunal as a three-strong body with very limited powers.

"It's fascinating because at that time, cabinet and caucus decided that it was impossible to deal with Maori grievances - and that all the Tribunal could do was look into future legislation."

A decade later, he was part of the next Labour Government which amended the legislation to allow the Tribunal to look at claims back to 1840.

"What had been too difficult in 1975 was by then quite acceptable," he says.

But he adds that, while the extension of powers may have become acceptable politically, many members of the public remain confused and uneasy about the Tribunal's role.

That's not the Tribunal's fault, he says. It is up to the Government of the day, not Tribunal members, to make the public more aware of the Tribunal's role.

"I think that if its role is to be fully appreciated, the politicians have to explain better to the public than they have done, why the Tribunal exists, and how the airing and settlement of grievances will advance the welfare of all New Zealanders."

Dr Bassett is married to Judith, a legal historian, writer and chairman of the ASB Trust. They have a daughter, Emma, who is a lawyer and a son, Sam, who is an accountant.

He has been appointed to the Tribunal for a three year period. ❖

Reserved land report has big implications for Tribunal claims

A report calling for abolition of the Maori Reserved Land system has major implications for a number of claims before the Waitangi Tribunal

THE LONG-AWAITED Trapski report says the system of perpetual leases—which roll over every 21 years with rents set unrealistically low—is unjust and inequitable.

The system has resulted in the owners of these Maori lands losing their rights to make decisions about their own property and failing to receive true market rentals, the report says.

It says the system has resulted in the owners of these Maori lands losing their rights to make decisions about their own property and failing to receive true market rentals.

In addition, unclaimed rent has been diverted to "general Maori purposes" without the owner's consent or involvement, and owners have suffered a loss of financial interest in the value of the land.

The Government has said it will act quickly on the report's recommendations though it has not yet spelt out what action it will take.

Whatever it does is likely to have a major impact on the Wellington Tenths, Taranaki and Nelson lands claims, all of which involve large areas of Maori Reserved Land.

The report says the fairest and most effective way of rectifying the situation is for owners and tenants to negotiate their own arrangements to terminate leases "in a way that brings about the least possible disadvantage or injury."

Where this is not possible because either side is unwilling or unable to negotiate a "mutually acceptable" solution, the Government should set down in law a framework for terminating leases.

That should include the following provisions:

- All leases should terminate after two further 21 year periods thus giving existing tenants 42 or 63 years tenure
- Rents for all leases should be reviewed to market levels in three years time so owners start to receive fair payment. After that rents should be reviewed every three years and based on current market rates.
- Owners should have first right to buy at market value, if the tenants wish to sell within the remaining term of the lease.

The report says all landowning Maori incorporations and trusts have made it clear that they would be willing to buy at market rates.

The Trapski recommendations differ in part from those proposed by the Government in a 1993 document, *A Framework for Negotiation—Toitu te Whenua (the Proposals)*.

Toitu te Whenua proposed a third right of renewal of 21 years and a time frame of 14 years for rents to be taken to market level—provisions which the Trapski report says were strongly rejected by Maori owners.

"It is acknowledged that the current system is unjust, but the Government is concerned that in resolving the original injustice, it does not itself create further injustice.

The report's authors, retired Judge Peter Trapski, former Maori Women's Welfare League president Georgina Kirby and Rob Cooper, stress the damage caused by long delays in resolving the issues relating to Maori reserved land.

They say final decisions are urgently needed "in order to bring certainty to a situation where uncertainty has been wreaking havoc in the lives of so many for so long."

The report is the latest in a long line of reviews and investigations into Maori Reserved Land. There have been at least nine major reviews or commission of enquiry into Maori Reserved lands since 1878.

While Maori Affairs Minister John Luxton hasn't yet said whether he will accept all the Trapski recommendations, he has made it clear that the Government is committed to resolving the issue.

But he says it wants to do so in a way that is fair both to owners and tenants.

Judge Peter Trapski.

"It is acknowledged that the current system is unjust, but the Government is concerned that in resolving the original injustice, it does not itself create further injustice.

"The Government wants to ensure that whatever decisions are made, are fair to both tenants and owners."

The report's authors, too, stressed the need for fairness to all parties.

"Absolute fairness must be the hallmark of all dealings between owners and tenants. A conciliatory, non-adversarial approach to the negotiations must be taken by all parties and there must be no attempt by owners to recoup any element of compensation for past grievances from tenants.

"Many owners and incorporations have expressed a desire to ensure that their experiences as victims of unfairness and injustice over an extended period are not now passed on to their own tenants."

Other recommendations in the report were directed at the role of the Maori Trustee. It said there was dissatisfaction in many cases with the Maori Trustee's administration of perpetually renewable leases and the time had come for the Maori Trustee to phase itself out of the administration of Maori reserved land.

"In most cases positive action should be taken immediately to return Mana Whenua or effective control to the owners of this land and for owners to be assisted in this process." ❖

Native Title Re-established

This is a summary of a paper, "Native Title Re-established", delivered by Chief Judge Durie to the International Bar Association, 25th Biennial Conference, Melbourne, October 1994.

THE NATIVE LAND Court, precursor to the Maori Land Court, "regularly got it wrong" in its interpretation of "native title" or customary land tenure, according to Chief Judge Edward Durie.

The result was a new tradition in New Zealand, a "Native Land Court version of custom that is substantially westernised".

Judge Durie told an Australian law conference that traditional Maori land tenure is "larger than ownership" and involves three levels of rights.

The first level is "use" rights, held by individuals groups and the tribes but with obligations to the tribal entity.

The second level is "political" rights—that is, the right of the tribe to manage its own territory.

The third level—the most difficult for Westerners to understand—is "associational" rights.

Because associational rights are tied to spiritual and emotive factors, Westerners tend to see them as less substantive. But to Maori, they are vitally important.

They include the right of individuals to maintain an interest in the traditional area after having moved away; the right of the tribe to maintain its connection in an area formerly occupied for generations and from which they have moved, and the right to speak at a place on account of ancestral land connections.

"The importance of associational rights has increased in recent years on account of land alienations and Maori urbanisation," Judge Durie said.

"Having a land interest in the home area, no matter how small, as a turangawaewae or place to stand, is important in the Maori psyche."

He said the Native Land Court system confiscated both associational and political rights.

"The Native Land Court is considered to have confiscated the tribal political rights of territorial management and the associational rights of kin, effectively destroying, it is claimed, the social and economic base. It is also argued that individual rights were confiscated in many instances as many of the kin group were left out of the ownership lists."

New Zealand history suggests some land reform was needed, he said. But it is clear that Maori would have preferred a different system.

Iwi in various parts of the country tried to set up alternative land tenure systems to protect their land including creating legal trusts, forming companies, and petitioning for statutes to govern their tribal lands.

What all these initiatives had in common was a determination to keep the Native Land Court out of their affairs.

Judge Durie's paper concludes by examining Maori resource rights and the claims process which, he says, "appears to require the re-establishment of both an economic base and political rights of self-determination".

And he says the Maori Land Court now has a much changed role from that of its predecessor the Native Land Court, "and it has won from Maori an esteem that was lacking when the Native Land Court was established a century and a half ago to convert native tenure".

Libraries In The Life Of A Nation

This is a summary of a speech titled "Libraries in the Life of the Nation" by Chief Judge Durie to the Joint Conference of the New Zealand and Australian Library and Information Assocations.

LIBRARIES SHOULD reflect the "soul" of the community they serve, says Chief Judge Edward Durie.

"In what (libraries) keep and how they operate, they mirror the persona and soul of their country or community."

"How libraries present themselves must be as important as the records they keep or the steps they take in servicing their users."

He told the joint conference of New Zealand and Australian Library and Information Associations that libraries used to be targeted to an educated and mainly white elite.

"No wrong was thought to be done.

"It was considered sufficient at the time that libraries were open to all and that for all there was one system of user.

"I think we have come to see more clearly now that to treat all people the same, when they are not, is not to treat them equally but to discriminate between them."

He said judgements on what was kept in libraries, how it was referenced and its accessibility were vitally important.

Library managers needed to be responsive to community opinion, to minority needs and particular interests.

The Treaty of Waitangi had particular significance in the context of libraries because its "rebirth" in recent years was a reminder that some important national documents achieve status only over time.

The contemporary view of the Treaty was as a "partnership"—which, in the library context, meant library administrators and Maori units working collectively to formulate policy and deliver services.

Much valuable "partnership" work had already been undertaken by the National Library and the New Zealand Library and Information Association, working with their respective partners, the Maori Policy Planning Unit and Te Roopu Whakahau, and by the Turnbull Library.

But, he said, many other issues still needed to be looked at, for instance what to do about early ethnographies and histories that continued to give New Zealanders a distorted view of Maori; how the records of whakapapa, or genealogies, should be handled; whether there is a property right in tribal histories, pepeha and songs.

And he said librarians must learn how they can best assist Maori users of libraries.

COPIES OF SPEECHES ARE AVAILABLE FROM THE WAITANGI TRIBUNAL DIVISION

Other speeches available from the Tribunal are:

- Maori and the law in the light of the life, works and legacy of Sir Apirana Ngata, by Chief Judge Durie at the centenary of the graduation of Sir Apirana Ngata, June 1994.
- Keynote address to Hui Whakapumau Maori Development Conference, by Chief Judge Durie at Massey University, August 1994.

Tina brings journalism and public relations skills to Tribunal

INFORMATION MANAGER Tina Watson (nee Youngman) is of Ngati Kahungunu ki Wairarapa on her mother's side and is from Greymouth on the West Coast on her father's side.

She was educated at Hukarere Maori Girls School in Hawkes Bay and after leaving school, spent a year living in London and travelling through Europe.

She worked at the Department of Maori Affairs library before deciding to pursue a career in journalism and public relations.

After completing the Waiariki Polytechnic Journalism course in Rotorua, she worked for the Rotorua Review and Rotorua Daily Post, Manatu Maori and the Prudential Assurance Company.

She has partially completed a BA in Maori at Victoria University.

As the new Information Manager, Tina will be responsible for the Waitangi Tribunal newsletters and publications, the library and public relations plan.

Information Manager Tina Watson.

Sian helps research Urewera district

RESEARCH OFFICER Sian Daly is of Irish and Norwegian descent.

She worked for three months as the acting Information Manager at the Tribunal.

Sian has a BA with Honours in history from Canterbury University and has partially completed her Masters degree at Victoria University. In between her studies, she spent a year travelling through Europe.

Sian is currently working on the Ngai Tahu ancillary claims and is working with fellow researcher Anita Miles on the Urewera Rangahaua Whanui District No.4.

Research Officer Sian Daly.

Accounts Clerk Tere Monga.

Tere former Maori Land Court clerk

ACCOUNTS CLERK Tere Monga is of Ngati Raukawa and Ngati Whatua descent.

She has worked for the Maori Land Court for the past four years where she developed and implemented a variety of accounting principles and administrative practices.

Before that, she worked for the Lower Hutt District Court.

The Researchers

Treaty of Waitangi research officers (from left) Janine Ford, Suzanne Woodley and Paul Hamer.

Turangi claim winds up

CLAIMANTS AND the Crown have made their final submissions in the Turangi Lands claim (Wai 84) over land taken in the 1960s for Turangi Township.

The Government of the day passed special legislation so that it could take the land from its Maori owners and use it to build a township for workers on the Tongariro power development.

The Maori owners have a number of grievances to do with the amount of land taken, how it was taken, the amount of compensation paid, lack of consultation and detrimental effects of construction on other land nearby.

First hearings were in April this year, with the Crown beginning its response in September.

The hearings were before Tribunal members Professor Gordon Orr (presiding officer), Professor Evelyn Stokes, Professor Sir Hugh Kawharu and Hepora Young.

The members will now begin work on their report on the claim.

Claimant Dulcie Gardiner explains problems with her property adjoining the Tokaanu tailrace to counsel and Tribunal members.

Claimants Bill Asher Left) and Arthur Grace make a point to Tribunal members at the Turangi site visit—at rear is principal claimant Mahlon Nepia.

This column will be a regular feature in Te Manutukutuku to introduce the Tribunal's 13-strong in-house research team.

SUZANNE WOODLEY

SUZANNE WOODLEY works on parts of the Taranaki claim, researching the "ancillary claims".

These are single issue claims related to twentieth century alienations such as land taken under the Public Works Act.

Suzanne started work with the Tribunal in 1990 as a claims administrator and worked with Te Roroa, Muriwhenua and Ngai Tahu claims.

In February 1992 she began research work, completing reports on the Matakana Island, Tuhua, Manaia 1C, Manaia 1A and 2A, Sewage Rates and Whangarae 1C claims.

Suzanne has a BA in sociology from Canterbury University and is completing an honours degree in history at Victoria University.

JANINE FORD

JANINE FORD has spent much of her time at the Tribunal working on the Taranaki claim. She is also claims manager for the Ngati Awa claim which has a hearing in December, and she has worked on the Chatham Island claim. Janine is also from Christchurch and has an honours degree in history.

She came to the Tribunal in 1990 after working at Maruwhenua (the Maori secretariat of the Ministry for the Environment). She worked initially on the Raupatu project which pulled together information about all confiscations of Maori land.

Janine left for 15 months overseas travel, including seven months in Central and South America, and returned in February 1992. A major report on the Ngati Awa claim will be in the next issue of Te Manutukutuku.

PAUL HAMER

PAUL HAMER is the researcher assigned to the Turangi, Whanganui River and Ngai Tahu ancillary claims.

Much of his time recently has been spent making amendments to the draft Ngai Tahu Ancillary Claims Report in the light of submissions from the Crown and claimants.

Paul completed an MA in history from Victoria University in 1992 and spent 18 months as a policy analyst at the Treaty of Waitangi Policy Unit before coming to the Tribunal in 1993. His first work for the Tribunal was as the researcher for the Maori Electoral Option claim.

He also investigated the operation of the Native Land Court in the Kaipara District during the "10 owner" period (from 1865-73) for the Rangahaua Whanui project.

The Waitangi Tribunal Claims

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